



United States
Department of
Agriculture

Forest
Service

Tonto National Forest
*Celebrating 100 Years of
Conservation
1905-2005*

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File Code: 1570

Date: November 8, 2002

Griffin Cattle Ranch
P.O. Box 1224
Globe, AZ 85502

Return Receipt Requested

Certified Return Receipt # 7099 3220 0000 2732 7773

Dear Griffin Family:

I am closing the record and documenting my review and decision of your appeal **02-03-12-0001-A251**. This appeal is in regard to District Ranger Widner's January 15, 2002 decision to remove yearling cattle from the allotment. The appeal was filed and has been processed under the provisions of 36 CFR 251, subpart C. Appeal record documents are numbered as (AR1), (AR2), etc.

BACKGROUND

AR1 - April 19, 2001 Riparian utilization monitoring in reach #1 of Upper Yankee Canyon.

AR2 - April 23, 2001 Riparian utilization monitoring in reach #1 of Yankee Joe Canyon.

AR3 - April 23, 2001 Riparian utilization monitoring in reach #2 of Yankee Joe Canyon.

AR4 - April 23, 2001 Riparian utilization monitoring in reach #1 of Blackjack Wash.

AR5 - August 15, 2001 Riparian utilization monitoring in 7 mile tribs of the 7 mile pasture.

AR6 - November 29, 2001 Riparian utilization monitoring in reach #1 of Bronson Creek.

AR7 - November 29, 2001 Riparian utilization monitoring in reach #1 of Nesbitt Creek.

AR8 - January 15, 2002 letter from Ranger Widner to Griffin Cattle Ranch instructing the removal of yearling cattle. Ranger Widner is the responsible official.

AR9 - February 18, 2002 notice of appeal from permit holder Griffin Cattle Ranch. This is the appeal to Ranger Widner's instructions to remove yearling cattle.

AR10 - March 1, 2002 letter from Thomas J. Klabunde acknowledging the receipt of the Griffin Cattle Ranch notice of appeal and the denial of the request for stay.



AR11 - July 29, 2002 Ranger Widner's responsive statements to the Griffin Cattle Ranch Appeal dated February 18, 2002.

AR12 - July 31, 2002 letter from Thomas J. Klabunde, Deputy Forest Supervisor to Griffin Cattle Ranch enclosing Ranger Widner's responsive statements.

AR13 - August 22, 2002 letter from Griffin Cattle Ranch that serves as a reply to Ranger Widner's responsive statements.

AR14 - September 12, 2002 letter from Deputy Forest Supervisor Thomas J. Klabunde acknowledging receipt of Griffin Cattle Ranch's letter dated August 22, 2002 and extending the reply period for Griffin Cattle Ranch.

POINTS OF APPEAL

My review of this appeal was confined to the substantive points raised in the appeal, the appeal record, federal regulations, provisions of the grazing permit and the policies and operational procedures as set forth in the directives system of the USDA Forest Service.

Issue 1: No longer in an official drought.

Contention: The appellant contends that we are no longer in an official drought, therefore, we question the rationale for this decision.

Response: Ranger Widner considered a review of the Standard Precipitation Index (SPI) that is available on the Internet. At the time of the date of the notice of appeal, the 12 month SPI through the end of January, 2002 revealed that conditions for Gila County were moderately dry while the 3 month SPI ending in January, 2002 revealed very dry. The rationale for Ranger Widner's decision is based upon the problems that occurred during the 2001 grazing season (AR1- 7). These problems were identified as over-utilization of the forage that was based on an apparent lack of riding to distribute the cattle and to push animals out of the stream bottoms (AR8).

The District Ranger is affirmed on the rationale for the decision.

Issue 2: Over-utilization of six pastures and questionable data from the Forest Service.

Contention: The appellant contends that they have received no meaningful detailed data that backs up Ranger Widner's statement that over-utilization occurred. In addition, the appellants reply letter (AR13) identified that the disagreement was on meaningful data and not pages of questionable data. The data that was presented is based on "best guess" methods. It also appears many of the Tonto personnel tend to ignore science adamantly. The appellant's reply to Ranger Widner's statements (AR13) include "not to use key areas to measure intensity, such as measurements around a spring and trough but to check the whole pasture and to monitor for stubble height".

Response: Appeal record documents AR1 – 8 reveal measurements in riparian areas on the Sedow allotment. The methods used to measure actual utilization of grass and browse vegetation, the timing of measurements and the selection of key areas is consistent with methods described in the Forest Service Handbook 2209.21 dated April, 1988 chapter 50 and the Forest Service Region Three Rangeland Analysis and Management Guide dated June, 1997 chapter 4. The appeal record documents, numbers AR1 to 7, reveal measurements that were conducted on woody riparian plants, herbaceous plants and measurements of the stream banks. In addition, each of these documents contains comments prepared by the person who conducted the actual utilization measurements. The actual utilization measurements for each of these key areas are:

Document AR1, the actual utilization recorded on woody plants was 0% and 0% on herbaceous plants. However, person conducting the measurements provided comments that there were no perennials, no deergrass, or emergents to measure.

Document AR2, the actual utilization recorded on woody plants was 20% and 27.9% on deergrass. The percent alterable bank was 89% by livestock.

