



File Code: 1570-1

Date: March 8, 2003

MATT AND REBECCA BATES
HAT RANCH
740 W ROAD 1 NORTH
CHINO VALLEY, AZ 86323

CERTIFIED MAIL – RRR
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RE: Appeal #03-03-07-0003-A251, Hat Allotment

Dear Mr. Bates:

This letter constitutes my review and decision on your appeal, which we received November 15, 2002. You appealed District Ranger (Deciding Officer) Susan Skalski's decision of October 22, 2002, to amend the Hat Allotment Annual Operating Instructions directing you to remove all livestock from the Forest once 40% utilization in key areas were reached in the DT/36 pasture.

I have reviewed the appeal points in your November 7, 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.

Permitted numbers for Hat Allotment are 430 head yearlong. On October 16, 2002, 320 head were moved from South Coleman pasture to DT/36 pasture. On January 1, 2003, you moved all 320 head out of DT/36 pasture to the South pasture for shipping. Shipping was concluded, and all livestock was removed from the Forest around the end of January 2003.

Your appeal (Appeal Record Document #9) included the following appeal points.

Issue No. 1: Forage is available, and dormant season use will not be detrimental. Therefore, complete livestock removal is not necessary.

Contention: "Complete removal is not necessary due to availability of forage in south winter and other pastures that we were not allowed to use this year." A stay was requested to allow time for University of Arizona to review the process and methodology used to determine such drastic de-stocking on the Hat Ranch. "Use during the dormant season will not be detrimental to the forage base in S. Snyder/T-Y, Dutch Kid/Cow Tank or South Winter pastures. There is no scientific basis to justify not grazing forage plants during the dormant season in Arizona in the name of improving plant health and vigor" (Appeal Record Document #9).

Response to Issue No. 1: Forage availability and whether use will be detrimental is based on the site-specific effects of a severe drought. The District Ranger's decision to remove livestock was based on lack of forage production and poor range conditions caused by a severe drought (Appeal Record Document #6). There is no question that we are (and have been) in a severe drought for several years. Statewide, the period from January through October 2002 was the driest on record. Because of drought severity, the Department of Agriculture designated the state



of Arizona a “primary disaster designation” making livestock producers eligible for federal assistance. The District Ranger provides an in depth description and documentation of drought conditions in the responsive statement (Appeal Record Document #22, pg. 1-2).

North and South Coleman, DT/36, and the eastern portion of Dutch Kid pastures received greater precipitation than received by most other allotments. The District Ranger considered site-specific conditions and, as a result, you were allowed to remain on your allotment longer than most of the other permittees. The District Ranger erroneously thought you had agreed to remove half of your existing stocking as a response to drought conditions and provided direction to that effect on, September 23, 2002. Learning that this was not the case, and working with you and your consultant, on October 22, 2002, the District Ranger modified her original decision. She let you decide whether to reduce or maintain existing livestock numbers with the only stipulation being that, once 40% utilization is reached, you would move to the next pasture, DT/36. When 40% utilization was reached in DT/36, all livestock were to be removed from the Forest due to a lack of forage in all remaining pastures (with the exception of Dutch Kid). Based on this direction, you were able to continue to graze on your allotment until December 31. You were not allowed to go into Dutch Kid.

It is obvious that the District Ranger has done everything possible to work with you and still meet the intent of the Allotment Management Plan (AMP) guidelines by providing wildlife forage. Due to severe drought conditions this year, Paul Webber, District Range Specialist, worked closely with you to adjust the pasture sequence in order to provide adequate feed for the permittee’s livestock during the growing season. This resulted in neither DT-36 nor Dutch Kid pastures being used in the desired time period specified in the Environmental Analysis and the Allotment Management Plan. Late summer rains resulted in a good green-up in DT-36 pasture and some green-up in the upper portion of Dutch Kid pasture. In order to allow you to continue grazing in the late fall, use of the DT-36 pasture was allowed at that time. However, in order to meet the intent of the NEPA decision and resulting AMP, livestock were not allowed to graze the Dutch Kid pasture this winter to maintain winter forage for elk, deer, and turkey on the Hat Allotment (Appeal Record Document #22, pg. 4).

The District Ranger’s decision to remove livestock once utilization rates were reached in DT/36 pasture was based on the severe and long-term drought, coupled with district staff’s assessment of available forage and plant health. This assessment consisted of four inspections where data were collected from 44 transects prior to the decision. An additional inspection was done following the decision, and data were collected on five transects. Collected data are summarized in “*Assessment of forage plant health and forage production on the Hat Allotment*”, by Paul Webber (Appeal Record Documents #8 and #22). The responsive statement also lists supportive range-literature references.

