



United States
Department of
Agriculture

Forest
Service

Region 3
Southwestern Region
Tonto National Forest
Tonto Basin Ranger
District

HC02
P.O. Box 4800
Roosevelt, AZ 85545

File Code: 2230

Date: October 5, 1999

(b) (6)

CERTIFIED MAIL - RETURN
RECEIPT REQUESTED

Dear (b) (6)

This letter is my decision to take administrative action on your term grazing permit for your failure to comply with the terms and conditions of your Grazing Permit (#12-796). I have reviewed the record and considered your response made on June 7, 1999 during the show cause meeting in which I asked you to explain why I should not take action on your permit.

Your term grazing permit, part 2 General Terms and Conditions, number 8 (a) states, "The allotment management plan (AMP) 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 for the area under permit and will require employees, agents and contractors and subcontractors to do likewise."

AMP's were developed and approved by the Forest Supervisor for both of your allotments (A Cross Allotment on July 18, 1978, and Dagger Allotment on January 13, 1982, with an amendment approved on March 12, 1985). AMP's are projected for 5 years, and have been expired for both allotments for at least 9 years. Since you do not have a current AMP, grazing strategies are implemented through the Annual Operating Plan (AOP) which is developed on a year-to-year basis until a new AMP is approved.

Background

You have repeatedly violated the terms and conditions of your permit by failing to follow your Annual Operating Plan (AOP) and ignoring the instructions I have given you for management of your grazing allotments. The following is a background summary of permit violations and AOP non-compliance:

1. You have failed to verify that you have removed cattle that were suspended from your permit in 1998. Therefore, the cattle have remained on the allotment without approval of payment of grazing fees. During the October 16, 1998 show cause meeting, you were informed you needed to provide proof of the 30% reduction for drought to the number of livestock grazing on your allotments, and you would also need to provide proof of a reduction to your term grazing permit if a 10% suspension was implemented.



On December 1, 1998, we requested in a letter to you to bring in your self-inspection certificate book with you when we scheduled on January 14, 1999 your 1999 Grazing Year Validation and Annual Operating Plan Meeting. You brought in some of your self-inspection certificates, but not all. We have obtained some of these certificates through the State of Arizona, but we still do not know if all the cattle were removed as per my letter to you dated November 16, 1998, which outlined the total number of adult animals allowed on both allotments (A-Cross and Dagger) after the 30% reduction due to drought and the 10% suspension reduction. In a letter to you dated April 4, 1999, I requested again for you to bring in your self-inspection certificates with you when you met with me and the District Range Staff Officer for your second show cause meeting held June 7, 1999. Our records show you have not taken enough livestock off of your allotments, thus you have livestock remaining on your allotment above the permitted numbers as identified in your 1999 AOP, and billed for during the 1999 Annual Validation and Term Grazing Permit billing process.

This is a violation of Part 3 Special Terms and Conditions, part 5 of your term grazing permit which states, "As a condition of this grazing permit, the permittee is required to keep such records of purchases, brandings, sales, losses, and movements of livestock as will enable him to accurately furnish the Forest Service at any time with the numbers by classes, of livestock that he has on National Forest range."

2. Livestock numbers on the allotment are in significant excess of the number you have applied for in your annual validation, and have paid fees for when billed by the Forest Service. During the June 7, 1999 show cause meeting you were informed that you sent back to the Forest Service the 1998 permit validation billing statement for yearlings (Bill For Collection and letter from you dated February 11, 1998 stating you had sold all your yearling carryover during the 1998 grazing season). The Annual Validation of Term Grazing Permit form shows you were going to have 200 yearlings on your allotment for the 1998 grazing season (form signed by your daughter for the Dagger Ranch on January 15, 1998). Copies of Brand Owner's Self Inspection Certificates for the 1998 grazing season show you sold yearlings when in fact you stated to us in a letter (card) that you had sold all your yearlings before the 1998 grazing season. You thus had yearlings on Forest Service land that you did not pay for, plus you had additional cattle on your allotment than you were authorized to have as identified in your 1998 AOP.

You stated during the June 7 show cause meeting that you moved your yearlings from national forest land to your private land, that is why you did not pay for the yearlings.

Having yearlings on national forest land that you did not pay for (unauthorized livestock use) is considered a paper trespass and is a violation of part 2 General Terms and Conditions, part 8(d) of your term grazing permit which states, "The permittee will allow only the numbers, kind, and class of livestock on the allotment during the period specified in Part 1 hereof or the annual Bill for Collection, including any modifications made as provided for in Section 8(c). If livestock owned by the permittee are found to be grazing on the allotment in greater numbers, or at times or places other than permitted in Part 1 hereof, or specified on the annual Bill for Collection, the permittee shall be billed for excess use at the unauthorized use rate and may face suspension or cancellation of this permit."

