

**First Level Review
Appeal Issues and Response**

**Mesa del Medio Grazing Association
Mesa del Medio C&H Allotment
Appeal #09-03-10-0010-A251**

Process Information

On, September 14, 2009 I received a Notice of Appeal on the decision dated July 29, 2009, by Coyote District Ranger Francisco Sanchez. Ranger Sanchez signed a Decision Notice/Finding of No Significant Impact (DN/FONSI) approving managed livestock grazing on the Mesa del Medio Allotment.

The appeal was filed in accordance with 36 CFR 251, subpart C, and was designated #09-03-10-0010-A251 for the Mesa del Medio Grazing Association.

In my October 1, 2009 Letter of Acknowledgement of the appeal, I outlined the steps and timeline that would be followed in processing this appeal, including the opportunity to request an oral presentation. In this letter I also denied Appellants request for stay since implementation of the Cerro Pedernal project will not begin until the 2010 grazing season and this appeal will be resolved prior to implementation, per 36 CFR 251.91(b). The Deputy Regional Forester notified you in her October 19, 2009 letter that she would not exercise her discretion to review my decision as provided for in 36 CFR 251.91(k),

The Deciding Officer prepared a Responsive Statement and submitted copies to the Appellant and me on October 14, 2009. On October 30, 2009, Ted Trujillo, attorney representing the Cerro Pedernal stockmen, submitted a request for an oral presentation to be held either November 7 or 14, 2009. I responded to Mr. Trujillo on November 5, 2009 by proposing to hold the oral presentation on November 21, 2009. An oral presentation was made to me on November 21, 2009 at the Rio Arriba County Rural Event Center in Abiquiu, New Mexico. At the conclusion of the oral presentation I informed you the appeal record would be officially closed in the near future and that I would issue a decision no later than 30 days after closing the record.

On December 4, 2009 I received your written supplement to the comments the Mesa del Medio Association provided in the Oral Presentation, which I accepted, and reviewed prior to making my decision. On January 8, 2010 I notified you the appeal record would be officially closed on January 8, 2010, and that I would render my decision no later than February 8, 2010.

As the Appeal Reviewing Officer I will be determining if Ranger Sanchez reached a reasonable conclusion in the Mesa del Medio Decision Notice/Finding of No Significant Impact. My decision is to either affirm or reverse the Deciding Officers decision.

I reviewed the Cerro Pedernal Environmental Assessment, Ranger Sanchez's Decision Notice/Finding of No Significant Impact (DN/FONSI), the Appeals, Responsive Statement of the Deciding Officer, and Supplemental Oral Presentation Information. I considered the entire record in formulating my decision.

History and Background

The Santa Fe National Forest completed an Environmental Assessment (EA) in July 2009 that disclosed the effects of livestock grazing on four grazing allotments. The four allotments are located, two each, on the Espanola and Coyote Ranger Districts. The District Rangers issued a separate decision for each allotment analyzed in the EA. Fourteen appeals were filed on the decisions, however one appeal was dismissed on the basis of not having standing to the appeal as provided for in 36 CFR 251.86(b).

The Coyote District Ranger, in the Decision Notice and Finding of No Significant Impact for the Mesa del Medio Allotment, decided to approve an adaptive management strategy for livestock grazing. An appeal was filed specific to the Mesa del Medio Allotment, signed by all but one of the association members.

The appellant included a request for stay of the District Ranger's decision in their appeal, which was denied by the Forest Supervisor and the Deputy Regional Forester.

Appeal Issues and Responses

Appellants base their appeal on nine claims for relief:

- 1) Consider the unique grazing system (*querencia*) of the Mesa del Medio that has been in practice and efficiently worked for many years;
- 2) Appellants want a full grazing season and full numbers (May 15-October 31);
- 3) Permittees should be more included and encouraged to participate in data collection, monitoring, and selection of key areas;
- 4) Appellants would like to see more thinning projects planned to remove forest encroachment;
- 5) Social and economic impacts to dependent communities should be addressed with more thorough studies;
- 6) Administratively changed allotment boundaries should be put back in place;
- 7) Full cooperation with NMGF is needed;
- 8) Northern New Mexico Policy and conditions of the Hassell Report should be considered;
- 9) Permittees need a guide to understand law, regulation, and policy used by the Forest Service.

