



United States
Department of
Agriculture

Forest
Service

Tonto
National
Forest

2324 E. McDowell Rd.
Phoenix, AZ 85006

File Code: 1570

Date: June 18, 1998

Red Creek Ranch
c/o Sue and Justin Marks, and Marie Jennings
P.O. Box 1999
Cave Creek, AZ 85327

RE: Appeal No. 98-12-SO-002

Dear Mr. & Mrs. Marks and Mrs. Jennings:

This letter is my appeal decision on your appeal of the Red Creek Annual Operating Instructions issued by Delvin Lopez on January 5, 1998. Your appeal concerns your disagreement with the criteria to be used to determine when livestock must be moved from one unit to another according to your "Annual Operating Instructions". Specifically you disagreed with the vegetation utilization and streambank alteration guidelines. This review was conducted according to the provisions of the appeal regulations in 36 CFR 251.99.

BACKGROUND

The District Ranger issued you a letter on January 5, 1998 which served as your Annual Operating Instructions for the Red Creek Allotment. Your appeal was received on March 10, 1998. On April 3, 1998 you met with Ranger Delvin Lopez and District Range Staff Patti Fenner to clarify appeal points and resolve issues. A response to your appeal was received from Ranger Lopez on April 8, 1998.

ISSUE 1. Utilization of vegetation in the Riparian Areas.

Contention: The limited use of 1/3 of a plant's height is far from 50% of its weight. It is more like a 10-20% use according to photo guidelines on key grass species, published by the University of Arizona.

Response: The appeal record (April 8, 1998 Appeal Response from Delvin Lopez) states that this issue was resolved during your meeting with Delvin Lopez and Patti Fenner on April 3, 1998. Therefore I will not address this issue.

ISSUE 2. Streambank Alteration

Contention: "The 20% limit of streambank alteration will be impossible to stay under because one bull track could make that much alteration-according to some peoples' opinion. I do not think the guidelines were set for a multiple use concept".



Response: The intent of the Tonto Forest Plan standards and guidelines is to assure that riparian eco-systems are maintained or restored in good condition, and that their management is consistent with Forest Plan direction as required under the National Forest Management Act (1976). Riparian area guidelines limiting impacts of streambanks is one measurement that provides specific, measurable and practical methods of implementing Forest Plan standards and guidelines. The Regional Guide for the Southwestern Region sets a riparian standard of maintaining at least 80% streambank protection and the Tonto National Forest Plan incorporates this standard by reference. The rationale for implementing these guidelines was given to you on April 3, 1998 according to District Ranger Lopez's April 8, 1998 Responsive Statement. The method for measuring streambank stability has been used in other riparian areas on other National Forests, and is a valid method. However, as more information is gained through monitoring and research we might need to make changes in methods and interpretations. At this time I think the District Ranger's decision to use the guidelines is appropriate.

ISSUE 3. The Fish and Wildlife Service should provide funding for water developments and improvement.

Contention: During these times of so much upheaval in the Forest use system, we are reluctant to spend a lot of money and effort on range improvements unless we can be assured of some definite returns. Since the Fish and Wildlife Service is the driving force behind most of these new regulations, we feel they should provide the money and materials for water developments and fencing.

Response: The appeal record (April 8, 1998 Appeal Response from Delvin Lopez) states that this issue was resolved during your meeting with Delvin Lopez and Patti Fenner on April 3, 1998. Therefore I will not address this issue.

ISSUE 4. A breach of cooperation and trust occurred.

Contention: "This Ranch cooperated with the project to help establish the Gila topminnow in the early 1980's. We were told there would be no implications towards grazing. Now we are told by the F&WS that the NEPA work was never completed and cattle must be excluded from using Red Creek until a B.O. is completed. We hope this year! We feel betrayed and that this is a breach of our cooperation and trust".

Response: The plan to introduce the Gila topminnow back in the late 1970s and early 1980s was to be administered under a memorandum of understanding between the Forest Service and the U.S. Fish and Wildlife service. The transplanted population was to be classified as "Experimental and Non-essential". As it turns out there was no authority to designate an Experimental and Non-essential population. Therefore, the Fish and Wildlife Service was unable to make such a designation and was compelled to consider transplanted populations as native populations. This was an unfortunate set of circumstances which denigrated the enthusiasm for transplanting threatened and endangered species. However, there are many other aspects for managing Threatened and Endangered Species that are different now than they were 18 years ago. The Gila topminnow is not the only Threatened and Endangered Species (and or habitat) on the Red Creek Allotment that is causing a need for change in grazing management. The Verde River has been classified as critical habitat for

the Southwestern Willow Flycatcher and Red Creek and Tangle Creek may have potential habitat for the Southwestern Willow Flycatcher.

The Allotment Management Plan on the Red Creek Allotment does not have a current biological assessment which is required under the Endangered Species Act. The Forest Service is currently under litigation for failure to comply with ESA for this reason. In order to comply with ESA an inter=agency team conducted a biological assessment on the annual operating plan (AOP). This summer the National Environmental Policy Act (NEPA) will be initiated which will include a biological assessment and consultation with US Fish and Wildlife Service.

DECISION

After review of the record, I conclude that the District Ranger's decision on the Red Creek Annual Operating Instructions appropriately complies with the regulations for administering grazing permits, and therefore the decision is affirmed.

/s/ Charles R. Bazan

CHARLES R. BAZAN
Appeal Deciding Officer
Forest Supervisor

cc: District Ranger, Cave Creek District