The DT/36 and a portion of the Dutch Kid were the only pastures with significant forage capacity. Forage production for the remainder of the allotment and for all other pastures was below 100 pounds per acre (Appeal Record Document #8, pg.5). Other pastures in the assessment, including T-Y, North, 13 Mile, South, South Perrin, Meath/Bull Trap, and the lower portion of Dutch Kid, with fewer than 100 pounds of production per acre, would be classified as only “potential capacity” where forage would not be normally allocated (*Region 3 Rangeland Analysis and Management Training Guide, R-3, 1977*). It should be noted that much of the available forage on the pastures that you want to graze this winter (e.g. T-Y, South 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, 44% of the most dominant and palatable grass - blue grama – was dormant, and another 45% was in a stressed condition on these pastures. This means that only 11% of the plants were classified as “healthy.” Furthermore, only 4% of the grasses surveyed produced seed heads this year (Appeal Record Document #8). 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 cliff rose and Apache plume. Due to the weak forage production on winter pastures such as T-Y, North, 13 Mile, South, South Perrin, and Meath/Bull Trap, use of browse plants would be expected to be excessive (Appeal Record Document #22, pg. 2).

Issue No. 2: Data was not provided that provides a reason not to graze.

Contention: “There has also been no data provided to us that shows a need to not graze Dutch Kid/Cow Tank during the dormant season this year” (Appeal Record Document #9).

Response to Issue No. 2: On October 3, 2002, you and your consultant, Duane Warrick, participated in a field trip with District Staff to discuss the current grazing situation (Appeal Record Document #7). During this field trip, the use of these pastures was discussed (Appeal Record Document #22, pg. 4). The following excerpts from the responsive statement addresses this issue:

The Allotment Management Plan (AMP) for the Hat Ranch Allotment (Appeal Record Document #1, p. 10) states: “This management plan includes special emphasis to both DT-36 and Dutch Kid pastures, since they represent the key winter foraging zones for elk, deer, and turkey. Dutch Kid pasture, since it provides forage for wintering turkeys, will generally be used prior to July 15 to insure adequate re-growth and seed head production. DT-36 pasture is scheduled for late spring or during the mid-summer months to promote good foraging conditions for these animals in the winter months” (Appeal Record Document #22, pg. 4).

Cow Pasture is primarily pinyon-juniper and is adjacent to Dutch Kid. It is not specifically mentioned in the assessment (Appeal Record Document #8) but is part of the group of pastures normally used during the winter season. The lower part of Dutch Kid has similar vegetation cover and received similar precipitation. Forage production for this part of Dutch Kid had 50-75 pounds of forage per acre. It would be reasonable to expect Cow Pasture to have similar production. As stated within the first issue, any pasture with less than 100 pounds of forage should be classified as “potential capacity” and should not be stocked.

Issue No. 3: The process and methodology is flawed.

Contention: “We are requesting an independent review, by the University of Arizona, of the process and methodology that the Kaibab National Forest used to determine such a drastic destocking recommendation on the Hat Ranch” (Appeal Record Document #9).

Response to Issue No 3: The District Ranger contacted the University of Arizona, Arizona Game and Fish Department, and the Natural Resource Conservation Service as third party reviewers. This effort culminated in a field trip, one that you participated in (Appeal Record Document #18). Prior to this field trip, the District Ranger's staff consulted various scientific publications and contacted range specialists from other resource management agencies in an attempt to locate a standard evaluation method. There was no widely used method. So, based on input from various other resource professionals and literature, a methodology was developed and is described in an assessment report done by Paul Webber (Appeal Record Document #8, pg. 4 and Appeal Record Document #22, pp. 4-8). George Ruyle, University of Arizona Extension Service, participated in the field trip and stated the following, "I think the analysis you did for the Partridge Creek Allotment last fall was well done and provided the kind of information to guide grazing management for the winter period" (Appeal Record Document #18). The analysis referenced followed exactly the same methodology used for the Hat Allotment.

In addition to the methodology referenced above, additional range data was collected on forage production, plant vigor, and seed head production. These procedures are well-established and are documented in the Rangeland Analysis and Management Training Guide, R-3, 1977 (Appeal Record Document #22, Appendix K) and in the R-3 Range Analysis and Management Handbook (pp. 43.1.6 - 43.1.7 and also in Appendix M). Greater detail is also described in the District Ranger's responsive statement (Appeal Record Document #22, pp. 4-8).

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 & 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. Our failure to invite third party consultants earlier 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 22, 2002, decision to not stock Hat 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.

It is not the intent of the District Ranger's decision or my review of that decision to penalize you for doing anything wrong. You have worked very hard to make your ranch work, and this is appreciated. 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