Several of the appeal issues (Statement of Reasons) are responsive to more than one claim for relief. Where this occurs my response to the issue is directed at all the claims

for relief which appear appropriate for inclusion with the issue being addressed. In other situations the issues may not directly address one of these claims and my response stands on its own. And finally, several of the claims appeared to be stand-alone claims. In other words there are no apparent issues associated with these claims.

Issue 1. Data and Monitoring

Appellants state that the 30% slope restriction is not warranted because livestock can use areas up to 60% slope. They state cattle can graze steep slopes and that this may encourage plants to grow faster and healthier, which may provide grazeable land for wildlife (Mesa del Medio Appeal, pg. 2).

Appellants state they disagree with standardization of the stubble heights when impacts from wildlife may affect these heights. They further state wildlife species affect the grazeable acreage and carrying capacity and should be factored in (Mesa del Medio Appeal, pg. 3).

The appellants question how resource conditions are determined and state there are other factors responsible, other than livestock, for the unstable streambanks (Mesa del Medio Appeal, pg. 3).

Response: (Combines Claims for Relief #1, 2, 3, 7)

Support to Decision

The purpose and need as stated in the EA (Cerro Pedernal EA, 7/2009, pg. 2) is to improve resource conditions on the allotment. Under current management (*querencia*), the allotment is not meeting or moving towards Forest Plan goals, objectives, standards, or guidelines in a desired timeframe. As a result, there is a need to change livestock management on the allotment. The District Ranger described how the grazing management criteria were developed and used in the analysis for the Cerro Pedernal EA (Sanchez Responsive Statement to Mesa del Medio, pgs. 1-4). The EA provides references to support a conservative level of utilization and stubble height (Cerro Pedernal EA, 7/2009, pgs. 109, 110). In addition, Forest Service Handbook 2209.13, Chapter 90 (pg. 4) supplies information on grazing intensity as depicted as a utilization level, citing the same references as the EA.

The EA (Cerro Pedernal EA, 7/2009, pgs. 48-51) describes the existing condition for rangeland vegetation, concluding there is a need to change grazing management on all four allotments (which includes the Mesa del Medio Allotment). The effects to riparian conditions from livestock use and other activities were analyzed in the EA (Cerro Pedernal EA, 7/2009, pgs. 39-48). This analysis looked at other factors that can modify of vegetation and soil properties to cause watershed impacts.

Information received from the New Mexico Game and Fish Department, and considered by the District Ranger indicated elk numbers within Game Management Unit (GMU) 6C

(which includes the Mesa del Medio Allotment) decreased from 2001 to 2008, with few elk observed during an elk survey in GMU 6C. Elk populations are expected to remain stable or decrease in GMU 6C to maintain the management objective for the unit. (Cerro Pedernal EA, 7/2009, pg. 62). New Mexico Game and Fish Department has indicated no plans to increase the number of elk in GMU 6 (includes the Valles Caldera) (Cerro Pedernal EA, 7/2009, pg. 101). The Forest Service works with the New Mexico Game and Fish Department on an annual basis and submits comments to proposed hunting regulations and management plans (Cerro Pedernal EA, 7/2009, pg. 101). Because the numbers of elk do not appear excessive for the area, construction of an elk-proof fence on the north boundary of the Valles Caldera does not appear to be necessary at this time.

As stated in the Response to Public Comment section in the EA, the Forest Service is responsible to maintain viable populations of native and non-native wildlife, and that direction exists in the Santa Fe National Forest Land and Resource Management Plan (Forest Plan) to manage livestock to maintain or enhance elk and deer winter range, elk calving, and to maintain suitable habitat (Cerro Pedernal EA, 7/2009, pg. 101).

The District Ranger disclosed in the Decision Notice there were no identified effects to Management Indicator Species (elk) as a result of the analysis (Mesa del Medio DN/FONSI, 7/29/2009, pg. 6).

