

United States
Department of
Agriculture

Forest
Service

Humboldt
Toiyabe
National
Forests

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Reply to: 1570

Date: August 28, 1997

Mr. Roy Clifford
Stone Cabin Partnership
P.O. Box 648
Tonopah, NV 89049

CERTIFIED MAIL - RETURN
RECEIPT REQUESTED Z 094 582 974

REF: 97-AP-004

Dear Mr. Clifford:

This is my decision concerning your appeal of the May 5, 1997 decision by Tonopah District Ranger Michael A. Valdes to authorize livestock grazing on the Monitor Complex C&H Allotment. This appeal was filed under 36 CFR 251, Subpart C. I make this decision based upon applicable laws, regulations, policies, appellant's notice of appeal, the District Ranger's decision letter, and the District Ranger's responsive statement.

As reviewing officer of your appeal, I have determined that the District Ranger's decision was appropriate. I am affirming his May 5, 1997 decision to authorize livestock grazing on the Monitor Complex C&H Allotment through the issuance of a term grazing permit. The term grazing permit was authorized for numbers and season of use as outlined in the Allotment Management Plan.

BACKGROUND:

The Appellant, Roy Clifford of Stone Cabin Partnership, filed a timely Notice of Appeal received in Sparks, Nevada, on June 9, 1997. Stone Cabin Partnership appealed the Tonopah District Ranger Michael A. Valdes's decision of May 5, 1997, to approve a term grazing permit which would reduce the permitted numbers on the Monitor Complex C&H Allotment from 542 head of cattle to 130 head, with no change in season of use. In addition, Stone Cabin Partnership asked for a stay of implementation of the decision pending the appeal. On June 6, 1986, Forest Supervisor Ronald Humphrey approved a term grazing permit issued to Stone Cabin Partnership. The permit included the Monitor Complex, Saulsbury, and Stone Cabin C&H Allotments on the Tonopah Ranger District. The permit authorized 542 head of cattle for a season from 6/10 to 10/10 on the Monitor Complex C&H Allotment.

Historically, resource conditions on the Complex C&H Allotment revealed unsatisfactory watershed conditions. These conditions suggested a need for a stocking adjustment, with allotment capacity less than the permitted 542 head of cattle. During the term of the aforementioned permit, Stone Cabin Partnership took partial non-use and stocked anywhere from 250-440 head of cattle on the Monitor Complex C&H Allotment instead of 542 head. Non-use was approved through memorandums of understanding for the purpose of restoring range and watershed values, and through bills for collection.

Based on utilization surveys and allotment inspections, it was evident that the permitted stocking level on the Monitor C&H Allotment exceeded capacity. An analysis was initiated in 1988 to establish a capacity commensurate with utilization surveys and other supporting information collected between 1986-1991. In addition, the analysis was initiated to determine a grazing strategy for the Monitor Complex C&H Allotment. The analysis process involved local, state, and federal agencies, and specifically, the Stone Cabin Partnership was asked to be involved in the analysis. An environmental analysis was completed and a Decision Notice and Finding of No Significant Impact was signed by District Ranger David Grider on June 17, 1991. The decision affirmed the selection of alternative 2 from the Monitor Complex C&H Allotment Environmental Assessment. Alternative 2 described the need to revise the current 3-pasture rest-rotation management system and adjust the permitted numbers from 542 to 130, with the same season of use. The Decision by Ranger Grider was not appealed by the Stone Cabin Partnership under 36 CFR 215.

The new management system, as described in alternative 2, was implemented in 1992. Included in the Monitor Complex C&H Allotment Management Plan was a strategy to implement the change in numbers of cattle from 542 to 130 over a five-year period. Stone Cabin Partnership continued to take voluntary non-use, stocking an average of 250 head of cattle on the allotment through 1995.

