



United States  
Department of  
Agriculture

Forest  
Service

Tonto  
National  
Forest

2324 E. McDowell Rd.  
Phoenix, AZ 85006

---

**File Code:** 1570

**Date:** July 14, 1998

**Mr. Leo R. Beus, Attorney-at-Law  
Beus, Gilbert & Devitt  
Suite 1000, Great American Tower  
3200 N. Central Avenue  
Phoenix, AZ 85012**

**RE: Appeal No. 98-12-SO-004**

**Dear Mr. Beus:**

This letter is my decision on your appeal dated March 25, 1998. Your appeal was filed on behalf of George Ewing who represents George T. Cline Equity Trust. The appeal was against District Ranger Tina Terrell's decision to temporarily suspend 10% of your permitted numbers on the Tonto Basin Allotment for unauthorized livestock use. This review was conducted according to the provisions of the appeal regulation at 36 CFR 215.

## **BACKGROUND**

The Tonto Creek Riparian Unit (TCRU) was established for mitigation of wildlife habitat losses associated with Plan 6 in 1992. This mitigation included the requirement to exclude livestock for portions of the year for protection of the riparian area on Tonto Creek. Since the establishment of the TCRU, Forest Service employees, as well as others, have reported that there has been livestock and grazing utilization on the TCRU during the time when livestock were not scheduled to be in the TCRU. On February 9, 1998 Tina J. Terrell, District Ranger on the Tonto Basin Ranger District made a decision to suspend 10% of the George T. Cline Equity Trust Grazing permit for unauthorized livestock use within the boundaries of the TCRU.

**Contention:** The livestock observed trespassing were never positively identified as belonging to the appellant, and the livestock owned by other ranchers were in the area.

**Response:** I agree that the livestock were not positively identified as belonging to the appellant. The District Ranger concluded that the livestock found in the TCRU belonged to the George T. Cline Trust since George Ewing responded to reports of cattle being in the unit and removed them. The vast majority of livestock in the area belong to George Ewing, and Mr. Ewing had not previously reported that the cattle belonged to someone else.



**Contention:** The gates were not left open by the appellant for his livestock to run free within the TCRU area.

**Response:** The TCRU is a very sensitive area biologically and politically. It is paramount that the area is protected from grazing during the time it is scheduled for rest. The appellant must take a responsibility of keeping the TCRU free from livestock during the period when the TCRU is scheduled for rest. Continuing to allow livestock to enter the TCRU when they are not supposed to be in the area will jeopardize grazing the TCRU and surrounding area.

## **DECISION**

After review of the record, I concluded that the District Ranger's decision was not adequately supported with positive identification of the livestock ownership. For this reason I am reversing the decision. The District Ranger will discontinue the suspension of 10% of the permit for 1-5 years.

The appellant must contact the District Ranger for approval of the annual validation and Annual Operating Plan before the cattle re-enter the allotment.

Sincerely,

/s/ Thomas J. Klabunde

TOM KLABUNDE  
Deputy Forest Supervisor and Appeal Reviewing Officer

cc:  
Tonto Basin District Ranger