The District Ranger selected an adaptive management strategy that takes into account and focuses on monitoring to determine adjustments in allowable livestock use. This approach allows flexibility needed to meet utilization guidelines and long-term desired conditions. The District Ranger states that monitoring will be “an open, cooperative, and inclusive process conducted with the permittees and other interested parties” (Mesa del Medio DN/FONSI, 7/29/2009, pg. 2).

Forest Supervisor Determination

The Forest Service is committed to managing the allotment to meet Forest Plan goals and objectives. The record indicates the District Ranger thoroughly analyzed and disclosed the issues surrounding elk management within and adjacent to the Mesa del Medio Allotment. The District Ranger’s selection, evaluation, and documentation of grazing management strategies, effects, and use criteria in the EA are reasonable.

Issue 2. Grazing System

Appellants state that the current grazing system (*querencia*) should be analyzed with the other alternatives. They further state that the substantial amount of proposed range improvements will require a large investment from the permittees (Mesa del Medio Appeal, pg. 3).

Response: (Combines Claims 1, 5)

Support to Decision

The purpose and need as stated in the EA (Cerro Pedernal EA, 7/2009, pg. 2) is to improve resource conditions on the allotment. Under current management (*querencia*), the allotment is not meeting or moving towards Forest Plan goals, objectives, standards, or guidelines in a desired timeframe (Cerro Pedernal EA, 7/2009, pgs. 48-51). As a result, there is a need to change livestock management on the allotment. The District Ranger described how grazing management criteria were developed and used in the analysis for the Cerro Pedernal EA (Sanchez Responsive Statement to Mesa del Medio, pgs. 1-4). The EA provides references to support a conservative level of utilization and stubble height (Cerro Pedernal EA, 7/2009, pgs. 109, 110). In addition, Forest Service Handbook 2209.13, Chapter 90.5 supplies a definition of grazing intensity as depicted as a utilization level, citing the same references as the EA.

Forest Service Handbook 2209.13, Chapter 90, Section 92.23 describes the parameters of how grazing allotment NEPA decisions can include an adaptive management strategy as part of the proposed action. An adaptive management strategy is appropriate for consideration, and is being used by many Forests across the National Forest System.

This concern, initially brought forward during the 30-day public comment period, was addressed in the EA (Cerro Pedernal EA, 7/2009, pgs. 106-107). The District Ranger, or his staff, met with the appellants throughout the analysis process and described what an adaptive management strategy is, how it is incorporated into the NEPA process, and how actions described as part of the adaptive management strategy would be implemented (Cerro Pedernal EA, 7/2009, pg. 14; Sanchez Responsive Statement to Mesa del Medio, pg. 5). The District Ranger appropriately included an adaptive management strategy within the proposed action (Cerro Pedernal EA, 7/2009, pgs. 18-23) and fully described it in the Decision Notice/Finding of No Significant Impact (Mesa del Medio DN/FONSI, 7/29/2009).

The adaptive management strategy for the Mesa del Medio Allotment, described in Alternative 2 in the EA (Cerro Pedernal EA, 7/2009, pgs 18-22), does not reduce the permitted livestock numbers, season of use, or change allowable utilization levels. The strategy does identify that elements of the grazing activity, including timing, duration, intensity, and frequency can be modified or adjusted if significant progress towards desired conditions is not made (Cerro Pedernal EA, 7/2009, pgs. 18-19).

Range improvements were identified (Cerro Pedernal EA, 7/2009, pgs. 21, 22) for the Mesa del Medio Allotment that will help achieve the desired conditions for the allotment. The Decision Notice (Mesa del Medio DN/FONSI, 7/29/2009, pgs. 11-14) also lists and categorizes each range improvement as to whether implementation is mandatory or discretionary. The list is comprehensive and represents potential improvements necessary to improve livestock distribution, and to control the timing, duration, and frequency of livestock use to move towards desired conditions. The feasibility and effectiveness of each improvement will be determined and a prioritized construction

schedule developed during Allotment Management Plan development, with the improvements identified as mandatory generally being higher priority than those listed as discretionary.

