



United States
Department of
Agriculture

Forest
Service

Lincoln
National
Forest

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File Code: 1570-1

Date: May 8, 2000

Clifford C. Nichols
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Albuquerque, NM 87102

Certified Mail Return Receipt Requested
P 838-768-153

Re: Appeal #00-08-03-0001-A251, Sacramento Allotment, Sacramento Ranger District,
Lincoln National Forest.

Dear Mr. Nichols:

This is my review decision concerning the appeal you filed on behalf of the Sacramento Grazing Association (*SGA*), regarding District Ranger Max Goodwin's decision of August 24, 1999. The decision under appeal concludes that the Dry and Davis Allotments are not considered part of the Sacramento Allotment.

The Sacramento Grazing Association's appeal was filed on September 15, 1999. The District Ranger provided the responsive statement on November 15, 1999. The reply to this responsive statement was filed on January 5, 2000, including a request for an oral presentation. The oral presentation was held on January 24, 2000.

The Administrative Appeal Record was closed on April 6, 2000. My review decision hereby incorporates the entire administrative appeal record. This appeal is being processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

The Sacramento Allotment was consolidated with other allotments which were under a Term Grazing Permit (*permit*) to Ted Bonnell, High Nogal Ranch, Inc. (*High Nogal*) through issuance of a new permit including an allotment management plan (*AMP*) on April 22, 1980.

The permit issued to High Nogal included separately listed allotments as follows:

Sacramento Allotment - 541 head of cattle from 1/1 to 12/31,
and 25 head of cattle from 5/16 to 11/15.

Davis Allotment - 36 head of cattle from 5/20 to 11/15.



Dry Allotment - 131 head of cattle from 11/1 to 5/15.

The 36 head on the Davis Allotment and the 131 head on the Dry Allotment are numbers of cattle included in the 541 and 25 head of cattle permitted on the Sacramento Allotment. The footnote at the bottom of Part 1 of the High Nogal permit indicates permitted cattle for the Dry and Davis Allotments were to be grazed in conjunction with the Sacramento Allotment per the AMP.

Bankruptcy proceedings for High Nogal occurred in 1983, followed by the sale of the base property in 1984, by order of the bankruptcy court. A permit was then issued to Ruidoso Land Company, for the Sacramento Allotment, on November 6, 1984, for 553 head of cattle, yearlong.

The Davis Allotment continued to be managed as a separate allotment from 1984 to 1992. According to paid permit cards, Administrative Record (AR) No. 3-Exhibit 16, a permit existed on the Davis Allotment issued to Blankenship which was issued to J. Harvey Lewis on 8/16/88. A Memorandum of Understanding (MOU) was signed by Forest Supervisor Lee Poague (AR 4, I-C) proclaiming permanent closure of the Davis Allotment on May 13, 1992. .

The Dry Allotment continues to be managed as a separate allotment from 1984 to the present. The AMP (AR-4, doc., 13) indicates there were four permits in existence in 1980 for the Dry Allotment. A memo in 1991 (AR-4, Doc. I-D) indicates three permits existed on the Dry Allotment and they were, Leonard and Margie Baird, Carrie Green, and Arnold Green.

On May 14, 1985, and again on February 29, 1988, a permit was issued to the Sacramento Cattle Company, Inc. for the Sacramento Allotment for 553 head of cattle, yearlong. On November 27, 1989, a permit was issued to the Sacramento Grazing Association for the Sacramento Allotment for 553 cattle, yearlong. This permit has expired, however, a new permit with the same number of cattle and season of use was issued by the District Ranger during the processing of this administrative appeal.

ISSUES

ISSUE 1: The Appellant contends that the Sacramento Allotment includes both the Dry and Davis Allotments and has included these allotments since 1980. The Appellant references: a) the waiver from High Nogal in 1980; b) the Allotment Management Plan attached to the 1980 permit; c) the Rescission Act Schedule; and d) paid permit cards as documentation supporting the Association's position.

Response: The terms of the permit determine the extent of the authorization. Part 1, Section 2 of the permit state: "The number, kind, class of livestock, period of use, and grazing allotment on which the livestock are permitted to graze as follows, unless

modified by the Forest Service in the Bill for Collection.”

