

2230



United States
Department of
Agriculture

Forest
Service

Tonto Basin
Ranger District

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File Code: 2230
Route To:

Date: June 22, 2000

Subject: **Administrative Action on Term Grazing Permit**

CERTIFIED MAIL-RETURNED
RECEIPT REQUESTED

Sanborn Land and Cattle Company
HCR4 Box 25
Globe, Az. 85502

Dear Mr. Sanborn:

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 (#12-795) on the Poison Springs and Sierra Ancha Allotments. I have reviewed the record and considered your response made on February 28, 2000 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 the Sierra Ancha Allotment on December 17, 1969 and the Poison Springs Allotment on May 1, 1987. AMP's have been expired for both allotments for at least 8 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 the 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 livestock suspended from your permit on June 29, 1999 (10% suspension). Therefore, livestock have remained on the allotment without approval and payment of grazing fees. During the December 8, 1998 information meeting, you were informed you needed to provide proof of the 30% reduction of the number of livestock grazing on the allotments that were applied for on



January 23, 1998 to be removed by March 1, 1998. This reduction was necessary to respond to the severe drought conditions we are experiencing. You were also issued a temporary suspension of 10% of your livestock numbers (51 adult animals) for 3 to 5 years for not following your AOP through a letter signed by the District Ranger on June 29, 1999. Our records show you have not removed enough livestock off of the allotments, thus you have livestock remaining on the allotment above the permitted numbers as identified in your 1998, 1999, and 2000 AOP; and billed for during the 1999, and 2000 Annual Validation and Term Grazing Permit billing process.

Also, you have not verified that you have removed all your yearlings, as stated in a letter signed on November 30, 1999 by the District Ranger. This decision stated yearling carryover on the Sierra Ancha and Poison Spring Allotments would not occur for the 2000 grazing season for resource protection during the current severe drought. This decision was discussed during the show cause meeting on February 28, 2000. There have been several compliance checks on the two grazing allotments and yearling steers were observed after your required removal date.

Not verifying livestock or yearling removals are violations of Part 3 Special Terms and Conditions, number 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 within the numbers by classes, of livestock that he has on National Forest range."

2. Livestock numbers on the Sierra Ancha and Poison Springs are in significant excess of the numbers you have applied for in your annual validations, and have paid grazing fees for when billed by the Forest Service. Livestock removed from National Forest Land to private land must be completely taken off and not returned to Forest Land as stated in the diary you presented to me on April 16, 1999 (a letter signed by the Sanborns to the District Ranger).

Having livestock on National Forest Land that you did not pay for (excess livestock use) is a violation of Part 2 General Terms and Conditions, number 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 place 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 removed livestock from the Forest and placed them on your private land, you did not notify us or apply for non-use of these cattle.

3. Livestock rotation was not followed correctly as listed in your 1998 AOP sent to you on January 29, 1998 and your 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 on April 4, 1999. This issue was discussed with you and your attorney in an information meeting held December 8, 1998, and a show cause meeting on May 7, 1999. Non-compliance with your 1999 AOP was discussed with you at the show cause meeting on February 28, 2000.

4. Your livestock were not tagged as instructed on December 8, 1998 during the information meeting. During this meeting it was agreed that you would tag 50% of the livestock by March 1, 1999. During the show cause meeting on May 7, 1999, your manager stated that you had 328 head of livestock and 254 of them were tagged. In various compliance checks a large number of livestock did not support the orange Forest Service shield tags.

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 as directed in your 1999 and 2000 AOP's by this date is a violation of Part 2 General Terms and Conditions, Section 8(f) of your term grazing permit that 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 Officer may, at its option, gather and hold for counting all livestock grazing on the allotment."

5. 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, 1999, and 2000 AOP's. During compliance checks and monitoring conducted by the Forest Service, the utilization levels on the Sierra Ancha and Poison Springs 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 number 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 as specified in Forest Service Manual Region 3 Supplement 2215.04c that 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 10% of your permit in place of the 10% suspension for not complying with the terms and conditions of your term grazing permit. I also am canceling another 70% of adult livestock and all of the yearling carryovers on your term grazing permit (for a total cancellation of 80% and all yearling carryovers), for your repeated failure to comply with the terms and conditions of your Term Grazing Permit (#12-795) on the Poison Springs and Sierra Ancha Allotments as described above.

Currently all livestock have been removed temporarily on the Sierra Ancha and Poison Springs Allotments due to severe drought conditions, low forage production, and exceeding utilization limits, as stated in my letter dated March 10, 2000. When livestock are allowed to be restocked on the Poison Springs and Sierra Ancha Allotments, your term grazing permit will be modified as follows:

34 cattle 01/01 – 12/31 Sierra Ancha
68 cattle 01/01 – 12/31 Poison Springs
No yearling carryover on either allotment

This decision is subject to administrative review pursuant to 36 CFR 251 and any appeal of this decision must be fully consistent with 36 CFR 251.90. A notice of appeal, including the reasons for appeal, must be filed with the Forest Supervisor, 2324 East McDowell Road, Phoenix, Arizona 85006 within 45 days of the date of this decision. A copy of the notice of appeal must be filed simultaneously with the District Ranger, HCO2 Box 4800, Roosevelt, Arizona 85545.

If you file a notice of appeal you may simultaneously request mediation pursuant to 36 CFR 251.103. If mediation is desired you must request mediation as part of filing your appeal. 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. If agreement has not been reached at the end of 45 calendar days, but it appears to the Deciding Officer that a mediated agreement may soon be reached, the Reviewing Officer may extend the mediation period for a period of up to 15 calendar days from the end of the 45-day appeal suspension period. If a mediated agreement is reached the Reviewing Officer will close the record without a decision on the merits of the appeal. If a mediated agreement cannot be reached under the specified timeframes, the stay granted during mediation will be lifted and the timeframes and procedures applicable to the appeal will be reinstated. All negotiations are confidential and mediators are specifically trained to serve as a neutral third party in those States with United States Department of Agriculture certified mediation programs.

Enclosed for your review are notes from the show cause meeting on February 28, 2000. If you or your attorney have any questions regarding this letter, enclosed notes, or this process please feel free to contact Linn Warren at this office.



TINA J. TERRELL
District Ranger

Enclosures

cc: Forest Supervisor

C.E. Brooks and Associates, P.C.
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