Document AR3, the actual utilization recorded on woody plants was 0% and 23.39% on deergrass. The percent alterable bank was 84% by livestock.

Document AR4, the actual utilization recorded on woody plants was 0% and 0% on deergrass. However, the comments reveal that there were no woody or herbaceous plants to measure and the water pipe was broken and the trough was dry. Cattle had trailed along wash and up side drainages.

Document AR5, the only riparian vegetation present is in exclosures (Rock Springs) or riparian pastures (7 mile).

Document AR6, the actual utilization recorded on woody plants was 62% and 22.9% on deergrass.

Document AR7, the actual utilization recorded on woody plants was 58% and 21.33% on deergrass. The percent alterable bank was 86% by livestock.

Forest Service Handbook 2209.21 in chapter 51.2 states, “For rotational systems and seasonal allotments, the production utilization survey is to be conducted as soon as possible following removal of livestock.

The methods that Tonto National Forest personnel utilized to measure woody and herbaceous plants on the Sedow allotment is consistent with Forest Service policy (AR1-7).

The riparian areas are key areas for livestock utilization measurements (see my response to issue 4).

The District Ranger is affirmed on this issue .

Issue 3: Removing yearlings early clearly creates significant economic hardship.

Contention: The appellant contends that removing yearling cattle will clearly create a significant economic hardship and the appellant request some form of compensation of their financial loss. The appellants reply letter (AR13) to Ranger Widner's responsive statements stated that since the outcome has been that all our cattle were ordered off anyway what would it have hurt to let the yearlings clean up old feed and fatten up a little?

Response: Economic effects may occur due to Ranger Widner's instructions to remove yearling cattle. However, while the objectives and policy of the Forest Service is to allow the opportunity for an economically profitable operation, the District Ranger has the legal responsibility to evaluate on-going grazing activities upon the soil, water, vegetation and wildlife on the Sedow allotment. This responsibility is identified in Part 2, clause 8(c) of the permit holders grazing permit. Forest Service Manual (FSM) 2202.1 and 2203.1 provides objectives and basic policy that the responsible official has followed. The District Ranger's decision is also consistent with 36 CFR 222.1(a) and Part 2, clause 8(a)(c) in his instructions to remove yearling cattle. The District Ranger is correct that compensation for losses cannot be made.

The district ranger did consider the monitoring information (AR1-7), drought and existing management practices may have upon the vegetation, soil, water and wildlife in his decision to remove yearling cattle from the allotment.

The District Ranger is affirmed on this issue.

Issue 4: With the drought over, removal of yearlings is arbitrary, punitive and unacceptable.

Contention: The appellant contends that their impression of a 10-year permit allowed them their permitted numbers unless there was a significant reason to reduce these numbers (AR9). The appellant agrees that there is a drought (AR13). However, with Forest Service monitoring key areas with questionable protocols to be used to disparage our management (AR13).

Response: The appellant is correct that a ten-year permit allowed them to graze their permitted numbers unless there is a significant reason to reduce these numbers.

The Forest Service Handbook 2209.21 dated 4/88 and the Forest Service Region Three Rangeland Analysis and Management Guide dated June, 1997 provide descriptions of key areas. The Rangeland Analysis and Management Guide states in chapter 4:

“Key areas are defined as, a portion of range, which because of its location, grazing or browsing value, and/or use, serve as an indicative sample of range conditions, trend, or degree of use seasonally. A key area guides the general management of the entire area of which it is part (SRM 1974)”

The Rangeland Analysis and Management Guide further states in chapter 4 that key areas are usually 5 acres or more and are selected as sites where prescribed use will occur first. Also included are sites where use must be closely monitored because of management plan

requirements, such as riparian areas or areas where threatened, endangered, or sensitive species may occur.

Range Widner selected riparian areas as key areas because it is an area where prescribed use will occur first. Riparian areas are not developed livestock waters.

Utilization monitoring of the grass and woody forage plants in these key areas is conducted to Forest Service methods identified in the Forest Service Handbook 2209.21 chapter 50 dated April, 1988 and Forest Service Region Three Rangeland Analysis and Management Guide chapter 4 dated June, 1997.

The District Ranger is affirmed on this issue.

DECISION

My review of your appeal was conducted in accordance with 36 CFR 251 Subpart C. After review of the appeal record, I find that the District Ranger's January 15, 2002 instructions to remove livestock was based on Forest Service policy and is in conformance with applicable laws, regulations, policies, and procedures. Therefore, I affirm the District Ranger's decision.

The appellant is encouraged to communicate and closely work with Ranger Widner and his staff on the management of the Sedow allotment. I highly recommend you meet with Ranger Widner and his staff often to further discuss the Forest Service methods to monitor rangeland condition, trend and utilization. Ranger Widner will also provide you copies of the Forest Service range handbooks and guides upon your request.

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, Southwester Region
333 Broadway SE
Albuquerque, New Mexico 87102

A copy of the second level appeal should also be sent to my office.

Sincerely,

/s/ Karl P. Siderits

Karl Siderits
Forest Supervisor
Appeal Reviewing Officer

CC: Regional Forester
Globe District Ranger