In reviewing District Ranger Goodwin’s decision of August 24, 1999 (AR-1, Exhibit 1) the Permit issued to the SGA in 1989, must be compared to the one issued to High Nogal on April 22, 1980. In Part 1 of the April 22, 1980 permit issued to High Nogal, the Sacramento Allotment, the Dry Allotment, and Davis Allotment are listed separately. The 1989 permit issued to the SGA lists only the Sacramento Allotment in Part 1 of the permit.

a) The Appellant contends that the Waiver of Term Grazing Permit (waiver) intended that all listed allotments be included in the new Sacramento Allotment.

The waiver does not define the allotment(s) to be grazed, it defines the permits to which the holder of said permit surrendered grazing privileges. Only Part 1 of the new permit authorizes the allotment(s) to be grazed. The Forest Supervisor confirmed the waiver and issued the permit the same day, meaning if the Forest Supervisor’s intent was to combine the Dry and Davis Allotments with the rest of the allotments listed on the attachment to the waiver, he would not have listed them on Part 1 of the permit he issued on April 22, 1980. Actually, only the Alamo, Penasco, McAfee, Sacramento, McGregor, Nelson, Pasture Ridge, Mule, and Summit Allotments were consolidated into a “new” Sacramento Allotment, as the permit was issued. Forest Supervisor Jim Abbott authorized grazing of the Dry and Davis Allotments as separate entries in Part 1, section 2 of the High Nogal permit on April 22, 1980.

The record indicates High Nogal grazed the Davis Allotment in 1981 and 1982, while taking non-use of the Dry Allotment the same years. In 1983 non-use occurred on the Sacramento, Dry, and Davis Allotments. In 1984, High Nogal lost the grazing permit for the Sacramento, Dry, and Davis Allotments through bankruptcy action. Following the bankruptcy proceedings and purchase of the base property, a permit was issued to Ruidoso Land Company for the Sacramento Allotment for 553 cattle, yearlong. The allotment map attached to the permit issued to Ruidoso Land Company displays the Sacramento Allotment Boundary. The Dry and the Davis Allotments are not included within the boundary of the Sacramento Allotment Map issued with the Ruidoso Land Company Permit in 1984. All livestock authorized by permit to High Nogal on the Dry and Davis Allotments were assigned to the Sacramento Allotment when the term grazing permit for the Sacramento Allotment was issued to the Ruidoso Land Company, on November 6, 1984. A statement by John Conner (AR-2, Att. 10) and a memo by Lynn Wessman (AR-4, doc. I-D), past Range Conservationists on the Cloudcroft Ranger District, document this change. The Dry Allotment and the Davis Allotment continued to be managed as separate allotments under permit to other permittees. Thus, as of 1984, the successors to the High Nogal Permit received a permit for the Sacramento Allotment only.

b) The Appellant contends that the 1980 Allotment Management Plan, which lists the Dry and Davis Allotments as pastures, is further proof of their inclusion in the Sacramento Allotment.

The Dry and Davis Allotments are listed as management units (pastures) in the AMP developed in cooperation with the High Nogal Permittee for the 1980 permit. This is appropriate since both the Dry and Davis were separate allotments listed in the April 22, 1980, High Nogal Permit. Statements in Part 3 of the subsequent permits issued to Ruidoso Land Company, Sacramento Cattle Company and SGA, incorporate the 1980 AMP and document the need to update it (see AR-4, II, doc.4, Part 3, Management Practices). The need to update the AMP is consistent with the statement on page 3 on the AMP, "The only accurate way to establish the capacity of a range is through trial." This "trial" approach is also consistent with the statements by Conner and Wessman, and the use records for 1980 to 1983, where actual use of the Dry and Davis Allotments by High Nogal varied.

Allotment management plans do not authorize grazing of an allotment (36 CFR 222.1(b)(2)). The purpose of the AMP is to prescribe the manner in which and how livestock operations will be conducted. It prescribes the program of action as to pasture rotation, schedule of installing range improvements etc., designated to reach set objectives.

