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Agriculture

Forest  
Service

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File Code: 1570

Date February 16, 1999

J.R. Houghtaling, et al  
Rt 11 Box 250  
Silver City, NM 88061

CERTIFIED MAIL - RRR

RE: Appeal for J.R. Houghtaling (1998-03-06-0012-251)

Dear Mr. Houghtaling:

This is my decision on your appeal of Silver City District Ranger Engel's cancellation of your Term Grazing Permit on the Redstone grazing allotment in its entirety. My review of this appeal has been conducted in accordance with 36 CFR 251 Subpart C, Appeals of Decisions Relating to Occupancy and Use of National Forest System Lands.

**APPEAL RECORD REVIEW**

A. On August 3, 1998, District Ranger Gerald Engel notified you of his decision to cancel your Term Grazing Permit in its entirety.

B. On September 9, 1998, you filed an appeal of the District Ranger's decision to cancel your Term Grazing Permit. This appeal consisted of two letters: one signed by you, the other signed by Roger Lamb.

C. On October 2, 1998, Reviewing Officer Camarena notified you that he was extending the date of the Deciding Officer's Responsive Statement to your appeal to November 1, 1998.

D. On November 2, 1998, Reviewing Officer Camarena notified you that he was again extending the Responsive Statement from the Deciding Officer to December 1, 1998, due to extenuating circumstances.

E. On November 3, 1998, Reviewing Officer Camarena notified you of receipt of Jerry Ray Houghtaling's letter regarding District Ranger Gerald Engel's letter dated July 31, 1998. You were notified that Jerry's letter would be considered as part of your appeal of Ranger Engel's decision regarding the cancellation of your Term Grazing Permit.

F. On November 20, 1998, District Ranger Engel held a meeting with you in accordance with CFR 251.93(b) to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal (documented in letter dated November 23, 1998 by District Ranger Engel).



G. On December 2, 1998, District Ranger Engel met with you to discuss his decision to cancel the Term Grazing Permit and that he had evaluated his decision based on discussions held on November 20, 1998 and December 2, 1998 (documented in letter dated December 4, 1998).

H. On December 3, 1998, District Ranger Engel issued his Responsive Statement in regards to your appeal.

I. On December 23, 1998, Roger Lamb responded to the District Ranger's Responsive Statement.

J. On January 15, 1999, you met with Forest Supervisor Abel Camarena to discuss District Ranger Engel's decision to cancel the Term Grazing Permit. At this meeting, you informed Supervisor Camarena of the expenditures and hard work that had been put into the Redstone Allotment and allotment management.

K. On January 22, 1999, District Ranger Engel responded to Mr. Lamb's letter dated December 23, 1998.

### **APPEAL SUMMARY**

In reviewing the three letters submitted as an appeal to District Ranger Engel's decision to cancel your Term Grazing Permit, I have consolidated your comments into one appeal point. This point is that you (Mr. Houghtaling and family) have tried to comply with the instructions issued by the District Ranger to manage your livestock according to the terms and conditions of the permit. This is demonstrated by your large investment in time and labor in rebuilding and maintaining improvements on the allotment.

### **BACKGROUND**

District Ranger Engel's appeal record which you have a copy of is incorporated by reference. Documents from this record are referred to as Doc. 0.0, for example.

On June 18, 1996, the decision to suspend 100 percent of your term grazing permit for three years, due to failure to follow the District Ranger's instructions, was made (Doc. 71.0). This decision, which was not appealed, followed earlier decisions to suspend 280 head of your 600 head term permit (Doc. 33.0) and to later cancel 280 head of your 600 head permit (Doc. 47.0).

The decision for partial suspension of your permit followed numerous warnings for grazing permit noncompliance: Doc. 17.0 livestock in wrong pasture; Doc. 19.0 livestock in wrong pasture; Doc. 22.0 livestock in wrong pasture, salt in bottom of meadow creek; Doc. 25.0, cattle in wrong pasture.

The decision for partial cancellation of your permit followed numerous warnings for permit in noncompliance: Doc. 35.0, livestock in wrong pasture; Doc. 42.0, livestock in wrong pasture.

A review of these warning letters indicate that you were notified of specific permit violations and warned of consequences to your grazing permit should permit compliance not be achieved.

Following the October 31, 1993 implementation of your 280 suspension (Doc. 33.0), which was converted to a 280 head cancellation on September 13, 1994 (Doc. 47.0), 320 head of cattle belonging to you were authorized to remain on the Redstone Allotment. You were allowed 8 1/2 months to remove suspended numbers of livestock following the partial suspension (Doc. 33.0). This number, 320 head, was authorized to be on the allotment prior to the 100 percent suspension decision of June 18, 1996.

The June 18, 1996 decision to suspend 100 percent of your grazing permit specified that you must "remove at least 75 percent of the livestock from the allotment by July 31, 1996. By September 30, 1996, you need to have all but a remnant (less than 10 head) of your livestock removed from the allotment. The allotment is to be free of livestock by October 30, 1996."

