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Date: March 8, 2003

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CERTIFIED MAIL – RRR
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RE: Appeal #03-03-07-0005-A251, Smoot and Moritz Allotments Appeal

Dear Earl and John Nagiller:

This letter constitutes my review and decision on your appeal, which we received November 18, 2002. You appealed District Ranger (Deciding Officer) Susan Skalski's decision of October 2, 2002, to amend the Smoot and Moritz Allotments Annual Operating Instructions directing you to move all remaining livestock into the Antelope pasture by October 20, 2002, and to have all remaining livestock moved into BS pasture for shipping by November 15, 2002, and to have all livestock removed from the allotment by November 30, 2002, because of extremely dry conditions and lack of forage (Appeal Record Documents #6 and #8).

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.

Permitted numbers for Smoot and Moritz Allotments are 350 adult cattle yearlong. You have additional winter forage on state and private land outside of the Forest. Use of summer pastures normally starts May 1.

Your appeal (Appeal Record Document #10) included the following appeal points.

Issue No. 1: Removal of all livestock will cause drastic economic and social consequences to the Ranch.

Issue No. 2: We will lose the genetic pool and behavioral knowledge present in herd.

Response to Issues 1 and 2: 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 that 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 2 decision, 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 (Appeal Record Document #21). You were issued a temporary permit for 146 head from January 1, 2003, to February 28 on West Pasture, Corva Allotment, and a temporary permit for 76 head for Pine Creek Allotment from January 15, 2003 to March 15. You did not use Pine Creek Allotment in January. With only one-month use for Pine Creek Allotment, you were able to increase the number of head allowed and move all 146 head from Corva to Pine Creek. All livestock are to be removed by 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 3 and 4, 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 No. 3: Feed is available to carry a reduced herd of cattle through the permitted period.

Issue No. 4: 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 3 and 4: Forage availability and whether use will be detrimental is based on the site-specific drought affects. 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 #25, pp. 1-2).

The District Ranger's decision to remove all livestock by the end of November was based on the severe and long-term drought, coupled with the district staff assessment of available forage and plant health. This assessment consisted of two inspections where data were collected from 24 transects prior to the decision. An additional two inspections were done following the decision, and data were collected on 17 transects. Paul Webber summarized the collected data in "*Assessment of forage plant health and forage production on the Smoot/Moritz Allotment*", December 13, 2002 (Appeal Record Document #19).

When forage production is less than 100 pounds per acre, there is not enough forage for livestock use while at the same time protecting the plant crown and maintaining sufficient ground cover for soil protection. 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".

For all of the winter pastures, forage production ranged from 50 to 100 pounds per acre. Not a single pasture had in excess of 100 pounds per acre. Based on our Training Guide, none of the

winter pastures would be classified as full capacity and, therefore, no capacity is available for livestock use (Appeal Record Document #19, pg. 4). I agree with the District Ranger that forage was not available to carry a reduced number of livestock through the winter period.

Even if the amount of forage allowed some use, the condition of the plants would not support use. The available forage on the pastures you want to graze this winter is production from the previous year. 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, 52% of the most dominant and palatable grass (blue grama) was dormant, and another 41% was in a stressed condition on these pastures. This means that fewer than 8% of the plants were classified as “healthy”.

Only 0.5% of blue grama plants produced seed heads (Table 1, Appeal Record Document # 19). 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 have been the first plants grazed. If grazing had been allowed this winter, the small amount of mostly-stressed grasses from this year’ production would be quickly utilized, forcing livestock and wintering mule deer and elk to use the limited browse plants that are present on the allotment (species such as four-wing saltbush, Apache plume, cliff rose, and winter-fat).

Due to the reduced forage production of grass species on the allotment, use of browse plants would be expected to be excessive (Appeal Record Document #25, pg. 2). Two primary objectives from the Environmental Analysis completed in 1993 were: 1. Increase the number of palatable browse species, and 2. Improve the vigor of individual palatable browse species (Appeal Record Document #1, pg. 5).

