



United States
Department of
Agriculture

Forest
Service
Tonto
National
Forest

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File Code: 1570/2230

Date: November 28, 2000

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

Re: Appeal #00-03-12-0011-A251, Partial Cancellation of the Term Grazing Permit,
Globe Ranger District, Tonto National Forest

Dear Mr. Norris:

This letter constitutes my review and decision on your August 11, 2000 appeal. Your appeal is regarding Ranger Larry Widner's June 29, 2000 decision to cancel 50 percent of your term grazing permit for failure to comply with the terms and conditions of the permit.

The Department of Agriculture mediation process, as described under CFR 251.103 was used to address the issues concerning your appeal. Mr. Phillip Stiles facilitated a meeting, as a part of the mediation process, with you, Terence Wheeler and District Ranger Larry Widner on October 18, 2000. After the meeting Mr. Widner decided not to change or amend his decision.

I have reviewed your appeal points according to the provisions of the appeal regulations in 36 CFR 251.99. My review has been conducted in full consideration of the entire appeal record, federal statutes, policies and operational procedures set out in the directives system of the USDA Forest Service.

In your August 11, 2000 letter you stated: "I am being found guilty until proven innocent. This decision is unfair, punitive, arbitrary and capricious. It will cause extreme hardship and ultimately result in the termination of my ranching operation. It follows on the heels of similar actions that have been occurring all year and which have the ultimate intend to causing me to lose may ranch."

In evaluating whether Mr. Widner's decision was unfair, punitive, arbitrary and capricious I evaluated whether the decision was needed and if it was consistent with the terms and conditions of the grazing permit and other actions taken for non-compliance.

According to the appeal record, Mr. Widner notified you on March 7, 2000 that your livestock would have to be removed by May 1, 2000. Your cattle were not removed by May 1, 2000 and Mr. Widner wrote another letter requiring that cattle be removed from the allotment, and extended the time for removal of all livestock by June 12, 2000. When livestock remained on the allotment after June 12, 2000 Mr. Widner took action on your permit. Considering this action



and the history of actions and written communications provided in Mr. Widner's June 29, 2000 decision, I believe that the decision was fair.

I considered the terms and the conditions of your grazing permit and the authorities Mr. Widner has in administering the permit. The grazing permit is very explicit. Part 2, Section 8(a) says "the allotment management plan for the land described on page 1 Part 1, is a part of this permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest Officer in charge of the area under permit and will require employed agents, and contractors and subcontractors to do likewise". Mr. Widner acted with proper authority consistent with the terms and conditions of your grazing permit.

On April 21, 2000 you appealed Mr. Widner's March 17, 2000 decision to require the removal of livestock from the Chrysotile allotment because of drought, lack of forage, and heavy utilization. My August 18, 2000 review of your appeal addressed the need for Mr. Widner's action. Livestock numbers were reduced on practically all allotments on the Tonto National Forest because of drought, and many grazing permittees removed all their livestock from the National Forest. The district ranger has the authority and legal responsibility to assess the rangeland and resource conditions and protect these resources from long-term impairment.

After reviewing the appeal record I conclude that the District Ranger's decision was made after a great deal of warning, notifying, and communicating with you. The decision was based on your failure to comply with the terms and conditions of the grazing permit and was consistent with the District Ranger's authority.

My review of your appeal was conducted in accordance with 36 CFR 251 Subpart C. After review of the record, I conclude that the District Ranger's June 29, 2000 decision to cancel 50 % of your term grazing permit on the Chrysotile Allotment was warranted and in conformance with applicable laws, regulations, orders, and policies and procedures. I affirm the District Ranger's decision.

According to the appeal regulations (36 CFR 251.87) 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 the second level appeal should also be sent to my office.

Sincerely,

/s/ Eddie Alford (for)

THOMAS J. KLABUNDE
Acting Forest Supervisor and Appeal Reviewing Officer

CC:
Regional Forester, R-3
District Ranger, D-2