In District Ranger Goodwin's letter to SGA on July 6, 1999 (AR-1, Exhibit 2), he acknowledges the error in the AMP, as to the listing of the Dry and Davis Allotments as pastures, and removes them from the AMP. Under 36 CFR 222 the District Ranger has the authority to administer grazing permits. The District Ranger's decision that the Dry Allotment and the Davis Allotment are not part of the Sacramento Allotment is an administrative determination regarding the land area permitted in the allotment, and is within his authority.

c) The Appellant contends that the Dry and Davis Allotments did not exist separately from the Sacramento since they are not listed on the Rescission Act Schedule of 1995.

The Rescission Act "Allotment Schedules"(AR-3, Exhibit 14, p.2) list "James Cnyn/Dry," which are the Dry Allotment and the James Canyon Allotment. Near the time of the preparation of the Rescission Act Schedule, an individual permittee had an expiring permit for the Dry and James Canyon Allotments. Hence, they were scheduled for NEPA analysis the same year. The Davis Allotment is not included in the Rescission Act Schedule because the allotment was considered closed as per the Memorandum of Understanding (AR-4, I,C) provided in my February 4, 2000, letter to Clifford C. Nichols. Since the Davis Allotment was considered closed to grazing, it was not necessary to include it in this schedule for National Environmental Policy Act Analysis. Thus, the Rescission Act requirements did not apply in the case of the Davis Allotment.

d) In the Notice of Appeal the Appellant offers Paid Permit Cards (AR-1, Exhibit 8 and 9) to demonstrate the Dry and Davis Allotments were "transferred" from High Nogal to Ruidoso Land Company.

These cards are maintained as unofficial records used as a matter of convenience to track the history of permits. They are not a part of the permit application and issuance process. "Transferred" is not a term used or defined by regulation. In the context it is used on the cards, its intent is to show the High Nogal permittee waived his permit back to the United States and a new permit was issued to Ruidoso Land Company.

ISSUE 2: The Appellant contends that withdrawal or cancellation of the permit with respect to a portion of the total land mass is a violation of Sections 1714 and 1752 of the Federal Land Policy and Management Act (*FLPMA*).

Response: Section 1714 applies to withdrawal of Federal Land from settlement, sale, location or entry for the purposes of limiting activities in order to maintain other public values. The Ranger's decision merely determines that these allotments are not part of the Sacramento Allotment. The Ranger has not made a decision to withdraw land from a particular use, therefore, Section 1714 does not apply.

Section 1752 of FLPMA authorizes the Secretary of Agriculture to issue permits and develop management plans for National Forests in sixteen western states. It provides for the development of management plans in cooperation and coordination with the permittees. This dispute is not about the management plan that has been under development since 1994. It is about the geographic boundary of the Sacramento Allotment.

ISSUE 3: The Appellant contends that the arbitrary reduction of the total landmass of the Sacramento Allotment, without a commensurate reduction of the grazing fees charged for the allotment, appears to have wrongfully resulted in overpayment by the SGA for close to nine years.

Response: Grazing fees are not based on total landmass but rather on numbers of livestock and the time the livestock are authorized to graze the National Forest System Lands. These numbers of livestock and seasons of use are determined annually and are dependant upon resource conditions and a permit holder's application to validate the permit.

No documentation is offered by the appellants to determine if Bills for Collection were calculated incorrectly concerning the numbers of cattle or months authorized to graze on the Sacramento Allotment. Since grazing fees are not calculated with acres as a factor, it is clear the SGA was not overcharged by virtue of a dispute on acres within the Sacramento Allotment.

ISSUE 4: The Appellant contends that neither Ted Bonnell nor any subsequent permittee on the Sacramento Allotment relinquished or extinguished any rights on the Dry or the Davis after 1980.

Response: The grazing permit conveys no property rights that are vested in the United States. It merely documents a privilege to graze livestock on the National Forest. The execution of waivers by High Nogal, The Federal Land Bank of Wichita, the Sacramento Cattle Company, and the Ruidoso Land Company surrendered all privileges to their respective permits. The waivers do not identify landmass, rather, they document the grazing permit and the number of cattle to which all grazing privileges are surrendered. The holder of a term grazing permit has no *right, title, or interest* in the Lincoln National Forest which can be conveyed to the purchaser of base property or permitted livestock.

