



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

Dale Cline  
P.O. Box 339  
Tonto Basin, AZ 85553-0339

Return Receipt Requested 7099 3220 0000 2732 7780

Dear Dale

This letter will document my review and decision of your appeal #02-03-12-0006-A251 dated August 29, 2002. The appeal is in regard to District Ranger Smith's decision to suspend 50% of the term grazing privileges for two years, and cancel the remaining 50% of the term grazing privileges. The appeal was filed and has been processed under the provisions of 36 CFR 251, Subpart C. I have not received any reply from you regarding Ranger Smith's responsive statements to your appeal points (AR13). Appeal record documents are numbered as AR1, AR2, etc.

**BACKGROUND:**

AR1 – Notice of appeal from permit holder Dale Cline dated August 29, 2002.

AR2 – July 19, 2002 decision letter to permit holder Dale Cline from Ranger Smith. Ranger Smith is herein identified as the responsible official.

AR3 – Term Grazing Permit for the Walnut allotment issued to Dale and Lorraine Cline by District Ranger Terrell on April 24, 1998.

AR4 – Annual Operating Instructions (AOI) dated April 19, 2002 from Ranger Smith to permit holder Dale Cline.

AR5 – Annual Validation of Term Grazing Permit for 112 cattle, cows from March 01, 2002 to February 28, 2003 on the Walnut allotment and 3 cattle, bulls from March 1, 2002 to February 28, 2003 on the Walnut allotment. Validation approved by Candace Sullivan acting for District Ranger Smith.

AR6 – Ten-year Summary of bill-for-collection and AOI dates.

AR7 – Documentation of conversation between permit holder Mr. Dale Cline and Ranger Smith on June 21, 2002.



AR8 – February 19, 2002 letter from permit holder Dale Cline to District Range Staff Officer Linny Warren documenting the moving of cattle into the Lann pasture on private land.

AR9 – Forest Service Handbook 2209.13, section 16.2

AR10 – June 26, 2002 letter from District Staff Linny Warren to files documenting a telephone conversation with Mr. Dale Cline about the need to remove all his livestock from the Forest Service lands, that they were not paid for and they would be charged at the excess rate.

AR11 – June 26, 2002 Range Inspection of the Walnut allotment conducted by Hugh Dorathory, District Range Technician.

AR12 – August 19, 2002 letter from permit holder Dale Cline to District Range Staff Officer Linny Warren documenting the removal of all cattle from the Walnut allotment to private property. The removal was complete by June 29, 2002.

AR13 – October 3, 2002 letter to permit holder Dale Cline from Ranger Smith with the responsive statements attached. The 20 reply period for the appellant was identified.

AR14 – September 7, 2002 letter from Appeal Review Officer Thomas J. Klabunde to permit holder Dale Cline acknowledging the timely receipt of the notice of appeal.

AR15 – October 3, 2002 letter to the Forest Supervisor containing the responsive statements to the permit holders appeal points.

## **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 term grazing permit and the policies and operational procedures as set forth in the directives system of the USDA Forest Service.

**Issue 1:** Annual Operating Instructions (AOI's) authorized livestock to be on the allotment.

**Contention:** The appellant contends that the AOI is the authorizing instrument for placing livestock on the Walnut allotment.

**Response:** The AOI is the document that describes how livestock grazing will be conducted on the allotment, such as pasture rotations, specific maintenance requirements of range livestock developments, pasture entry and exit dates and forage utilization standards. The AOI is the instructions that are described in Part 2, clause 8(a) of the permit holders term grazing permit (AR3 and AR4)).

36 CFR 222.50(g) states all fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use unless otherwise authorized by the Chief, Forest Service.

The permittee's term grazing permit states in Part 2, clause 3 that the permittee will not allow owned or controlled livestock to be on Forest Service administered lands unless the fees specified in the bill for collection are paid.

The permit holders term permit states in Part 2, clause 8(d) that the permittee will allow only the numbers, kind and class of livestock on the allotment during the period specified in Part 1 hereof or the annual bill for collection. If livestock owned by the permittee are found to be grazing on the allotment in greater numbers, or at times or places other than permitted in Part 1 hereof, or specified on the annual bill for collection, the permittee shall be billed for excess use as the unauthorized use rate and may face suspension or cancellation of this permit (AR3).

**The District Ranger is affirmed on this issue.**

**Issue 2:** The bill for collection was not issued along with the AOI even though the AOI stated it was included.

**Contention:** The appellant contends that in the last few years, he never knows what to expect as to when the grazing fee bill would arrive. The permit holder states he would just pay when it does arrive.