If you did move your yearlings to your private land, this action is also a violation of part 2 General Terms and Conditions, part 9 of your term grazing permit which states, "Nonuse: At least 90 percent of the livestock permitted must be grazed each year, unless the Forest Officer in charge approves nonuse. Failure to place livestock on the allotted range/pasture without approved nonuse may result in cancellation of the term grazing permit in whole or in part." If livestock were removed for the 1998 grazing season, they should have been removed permanently and not moved back and forth from national forest land to private land.

3. Livestock rotation was not followed correctly as listed in your 1998 AOP (sent to you on January 29, 1998) and 1999 AOP (sent to you on March 3, 1999). This is a violation of part 2 General Terms and Conditions, number 8(a) which states the Allotment Management Plan (AMP) 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...

FSH 2209.13,19 states, "The AMP specifies objectives, problems involved on the allotment, and defines the actions and monitoring and evaluation responsibilities of the permittee and the Service. Annual operating plans give the specifics for the ensuing season and must be based on the AMP. Annual plans should specify dates and areas of use, utilization standards, maintenance and construction responsibilities for the year." Non-compliance with your 1998 AOP was documented to you in a letter dated June 15, 1998 and a letter dated October 6, 1998. This issue was discussed with you in an informational meeting held on June 24, 1998, and a show cause meeting held on October 16, 1998, respectively. Non-compliance with your 1999 AOP was documented to you in a letter dated April 4, 1999, and subsequently at a show cause meeting held June 7, 1999.

4. Livestock were found in the Salt River area when you committed in your 1998 AOP not to allow cattle access to critical habitat for the razorback sucker. During compliance checks conducted on the following dates: July 1, 1998, July 10, 1998, July 13, 1998, July 14, 1998, July 15, 1998, July 28, 1998, September 17, 1998, December 21, 1998, December 22, 1998, March 16, 1999, April 28, 1999, September 22, 1999, and September 29, 1999; cattle were either in the wrong pasture as stipulated in your 1998 and/or 1999 AOP, or cattle were found along Cherry Creek, Coon Creek, or along the Salt River where they did not belong. This is a violation of part 2 General Terms and Conditions, number 8(a) which states the Allotment Management Plan (AMP) 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. By not following your AOP, and in particular by allowing cattle access to critical habitat for the razorback sucker when we identified in your AOP's that cattle needed to be kept from critical habitat, either by fences along the creek/river or pasture rotation, you violated the terms and conditions of your AOP.

5. You have not responded in a timely manner to my request to remove livestock in occupied habitat for the Southwestern Willow Flycatcher on a neighboring allotment on the Salt River. During the show cause meeting on October 16, 1998 and the show cause meeting on June 7, 1999, you were informed that it was critical to remove cattle from both areas, particularly off the Salt River. You were also informed that cattle could not by any means be in the occupied southwestern willow flycatcher habitat, and if they were found in the habitat, the cattle would have to be removed immediately. During the June 7 show cause meeting you were informed that the district office notified you that your tagged cattle were seen in the occupied southwestern willow flycatcher habitat in January 1999, but you did not have the cattle removed until March 1999.

During compliance checks on the following dates: December 21, 1998, December 22, 1998, February 4, 1999, and February 24, 1999, your cattle were found in the wrong allotment and in occupied southwestern willow flycatcher habitat.

This is a violation of part 2 General Terms and Conditions number 8(a) which states, "The allotment management plan (AMP) 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 for the area under permit and will require employees, agents and contractors and subcontractors to do likewise."

6. On November 20, 1996, you were notified at a show cause meeting that your salting practices were not in compliance with your AOP. You were notified of this non-compliance in a letter from then District Ranger, Dennis Roy, to you on November 1, 1996. This practice is a violation of Number 8 of Part 3 (three) of your Term Grazing Permit which states, "All salt and meal placed on the Tonto National Forest will be located on feed and not next to water unless such locations are approved in writing by the Forest Officer in charge." At the time the salting practice took place, you did not have approval to salt on the Tonto National Forest near water.

During the information meeting held on June 24, 1998, you were reminded again not to put salt in riparian areas nor within a 1/4 mile of water. During a compliance check on September 17, 1998, a salt block was found along side the road going into the ranch headquarters on Forest Service land. During the show cause meeting on June 7, 1999 you were again notified that salting near waters was a violation of your term grazing permit. This is a repeat offense and violation of part 3 of your term grazing permit.

