

**First Level Review
Appeal Issues and Response**

**Youngsville Grazing Association, Youngsville C&H Allotment
Appeal #09-03-10-0011-A251**

and

**John Valdez, Youngsville C&H Allotment
Appeal #09-03-10-0012-A251**

and

**El Madriel Partnership, Youngsville C&H Allotment
Appeal #09-03-10-0013-A251**

and

**Lorenzo Valdez, Youngsville C&H Allotment
Appeal #09-03-10-0014-A251**

and

**Jacobo Salazar, Youngsville C&H Allotment
Appeal #09-03-10-0015-A251**

and

**Paul Serrano, Youngsville C&H Allotment
Appeal #09-03-10-0016-A251**

and

**Severiana Salazar and Sons, Youngsville C&H Allotment
Appeal #09-03-10-0017-A251**

and

**Eddie Salazar, Youngsville C&H Allotment
Appeal #09-03-10-0018-A251**

Process Information

On, September 14, 2009 I received eight Notices of Appeal and Request for Oral Presentation 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 Youngsville Allotment.

The appeals were filed in accordance with 36 CFR 251, subpart C, and several included a request for an oral presentation as provided in 36 CFR 251.90(c) and 251.97. The appeals were designated #09-03-10-00011-A251 (Youngsville Grazing Association), #09-03-10-00012-A251 (John Valdez), #09-03-10-00013-A251 (El Madriel Partnership), #09-03-10-00014-A251 (Lorenzo Valdez), #09-03-10-00015-A251 (Jacobo Salazar), #09-03-10-00016-A251 (Paul Serrano), #09-03-10-00017-A251 (Severiana Salazar and Sons), and #09-03-10-0018-A251 (Eddie Salazar). I have decided my review decision will consolidate the eight appeals since they are relevant to the same decision

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(Youngsville Allotment) and involve common issues. This is consistent with 36 CFR 251.95(b).

In my October 1, 2009 Letter of Acknowledgement of the appeals, I outlined the steps and timeline that would be followed in processing these appeals, including the opportunity to request an oral presentation. In this letter I also denied the requests for stay since the Cerro Pedernal project will not be implemented until the 2010 grazing season and these appeals will be resolved prior to implementation, per 36 CFR 251.91(b). The Deputy Regional Forester notified the requesters 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 Appellants and myself on October 14, 2009. On October 30, 2009, John Valdez, November 3, 2009, Severiana Salazar and Sons, and November 2, 2009, Lorenzo Valdez submitted replies to the Deciding Officer's responsive statement. 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 the appellants 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.

I received the written supplements to the comments provided in the Oral Presentation on December 1, 2009, Youngsville Livestock Association, December 4, 2009, Severiana Salazar and Sons, and December 7, 2009, Eddie Salazar, which I accepted, and reviewed prior to making my decision. On January 8, 2010 I notified you by letter 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 Youngsville 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, the Appeals, Responsive Statements of the Deciding Officer, Appellant Reply Statements, and Supplemental Oral Presentation Information. I considered the entire record in formulating my decision.

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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 Youngsville Allotment, decided to approve an adaptive management strategy for livestock grazing. Eight appeals were filed specific to the Youngsville Allotment and have been consolidated for this review and decision as provided for in 36 CFR 251.95(b).

Some of the appellants included a request for stay of the District Ranger's decision in their appeals, which were denied by the Forest Supervisor and the Deputy Regional Forester.

Appeal Issues and Responses

The Appellants do not list any clear claims for relief, but do include many issues or points of contention in their appeals. I have grouped the issues brought forward into the following major categories and will address them by category.

Appeal Point Categories:

- 1) Livestock grazing is a right instead of a privilege, as documented in the Treaty of Guadalupe Hildago, Kearny Code, the Organic Act, the Taylor Grazing Act, and the Federal Land Policy and Management Act;
- 2) Grazing management criteria, including capacity estimates, stubble height, and utilization levels, are questioned;
- 3) Adaptive Management, including the proposed range improvements, affect permittee rights and economic situation;
- 4) Elk management not adequately addressed;
- 5) Other forest management practices should have been considered;
- 6) Decision violates the Public Rangelands Improvement Act and National Environmental Policy Act;
- 7) Forest Service cannot limit access to riparian areas;
- 8) The permittees were not sent copies of 36 CFR 251;
- 9) Administrative allotment boundary changes not adequately addressed;
- 10) The NMGF Department does not restrict fishing in streams that are listed as impaired in the EA

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Category 1. Livestock grazing is a right instead of a privilege.

