



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

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File Code: 1570-1

Date: January 18, 2001

Howard J. Norris
P.O. Box 1061
Globe, AZ 85502

Re: Appeal #00-03-12-0011-A251, Chrysotile Allotment, Globe Ranger District,
Tonto National Forest

Dear Mr. Norris:

This letter documents my second-level review decision of the appeal you filed on December 11, 2000. The appeal is in regard to the June 29, 2000, decision by District Ranger Widner, herein termed the Deciding Officer, to cancel 50 percent of your term grazing permit on the Chrysotile Allotment. The appeal was filed and has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

By letter dated June 29, 2000, the Deciding Officer canceled 50 percent of your term grazing permit for failure to comply with the terms and conditions of your permit.

On August 16, 2000, the first-level Appeal Reviewing Officer acknowledged receipt of your first-level appeal dated August 11, 2000. Under the provisions of 36 CFR 251.94, the Deciding Officer prepared and mailed to you a copy, on September 6, 2000, of his written responsive statement to your appeal. On September 24, 2000, you responded to the Deciding Officer's written responsive statement. On November 11, 2000, the Appeal Reviewing Officer closed the record. Based on his review of the record, the Appeal Reviewing Officer affirmed the Deciding Officer's decision on November 28, 2000.

Your second-level appeal was received in this office on December 14, 2000. By letter dated January 16, 2001, I indicated my review decision would be made within 30 days from when the appeal record is received from the first-level Appeal Reviewing Officer.

POINTS OF APPEAL

My review of this appeal was confined to the substantive points raised in the appeal, the appeal record, federal regulations, and the policies and operational procedures as set out in the directives system of the USDA Forest Service.



ISSUE 1: The permit was cut 50 percent for not cleaning up wild cattle in a portion of the ranch on the Salt River that appellant was ordered to vacate in 1995.

Contention: The appellant contends that since he is addressing the problem by rounding up the wild cattle, the permit cut is not necessary.

Response: The record is clear that the Deciding Officer's decision to cancel 50 percent of the appellant's term grazing permit was based on 4 areas of noncompliance with the terms and conditions of the permit (Docs. G; K). These include:

1. Failure to remove cattle by May 1, 2000, as directed by the Deciding Officer. On March 7, 2000, the Deciding Officer notified the appellant that "Recent monitoring and observations indicate that proper use levels on the Chrysotile Allotment have been exceeded and that continued grazing is resulting in unacceptable resource impacts." In a letter dated March 17, 2000, the Deciding Officer amended the appellant's 2000 annual operating instructions (AOI) and directed the removal of all the appellant's cattle from the Chrysotile Allotment by May 1, 2000 (Doc. M). The record demonstrates that on June 29, 2000, the appellant still had cattle remaining in a number of pastures (Doc. K).
2. Running yearlings outside the January 1 through May 31 date provided for in the appellant's term grazing permit.
3. Failure to follow the pasture rotation schedule outlined in AOI's between 1996 and 2000. In addition, unauthorized cattle belonging to the appellant were documented in the Ash Creek Riparian Pasture, 1995 through 2000.
4. Actual forage utilization levels between 1997 and 2000 continually exceeded acceptable levels by 20 to 50 percent.

The Secretary of Agriculture's regulations at 36 CFR 222.4(a)(4) provide the authority for Forest Officers to cancel or suspend a permit if a permittee does not comply with the provisions and requirements in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based.

Part 1(3) of Forest Service term grazing permits (FS-2200-10) states: "It is fully understood and agreed that this grazing permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued thereunder.... This permit can also be cancelled, in whole or in part, or otherwise modified, at any time during the term to conform with needed changes brought about by ... numbers permitted or season of use necessary because of resource conditions...."

Part 2(2) provides that prior to each grazing season the Forest Service will "send the permittee a Bill for Collection specifying for the current year the kind, number, and class of livestock allowed to graze, the period of use, the grazing allotment, and the grazing fees. The bill when paid, authorizes use for that year and becomes a part of this permit."

Part 2(8)(c) requires the permittee to remove livestock from Forest Service administered lands before the expiration of the designated grazing season upon request of the Forest Officer when it is apparent that further grazing would damage the resources. Part 2(8)(d) states: “The permittee will allow only the numbers, kind, and class of livestock on the allotment during the period specified in Part 1 hereof or the annual Bill for Collection, including any modifications made as provided for in Section 8(c). If livestock owned by the permittee are found to be grazing on the allotment in greater numbers, or at times or places other than permitted in Part 1 hereof, or specified on the annual Bill for Collection, the permittee ... may face suspension or cancellation of this permit.”

Finding: The record clearly shows that the appellant failed to remove livestock as directed by the District Ranger on March 17, 2000. The record also clearly documents that the appellant failed to follow pasture rotation schedules specified in AOI's, consistently exceeded forage utilization levels specified in AOI's, and violated Part 2(8)(d) of his term grazing permit by allowing yearlings to graze outside the season specified in Part 1 of his permit. The appellant's actions on these four counts are clear violations of the terms and conditions of his term grazing permit.

ISSUE 2: The requirement to remove all permitted livestock from the Chrysotile Allotment has forced the appellant to sell his ranch.

Contention: The appellant argues that if his permit is cut 50 percent, the reduced sale value of the ranch will probably pay the note but leave nothing for him on which to live.

Response: The Secretary of Agriculture's regulations at 36 CFR 222.3(b) states “Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources.” Applicants for term grazing permits and their lenders assume the financial risk associated with potential future adjustments in grazing management strategies for stewardship of resources. In the case of this appeal, the Deciding Officer's decision to cancel 50 percent of the appellant's term grazing permit is not based on resource conditions but rather on the violation of the terms and conditions of the appellant's permit as documented in the Deciding Officer's decision letter of June 29, 2000.

Monitoring records on the Chrysotile Allotment indicate that range conditions are declining and that all monitoring sites are currently rated as poor or very poor (Doc. M). This demonstrates a clear need to conduct a proper analysis under the National Environmental Policy Act (NEPA) and adjust grazing management strategies on the allotment including a determination of proper stocking levels. The NEPA analysis for the Chrysotile Allotment is presently scheduled for completion during 2001. Based on a waiver of the term grazing permit privileges by the existing permit holder, the purchaser of permitted livestock and designated base property would be entitled to apply for a new term grazing permit. The numbers of livestock to be authorized in the future on the Chrysotile Allotment will have to be determined through the NEPA analysis and decision-making process to be conducted in the immediate future.

Finding: The Deciding Officer properly redeemed his responsibility to take administrative action under the terms and conditions of the permit based on numerous violations of the terms and conditions of the permit. Irrespective of this action, a current NEPA analysis is needed to identify a proper level of stocking and to improve the condition of rangeland resources.

DECISION

After review of the appeal record, I find that the Deciding Officer's decision to cancel 50 percent of your term grazing permit was based on a reasonable assessment of repeated violations of the terms and conditions of your permit.

The Deciding Officer's decision is in conformance with applicable laws, regulations, policies, and procedures. Therefore, I affirm the Deciding Officer's decision to cancel 50 percent of your term grazing permit on the basis of permit violations pursuant to the terms and conditions contained in your permit.

Also, by this letter, I am directing the Deciding Officer to insure timely completion of the NEPA analysis and decision-making process for the Chrysotile Allotment, which will determine the level of grazing to be permitted in the future. The target date for making this determination through the NEPA process is December 31, 2001.

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

Sincerely,

/s/ James T. Gladen
JAMES T. GLADEN
Deputy Regional Forester

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