As of August 1, 1996, (Doc. 76.0) you were credited for removal of 302 head of your livestock. It appeared that you were progressing satisfactorily in having all livestock belonging to you removed from National Forest System lands by October 30, 1996. However, as of February 5, 1997, there remained sightings and other evidence that a scattering of livestock belonging to you remained throughout the entire allotment. Based upon your failure to have all of your stock removed by October 30, 1996, you were given until February 28, 1997 to explain why your permit should not be entirely cancelled (Doc. 78.0). You responded that indeed some of your cattle were still on the allotment, you were making progress, but needed more time (Doc. 79.0).

On May 27, 1997, District Ranger Engel agreed to extend your final removal date to July 1, 1997. "If after July 1, 1997, we find more than 10 head of your branded cattle on National Forest System lands, I would consider that unacceptable compliance and would have no choice but to take the last administrative action and cancel your term grazing permit" (Doc. 81.0).

Since the July 1, 1997 extended deadline to have all of your livestock removed from National Forest System lands "I have received (on several occasions) reports of cattle branded with your brand being seen on the Redstone Allotment and off the Redstone Allotment in the Little Turkey Park area." Further, New Mexico Livestock Board records indicate that since July 1, 1997, you have "sold a total of 22 head of cattle. Dates of the sales are August 26, 1997; October 7, 1997; and January 13, 1998 (Doc. 85.0).

On February 13, 1998, you stated to Mike Head and Ralph Pope that you believe some wild cattle with your brand still exist on the allotment (Doc. 83.0).

Based upon these circumstances, District Ranger Engel made the decision to cancel the term grazing permit in its entirety and "start other actions by which all unauthorized livestock will be removed from the Redstone Allotment and surrounding area" (Doc. 85.0).

## **FINDINGS**

Review of the Redstone Allotment record reveals that since the unappealed June 18, 1996 decision to suspend 100 percent of your term grazing permit, you have failed to follow the Forest Officer's instructions to remove your cattle from National Forest System lands by October 30, 1996. The District Ranger, in recognition of the large task involved, extended until July 1, 1997 for you to remove your livestock from the allotment. You were allowed nearly one year from June 18, 1996 through July 1, 1997, to complete this task. District Ranger Engel established a clear standard by which your success or failure would be measured. "If after July 1, 1997, we find more than 10 head of your branded cattle on National Forest System lands, I would consider that unacceptable compliance and would have no choice but to take the last administrative action and cancel your term grazing permit" (Doc. 81.0).

Your failure to comply with District Ranger's instructions is a violation of your term grazing permit, Part 1, Item 3. "It is fully understood and agreed that this permit may be suspended or cancelled, in whole or part, after written notice, for failure to comply with any of the terms and conditions specified in Part 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which the permit is based, or the instructions of Forest Officers thereunder, .."

Further, 36 CFR 222.4(4) provides "Cancel or suspend the permit if the permittee does not comply with provisions and requirements in the grazing permit.."

Forest Service policy found in Forest Service Handbook 2209.13, Section 16.23 provides "carefully evaluate circumstances of each violation to determine whether suspension or cancellation is justified. Do not suspend or cancel a permit before notifying the permittee in writing and giving the permittee a chance to respond" (2231.62).

Suspension or cancellation is warranted if permittee livestock graze (1) outside the permitted grazing season; (2) on lands outside the permitted area; (3) in greater numbers than permitted; or (4) livestock are under control of the permittee, but are owned by someone else; or (5) the permittee is not following the approved allotment management plan."

The record indicates that the District Ranger resorted to a large number of warnings and increasing adverse permit actions before resorting to this ultimate decision to cancel your permit. Deadlines were extended to give you reasonable opportunity to comply with instructions to remove livestock before the cancellation was made. The District Ranger did not decide to cancel your permit without notifying you and giving you a chance to respond (Doc. 78.0; 81.0). Even after the cancellation decision was announced, the District Ranger explored alternatives to permit cancellation (Doc. 94.0, 95.0).

## **DECISION**

I recognize the efforts that you and your family made in trying to manage the allotment with the resources you had at your disposal. It is unfortunate that you and your family were not able to meet the requirements and needs as prescribed in the permit for managing a difficult situation.

However, you were informed of these difficulties prior to the issuance of the permit and in the subsequent years to follow. I feel the District Ranger gave you ample opportunity to comply with these directions.

After a detailed review of the record, I find the District Ranger's decision to cancel your term grazing permit was proper and consistent with Forest Service policy, manual direction, and Federal regulations.

The District Ranger is affirmed with respect to all appellant contentions.

Pursuant to 36 CFR 251.87(c), my decision is appealable to the Regional Forester. A Notice of Appeal for a second level of review must be submitted to the Regional Forester, Federal Building, 517 Gold Avenue, SW, Albuquerque, New Mexico, 87102, within 15 days of this decision.

Sincerely,

*/s/Abel M. Camarena*  
ABEL M. CAMARENA  
Reviewing Officer

cc:  
Silver City Ranger District  
RO