Stone Cabin Partnership's term permit expired on December 31, 1995. Following the expiration of the term permit, the Partnership submitted an application for a new permit, which included terms and conditions for 250 head of cattle for a four month season on the Monitor Complex C&H Allotment. A new term permit was offered by District Ranger Michael A. Valdes on May 24, 1996, containing modifications to the expiring permit for the Monitor Complex C&H Allotment, with the remaining two allotments unchanged. The Stone Cabin Partnership was opposed to modifying the stocking rate on the Monitor Complex C&H Allotment, and at the request of the Partnership, asked representatives of the Nye County Commission intervene on their behalf. A meeting was held on February 2, 1997 with members of the Nye County Commission and Bureau of Land Management personnel, however, no resolution was reached regarding the modification in stocking rates on the Monitor Complex. It was agreed at the meeting to authorize a livestock use permit for 250 head of cattle for a four month season, with a term of one year expiring on December 30, 1996, and address opportunities with the Bureau of Land Management in providing additional allotment capacity.

In 1997, several meetings were held with Roy Clifford with the intention of resolving the Monitor Complex C&H Allotment capacity issue and to implement Ranger Grider's 1991 Decision to reduce livestock numbers. Stone Cabin Partnership's 1995 application for a term

permit, including terms and conditions of 250 head of cattle for a four month season on the Monitor Complex C&H Allotment was still on file. Since the 250 head stocking level on the Monitor Complex C&H Allotment was not supported by allotment resource conditions or an environmental analysis, as required by the National Environmental Policy Act (NEPA), the application was not approved as submitted. Based on the fact that many of the riparian areas of the Monitor Complex were found to have excessive grazing impacts, District Ranger Michael A. Valdes tiered to Ranger Grider's 1991 Decision and approved a ten-year term permit for 130 head of livestock for a four month season on the Monitor Complex C&H Allotment, beginning with the 1997 grazing season.

DISCUSSION OF APPEAL ISSUES AND FINDINGS:

APPEAL ISSUE: "The Forest Service has not provided any new information to show that this reduction is needed. The information in the environmental assessment appears to be ten years old. It has not been updated since rest rotation was implemented several years back" .

RESPONSE: The Monitor Complex C&H Allotment was considered " NEPA sufficient", at the time the permit expired in 1995. Tiering to the 1991 Decision, an Allotment Management Plan for the Monitor Complex was amended to reflect alternative 2. The plan was completed in 1992 and implemented in the same year. The Clifford's refused to sign the plan several times, stating the ranch could not afford such a large reduction. Although Clifford's refused to sign the plan, they agreed to follow the rotation system, proposed range improvement schedule, and early removal requests based on forage utilization standards as needed.

Forest Service manual direction (FSM 2212) provides direction for allotment management planning. An allotment management plan is the primary document which guides the implementation of forest plan direction for rangeland resources.

The Monitor Complex C&H Allotment Management Plan implemented the 1991 Decision in 1992. Contained within the allotment plan was a strategy to implement the numbers reduction within five years. The plan outlined an implementation schedule for the reduction, listing 20% incremental adjustments to be made over the 5 years. The reduction was to be fully implemented by 1997. From 1993 to present, the Stone Cabin Partnership continued to take voluntary nonuse, stocking an average of 250 head of cattle on the Monitor Complex C&H Allotment through 1996. Early-off situations were required each year, varying from 2 weeks to two months before the off-date. In general, compliance to these requests was acceptable, but forage standards and guides described in the Toiyabe National Forest Land and Resource Management Plan were continually exceeded in several key areas each season.

DECISION: I affirm Ranger Valdes decision to issue the term-grazing permit within the guidelines and direction developed in the Allotment Management Plan and consistent with direction in the Toiyabe Land and Resource Management Plan.

APPEAL ISSUE: "The Forest Service has stated in its decision that AUMs will be added to the Hunts Canyon unit once an analysis is completed but it has not stated how or when this

will happen on approximately 640 acres of very productive meadows that belonged to Carrillo."

RESPONSE: The District has developed a 15 year schedule for all of its grazing allotments needing NEPA analysis and decisions, as required by the 1995 Rescission Act. Since the Monitor Complex C&H Allotment is NEPA sufficient, the Tonopah Ranger District is emphasizing analysis on other allotments currently exceeding utilization standards and guidelines and showing significant rangeland resource damage. Therefore, the analysis process for the Hunts Canyon pastures may be several years away. The Monitor Complex C&H Allotment has yet to support the existing stocking rate. Adjustment in the Monitor Complex is a separate decision that needs to be implemented prior to adding any other lands to the allotment.

