



**United States
Department of
Agriculture**

**Forest
Service**

**Tonto
National
Forest**

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File Code: 1570

Date: July 10, 2000

Law Offices of Michael A. Carragher
104 S. Broad Street # 6
Globe, Arizona 85501

RE: Herb and June Fletcher Appeal

Dear Mr. Carragher:

This letter constitutes my review and decision on the appeal you filed on behalf of Herb and June Fletcher. Your appeal concerned District Ranger Tina Terrell's October 5, 1999 decision to cancel the Term Grazing Permit (#12-796) held by Herb and June Fletcher on the Dagger and A-Cross Allotments.

BACKGROUND

A Term Grazing Permit was issued to Herb and June Fletcher (permittees) on the A Cross and Dagger Allotments on November 23, 1994. On October 5, 1999, Tina J. Terrell, District Ranger on the Tonto Basin District of the Tonto National Forest, cancelled the Term Grazing Permit for the permittees' repeated failure to comply with the terms and conditions of the permit. You notified the Forest Service that you were appealing that decision on October 26, 1999, and petitioned for mediation under the USDA Reorganization Act of 1994. The mediation process took place according to 36 CFR 251.103 and was completed on March 14, 2000. The administrative appeal process was suspended during the mediation process. After the mediation process was completed the administrative appeal process was reinstated. I received your letter stating the points of the appeal on April 25, 2000, and a response to the points of your appeal from Ranger Tina Terrell on May 25, 2000. I did not received a response to her reply, therefore I have closed the record.

POINTS OF YOUR APPEAL

I have reviewed the appeal points presented in your April 25, 2000 letter according to the provisions of the appeal regulations in 36 CFR 251.99. My response to your appeal points are categorized under the same "appeal point" titles as Ranger Terrell used in her May 25, 2000 letter.

APPEAL POINT NUMBER 1. Appellant should not be penalized for the problems being created for the Forest Service by current litigation regarding threatened and endangered species.



MY RESPONSE. The District Ranger's decision is based on the permittee's repeated failure to comply with the terms and conditions of the Grazing Permit. The lawsuits filed against the Forest Service generally alleged that the Forest Service was in violation of the Endangered Species Act (ESA) for failing to consult with U.S. Fish and Wildlife Service on grazing permits. Whether or not the Forest is in litigation, the permittee is required to comply with the terms and conditions of the grazing permit. The District Ranger's records show that noncompliance by the permittee included failing to keep cattle in units that were assigned through the Annual Operating Plans (AOP), failing to tag livestock as required by the District Ranger, having numbers of livestock on the allotment substantially in excess of the permitted numbers, and failing to comply with other requirements such as proper placement of salt for livestock.

YOUR APPEAL POINT NUMBER 2. Appellant does not agree that the protection of the habitat areas for endangered species requires removal of all livestock and termination of term grazing permits.

MY RESPONSE. The record substantiates that the reason for canceling the permit was not to protect habitat for endangered species, but for the permittees' violation of the terms and conditions of the grazing permit. The grazing permit contain provisions for the District Ranger to require proper range management for the protection of resources, including habitat for endangered species. Through the administration of the grazing permit, the District Ranger requires the permittee to allow only permitted livestock on the allotment, keep cattle in assigned units, tag livestock when necessary, and comply with other requirements such as proper placement of salt on the allotment. These management requirements apply whether or not habitat for threatened and endangered species is involved.

YOUR APPEAL POINT NUMBER 3. Appellant does not agree that the drought has resulted in over utilization of available feed.

MY RESPONSE. My response to appeal point number 2 applies here. The District Ranger's decision to cancel the grazing permit was based on the permittee's failure to comply with the terms and conditions of the grazing permit. The record shows that the District Ranger sufficiently communicated with all grazing pemrittees on the Tonto Basin District in order to consistently implement effective management and protect resources during the drought. Sufficient information and monitoring supported the decisions for managing during the drought.

ADDITIONAL APPEAL POINT. Appellant contends that the District Ranger resisted resolution through the mediation process. This is an appeal point that you described in your April 25, 2000 letter, and was included under appeal point number 1 of the District Ranger's response.

MY RESPONSE. In reviewing the record, I have determined that the District Ranger participated in the mediation process according to regulations. The action taken against the grazing permit is consistent with the Terms and Conditions of the Grazing Permit, under the authority of the District Ranger.

The record indicates that the permittee repeatedly failed to comply with the terms and conditions of the grazing permit after conferencing and warning by the District Ranger. The District Ranger made a decision to continue with her October 5, 2000 decision after mediation. This decision was made after conferencing with the permittee in an attempt to gain compliance with the terms and conditions of the permit. The permittees had adequate opportunities to comply with the grazing permit, however they continued to violate the terms and conditions.

CONCLUSION

After review of the record, I conclude that the District Ranger's decision to cancel the Term Grazing Permit (#12-796) held by Herb and June Fletcher on the Dagger and A-Cross Allotments was warranted and with proper authority. The District Ranger's decision is affirmed.

According to the appeal regulations (36 CFR 521.87) you may file an appeal to the Regional Forester within 15 days of this decision. The second level appeal must be sent to: Regional Forester, Southwestern Region, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102. A copy of any second level appeal should also be sent to my office.

Sincerely,

THOMAS J. KLABUNDE
Appeal Reviewing Officer

CC:
Herb and June Fletcher
Regional Forester, R-3
District Ranger, Tonto Basin