



File Code: 1570-1

Date: June 2, 1999

GRAND CANYON BUFFALO RANGE INC
MARVIN R HATCH
1001 E THIRD ST
WINSLOW AZ 86047

RE: Appeal #98-0307-01

Dear Mr. Hatch:

I have reviewed your appeal dated September 22, 1998 (appeal record #19) as amended September 28, 1998 (appeal record #22), the appeal record submitted by Tusayan Ranger District, your response to the responsive statement (appeal records #28-29), information from your oral presentation (appeal records #31-32), and any other further information that you have provided that was added to the appeal record. Specifically, you appealed District Ranger Thakali's decision (appeal record #14), issued August 17, 1998, to not reissue term grazing permit No. 07-752, for the Rain Tank Allotment, to the previous permit holder, Grand Canyon Buffalo Range, Inc.

Your appeal, as amended, included six issues (appeal records #19 & 22).

Issue No. 1: The deed of trust from Grand Canyon Buffalo Range, Inc. to Sierra Verde Estates, Inc. was the lawyer's mistake and was corrected the same day the deed was filed. The base property remained in Grand Canyon Buffalo Range, Inc. until September 19, 1997, when a deed of trust was foreclosed. Her statement that Grand Canyon Buffalo Range, Inc. did not hold the base property since 1992 is erroneous.

At the oral presentation, you stated that the exact legal status of the base property is unknown. Based on this discussion, I kept the appeal record open until April 30, 1999, to provide time to provide any additional documentation as it relates to the ownership of the base property. On the last day, you submitted a request for an extension that was denied (appeal records #36 & 37). No additional documentation was provided previous to your request for extension, therefore, my review of the decision will be based on the documentation contained in the appeal record.

The warranty deed, docket 1496, page 188, dated 08/07/92 (appeal record #2) shows that the base property was transferred from Grand Canyon Buffalo Range, Inc. (name of permit holder) to Sierra Verde Estates, Inc. You state that this is in error, however, you have provided no further documentation to that affect.

An escrow waiver dated August 7, 1992 (appeal record #5), stated that Grand Canyon Buffalo Range, Inc. will forfeit said term grazing permit and all privileges connected therewith in the event of foreclosure of the base property. Trustee's deed, docket 2023, page 418, dated 09/19/97 (appeal record #6) transferred the base property to the Johnson Living Trust due to foreclosure.



You made no effort to contact the District Ranger prior to this date to inform the Forest Service of this situation or to make any effort to request that the base property designation be exchanged to another parcel of land. In your affidavit (appeal record #32), you state that the first time you shared this information with the Forest Service (Dave Brewer), through a telephone conversation, was December 1997, three months after you no longer had the base property identified in the grazing permit. Dave Brewer discussed renewing your permit with you over the phone in March 1998 (appeal record #34). Based on his conversations with you, we initiated a record search in March to determine if any changes in ownership had taken place (appeal records #2-4 & 6). This information was presented to you during a meeting with the District Ranger, June 24, 1998 (appeal records #9-10).

There is a discrepancy between when you said you notified the Forest Service (12/97) and when we felt you first discussed the situation with us (6/98). Regardless of when you first made the Forest Service aware of your situation, the fact remains that you never discussed your situation (as it relates to the base property) with us prior to losing the base property identified in your permit due to foreclosure. You made no requests to exchange or find other parcels of land suitable for base property prior to foreclosure. You requested an exchange of base property March 3, 1998, five months following foreclosure. Whether this was a deliberate attempt to exchange base property thinking that the Forest Service was unaware of the foreclosure depends on the timing of when we were first notified. Since notification was by phone and there is a discrepancy in the record concerning the exact time the Forest Service was notified, no fraudulent claims are being made.

You were aware of the seriousness of this situation. You had previous experience concerning meeting the requirements related to your base property based on an earlier Forest decision and appeal (appeal record #1), and yet, you still failed to discuss the situation with the Forest Service prior to foreclosure as clearly directed in your term grazing permit (Part 2, Section 11 (c)) (appeal record #7).

Issue No. 2: My investment in the Rain Tank allotment of several hundred thousand dollars would be my loss, and the Forest Service would gain monetarily from my loss.

Section 11(d) of term grazing permit, 07-752 (appeal record #7) states, "The permanent improvements constructed or existing for use in conjunction with this permit are the property of the United States Government unless specifically designated otherwise or covered by a cooperative agreement. They will not be removed nor compensated for upon cancellation of this permit, except in the National Forests in the 16 contiguous Western States when cancelled, in whole or in part, to devote the land to another public purpose including disposal." Under 36 CFR 222.3(1ii), a term permit holder has first priority for receipt of a new permit at the end of the term period provided he has fully complied with the terms and conditions of the expiring permit.

