

File Code: 1570-1

Date: December 10, 1999

Fennemore Craig Law Office
c/o Jay Shapiro
3003 North Central Ave., Suite 2600
Phoenix, AZ 85012-2913

Certified Mail - Return Receipt Requested
P 556 954 707

Re: Appeal of Decision to Cancel The Term Grazing Permit on the New River Allotment (Appeal #99-03-12-0001-A251), Cave Creek Ranger District, Tonto National Forest

Dear Mr. Shapiro:

This letter documents my second level review decision of the appeal you filed on behalf of your client, the Richard and Anna Bragg revocable inter-vivos trust. The appeal is in regard to District Ranger Delvin R. Lopez' decision to cancel the term grazing permit which authorized your client to graze 550 head of cattle on the New River allotment. The appeal was filed and has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

On April 14, 1992, a term grazing permit was issued to the Richard and Anna Bragg revocable inter-vivos trust authorizing them to graze 550 head of cattle (1/1-12/31 annually) on the New River allotment. The term grazing permit was issued for a term of 10 years unless waived, cancelled or otherwise terminated as provided for in the terms and conditions of the permit. On November 6, 1998, District Ranger Delvin R. Lopez cancelled the term grazing permit for failure to comply with the terms and conditions of the permit.

Your first level appeal and request for stay of this decision was hand delivered to Forest Supervisor Bazan on December 21, 1998. On December 31, 1998, Supervisor Bazan stayed the cancellation of the New River term grazing permit (36 CFR 251.91(g)(1)). Under the provisions of 36 CFR 251.94 the District Ranger prepared and mailed to you a copy of his written responsive statement to your appeal on January 19, 1999. Your reply to the responsive statement was received by Deputy Forest Supervisor Thomas J. Klabunde on February 23, 1999. He subsequently closed the record on March 3, 1999. Based on his review of the record, Deputy Forest Supervisor Klabunde affirmed the District Ranger's decision on April 20, 1999.

Your second level appeal and request for stay of the District Ranger's decision was received in this office on April 30, 1999. By letter dated May 7, 1999, John R. Kirkpatrick, Appeal Reviewing Officer, granted a continuance of the stay. By letter dated May 20, 1999, the Appeal Reviewing Officer indicated his review decision would be made within 30 days from the date the appeal record was received. Because of the demands placed on this office having to do with

litigation and other appeals, I subsequently extended the time period to issue a second level decision on this appeal to no later than December 17, 1999.

APPEAL DECISION

In your second level appeal you raised the issue of whether or not the District Ranger's execution of a new term grazing permit on January 12, 1999, negated the administrative actions taken against the April 14, 1992, term grazing permit. You argued that the District Ranger's cancellation of the 1992 permit, as well as, appellant's appeal of that decision were rendered moot by the issuance of a new permit in January 1999.

After a thorough review of the appeal record I agree with your assessment that the new term grazing permit dated January 12, 1999, superseded the 1992 permit and vacated the cancellation decision. The Ranger's issuance of a new permit in effect withdrew the Ranger's cancellation decision, therefore, I am dismissing your appeal of the cancellation decision in accordance with 36 CFR 251.92(a)(6). The New River allotment must be managed under the new permit of record issued January 12, 1999.

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, Tonto NF
District Ranger, Cave Creek RD
Director, Range Management R3
Appeals and Litigation Staff, R3