



File Code: 1570-1

Date: March 4, 2003

CURT AND NANCY WELLS
PARTRIDGE CREEK ALLOTMENT
P O BOX 4320
CHINO VALLEY, AZ 86046323

CERTIFIED MAIL – RRR
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RE: Appeal #03-03-07-0001-A251, Partridge Creek Appeal

Dear Mr. Wells:

This letter constitutes my review and decision on your appeal, which we received November 8, 2002. You appealed District Ranger (Deciding Officer) Susan Skalski's decision of October 15, 2002, to amend the Partridge Creek 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 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.

Your appeal (Appeal Record Document #6) included the following appeal points.

Issue No. 1: Economic loss.

Contention: Due to the issuance of the Amendment, we must either find other pasture for our cattle or be forced to sell them with significant economic loss.

Response: 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 15th decision, Ranger District staff located and assessed all other allotments with acceptable range conditions. The District Ranger offered substitute forage to you during a meeting with permittees on December 16th. You considered and then declined to accept this substitute forage (Appeal Record Document #16).



Issue No. 2: There is sufficient forage available to support livestock with little or no effect to the perennial plants.

Contention: The wrong conclusions concerning forage health and vigor were reached based on questionable methods that led to faulty data. “We disagree with the conclusions...We believe that the amount of forage available on the allotment is more than sufficient to support the decrease in allotted numbers... Dormant forage can be moderately utilized with little or no effect to perennial plants. We do not agree that the resource has been evaluated properly or legally, using accepted methods, to determine vigor and plant health...”.

Response: The District Ranger’s decision was based on the professional judgment of district range specialists conducting allotment inspections based primarily on ocular estimates of range conditions. This is within the accepted monitoring techniques outlined in “R-3 Rangeland Analysis and Management Training Guide, 1997”, which are the internal agency guidelines we use.

Range conditions were first assessed through a range inspection conducted around August 10, 2002. Warm season grasses had failed to grow (Appeal Record Document #4). On September 10, 2002, some green-up had occurred with the average growth on blue grama (and other species) being 2-3 inches (Appeal Record Document #4). Specialists conducted a more intensive pasture-by-pasture inspection on September 25, 2002. Personnel verified results of the earlier inspections through the collection of actual plant data. The team was in agreement concerning the limited forage production and that recommendations for complete rest were warranted. This recommendation was further supported by an analysis and data, collected prior to the allotment management plan of 1995, which indicated poor range condition in the grassland communities (Appeal Record Document #12, pg. 2). The team believed additional data was necessary to further quantify forage conditions (Appeal Record Document #4). On October 11, 2002, this information was collected. Plants were categorized as those that did not break dormancy (dormant - those that failed to grow during the previous season), those that did break dormancy but with very limited growth (stressed - less than 50% growth), and those with greater than 50% growth (healthy). In addition to assessing overall vigor, plant leaf length and number of seed heads were recorded (Appeal Record Document #4). The analysis summary showed that 77.6% of the plants were dormant (did not break dormancy during the 2002 growing season) or stressed and that seed heads were produced on only 4% of the plants.

There is professional disagreement over the usefulness and interpretation of this data. This method may not assess plant health very well. The methodology’s primary purpose was to verify and quantify the severe drought-related range conditions first observed during the previous range inspections. To this end, the assessment is effective in showing range conditions that existed over large areas where a high percentage of plants failed to grow during the summer. For plants that did have some growth, leaf length was short, indicating low vigor (Appeal Record Document #12, Appendix L).

The decision to not stock Partridge Creek was based both on a lack of forage and concerns for drought recovery (Appeal Record Document #5). The assessment (Appeal Record Document #4) showed some forage capacity, though it was scattered and essentially found in parts of only

two pastures. Out of six pastures, only parts of two pastures contained areas with greater than 100 pounds of forage (ranging from 107.5 to 150.5 lbs/ac) (Appeal Record Document #4). Averaged over the whole allotment, forage production was only 73.4 pounds per acre. The estimated numbers in the analysis were based on the number of acres categorized as “full capacity”. As a guideline, “R-3 Rangeland Analysis and Management Training Guide, 1997” (pages 2-9) recommends a minimum of 100 pounds per acre growth for an area to be classified as “full capacity”. Based on this guideline, little if any of this allotment should have been classified as full capacity. The drought has produced a situation where very few acres produce greater than 100 lbs/acre (Appeal Record Document #4).

I have concluded that the District Ranger was appropriately concerned about poor range conditions, lack of forage, and the potential for livestock grazing to further degrade these conditions. Because of these conditions, there is a strong resource need to allow more rest for the allotment. This is important for the current conditions as well as for the recovery once moisture returns (Appeal Record Document #12, pg 3).

The “forage availability when dormant” issue would have been more relevant if the grazing season were restricted to the dormant period. The issue raised is misleading because it includes time when plants are not dormant. The grazing season included time in the fall prior to dormancy and extended into the spring growing season. There are also additional forage needs for wildlife, an objective stated in the Allotment Management Plan (Appeal Record Document #1). The spring growing season is when cool season grasses are the most vulnerable. The District Ranger had sufficient reason to remove all livestock grazing prior to and immediately after winter dormancy on this allotment. I concur with the Ranger’s assessment that grazing this allotment during non-dormant periods would risk long-term damage to rangeland health.

