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RE: Appeal #03-03-07-0004-A251, Ebert Allotment

Dear Mr. McNelly:

This letter constitutes my review and decision on your appeal, which we received November 18, 2002 (Appeal Record Document #7). You appealed District Ranger (Deciding Officer) Susan Skalski's decision of October 10, 2002, to amend the Ebert Allotment Management Plan to not stock the allotment during the November 1, 2002, to April 30, 2003, grazing season because of extremely dry conditions and lack of forage.

I have reviewed the appeal points in your November 15, 2002, letter according to the provisions of the appeal regulations in 36 CFR 251.99. My review has been conducted in full consideration of the entire appeal record, federal regulations, provisions of the grazing permit, and the policies and operational procedures set forth in the directives system of the USDA Forest Service.

Your current grazing system consists of two, separate herds with 100 mature cows permitted from 11/1-4/30 on Ebert. These are moved onto Homestead Allotment with a permitted number of 125 cows with calves (5/1 – 10/31). The second herd consists of a total of 170 mature cows which are pastured off-Forest 11/1-5/14, and these are moved onto Davenport Lake Allotment from May 15 to October 31.

Your appeal (Appeal Record Document #7) included the following appeal points.

Issue 1: There is adequate feed to carry a reduced herd of cattle through the permitted period.

Issue 2: There is no basis for not allowing grazing of forage plants during the dormant season in the name of improving plant health and vigor.

Response to Issues 1 and 2: The District Ranger's decision to not stock the Ebert Allotment was based on the severe and long-term drought, coupled with the district range staff assessment of available forage and plant health. This assessment consisted of two allotment inspections prior to the decision with additional data collected following the decision to verify that the range conditions first observed were correct. Collected data are summarized in, "*Assessment of Forage Plant Health and Forage Production on the Ebert Allotment*" by Paul Webber, January 14, 2003 (Appeal Record Document #21), and in the responsive statement (Appeal Record Document



#22). The District Ranger's responsive statement (Appeal Record Document #2, Appendices B, G, H, and I) also lists supportive range-literature references.

The first allotment inspection was conducted September 26, 2002, by a team of resource professionals. Participants observed range conditions and collected limited data from four transects. On October 4, 2002, Paul Webber, District Range Staff, conducted a second field inspection and collected data from an additional nine transects. "Even though there was some production within the allotment, many perennial grass plants were still in a dormant state and showing signs of severe stress" (Appeal Record Document #6). Following the decision, additional data were collected from 24 more transects.

As noted in the "*Assessment of Forage Plant Health and Forage Production on the Ebert Allotment*" (Appeal Record Document #21), the transects done on the allotment resulted in an estimate of forage production between 50 and 100 pounds per acre on all pastures, with the exception of the White Hills Pasture. The White Hills Pasture was rested last winter, and it had 125-150 pounds of forage per acre. Areas with fewer than 100 pounds of production per acre are considered to be in a "potential capacity" category and should not have been used in estimating capacity (1997, pg. 2-9, "*Region 3 Rangeland Analysis and Management Training Guide*"). Even with the rest the White Hills Pasture received last year, 60% of the grasses there were either dormant or stressed, and only 2% of grasses there had seed heads.

It should be noted that much of the available forage on the pastures you want to graze this winter is production from the previous year, and that the majority of the grasses on all pastures surveyed either did not break dormancy this past growing season, or produced only limited growth, due to the severe drought conditions. As described in the assessment, 45% of the most dominant and palatable grass - blue grama - was dormant, and another 39% was in a stressed condition on these pastures. This means that only 16% of the plants were classified as "healthy". Fewer than 3% of plants produced seed heads, and the average plant leaf that broke dormancy was only 2.3 inches (Table 1, Appeal Record Document # 21).

Since livestock will select this year's production before using forage produced in prior years, plants that used their reserves this year to break dormancy and, in some instances, develop a seed head would be the first plants grazed. If grazing had been allowed this winter, the small amount of mostly stressed grasses from this year's production would be quickly utilized, forcing livestock and wintering mule deer and elk to use browse plants such as four-wing saltbush, cliff rose, and winter-fat. Due to the reduced forage production throughout the allotment, use of browse plants would be expected to be excessive (Appeal Record Document #22).

According to George Ruyle, University of Arizona (Appeal Record Document #16), light grazing of dormant plants will not adversely influence subsequent productivity. The concern is not that grazing cannot occur when they are dormant; the concern is that there is a lack of forage, and what little that remains is needed to protect the soil, to protect the plant's crown and any current or future basal buds, and to provide for other wild ungulates that co-inhabit the range.

The District Ranger had sufficient reason to be concerned about poor range conditions due to the drought and lack of available forage and how livestock grazing would further degrade these conditions. Wildlife is also a concern with an objective stated in the Allotment Management

Plan (AMP) to provide habitat for a wide diversity of native wildlife (Appeal Record Document #1).

Issue 3: Not being able to graze will cause drastic economic and social consequences.