ISSUE 5: The Appellant contends that Ranger Goodwin and Range Conservationist Newmon are biased regarding this dispute over the Sacramento Allotment Boundary. (See AR-3, p.17-19)

Response: Forest Supervisor Poague closed the Davis Allotment to livestock grazing as documented in a Memorandum of Understanding in 1994. The record indicates the Forest Supervisor made the decision based on a recommendation from District Ranger Norm Curran. This was not a recommendation by District Ranger Max Goodwin.

In 1994, the District, during the allotment planning process, developed an Environmental Assessment (AR-4, I-A) including alternatives for the management of the Sacramento Allotment in cooperation with the SGA. Specifically, the Environmental Assessment analyzed alternatives for the Sacramento Allotment including Alternative 2A. The pastures listed and the maps in the appendix for Alternative 2A did not include the Dry and Davis Allotments. In a letter to the Ranger dated September 10, 1994 (AR-2, Att. 1B), the SGA expressed willingness to comply with proposed Alternative 2A within the Association's ability.

The record indicates that in 1994, there was cooperation and agreement between SGA and District Ranger Max Goodwin and Range Conservationist Rick Newmon regarding proposed management and the geographical boundaries of the Sacramento Allotment

DECISION

My review of your appeal was conducted in accordance with 36 CFR 251 Subpart C.

This decision is based on the following summary of facts, in the administrative record: Part 1 of the High Nogal Permit (1980) distinguished the Dry and Davis Allotments separately from the Sacramento Allotment. This entry in Part 1, defined the Sacramento Allotment to be exclusive of the Dry and Davis. Records provided indicate the Dry Allotment was not used after 1980 and the Davis Allotment was not used after 1982 by High Nogal.

High Nogal lost the permit to the Sacramento Allotment, the Dry Allotment, and the Davis Allotment, in a bankruptcy action in 1984. After bankruptcy, a new permit was issued in

1984, to Ruidoso Land Company (for the Sacramento Allotment) that included a map (AR-2, Att. 5) identifying the allotment authorized in Part 1 of the permit. The map did not include the Dry and Davis Allotments. From that point on, permits issued to the Sacramento Cattle Company and SGA also excluded the Dry and Davis Allotments.

The AMP developed with High Nogal (1980) listed the Dry and Davis Allotments as pastures to be grazed and was a part of the SGA Permit issued in 1989. However, the AMP by definition in 36 CFR 222 does not authorize grazing. It prescribes the manner in which and extent to which, livestock operations will be conducted. Part 1 of the permit issued to SGA in 1989, authorized only the Sacramento Allotment. The Dry and Davis Allotments are other Forest Service designated allotments (AR-2, Att. 4) that must be listed in Part 1-section 2 of the permit to be authorized for use.

After review of the record, I find the District Ranger's decision with respect to the August 24, 1999, letter stating that, "The SGA does not have a Term Grazing Permit for the Dry and Davis Allotments" was reasoned and in conformance with applicable laws, regulations, orders, and policies and procedures. The District Ranger's decision was not biased, unlawful, arbitrary, capricious, nor an abuse of discretion. Therefore, I affirm the District Ranger's decision that the Dry Allotment and Davis Allotment are not within the Sacramento Allotment, as documented in his letter of August 24, 1999.

This decision is subject to a second level review to be filed with the Regional Forester under 36 CFR 251.87. You must file the appeal within 15 days of the receipt of this decision, and direct it to: Regional Forester, Appeals and Litigation Staff, 517 Gold Avenue SW, Albuquerque, NM 87102.

If you have any questions concerning the appeal process, please contact Larry Sansom at (505) 434-7200.

Sincerely,

/s/ Jose Martinez

JOSE M. MARTINEZ
Forest Supervisor

Cc:
Sacramento Grazing Association (Mrs. Goss)
Sacramento Ranger District