Construction costs for the proposed range improvements would be shared under a cost share agreement with the allotment permittees (Cerro Pedernal EA, 7/2009, pg. 19). All available funding sources will be utilized. Progress towards implementing all proposed range improvements will depend on available funding and permittee cooperation. The Economic Analysis (Cerro Pedernal EA, 7/2009, pgs 77,78) states, "Under the proposed action, no significant changes in permitted use are proposed and actual use is expected to remain similar to recent past use; therefore the propose action is unlikely to affect the economic viability of individual ranches. The conservative to moderate stocking and utilization rates proposed are consistent with existing research that indicates that such practices can optimize financial return over the long term." However, the decision does include identified water developments critical to the implementation of the proposed action, the installation of which will be cost shared between the Forest Service and permittees.

Forest Supervisor Determination

The range improvement practices identified as part of the adaptive management strategy will be constructed under a cost share agreement with the permittee so not all costs will be borne by the permittee. The District Ranger's selection of Alternative 2, which describes implementation of an adaptive management grazing strategy, with no changes to permitted livestock or season of use, is reasonable.

Issue 3. Access to Riparian Areas

Appellants state concern that limiting access to riparian areas is a violation of their existing water rights. They also state they disagree with fencing streams and that there are other methods that could be used to protect streams (Mesa del Medio Appeal, pg. 4).

Response: (Claim 1)

Support to Decision

The issue of water rights was brought forward as a comment to the proposed action for the Cerro Pedernal project. It was addressed in the Response to Comments section of the EA, and summarily stated that Federal reserved water rights are established and recognized by states under case law (Cerro Pedernal EA, 7/2009, pg. 103).

The District Ranger addressed the issue of riparian fencing in his responsive statement (Sanchez Responsive Statement to Mesa del Medio, pg. 6). The EA identified the need to mitigate the effects from livestock grazing to several streams (Cerro Pedernal EA, 7/2009, pg. 24), and committed in the DN/FONSI to be responsible for the maintenance of the proposed exclosures (Mesa del Medio DN/FONSI, 7/29/2009, pgs. 13, 14).

Forest Supervisor Determination

The District Ranger's decision to mitigate the effects of livestock grazing by protecting the identified areas is reasonable. Consideration should also be given that other means of streambank protection may be possible and should be considered. This consideration needs to be cooperatively and collaboratively determined, and since the Forest Service is responsible for implementation and maintenance of these structures the final determination will be made by the District Ranger on the appropriate method to protect these areas.

Issue 4. Economic Impacts Inflicted by Proposed Developments

The appellants state the substantial amount of proposed range improvements will require a large investment from the permittees (Mesa del Medio Appeal, pg. 4, 5).

Response: (Claim 5)

Forest Supervisor Determination

My response to this issue is the same as that already discussed in Issue 2, where the concern of substantial financial impacts to the appellants was raised.

Issue 5. Communication with Permittees

The appellants state there is too much turnover of Forest Service personnel to establish working relationships. As a result of this, they state the Forest Service has been negligent in effectively communicating with permittees, especially as it has concerned proposed developments and associated costs/impacts (Mesa del Medio Appeal, pg. 5).

Response: (Not directly tied to any one Claim)

Support to Decision

The issue of turnover in Forest Service personnel cannot be addressed in an EA or in my decision on the appeal. I insist that my key officials maintain an open door policy and emphasize effective working relationships. We will continue to work with permittees and others to improve communication and relationships.

In response to the second part of the issue, the record indicates the District Ranger, or his staff, met with the appellants throughout the analysis process and described what an adaptive management strategy is, how it is incorporated into the NEPA process, and how actions described as part of the adaptive management strategy, including the proposed range improvements would be implemented (Cerro Pedernal EA, 7/2009, pg. 14; Sanchez Responsive Statement to Mesa del Medio, pg. 5).

Forest Supervisor Determination

The District Ranger's decision to implement an adaptive management strategy for the Mesa del Medio Allotment, including establishing a schedule for development of the proposed range improvements, is expected to lead to progress toward achievement of desired conditions and is reasonable.