7. Your livestock were not tagged as instructed on June 24, 1998 during the information meeting. During this meeting we stated we will give each permittee who has to tag cattle time to tag their cattle, and we will allow permittees to tag their cattle when they gather cattle for a sale. During the June 24 meeting you initially chose yellow tags for your cattle on the A-Cross and Dagger Allotments but were issued purple tags. During the October 16, 1998 show cause meeting, it was discussed with you the need to tag your cattle as soon as possible. It was stipulated at the meeting that you were issued 252 tags for your cattle. During the June 7, 1999 show cause meeting, you stated you had tagged approximately 150 cattle. You were then notified again to get the rest of your cattle tagged and that you have had plenty of time to tag cattle (tags were given to you in October 1998).

By not tagging your cattle when requested, and by the amount of time that has elapsed since you were given tags in October 1998, this action of not having all your cattle tagged by this date is a violation of Part 2 General Terms and Conditions, part 8(f) of your term grazing permit which states, "The Forest Officer in charge may, at any time, place or fasten or require the permittee to place or fasten upon livestock covered by this permit appropriate marks or tags that will identify them as livestock permitted to graze on lands administered by the Forest Service. When requested by the Forest Officer, the permittee will, at any time during the permitted period of use, including entry and removal dates, gather permitted livestock to enable an accurate count to be made thereof. The Forest Service may, at its option, gather and hold for counting all livestock grazing on the allotment."

8. The utilization levels identified in your AOP's have consistently been higher than the level allowed in your AOP. Utilization levels were outlined in your 1998 and 1999 AOP's. During compliance checks and monitoring conducted by the Forest Service, the utilization levels on the A-Cross and Dagger Allotments are above the levels outlined in your AOP. As stipulated in your AOP under Grazing Prescriptions - Utilization limits for livestock grazing:

"Once these utilization levels have been reached you will be required to move your livestock to the next scheduled pasture or remove them from the National Forest regardless of the scheduled time remaining or how many head months you have paid for. The unused portion of grazing fees will be credited to your account and applied toward the next grazing season unless you make a written request for a refund.

Livestock must be moved within three days of the planned rotation dates or when the utilization objectives have been met. One-hundred percent of the permitted number of livestock must be moved by the scheduled move date. Livestock allowed to remain on pastures beyond the specified rotation dates, allowed to drift between pastures or allowed on a rested pasture will be considered in violation of term grazing permit."

This is a violation of part 2 General Terms and Conditions part 8(a) of your term grazing permit which states, "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 for the area under permit and will require employees, agents, and contractors and subcontractors to do likewise."

Conclusion

Your term grazing permit, part 2 "General Terms and Conditions" number 8(a) states, "The allotment management plan (AMP) for the land described on page 1, Part 1, is a part of this permit...", and an Operating Plan is specified in Forest Service Manual Region 3 Supplement 2215.04c which states:

Annually, prior to the grazing season, the District Ranger will prepare an operating plan with the grazing permittee. The plan will be based on the forest land and resource management plan and the allotment management plan. The plan will include statements of how the livestock will be grazed on the range that season, developments planned, improvements to be maintained, salting, herding, bedding, and other instructions. The plan will also include a statement concerning any analysis, production/utilization studies, inspections, and so forth, to be carried out on the allotment during the season. The permittee will be furnished a copy of the plan prior to the grazing season. The permittee copy will include routing schedules, maps, or other information to enable the permittee to carry out the plan."

After a thorough review of the violations and your response to the show cause meeting, I have decided to cancel your Term Grazing Permit (#12-796) on the Dagger and A-Cross Allotments for your repeated failures to comply with the terms and conditions of your permit as described above. The schedule for removal of your cattle will be forthcoming.

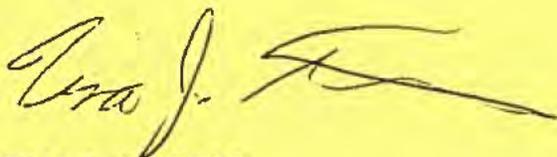
If you disagree with my decision you may file an appeal under CFR 251.88. According to the regulations you must file your appeal with the Forest Supervisor, 2324 E. McDowell Road

within 45 days of the date of this decision, and simultaneously send a copy of the notice of appeal to me.

You may also request mediation under the USDA Reorganization Act of 1994. The final rule for mediation of grazing permits is in the Federal Register and is available on the internet web page at <http://www.fs.fed.us>. If you have questions about this process please give Linny Warren a call at (520) 467-3200.

Enclosed for your review are notes from the show cause meeting on June 7, 1999. If you or your attorney have any questions regarding this letter or the enclosed notes, please feel free to contact Linny Warren at this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina J. Terrell", with a long horizontal flourish extending to the right.

TINA J. TERRELL
District Ranger

Enclosure

cc:
Forest Supervisor
Michael Carragher
104 S. Broad St., Suite 6
Globe, AZ 85501