**Response:** The District Ranger stated that the bill for collection was not included in the annual operating instructions (AR15).

**The appellant is affirmed on this issue.**

**Issue 3:** It is customary for bills for collection to be issued late.

**Contention:** The appellant contends that he is accustomed to receiving the AOI and then has the grazing fee bill follow in the mail anywhere from a week to several months.

**Response:** A review of previous bills for collection reveal that February 16<sup>th</sup> is the average date that bills for collection have been issued to Mr. Cline (AR6). In the last ten years, bill for collections have been issued three times past the March 1<sup>st</sup> date when livestock are to be paid for. The April 19, 2002 AOI clearly states on the first page under Allotment Management that the grazing season started on March 1, 2002 and ends on February 28, 2003 (AR4). The 36 CFR 222.50(g) states all fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use unless otherwise authorized by the Chief, Forest Service.

**The District Ranger is affirmed on this issue.**

**Issue 4:** The gate between the Forest Service and permittee's land was propped open and the public continually leaves gates open making livestock management difficult.

**Contention:** The appellant contends that once cattle were in the Cottonwood pasture of the Walnut allotment, which borders private land, he had a hard time keeping cattle scattered since they wanted to trail back to the private land where they had been fed hay. Without that gate propped open, that divides private land from National Forest Lands, cattle coming home, or back to private land, would just hang up against the fence on the Forest Service side where they did not belong. The appellant contends that the purpose of propping open the gate was to allow a number of cattle, or a bunch, to drift back to private and then be taken back to the allotment as a bunch with the help from other people.

**Response:** The permit holder's livestock were not authorized by a paid bill for collection to graze on the Walnut allotment (AR7 and AR11). The 36 CFR 222.50(g) states all fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use unless otherwise authorized by the Chief, Forest Service.

**The District Ranger is affirmed on this issue.**

**Issue 5:** The District Rangers letter is not specific regarding what the violations of the term grazing permit are.

**Contention:** The appellant contends that Ranger Smith wants to cut my permit in half and suspend the other half for two years, which I guess must be for trespass, although he doesn't exactly say so. He, Ranger Smith, just says for the willful violation of the terms of your grazing permit, which isn't very specific.

**Response:** Ranger Smith's decision letter to permit holder Dale Cline dated July 19, 2002 clearly and specifically states on the first page within the fifth paragraph that; Allowing the permitted cattle back onto the allotment on April 10, without notifying us, receiving a bill or paying the grazing fees, and allowing them to remain on the National Forest under these conditions is a willful violation of Part 2, clause 3 and clause 8(d) of your term grazing permit.

**The District Ranger is affirmed on this issue.**

**Issue 6:** For a first time offense the administrative action is "grossly punitive, arbitrary and capricious".

**Contention:** Up to the current date, the permit holder has never been in trespass with the Forest Service, and believe that for a first time offense, a 50% suspension of the term permit and a cancellation of the remaining 50% is grossly punitive, arbitrary and capricious.

**Response:** The Forest Service Handbook 2209.13-92-1 section 16.2 effective August 3, 1992 states the following; Approach permit cancellation with discretion. Cancellation applies if a permanent change in the permit is necessary. Total cancellation is seldom justified in first offense cases unless violation is flagrant and willful.

The admission of allowing livestock to graze without a paid bill for collection (AR7 and 10), allowing the permitted cattle back onto the allotment on April 10, without notifying the District Ranger or receiving a bill or paying the grazing fees, and allowing them to remain on the National Forest under these conditions is a willful violation of Part 2, clause 3 and clause 8(d) of your term grazing permit (AR2). The permit holder was made aware of this willful conduct in a phone conversation with District Range Staff Officer Linn Warren on June 26, 2002 (AR10).

**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 Rangers July 19, 2002 decision to suspend 50% of your term grazing permit for two years beginning March 1, 2003 and canceling the remaining 50% for violation of the Term Permit, Part 2, clause 3 and 8(d) is in conformance with applicable laws, regulations, policies, and procedures. Therefore, I affirm the District Ranger's decision.

In addition, I am providing new Forest direction that the preparation of grazing bills for collection will be prepared and mailed to permit holders at least 30 days in advance of livestock entry onto the National Forest.

I am also encouraging the permit holder to actively communicate and closely work with Ranger Smith and his staff on the management of the Walnut allotment.

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  
333 Broadway SE  
Albuquerque, New Mexico 87102

Sincerely,

/s/ Karl Siderits

Karl Siderits  
Forest Supervisor  
Appeal Reviewing Officer

CC: Regional Forester  
Tonto Basin District Ranger