The District Ranger requested third-party reviews by the University of Arizona Extension Service and the Arizona Department of Game and Fish. George Ruyle, PhD, University of Arizona, provided the following comments based on a field trip (December 16, 2002) with permittees, Arizona Game and Fish Department, NRCS, and the Forest Service (Appeal Record Document #15):

- The FS analysis conducted for Partridge Creek was well done and provided the kind of information needed to guide grazing management for the winter period.
- The decision not to stock the allotment at this time, because the fall green-up on blue grama was the only growth for the year, may have been justified. Restocking now, however, is a different decision.
- Grazing too late into the spring will be the potential problem, not whether or not to put some cows out now.
- The “plant health assessments” are likely related to the phenotypic variability of blue grama to respond to drought in terms of carbon allocation, rather than any grazing history.
- You won’t know the extent of drought mortality on blue grama, nor the impact on vigor, until next summer.
- The more critical periods for plants relative to defoliation are when and if conditions allow for early spring growth and during the summer growing season.
- Consideration of cool season forage plants is an issue.

While we may have had a different view of grazing impacts during the winter dormant season, the points made by Ruyle above generally support our concerns about the uncertainty of long-term impacts to rangeland conditions.

Issue No. 3: The decision was arbitrary and capricious.

Contention: Conclusions drawn from the information and documentation produced were used in an arbitrary and capricious manner for the determination to issue the Amendment.

Response: The District Ranger is responsible for providing the appropriate management, stewardship and protection of the natural resources on grazing allotments within her Ranger District. Typically, we expect to accomplish that objective without causing hardship to the grazing permittee. However, severe conditions have developed with the extended drought during the past several years. Northern Arizona is currently experiencing one of the driest periods on record. The current situation is a continuation of a dry weather pattern that has generally prevailed since 1996 (Appeal Record Document, Appendix A, C, D, E). Forage production is far below normal. The District Ranger's letters of March 8 and July 1, 2002, to all district permittees addressed this situation and appropriately raised the possibility of necessary changes in season of use, reduced numbers of animals, or shortened use of pastures or allotments (Appeal Record Document, #2 and #3). Many permittees either did not come onto their allotments last summer, or came on with reduced numbers at their own initiative because of the drought conditions. As fall approached with substantially less-than-normal monsoon rainfall amounts, it became evident that the South Kaibab rangeland resources would be at risk unless adjustments were made in winter allotment stocking levels.

Ranger Skalski had sufficient reason to be concerned with the heavy grazing impacts on natural resources of the Partridge Creek Allotment because of extremely dry conditions and lack of forage. The District Ranger has the authority and legal responsibility to assess rangeland and resource conditions and to protect these resources from long-term impairment.

Issue No. 4: Laws, rules and regulations were violated.

Contention: Laws, rules and regulations were violated in the production of the Assessment and Determination and Amendment issued to suspend the AMP for the 2002-2003 grazing season.

Response: The allegation that laws, rules, or regulations were violated was made but there were no reasons given for the allegation (Appeal Record Document #6, pg 3).

I did not find that the Deciding Officer's decision violated any laws, rules, or regulations as set out in 36 CFR part 222-Range Management or in our directive system. The deciding officer's decision was based on an overall assessment of rangeland conditions and the need to ensure the protection of rangeland resources during this period of unprecedented drought. The District Ranger has full authority (part 2, term grazing permit) to issue instructions for proper protection and management of resources. These instructions were based on range observations and data collected by resource professionals (Appeal Record Document #2). The Ranger followed the Forest Service Region Three Rangeland Analysis and Management Guide, dated June 1977, and

Forest Service Handbook 2209.21 chapter 50, dated April 1998. The appellant was provided drought information and warned of possible actions prior to the decision (Appeal Record Document # 4).

Issue No. 5: There was a lack of cooperation and communication between the Forest Service and the permittee, and the permittee was not consulted prior to the decision.

Contention: “I was not invited to participate in any of the range inspections used to make the decision. Gary Hase called me about October 1st to discuss the drought situation and what alternatives we might consider to leave residual forage after the 2002-2003 grazing season. We discussed both reduced numbers or reduced season. I proposed and preferred the reduced numbers option. Gary Hase felt that some arrangement could be made for one or the other. About October 13th, Gary Hase called me to tell me “that the District Ranger had decided that I could not stock my allotment”. Neither the District Ranger nor her staff would discuss the matter or negotiate any further.

Response: Two general letters dated March 8 and July 1 concerning drought were sent to all grazing permittees well in advance of the decision (Appeal Record Document #2 and #3). Each of these letters raised the possibility of reduced numbers of animals or shortened season of use due to drought impacts and our unwillingness to risk the long-term health of National Forest rangelands. Neither letter directly suggested that the District Ranger might not allow you to stock the Partridge Creek allotment for the same reasons. On September 23, 2002 Gary Hase discussed winter range and suggested that you need to be prepared for no grazing (Appeal Record Document #12, Appendix N). I found no evidence in the Appeal Record to indicate that the District Ranger or her staff had specifically invited you to participate in monitoring the condition of your allotment prior to making the decision. On the other hand, I’m aware that all permittees on this ranger district have a standing invitation to participate in monitoring activities.

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 & 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 15, 2002, decision to not stock Partridge Creek 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.

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 RD
Regional Forester, R-3
R-3 Director of Range Management