As discussed under Issue No. 1, Grand Canyon Buffalo Range, Inc., violated the terms of the permit as it relates to base property, therefore, the District Ranger decided to not renew the permit to the previous permit holder. You forfeited your grazing permit in connection with the foreclosure of your personal property that was designated as base in association with the term grazing permit (appeal record #5). Therefore, you are not entitled to compensation for any improvements (36 CFR 222.6 (b)). Furthermore, because the land will not be devoted to another use and because of violations to the permit, you have no claim to the permit and, therefore, to the existing improvements associated with this allotment.

Issue No. 3: A research of the policy of the Forest Service shows that a base property is not a requirement for holding a grazing lease.

To qualify for a term grazing permit, an applicant must own personal property that qualifies and is accepted as base property (FSM 2231.22a, Kaibab Supplement #26) (36 CFR 222.3 (1)(i)). The minimum size for the Kaibab N.F. is 40 acres (FSM 2231.22a, Kaibab Supplement #26).

Issue No. 4: The 18 acres of Coconino siding that I have offered for base property is certainly more centrally located and serves the Rain Tank allotment much better.

Qualification of an applicant for a term grazing permit is defined as the applicant having the livestock to be grazed and such base property (40 acre minimum) as required by the Kaibab National Forest (36 CFR 222.3(1)(i), 222.3(1)(vi)(A). The current acreage requirement for the Kaibab National Forest is 40 acres (FSM 2231.22a, Kaibab Supplement). Since you no longer own the associated base property and you failed to work with us prior to the change in base property ownership to obtain other suitable base property, you are no longer qualified as an applicant for the term grazing permit for the Rain Tank Allotment. In addition, there currently exists an outstanding Escrow Waiver of Term Grazing Permit Privileges, with your signature, to the current owner of the base property.

There has been no decision to exchange the base property listed in the term grazing permit for this property or any other property. The decision being appealed deals only with the decision to not renew the permit to the previous permittee. Therefore, there is nothing to appeal.

Issue No. 5: There has been no showing that the Forest Service was injured in any way by my loss of the base property in foreclosure.

Grazing on Forest Service land is a privilege administered under a term grazing permit. Part 2, Section 11 (c) of the grazing permit clearly states that "the permittee will notify the Forest Officer in charge of any change in control of base property, ownership of livestock, or other qualifications to hold this grazing permit" (appeal record #7). Grand Canyon Buffalo Range, Inc., violated the terms of the permit and had violated the clause at an earlier time. On April 30, 1986, a decision was made by the Forest Supervisor to revoke 20 percent of the grazing permit on the Rain Tank Allotment based on a change of ownership that was not reported to the Forest Officer in charge (appeal record #1).

Issue No. 6: I also own other ranches and have offered them as base property.

This has no bearing on the review of the decision being appealed (see Issue No. 4).

Summary of my Decision

I have decided to uphold the District Ranger's Decision of August 17, 1998. I have concluded that Renee Thakali, Tusayan District Ranger, acted within her authority and within the law when she made the Decision to not renew the term grazing permit for the Rain Tank Allotment to the previous permittee, Grand Canyon Buffalo Range, Inc.

Your actions were clearly in violation of the term grazing permit as it relates to the base property. There is a discrepancy between when you said you informed the Forest Service and when our records state that you did, but the fact remains, you should have talked to us when you first became aware of your situation as it relates to the loss of your personal property that was designated as the base property for the term grazing permit. Based on previous experience, you

knew the seriousness of the situation, and yet, you failed to bring this to our attention, as clearly stated in the conditions of the grazing permit.

Another issue not originally in your appeal that you have raised is that the Decision under appeal was invalid because the permit had not yet expired as evidenced by the date of expiration written on the permit. The Chief of the Forest Service has no authority to issue a permit longer than 10 years (36 CFR 221.1(5)(ii)). Regardless of the stated date in the permit, the permit expired March 28, 1998, as stated in the Decision.

Pursuant to 36 CFR 251.87(c), this Decision is appealable to the Regional Forester. Should you choose to pursue a second-level appeal, it must be filed within 15 days of the date of this Appeal Decision. The address is: Regional Forester; Forest Service, Southwestern Region; 517 Gold Ave., SW; Albuquerque, New Mexico 87102.

Sincerely,

/s/ Conny J . F risch
CONNIE J. FRISCH
Forest Supervisor

cc:
District Ranger, Tusayan Ranger District
Mr. Steven A. Hirsch, Attorney At Law
Director of Range Management, R-3 Regional Office

Author: stewardship, kmenasco, 05/17/1999 02:58pm
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