



United States
Department of
Agriculture

Forest
Service

R3 Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1/2200

Date: December 16, 2002

John Griffin
Griffin Cattle Ranch
P.O. Box 1224
Globe, AZ 85502

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeal #02-03-12-0002-A251, Sedow Allotment AOP Decision, Globe Ranger District,
Tonto National Forest

Dear Mr. Griffin:

This letter documents my second-level review decision of the appeal you filed on November 15, 2002. Your appeal is in regard to District Ranger Widner's May 24, 2002, decision instructing you to remove your cattle from the Sedow Allotment because of extreme drought conditions and lack of forage. Your appeal was filed and has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

On May 24, 2002, Ranger Widner (Deciding Officer) amended the annual operating instructions for the Sedow Allotment directing total removal of cattle from the allotment. On July 5, 2002, you filed your first-level appeal. Under the provisions of 36 CFR 251.94, the Deciding Officer completed his written responsive statement to your appeal on August 7, 2002. On September 2, 2002, you submitted your comments to the responsive statement. On September 25, 2002, the first-level Reviewing Officer closed the record. Based on the review of the record, the Deciding Officer's decision was affirmed on October 24, 2002.

Your second-level appeal was received in this office on November 15, 2002. Upon receipt of your appeal, I indicated my review would be made within 30 days from the date the appeal record was received.

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 Deciding Officer's decision is having an unnecessary adverse financial effect on the permittee.

Contention: The appellant contends that although the State of Arizona is experiencing extreme drought conditions, the Sedow Allotment is in comparatively good condition and that valid, scientific monitoring would verify that fact.



Discussion: All rangelands are adversely affected by drought, regardless of the condition of the rangelands, with rangeland in fair or poor condition being more adversely affected than rangeland in good or excellent condition. Rangeland plants are dependent on soil moisture for survival and the lack of soil moisture can result in loss of plant vigor and plant mortality. The reduction of vegetative cover can lead to increased soil erosion, loss of site productivity, and degradation of water quality. The record demonstrates soil moisture conditions on the allotment during the spring of 2002 were extremely dry, and new forage production was either non-existent or very poor. The vigor of herbaceous forage was poor, and many plants appeared to be dead or dying. Additionally, the overall trend on many key areas appeared to be downward (Docs. 1, 2, 3, 7).

Finding: As pointed out in the Deciding Officer's responsive statement and the first-level appeal decision, District Rangers are responsible for taking the necessary steps to ensure ongoing grazing does not damage rangeland resources. In these times of extended drought, we are sympathetic to, and understanding of, livestock operators' needs for forage. Ranchers adapting to drought conditions accompanied by economic pressures caused by use reductions find it a very difficult time. In addressing the drought situation's impact on our permittees, we are coordinating our activities wherever possible with the Natural Resources Conservation Service and other State and Federal agencies to help them through this tough situation. Significant reductions in cattle use have occurred across the Western United States in response to drought, because there is little or no forage on the National Forest System lands to support the use. Continued use would impair the short- and long-term health of the rangelands. We are being as flexible as possible, while making sure our decisions are consistent with good land stewardship. We will continue to review and assess viable options on a case-by-case basis with permittees, Universities, Cooperative Extension Agents, and other third parties in an effort to minimize the impact on the livestock industry in the Southwestern Region. The Deciding Officer has appropriately determined that the Sedow Allotment will not support grazing because of drought conditions.

ISSUE 2: The Deciding Officer's decision was arbitrary, capricious, and punitive.

Contention: The appellant contends it is arbitrary, capricious, and punitive for the Tonto's monitoring team to insist on monitoring within three days after cattle moved out of a pasture. The appellant argues the Tonto's riparian monitoring protocols are based on bias, not science. The appellant asserts the Forest Service needs to allow a non-biased, broad-based team of scientists to evaluate the current condition of rangeland conditions on the Sedow Allotment.

Response: As noted under Issue 1, we are coordinating our activities wherever possible with the Natural Resources Conservation Service and other State and Federal agencies to help permittees through this tough situation. We will continue to review and assess viable options on a case-by-case basis with permittees, Universities, Cooperative Extension Agents, and other third parties in an effort to minimize the impact on the livestock industry in the Southwestern Region. The record demonstrates that from April 1 to May 3 the permittees were grazing 281 head of adult cattle on the Sedow Allotment. That number was subsequently reduced to 140 head of adult cattle and ultimately to complete removal of cattle from the allotment in June (Docs. 3; 12). The record is clear that the basis for requiring the removal of cattle from the allotment had nothing to do with monitoring protocol. It was based on extreme drought conditions and the lack of forage. As pointed out under Issue 1, all rangelands are adversely affected by drought, regardless of their

condition.

Finding: The Deciding Officer's decision was not arbitrary, capricious, nor punitive. The Deciding Officer's decision was based on an overall assessment of rangeland conditions and the need to ensure the protection of rangeland resources during this period of unprecedented drought. As rangeland conditions improve, the Forest Service will request an independent review by other scientists if there is disagreement on the rate of restocking allotments, wherever they may be located in the Southwestern Region.

DECISION: Based on my review of the record and your appeal issues, I find that the Deciding Officer's Decision to amend your operating plan requiring removal of your cattle from the Sedow Allotment was appropriate, based on extreme drought conditions and the lack of forage. The Deciding Officer's May 24, 2002, operating plan decision is affirmed. This decision is the final administrative determination of the Department of Agriculture. 36 CFR 251.87(e)(3)

Sincerely,

/s/ Abel M. Camarena
ABEL M. CAMARENA
Appeal Reviewing Officer,
Deputy Regional Forester

cc: David M Stewart, Christina Gonzalez, Eddie Alford, Larry P Widner, Mailroom R3 Tonto, Globe RD