Issue 4: We would lose the genetic pool and behavioral knowledge present in our herd.

Response to Issues 3 and 4: Consistent with Forest land and resource management plans, it is our policy to make forage available to qualified livestock operators from lands that are suitable for livestock grazing (FSM 2203.1). There is no law, regulation, or policy that elevates the profitability of a livestock operation over the protection of the natural resources. Though desirable to have economically profitable livestock operations, this is dependant on ensuring the natural resources are being properly managed and protected.

The District Ranger tried to mitigate the economic impacts of her decision by offering substitute forage on other allotments. Following the October 10th decision, Ranger District staff located and assessed all other allotments with acceptable range conditions. The District Ranger offered substitute forage located in the north pasture of the Pine Creek Allotment. You chose to use the Anita Allotment pastures instead (Appeal Record Document #17). A temporary grazing permit was issued for 75 head from December 23 to March 15, 2003.

We agree that the loss of the herd genetic pool and behavioral knowledge of the allotment is a concern. However, our primary concern is the protection of the range resource. As described in our response to issues 1 and 2, the District Ranger has no other options, during this severe drought, other than to not allow grazing because of the lack of forage available and the need to protect the remaining forage.

Issue 5: The permittee was not invited to participate in the September 26, 2002, inspection. There was no opportunity to work with the District to work-out a reasonable solution.

Response to Issue 5: A Forest Rangeland Evaluation Team, working under severe time constraints, assessed multiple allotments over a period of several days in the fall of 2002, including the September 26 inspection. Due to time constraints caused primarily by 1) the need to gather enough information to make informed decisions while giving permittees enough lead-time to make adjustments prior to the onset of winter grazing and 2) on-going and significant resource issues related to existing grazing on multiple allotments during the severe drought which required frequent and continual monitoring to ensure the protection of the rangeland resource, some visits to various allotments were made without coordinating with permittees during the fall. This included one on September 26, when five pastures on two allotments were visited (Appeal Record Document #22, pg. 4).

Two letters concerning the drought situation were sent to you on March 8, 2002 (Appeal Record Document #3), and on July 1, 2002 (Appeal Record Document #4). Neither letter directly suggested that the District Ranger might not allow you to stock Ebert Allotment. On August 27, 2002 (Appeal Record Document #5), Paul Webber contacted Dave McNelly to discuss a possible recommendation to not stock Ebert allotment. There were numerous post-decision meetings

(Appeal Record Documents #12, #14, #15, and #17) and field trips (an October 30, 2002, visit to the Ebert Allotment and a multi-agency field trip with numerous permittees on December 12, 2002) (Appeal Record Document #16), as well as several discussions over the phone and in the office (Appeal Record Document #22, pg. 4).

I expect the District Ranger to work closely with all of our grazing permittees, notifying you well in advance of monitoring activities to be conducted on your allotment and providing an opportunity to participate. I don't, however, expect that the district staff will include you every time they monitor your allotments.

It is important to me that we engage our grazing permittees in discussion prior to making decisions, soliciting your ideas about alternatives for meeting our stewardship responsibilities that directly affect your operations.

I think it is important that we invite and welcome third-party involvement where there are differences of perspective on range condition or trend. The perspectives of the University of Arizona Extension Service, the Arizona Department of Game and Fish, and the Natural Resource Conservation Service were important to our discussions; however, we should have invited them to participate earlier in our decision-making process.

Not all of my expectations were met. We can and must do a better job of working with you and our other permittees as we deal with the impacts of drought on Kaibab National Forest rangeland management. Our failure to communicate as early, as well, and as often as I would like, however, does not offset my responsibility to focus this appeal decision on the District Ranger's decision to protect the long-term health of our rangelands.

CONCLUSION

My review of your appeal was conducted in accordance with 36 CFR 251 Subpart C. After review of the record, I conclude that the District Ranger's October 10, 2002, decision to not stock Ebert Allotment was warranted and in conformance with applicable laws, regulations, orders, and policies and procedures. The District Ranger's decision was not unlawful, arbitrary, capricious nor an abuse of discretion. I affirm the District Ranger's decision.

My decision is not a reflection on your accomplishments in range improvement over the past 46 years. Your family's efforts in developing range improvements, controlling juniper encroachment, constructing water lines and improving management strategies have certainly resulted in significantly improved range conditions from those of a half-century ago, and we appreciate that. We must deal with the drought conditions and impacts of today, however, and ensure that the grazing management action we take does not reduce rangeland health.

According to the appeal regulations (36 CFR 251.87), you may file an appeal to the Regional Forester within 15 days of this decision. The second level appeal must be sent to: Regional Forester, Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102. A copy of the second level appeal should also be sent to my office.

Sincerely,

/s/ Michael R. Williams
MICHAEL R. WILLIAMS
Forest Supervisor
Appeal Reviewing Officer

cc:
District Ranger, Williams Ranger District
David Stewart, R-3 Director of Range Management
Christina Gonzalez, R-3 Appeals Assistant