



United States
Department of
Agriculture

Forest
Service

Black Hills National Forest
Supervisor's Office

www.fs.usda.gov/blackhills

1019 N. 5th Street
Custer SD 57730-8214
Tel. 605/673-9200
FAX 605/673-9350

File Code: 1570
Appeal #11-02-03-012
Date : January 20, 2011

BRIAN BRADEMEYER
FRIENDS OF THE NORBECK, INC.
PO BOX 2003
RAPID CITY, SD 57709

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear Mr. Brademeyer:

On December 5, 2010, you filed a notice of appeal on behalf of Friends of the Norbeck, Native Ecosystems Council, Biodiversity Conservation Alliance, and Prairie Hills Audubon Society of Western South Dakota on the Rangeland Allotment Management Planning on the Mystic Range Analysis Area, Palmer Gulch Allotment. Your appeal was timely filed pursuant to 36 CFR 215 and was assigned appeal number 11-02-03-0012 for tracking purposes.

I have reviewed the appeal record, including your appeal, the ROD, and supporting documentation in the project record. I have weighed the recommendation from the Appeal Reviewing Officer (ARO) and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on your appeal including the specific relief requested.

Action Appealed

The Mystic Range Project: Palmer Gulch Allotment Record of Decision (ROD) was signed by the Mystic District Ranger on October 12, 2010. The purpose of this decision was to determine whether or not livestock grazing should continue and, if so, whether any changes may be needed to meet Forest Plan direction on the Palmer Gulch Allotment. The Palmer Gulch Allotment includes a portion of the Norbeck Wildlife Preserve (NWP), which has additional legal and management direction from other allotments included in a separate ROD as part of the Mystic Range Project.

The appellant requests the following relief:

1. Remand of those parts of Ranger Thompson's 10/12/10 decision that authorize continued livestock grazing for three to five years on the Palmer Gulch Allotment within the Norbeck Wildlife Preserve on the Mystic Ranger District of the Black Hills National Forest;
2. Immediate designation of the Sunday, Palmer, Ford and south half of the Rabbit Pastures, and the ungrazed portions of the Lower and Upper Bear Pastures, as unsuitable for livestock grazing; and immediate permanent closure of FS 356;



3. Remand of those parts of Ranger Thompson's 10/12/10 decision that authorize trailing of livestock through the Norbeck Preserve;
4. Remand of those parts of Ranger Thompson's 10/12/10 decision that authorize construction by permittee(s) of boundary fencing along the north and west borders of the Norbeck Preserve;
5. Remand of the non-Norbeck parts of Ranger Thompson's 10/12/10 decision, with instructions to bring the Mystic Range Project into compliance with NFMA, the 1982 regulations, the 1999 Forest Plan Appeal Decision, and the 2000 Settlement Agreement in order to avoid being inextricably tied to the illegal flaws of the Phase II Amendment; and
6. Mandate that no further actions be undertaken on the Norbeck Wildlife Preserve until a new programmatic Environmental Impact Statement has been prepared that manages the Preserve consistent with the specific "protection" of game animals and birds, and their "breeding place" mandates of the Norbeck Organic Act, conducts the required review of expansion of Black Elk Wilderness, and all Norbeck/Black Elk Wilderness Forest Plan Standards and Guidelines have been brought into line with the NOA direction as interpreted in the 2001 Tenth Circuit Ruling.

Appeal Reviewing Officer's Findings and Recommendation

Your appeal was formally reviewed by a US Forest Service team, led by ARO Robert Sprentall. This team provided an objective review and was not involved in the development, analysis or decision of the Mystic Range Project, Palmer Gulch Allotment. The team evaluated your appeal and the project record, and provided a recommendation to me. The ARO found that your appeal contained multiple issues which are summarized in the enclosed recommendation letter. The ARO recommends the District Ranger's decision be affirmed, finding no violation of law, regulation, or policy.

Decision

I have reviewed and considered the appeal record, EIS, ROD and notice of appeal pursuant to and in accordance with 36 CFR 215.19. I find no violation of law, regulation, or policy. Therefore, I have decided to affirm in whole the Ranger's decision, denying your request for relief, with the following qualification. Based on my review of the appeal record, and on clarifications provided by you and Ranger Thompson, I have determined that an informal resolution on Appeal Issue III was reached. Therefore, trailing of livestock will not be permitted in the Norbeck Wildlife Preserve.

This decision constitutes the final administrative determination of the Department of Agriculture (36 CFR 215.18(c)).

Sincerely,

/s/ Dennis L. Jaeger

DENNIS L. JAEGER

Appeal Deciding Officer

Enclosure

cc: Robert Sprentall, Mark L Martin, Edward Fischer, Katie Van-Alstyne, Robert J Thompson