



United States  
Department of  
Agriculture

Forest  
Service

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File Code: 1570-1

Date: June 26, 2000

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Certified Mail – Return Receipt Requested

Re: Appeal #00-03-00-0077-A251, Sacramento Grazing Association, Sacramento Ranger District, Lincoln National Forest

Dear Mr. Nichols:

This letter documents my second level review decision of the appeal you filed on behalf of your client, the Sacramento Grazing Association. The appeal is in regard to District Ranger Max E. Goodwin's July 6, 1999, decision to remove any reference to the Dry Canyon and Davis Pastures (Allotments) from the High Nogal Allotment Management Plan. In other words, Ranger Goodwin concluded that subsequent waiver and reissuance of the April 22, 1980, term grazing permit issued to High Nogal did not include the Dry Canyon and Davis Pastures (Allotments). The appeal was filed and has been processed under the provisions of 36 CFR 251, subpart C.

### **BACKGROUND**

On June 24, 1999, your client requested documentation as to why the Dry Canyon and Davis Pastures (Allotments) were not included in the term grazing permit issued to the Sacramento Grazing Association on November 11, 1989. By letter dated July 6, 1999, Ranger Goodwin concluded that subsequent waiver and reissuance of the April 22, 1980, term grazing permit issued to High Nogal did not include the Dry Canyon and Davis Pastures (Allotments).

Your first level appeal and request for an oral hearing were filed on September 15, 1999. On October 15, 1999, Forest Supervisor Martinez notified you your appeal was timely and that your request for an oral hearing was granted. Under the provisions of 36 CFR 251.94 the District Ranger completed his written responsive statement to your appeal on November 10, 1999. Your reply to the responsive statement was filed with Supervisor Martinez on January 5, 2000. He subsequently closed the appeal record on April 6, 2000. Based on his review of the record, Supervisor Martinez affirmed the District Ranger's decision on May 8, 2000.

Your second level appeal was received in this office on May 15, 2000. By letter dated May 26, 2000, I indicated my review decision would be made within 30 days from the date the appeal record was received.



## **APPEAL DECISION**

In your second level appeal you challenged the decision by Ranger Goodwin to exclude the Sacramento Grazing Association from the Dry Canyon and Davis Pastures (Allotments).

After a thorough review of the appeal record I have concluded that there is incomplete documentation of grazing permit administrative actions dating back as far as 1983. The record indicates the term grazing permit Approving Officer may have intended to exclude the Dry and Davis Pastures (Allotments) from the Sacramento Allotment by removing any reference to them on the face of the permit when the Ruidoso Land Company acquired the Sacramento Allotment in 1984. On the other hand, the term grazing permit Approving Officer included language in Part 3 of the permit issued to Ruidoso Land Company stating "As a condition to this permit, the applicant will be required to accept in full, as approved, official Allotment Management Plan Dated April [29], 1980". This same language was included in Part 3 of the term grazing permit for the Sacramento Allotment issued to the Sacramento Cattle Company on February 29, 1988. The April 22, 1980, Allotment Management Plan for the High Nogal Ranch Inc. clearly included the Dry Pasture in the Alamo Division and the Davis Pasture in the Sacramento Division. When the Sacramento Grazing Association acquired the permit in 1989, Part 3 of the permit stated "The Allotment Management Plan dated 4/22/80 will be considered a condition of this permit until a revised plan is completed."

The record also indicates the term grazing permit Approving Officer may have intended to exclude the Dry and Davis Pastures (Allotments) from the Sacramento Allotment by not including them on the allotment map included in the record at 2-5. However, the map is not referenced on the face of the November 6, 1984, permit issued to Ruidoso Land Company and does not contain an original signature of the Approving Officer.

In their first level appeal the Sacramento Grazing Association made two requests for relief. First they requested that "Mr. Goodwin's decision made on behalf of the Forest Service per his letter of August 24, 1999, be rescinded and withdrawn." Based on my review I have concluded it is not possible to determine with reasonable certainty that the Sacramento Grazing Association does or does not have a legitimate claim to graze the Dry and Davis Pastures (Allotments) as outlined in the High Nogal Management Plan approved by Forest Supervisor James R. Abbott on April 22, 1980.

Therefore, by copy of this decision the District Ranger is instructed to consider the Dry Canyon and Davis Pastures (Allotments) in the current NEPA analysis for authorization of grazing on the Sacramento Allotment. This will be consistent with the special terms and conditions as stated in Part 3 of the term grazing permit issued to the Sacramento Grazing Association. Following the NEPA analysis the District Ranger is instructed to update the April 22, 1980, High Nogal Allotment Management Plan referred to in part 3 of the Sacramento Grazing Association's term grazing permit as appropriate. However, since the Sacramento Grazing Association has never grazed the Dry and Davis Pastures (Allotments) it will not be appropriate for them to do so during the interim period while the NEPA analysis is being completed.

Your clients' second request for relief included "damages, costs, expenses and fees incurred due

to the negligent and/or intentional deprivation of the use of the Dry and Davis for the duration of their Permit from 1989 to present.” Forest Service appeal regulations at 36 CFR 251 subpart C provide a process by which those who hold a written authorization to occupy and use National Forest System lands, may appeal a written decision by an authorized Forest Service line officer with regard to issuance, approval, or administration of the written instrument. The rules in subpart C seek to offer appellants a fair and deliberative process for appealing and obtaining administrative review of decisions regarding written instruments that authorize the occupancy and use of National Forest System lands. The appeal process under 36 CFR 251 does not allow for the award of damages related to an administrative decision. Any damage claim must be brought before the Federal Court of claims. Therefore, your clients’ second request for relief is denied. The denial of your client’s second request does not in any way preclude them from seeking future relief through the courts.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 251.87(e)(3)].

/s/ James T. Gladen  
JAMES T. GLADEN  
Appeal Reviewing Officer  
Deputy Regional Forester, Resources

cc:  
Forest Supervisor, Lincoln NF  
District Ranger, Sacramento RD  
Director, Rangeland Management, R3  
Appeals and Litigation Staff, R3