Appellants state the permitted allotment entry dates, season of use, and livestock numbers are private property rights, not subject to negotiation and must be protected and honored. They base this claim on the Treaty of Guadalupe Hidalgo, Kearny's Code, the Organic Act, the Taylor Grazing Act, and the Federal Land Policy and Management Act.

Response:

Support to Decision

The District Ranger described how the Treaty of Guadalupe Hidalgo and Kearny's Code were addressed in the Cerro Pedernal Environmental Assessment (EA) in his Responsive Statement (Responsive Statement to Lorenzo Salazar, 10/14/2009, pg. 5). The terms and conditions of these documents have been decided by law and do not address the stated purpose and need of the EA, which is to authorize grazing in a manner which results in the landscape meeting or moving towards objectives in the Santa Fe National Forest Forest Plan and allotment specific desired conditions (Cerro Pedernal EA, 7/2009, pg. 2).

I acknowledge there is debate between the appellants and Forest Service about the role played by the Treaty of Guadalupe Hidalgo and Kearny's Code regarding occupancy and use of National Forest System (NFS) lands, including those encompassed by the Youngsville Allotment. I appreciate the difference of opinion held by the appellants about this but conclude that resolution of our differences is not within the authority of the Forest Service, and that the referenced documents are not relevant to this decision under appeal.

However, I am clear as to how law, regulation, and policy are applied to activities conducted on NFS lands. 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.

Regulations promulgated from law that guide, in part, livestock management on NFS lands are found at 36 CFR 222. Specific to the appellants issue of grazing rights not subject to negotiation, 36 CFR 222.3(a), (b), and (c) states, “ (a) Unless otherwise specified by the Chief, Forest Service, all grazing and livestock use on National Forest System lands and on other lands under Forest Service control must be authorized by a grazing or livestock use permit, (b) Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources, and (c) The Chief, Forest Service, is authorized to issue permits for livestock grazing and other use by livestock of the National Forest System and on other lands under Forest Service control

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as follows...” Further, Forest Service Manual at 2230.3.2 states, “The holding of such permits is a privilege, not a property right.”

The Cerro Pedernal EA was prepared within the parameters of applicable Federal laws, regulations, and policies (Sanchez Responsive Statement to Lorenzo Salazar, 10/14/2009, pg 4). Besides providing sideboards for the environmental analysis process, several of these laws, regulations, and policies provide guidance to regulating livestock use of NFS lands. The Organic Act states, “The Secretary of Agriculture... may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction;...”. Section 402 of the Federal Land Policy and Management Act states, “...permits and leases for domestic livestock grazing on public lands issued...by the Secretary of Agriculture, with respect to lands within National Forests in the eleven contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, ...”. The Taylor Grazing Act applies only to the Department of the Interior.

Forest Supervisor Determination

The project record substantiates that the District Ranger followed applicable federal laws, regulations, and policies in documenting the effects of continued livestock grazing on the Youngsville Allotment in the Cerro Pedernal EA. Although not required for analysis by the National Environmental Policy Act, the authority to manage livestock grazing activities is included in the legal and policy guidance documents utilized by the Forest Service when documenting the effects of livestock grazing in this EA.

Category 2. Grazing management criteria, including capacity estimates, stubble height, and utilization levels, are questioned.

Appellants state the EA fails to address why slopes greater than 30% were not identified as suitable rangelands, the Forest Service needs to address how the 30% riparian and 40% upland utilization levels were derived, and that the EA fails to describe why a 4 inch stubble height is used in forage utilization measurements.

Response:

Support to Decision

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 Lorenzo Salazar, 10/14/2009, pgs 6, 7, 9). The EA provides references to support a

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conservative level of utilization and stubble height (Cerro Pedernal EA, 7/2009, pgs 109, 110). These guidelines have been incorporated into Annual Operating Instructions since 2004 (Sanchez Responsive Statement to Lorenzo Salazar, 10/14/2009, pg 7). In addition, Forest Service Handbook 2209.13, Chapter 90 (pg. 4) supplies grazing intensity as depicted as a utilization level, citing the same references as the EA.

Forest Supervisor Determination

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 Youngsville Allotment). The District Ranger's selection, evaluation, and documentation of grazing management criteria in the EA are reasonable.

Category 3. Adaptive Management, including the proposed range improvements, affect permittee rights and economic situation.

Appellants state the Forest Service use of adaptive management affects the permittees rights. They further state the proposed improvements are too expensive and favor elk over cattle.

Response:

Support to Decision

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 Youngsville permittees 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 (Sanchez Responsive Statement to Lorenzo Salazar, 10/14/2009, pgs 1, 2). 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 his Decision Notice/Finding of No Significant Impact (Youngsville DN/FONSI, 7/29/2009).