Issue 6. Violation of National Environmental Policy Act – Social and Economic Impacts.

The appellants state the Forest Service failed to examine a range of alternatives including those that surround the social and economic communities, and that an EA for each allotment should have been prepared (Mesa del Medio Appeal, pg. 5).

Response: (Combines Claims 4, 5)

Support to Decision

A scoping letter for this environmental analysis was sent to the public on March 30, 2007, with seven responses received (Cerro Pedernal EA, 7/2009, pg 14). The Interdisciplinary Team analyzed internal comments and comments received from the public during the scoping period and determined the concerns raised could be addressed by the two alternatives. (Cerro Pedernal EA, 7/2009, pg. 17).

Two alternatives were developed and analyzed in detail, the No Action and Proposed Action alternatives. Two additional alternatives were considered but eliminated from detailed study - Continuation of Current Management and Vegetative Treatments. The vegetative treatments alternative included meadow restoration by thinning encroaching conifers on the borders of open meadows, general thinning to promote more herbaceous growth, and letting fire play a natural role. Vegetative treatments would more appropriately be proposed under future fuels reduction, ponderosa pine restoration, or habitat improvement projects. Fire use is being analyzed on a larger Forest-wide scale through a Fire Management Plan (Cerro Pedernal EA, 7/2009, pg. 17). The Forest Service stated it was their intent to proceed with vegetation treatments with a purpose and need targeting vegetation treatments that would identify not only watershed improvements but others such as fuel reduction, and Wildland Urban Interface (Cerro Pedernal EA, 7/2009, pg. 104).

On August 4, 2008, a legal notice was published in the Albuquerque Journal announcing the 30-day notice and comment period for this proposed action. Fifteen responses were received, one of which stated, "The Forest Service needs to consider the social-economic impacts the proposed action will have on Northern New Mexico ranchers and their families". This concern was addressed in the EA (Cerro Pedernal EA, 7/2009, pgs. 76-78, 102) and Decision Notice/Finding of No Significant Impact (Mesa del Medio DN/FONSI, 7/29/2009, pgs. 4-6). The Interdisciplinary Team considered this issue when analyzing the effects of the proposed action and determined there were no significant effects from the proposed action, based on the direction provided in 40 CFR 1500 – 1508,

Forest Service Manual 1950, and Forest Service Handbook 1909.15 (Cerro Pedernal EA, 7/2009, pg. 102).

An objective stated for the Forest Service range management program is to “contribute to the economic and social well being for people by providing opportunities for economic diversity and by promoting stability for communities that depend on range resources for their livelihood” (FSM 2202.1). A Forest-wide goal of the Santa Fe National Forest LRMP states, “Manage Forest activities and programs within the capability of the land while recognizing the value of maintaining the traditional cultures of northern New Mexico” (Cerro Pedernal EA, 7/2009, pg. 2). Additionally, Presidential Executive Order 12898 requires Federal agencies to respond to the issue of environmental justice by “identifying and addressing disproportionately high and adverse human activities on minority and low income populations.” Proposed management activities must address both human health and environmental effects, as well as cumulative and indirect effects on a community (Cerro Pedernal EA, 7/2009, pg. 76).

The EA includes analysis of the effects of both alternatives analyzed in detail to the environmental justice and socioeconomic conditions present in the area. Economic viability of individual ranches or the ranching community at large is subject to a variety of influences, including market fluctuations, weather, ranch management decisions, variable operating expenses, and the availability of other sources of income (Cerro Pedernal EA, 7/2009, pg. 78). The District Ranger’s decision to select the proposed action does not change permitted use (numbers of livestock or season of use) and actual use is expected to remain similar to recent past use. However, the decision does include identified water developments critical to the implementation of the proposed action, the installation of which will be cost shared between the Forest Service and permittees. The Decision Notice and accompanying Finding of No Significant Impact describe why this action will not have a significant effect on the human environment, and therefore, why an EIS was not prepared (Mesa del Medio DN/FONSI, 7/29/2009, pgs. 4-6).

