



File Code: 2230

Date: August 31, 2004

Mr. Abelardo Martinez



CERTIFIED MAIL - RRR

Dear Abe:

This letter is a follow-up to my July 13, 2004, letter regarding non-compliance with several of the terms and conditions of your Term Grazing Permit. As previously noted, specific violations of the permit included:

1. Failure to maintain improvements, Part 2(8)(i);
2. Allowing livestock to graze on adjacent allotments or in pastures that are scheduled to be used at another time or rested, Part 2(8)(a), (8)(d), and (8)(e);
3. Improper placement of salt and mineral blocks, Part 3 item 5;
4. Failure to pay your 2004 grazing fees, Part 2(2) & (3);
5. Failure to gather cattle for an accurate count, Part 2 (8)(f).

The July 13, 2004 letter outlined steps to be taken to achieve compliance by August 13, 2004. Specifically:

1. Maintain the allotment boundary fence (Improvement #3427) between the Pleasant Valley and Hickey Allotments and keep the gates closed.
2. Move all cattle to the Hamilton Mesa pasture in accordance with the Pleasant Valley Allotment AMP Grazing Schedule, Year 2.
3. Remove all cattle from the Hickey Allotment.
4. Remove all livestock from the San Francisco River.
5. Remove salt and mineral blocks from all pastures except for the Hamilton Mesa pasture and have salt at least ¼ mile away from water and away from roads.
6. Properly apply for 2004 grazing use and pay grazing fees for the 2004 grazing season.
7. Gather and present your livestock for counting for confirmation of actual use and compliance with this decision, or provide other suitable documentation of actual use such as shipping records.

The July 13, 2004 letter also provided notification that failure to come into compliance with the terms of the permit within the prescribed time could result in further suspension or cancellation proceedings.



Allotment inspections on August 16- 18, 2004, reveal that most of the compliance issues have not been corrected, including:

1. Maintaining the allotment boundary fence (Improvement #3427) between the Pleasant Valley and Hickey Allotments and keeping the gates closed.
2. Moving all cattle to the Hamilton Mesa pasture in accordance with the Pleasant Valley Allotment AMP Grazing Schedule, Year 2.
3. Removing all cattle from the Hickey Allotment.
4. Removing salt and mineral blocks from all pastures except for the Hamilton Mesa pasture and having salt at least ¼ mile away from water and away from roads.
5. Properly applying for 2004 grazing use and paying grazing fees for the 2004 grazing season.
6. Gathering and presenting your livestock for counting for confirmation of actual use or providing other suitable documentation of actual use such as shipping records.

A copy of the report for allotment inspections of August 16 - 18, 2004 is enclosed for your information.

Abe, because you are still in non-compliance with the terms and conditions of your permit as outlined in the November 19, 2003 Notice of Non-Compliance and follow-up letters of December 18, 2003, February 13, 2004, March 8, 2004 and July 13, 2004 I am withdrawing my decision of July 13, 2004, canceling 25 percent of your Term Grazing Permit for the Pleasant Valley Allotment and suspending an additional 25 percent for three years. Although I regret it has come to this, it is my decision concurrently to cancel your entire Term Grazing Permit for the Pleasant Valley Allotment. As you have no other grazing permits, you are not authorized to have livestock on any National Forest System Land.

It is essential that your livestock be removed from National Forest System Land as soon as possible in order to limit resource damage to threatened and endangered species habitat. All livestock must be removed from the Pleasant Valley Allotment, the Hickey Allotment and any other National Forest System Land where your livestock may be located within 30 days from the date of this letter. This 30 day period is intended to allow a reasonable amount of time for removal of livestock. Any livestock left on National Forest System Land following the 30 day period will be subject to impoundment.

Further, as stated in the March 8, 2004 and July 13, 2004 letters, you will be billed at the unauthorized use rate of \$4.41 per head month for all grazing that has occurred since March 1, 2004.

This decision is subject to administrative review, pursuant to provisions of 36 CFR 251 and any appeal of this decision must be fully consistent with 36 CFR 251.90. A copy of the 36 CFR 251.9 Regulations is also enclosed for your information. The procedure for filing an appeal under 36 CFR 251 is as follows: A written Notice of Appeal, including the reasons of appeal, must be filed with the Forest Supervisor, Apache-Sitgreaves National Forests, P.O. Box 640, Springerville, AZ 85938, phone (928) 687-4301, within 45 days from the date of this decision.

A copy of the Notice of Appeal must be filed simultaneously with the Clifton District Ranger, at the address on the enclosed letterhead.

If you file an appeal, you may also request an oral presentation with the Forest Supervisor prior to the closing of the appeal deadline (36 CFR 251.97). You may also request a stay of my decision at any time prior to the appeal deadline (36 CFR 251.91) but it must also be filed with the Forest Supervisor at the above address. If you choose to file an appeal, as always I am willing to meet with you to discuss concerns about my decision or any additional issues you have about non-compliance.

Additionally, if you file a Notice of Appeal, you may request mediation as part of your appeal, pursuant to regulations 36 CFR 251.103. A copy of these regulations is also enclosed. If you request mediation, a stay of the decision will automatically be granted for the duration of the mediation period, which is 45 calendar days. All negotiations are confidential, and mediators are specifically trained to serve as a neutral third party in those States with U.S. Department of Agriculture certified mediation programs.

Abe, I understand these processes are somewhat complicated, so I encourage you to contact Kent or me if you have any clarifying questions or wish to meet with us.

Sincerely,

/s/ Frank A. Hayes
FRANK A. HAYES
District Ranger

Enclosures

cc: Forest Supervisor
Regional Forester
Abe Martinez Jr.
Dan Martinez
Rocky Gardom
Greenlee County Supervisors
Cattlegrowers Assoc.