The adaptive management strategy for the Youngsville Allotment, described in Alternative 2 in the EA (Cerro Pedernal EA, 7/2009, pgs 18-23), does not reduce the permitted livestock numbers, season of use, or change allowable utilization levels. The strategy does provide that elements of the grazing activity, including timing, duration,

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intensity, and frequency can be modified or adjusted if significant progress towards desired conditions is not made (Cerro Pedernal EA, 7/2009, pg. 18).

Range improvements were identified (Cerro Pedernal EA, 7/2009, pgs. 22, 23) for the Youngsville Allotment that will help achieve the desired conditions for the allotment. The Decision Notice (Youngsville DN/FONSI, 7/29/2009, pgs. 12, 13) also lists and categorizes each range improvement as to whether implementation is mandatory or discretionary. The list is comprehensive and represents potential improvements to improve livestock distribution, and to control the timing, duration, and frequency of livestock use towards achieving 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.

The appellants claim an adaptive management strategy will affect their rights to graze livestock on National Forest System lands. I addressed the issue of right-to-graze in the Category 1 discussion above.

Forest Supervisor Determination

The options evaluated within the strategy are practices commonly used to manage livestock on National Forest System lands throughout the west. 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 decision to select Alternative 2, which describes implementation of an adaptive management grazing strategy with no changes to permitted livestock or season of use, is reasonable.

Category 4: Elk management not adequately addressed

Appellants state the high population densities of elk are affecting the Youngsville Allotment, a game fence should be constructed between the Valles Caldera and the allotment, the Forest Service should consult with the New Mexico Game and Fish Department regarding elk, and that elk impact the high country prior to livestock entry.

Response:

Support to Decision

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 Youngsville Allotment) decreased from 2001 to 2008, with few elk observed during an elk survey in GMU 6C (Cerro Pedernal EA, 7/2009, pg. 101). The District Ranger described how 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). The 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). Because the numbers of elk do not appear excessive, construction of an elk-proof fence on the north boundary of the Valle Caldera does not appear to be necessary at this time.

The District Ranger also informed the appellant of Forest Service responsibilities to maintain viable populations of native and non-native wildlife, and that direction exists in the Santa Fe National Forest Plan to manage livestock to maintain or enhance elk and deer winter range, elk calving, and to maintain suitable habitat (Sanchez Responsive Statement to Lorenzo Salazar, 10/14/2009, pg. 3). These same issues were addressed through the 30-day comment period (Cerro Pedernal EA, 7/2009, pg. 101) and in the environmental effects section of the EA (Cerro Pedernal EA, 7/2009, pgs. 62, 65-66).

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. He commits to allotment monitoring being an open, cooperative, and inclusive process to be conducted with the permittees and other interested parties where feasible (Youngsville DN/FONSI, 7/29/2009, pg. 2).

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

Forest Supervisor Determination

The record indicates the District Ranger thoroughly analyzed and disclosed the issues surrounding elk management within and adjacent to the Youngsville Allotment, and his decision was consistent with applicable federal laws, regulations, and policies in this matter.

Category 5: Other forest management practices should have been considered

Appellants state the EA fails to address the real issues of thinning and logging (and high elk population densities, which are addressed in Category 4, above); that these elements are the cause of problems in the allotment and by implementing forest health initiatives a reduction in grazing pressure in riparian areas would result.

Response:

Support to Decision

A scoping letter for this NEPA 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).

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 do thinning, which will increase the amount of forage by opening up the canopy". The Forest Service responded to this comment by noting this comment was heard early in the planning stages of this project and that the Service recognizes the need for additional vegetation treatments to improve rangelands and watersheds. The Forest Service also stated an intent to target vegetation treatments that would improve watersheds and also reduce fuels and meet Wildland Urban Interface goals (Cerro Pedernal EA, 7/2009, pg. 104).

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The stated purpose and need for the Cerro Pedernal Allotments project is to meet Congressional intent and Forest Service regulation and policy by issuing authorizations for grazing activities that move the landscape towards objectives in the Santa Fe National Forest Plan and allotment specific desired conditions (Cerro Pedernal EA, 7/2009, pgs. 1, 2). This purpose and need was intentionally narrowly defined to provide the Interdisciplinary Team clarity of the issues and improved efficiency of the analysis.

Forest Supervisor Determination

Consistent with Forest Service regulation and policy, the District Ranger fully considered comments provided by the appellants to include other vegetation treatments in the analysis (Sanchez Responsive Statement to Lorenzo Salazar, 10/14/2009, pg. 5), and appropriately focused the analysis on the stated purpose and need, which was authorization of grazing in a manner that meets Forest Plan objectives and maintains or improves conditions resulting from such authorization(s).