The effects of drought on range conditions and the need for careful livestock management are addressed in numerous scientific publications. These are listed in detail in the District Ranger’s responsive statement (Appeal Record Document #25, pp. 2-3).

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.

Issue No. 5: There is lack of disclosure of a process to allow restocking once cattle are removed.

Response to Issue 5: This issue is not relevant to the District Ranger’s decision to protect the winter range and is, therefore, outside of this review. The decision on stocking summer range will be made by the District Ranger this spring prior to the summer grazing season.

I expect the District Ranger to work closely with all of our grazing permittees, notifying you well in advance of any guidelines or other processes that she will use to make her decision on stocking summer range. 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.

Issue No. 6: There is a lack of site-specific data justifying the drastic actions (removal of all livestock) and adequacy of the process and data.

Response to Issue 6: A team of resource professionals inspected three Smoot/Moritz Allotment winter pastures, primarily through observations with limited data collection (15 transects), September 26, 2002. All present agreed that it would be best for the long-term health of the range resource to not permit livestock grazing on the Smoot-Moritz Allotments during the winter. However, the team felt it was necessary to collect and evaluate additional resource data. Additional data were collected for nine transects on September 30, 2002, prior to the decision, and data were collected from an additional 17 transects following the decision, verifying original assessment. Data collected on these dates included information on plant health and vigor as well as forage production using accepted range management data collection techniques. Grazing capacity was estimated in accordance with accepted standards of the range management profession.

Forage production and capacity described in the assessment (Appeal Record Document #19) followed the standards found in the R-3 Rangeland Analysis and Management Training Guide, Section 4, page 15. For a more detailed discussion on this process, see page 5 of the responsive statement (Appeal Record Document #25).

To develop a process to assess range drought conditions, District range professionals searched the scientific literature and consulted other range specialists from other agencies. Using this process, Paul Webber classified plants as dormant, stressed, and healthy. In addition, average leaf-length and seed-head production was measured. This is discussed in greater detail in the District Ranger's responsive statement (Appeal Record Document #25). The results are discussed under the response to issues 3 and 4.

The District requested a meeting with University of Arizona, and the University of Arizona Cooperative Extension range specialists for a field review of the parameters used in our assessment of Smoot-Moritz and other affected allotments. This meeting took place on December 16. Permittees and representatives from the Arizona Game & Fish Department, the Natural Resource Conservation Service and the Forest Service, in addition to University of Arizona range specialists, participated in this field trip. Suggestions were made for additional data that would be desirable to collect when assessing drought impact to plants (e.g., long-term data, additional precipitation data), but no criticism was made of the methodologies used in the allotment assessments, nor any suggestions made for additional data that could have been collected in the time-frames that District personnel were dealing with this fall (Appeal Record Document #20). George Ruyle, University of Arizona, Extension Service, participated in the field trip and stated, "I think the analysis you did for the Partridge Creek Allotment (*analysis process is the same for Smoot/Moritz Allotments*) last fall was well done and provided the kind of information to guide grazing management for the winter period" (Appeal Record Document #20).

I have concluded that the District Ranger utilized site-specific information and standard data collection methods, when they existed. Where no standard methodologies existed, the District range specialists consulted the scientific literature and other agency experts to develop suitable methodologies. To further verify suitability, the District coordinated with University of Arizona range experts in the field.

Issue No. 7: We were not notified of the inspections being conducted or invited to be present while the range inspections were taking place.

Response to Issue 7: 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 #4 and #5). 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. However, neither letter directly suggested that the District Ranger might not allow you to stock the winter pastures of the Smoot and Moritz Allotments for the same reasons.

On September 10, 2002, the first decision letter directed you to remove your livestock by November 1, 2002. You met with the District Ranger and her staff September 27, 2002. The second decision letter, which allowed you to stay on the allotment until the end of November, was dated October 2, 2002. 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 am 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 do not, 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 Game & Fish Department, 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 2, 2002, decision to not stock Smoot and Moritz Allotments were 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. Both of you have worked very hard at making your ranch work, and this hard work 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