Forest Supervisor Determination

The Forest Service is committed to sustaining long-term resource management including the continuance of traditional uses, and serving communities in northern New Mexico. The proposed action continues to permit livestock grazing within the capabilities of the allotment; therefore the effects are not likely to result in adverse impacts to environmental resources and the socioeconomic conditions to the local ranching community or individuals. The District Ranger’s decision is in compliance with the National Environmental Policy Act.

Issue 7. Inadequate Cooperation with other Agencies.

The appellants state the Forest Service has not cooperated with the New Mexico Game and Fish Department regarding elk populations and effects (Mesa del Medio Appeal, pg. 5).

Response: (Claim 7)

Forest Supervisor Determination

The response to this issue was incorporated into my response to Issue 1, above. The record indicates the District Ranger appropriately analyzed and considered information provided by the New Mexico Game and Fish Department regarding the numbers of elk on the Mesa del Medio Allotment (Cerro Pedernal EA, 7/2009, pgs. 62-67, 101).

Issue 8. Violation of the Hassell Report and Northern New Mexico Policy

The appellants state the conditions of the Hassell Report and the Northern New Mexico Policy have not been met by the Forest Service (Mesa del Medio Appeal, pg. 6).

Response: (Claim 8)

Support to Decision

The Cerro Pedernal EA was prepared within the parameters of applicable Federal laws, regulations, and policies (Cerro Pedernal EA, 7/2009, pgs. 1, 2; Mesa del Medio DN/FONSI, 7/29/2009, pgs. 6, 7).

The Hassell Report and Northern New Mexico Policy recommended shifts in Forest Service Practices to increase sensitivity to the unique culture of northern New Mexico. However, the referenced documents are not directly applicable to this decision under appeal. While I acknowledge a difference in interpretation between appellants and Forest Service on the issue of occupancy and use of National forest System lands, resolving those larger issues is not within the authority of the Forest Service.

The U.S. Congress and Secretary of Agriculture have mandated the Forest Service to manage livestock grazing activities on NFS lands through issuance of a permit subject to terms and conditions for occupancy and use of the land. The Forest Service is authorized to manage rangelands to protect basic soil and water resources, provide for ecological diversity, improve or maintain environmental quality, and meet public needs for interrelated resources.

Forest Supervisor Determination

My review of the project record indicates the District Ranger followed applicable federal laws, regulations, and policies in documenting the effects of continued livestock grazing on the Mesa del Medio Allotment in the Cerro Pedernal EA.

Additional Appeal Claims for Relief (6 and 9):

In the Notice of Appeal, Appellants stated several claims for relief which appeared to be stand-alone claims. In other words there are no apparent issues associated with these claims. Following is my consideration of these claims for relief.

Claim 6: Administratively changed allotment boundaries should be put back in place.

Appellants state there have been changes made administratively to allotment and pasture fences and where these occurred should be changed back (Mesa del Medio Appeal, pg. 8).

Response:

Support to Decision

This issue was raised in the 30-day notice and comment period for the proposed action. The Interdisciplinary Team responded that allotment boundary disputes are best resolved cooperatively among the parties involved in the dispute. The Team further explained that including this topic in the NEPA analysis could delay completion of the analysis and that NEPA may not be required to adjust allotment boundaries (Cerro Pedernal EA, 7/2009, pgs. 104, 105).

Forest Supervisor Determination

The District Ranger's decision to not analyze this issue in the Cerro Pedernal EA was reasonable, since this type of decision can be made administratively.

Claim 9: Permittees need to be provided with a guide to Forest Service law, regulation, and policy.

Appellants state a desire to be provided with a guide to assist them to understand law, regulation, and policy used by the Forest Service. They state this information is necessary for them to ensure their rights to utilize land are maintained and to be able to appeal decisions they find unacceptable (Mesa del Medio Appeal, pg. 8).

Response and Forest Supervisor Determination

I understand that the laws, regulations, and policies used by the Forest Service are complex and agree it is important for the appellants to have all the information they feel they need to better understand these sideboards. The District Ranger and his staff are available to meet with the appellants, answer any questions they may have, and provide them the information they want.