



United States
Department of
Agriculture

Forest
Service

Tonto
National
Forest

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File Code: 1570

Date: September 28, 2001

Mr. Charlie Wilcox
CTW Cattle Company
HCR 34 Box 5005
Mayer, AZ 86333

CERTIFIED: RETURN RECEIPT
REQUESTED

Dear Mr. Wilcox:

This documents my review and decision of the appeal you filed July 10, 2001. The appeal is in regard to District Ranger Delvin Lopez's May 31, 2001 decision to suspend 20% of your permitted numbers on the Copper Creek Allotment for 2 years. It was filed and has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

On May 31, 2001 District Ranger Lopez suspended 20% of your grazing permit on the Copper Creek Allotment for a period of 2 years. According to Mr. Lopez, the decision to take this action was for:

1. Repeated violations of salting policy, as stated in the terms and conditions of your term permit Part 3, Clause 9, and as directed in the Annual Operating Instructions.
2. Failure to follow the grazing schedule issued in Annual Operating Instructions according to the terms and conditions of your grazing permit part 2, Clause 8(a).

I received your letter stating the points of the appeal on July 10, 2001, a responsive statement from Mr. Lopez on August 6, 2001 and your reply to that statement on August 27, 2001. You met directly with Mr. Lopez on August 27, 2001 rather than using the Agriculture Mediation Service as described in 36 CFR 251.103. During the meeting you asked Mr. Lopez to reconsider the decision to suspend 20% of your grazing permit, and you would work on compliance with management requirements in the future. Mr. Lopez did not change his decision, therefore the appeal process has continued.

POINTS OF YOUR APPEAL

I have reviewed the appeal points presented in your July 10, 2001 letter according to the provisions of the appeal regulations in 36 CFR 251.99. I also evaluated whether you were given clear notice of the permit violation, the action that would be taken, the opportunity to correct the problem and an opportunity to "show cause" why action should not be taken. The following are the points of your appeal and my response:



1. Concerning the placement of salt blocks.

Your term grazing permit part 3, clause 9, and the annual operating instructions (AOI) provide direction for placing salt. Therefore, placing salt inconsistent with that provision is a violation of your permit. Mr. Lopez provided the information to you on the Forest salting policy, and on the placement of salt that was inconsistent with the policy. This notification was given on:

March 15, 2000 Range inspection report for inspection conducted March 10 -14, 2000, and March 20, 2000: Cover letter.

January 4, 2001 Annual Operating Instructions for 2000 – 2001.

April 19, 2001 range inspection.

May 18, 2001 range inspection report for May 3, 2001

2. Concerning cattle being in the Cornstalk pasture when they were not scheduled to be there according to the AOI.

According to the record cattle were in the Cornstalk pasture from mid-February 2001 to May of 2001. This is documented in the following:

February 22, 2001 note from Preston Tucker (72 cattle in the Cornstalk Pasture).

March 7, 2001 email from Patti Fenner.

March 15, 2001 note from Preston Tucker (cattle observed in the Cornstalk Pasture near Cornstalk Well).

April 6, 2001 note from Todd Willard. Twenty-eight to thirty head of cattle were observed in the Cornstalk Pasture.

April 19, 2001 range inspection by Patti Fenner.

May 18, 2001 range inspection by Patti Fenner

Notification of cattle being in the wrong pasture according to the AOI was documented:

February 22, 2001 memo of telephone call from Patti Fenner to you.

March 7, 2001 e-mail from Patti Fenner to you.

March 17, 2001 note from Patti Fenner on the discussion she had with Rink Goswick.

April 19, 2001 range inspection report mailed to your ranch.

May 5, 2001 phone call from Patti Fenner to you.

May 18, 2001 range inspection report for an inspection completed May 3, 2001.

After reviewing your appeal letter of July 10, 2001, the District Ranger's responsive statement of August 6, 2001 and your reply to the responsive statement of August 27, 2001. I have determined that the District Ranger had sufficient documentation showing violation of the terms and conditions of your permit occurred. There is also adequate documentation showing that you were provided proper notification of the violation and adequate time to correct the management infraction. Therefore, I am supporting the District Ranger's decision to suspend 20% of your grazing permit for 2 years. The district ranger will notify you of the date the cattle must be removed from Copper Creek Allotment.

According to the appeal regulations (36 CFR 251.87), you may file an appeal with 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 should also be sent to my office.

Sincerely,

/s/ Thomas J. Klabunde

THOMAS J. KLABUNDE
Deputy Forest Supervisor and Appeal Reviewing Officer

cc: Delvin Lopez
Regional Forester, R-3