Category 6: Decision violates the Public Rangelands Improvement Act and the National Environmental Policy Act.

Appellants state the Forest Service did not consult with them as required by the Public Rangelands Improvement Act. They state an EIS should have been completed instead of an Environmental Assessment, due to a failure to adequately assess the socioeconomic impacts of the decision.

Response:

Support to Decision

Public Rangelands Improvement Act – Statutory authorities to protect, manage, and administer National Forest System lands for range management purposes include the Public Rangelands Improvement Act of 1978. This law has been codified into regulations which confer authority to the Chief of the Forest Service. In turn, the Chief has developed policy that requires units to coordinate, cooperate, and consult with grazing permittees and grazing associations, and other interested parties in developing allotment management plans (AMP). Although the policy statement references permittee involvement during development of AMPs and not NEPA analyses/decisions, one direct product of a NEPA-based decision of an allotment is an AMP. Therefore, it is standard practice on the Santa Fe National Forest to collaborate with affected permittees throughout the plan-to-project, NEPA, and allotment management plan writing phases of AMP development.

The project record indicates the Forest Service met with the permittees of the Youngsville Allotment throughout the analysis process, to discuss the analysis of the allotment (Sanchez Responsive Statement to Lorenzo Salazar, 10/14/2009, pgs. 1, 2). In addition to these meetings, project scoping letters were sent to the permittees on March

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30, 2007 (Cerro Pedernal scoping letter, 3/30/2007) and the notice of a 30-day comment period to the proposed action was printed in the Albuquerque Journal on August 1, 2008 (Cerro Pedernal legal notice, 8/1/2008).

Forest Supervisor Determination

The District Ranger did provide opportunities to engage the permittees in the planning work for the Youngsville Allotment and has followed Forest Service policy and met the intent of the PRIA.

Support to Decision

National Environmental Policy Act – Socioeconomic concerns were raised during the 30-day notice and comment period and were addressed in the EA (Cerro Pedernal EA, 7/2009, pgs. 77-78, 102) and Decision Notice/Finding of No Significant Impact (Youngsville DN/FONSI, 7/29/2009, pg.4-6). The Interdisciplinary Team analyzed the effects of the proposed action to socioeconomics 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). The appellants state an EIS should have been completed instead of an Environmental Assessment, due to a failure to adequately assess the socioeconomic impacts of the decision.

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 Plan 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.” The effects of the proposed management activities are to encompass both human health and environmental effects, and are to include the 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 results in no change in 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

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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 (Youngsville DN/FONSI, 7/29/2009, 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.

Category 7. 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.

Response:

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 EA identified the need to mitigate the effects from livestock grazing to several streams (Cerro Pedernal EA, 7/2009, pgs. 23, 24), and committed in the DN/FONSI to be responsible for the maintenance of the proposed exclosures (Youngsville DN/FONSI, pgs. 12, 13).

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.

Category 8. The permittees were not sent copies of 36 CFR 251

Appellants state concern that the Forest Service did not send them copies of the 36 CFR 251 regulations when they were notified of the Decision Notice and Finding of No Significant Impact for the Youngsville Allotment.

Response:

Support to Decision

On July 30, 2009, the District Ranger sent each permittee a cover letter with the Youngsville Decision Notice/Finding of No Significant Impact. The letter described the appeal rights of the permittees and offered to provide assistance to the permittees regarding the decision and the appeal process (Youngsville DN Cover letter, 7/30/2009). The District Ranger noted in his responsive statement that no requests for assistance or copies of the 36 CFR 251 regulations were received from the permittees (Sanchez Responsive Statement to Lorenzo Salazar, 10/14/2009, pg. 4).

Forest Supervisor Determination

The District Ranger promptly notified the permittees of his decision on the Youngsville Allotment and provided them with an offer of assistance. The District Ranger's actions were reasonable.

Category 9. Administrative allotment boundary changes not adequately addressed

Appellants state there have been changes made administratively to allotment and pasture fences and these were not addressed in the EA.

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.

Category 10. The NMGF Department does not restrict fishing in streams that are listed as impaired in the EA.

The appellants state the New Mexico Game and Fish Department does not restrict fishing in streams that are listed as impaired in the EA, and because of that, why are the streams identified as impaired.

Response:

Support to Decision

The District Ranger acknowledges that fishing regulations are established by the New Mexico Game and Fish Department (Sanchez Responsive Statement to Lorenzo Salazar, 10/14/2009, pgs. 5, 6). This concern is not within the administrative authority of the Forest Service.

Forest Supervisor Determination

The District Ranger considered the information available to him and his response and decision is reasonable.