Utilization surveys will be conducted on the new Hunts pastures during the 1997 field season. This information will be used along with other surveys to confirm a proper stocking level. The process will be similar to the analysis initiated to evaluate and recommend the management system for the Monitor Complex C&H Allotment. A proper stocking level will be determined commensurate with rangeland conditions and Forest Plan Standards and Guidelines. The process will involve Forest Service personnel, Federal, State, and local agencies. Following a decision based on the analysis, a management plan will be developed for the area implementing a selected management strategy.

DECISION: I affirm Ranger Valdes on this appeal point.

APPEAL ISSUE: 'We have met with the Forest Service to discuss this several times, the last being May 15, 1997 and asked for an annual authorization for Carrillo Pasture, applied for conservative numbers of cattle, and agreed to base the length of grazing use on Forest Service Standards.'

RESPONSE: A temporary permit (Application and Permit for Livestock Use) for the Hunts Pastures was authorized on 6/5/97, for 170 cattle from 6/15 to 9/15. An Annual Operating Plan was developed and attached to the permit as terms and conditions. The actual length of the season will depend on forage utilization standards being met, as listed in the Annual Operating Plan.

DECISION: I affirm Ranger Valdes on this appeal point.

APPEAL ISSUE: "We are probably the oldest original permittee in this area. Cutting our numbers from 542 to 130 head is going to put Stone Cabin Partnership out of business. 130 head is not an economically viable number to maintain an economic ranch operation in Central Nevada. Forest Service and BLM numbers must be balanced like they were. We think this can be accomplished without causing damage to federal lands" .

RESPONSE: The Tonopah Ranger District during the last six years has sought remedies including working with the Bureau of Land Management (BLM) to lessen the impact of the

reduced stocking rate on the Monitor Complex C&H Allotment. To date, only temporary solutions have been found to resolve the capacity issue facing the Monitor Complex C&H Allotment. Resource conditions, emphasizing riparian areas, will continue to be the primary focus when making management decisions. While the Forest Service considers a stocking rate that would make an economical basis for a livestock operation, capacity and suitability to support livestock use must be commensurate with utilization standards and guidelines and resource conditions.

DECISION: I affirm Ranger Valdes on this appeal point.

APPEAL ISSUE: "We are trying to change our method of operation and we are talking with Forest Service and BLM about these management changes but the federal agencies must also work in conjunction with the larger management plan. "

RESPONSE: The Forest Service has demonstrated willingness to consider changes in your methods of operation, through water hauling sites, new or rebuilt water developments, rider camps, and other ways to aid in better distribution of cattle. Last year the Forest Service met with Stone Cabin Partnership, BLM and members of the Nye County Commission. Such meetings have helped brainstorm options of managing all of Stone Cabin Partnership's permitted use on public lands in an integrated fashion, and explored opportunities that may lessen the effect of the allotment reduction. The Forest Service plans to continue consideration of these options and come up with a comprehensive plan in the next few years.

DECISION: I affirm Ranger Valdes on this appeal point.

APPEAL ISSUE: "We have cooperated with the Forest Service and BLM as long as I can remember by moving cows and taking care of waters and fences and I think all the Forest Rangers I have worked with will agree with that. I am asking you to personally to reconsider the number of cows we are permitted to run in order that we can make a decent living. "

RESPONSE: The record demonstrates that cooperation and coordination have been the typical means of resolving concerns on the Monitor Allotment. The Forest Service has never taken permit action on the Monitor C&H Allotment due to lack of compliance with term and conditions in the grazing permit. However, an environmental analysis has been conducted and an alternative selected that meets resource concerns on the allotment and implements the Forest Plan. In considering the reissuance of a term grazing permit, a Deciding Official would need to base their decision on the most current analysis of the allotment and base the authorization of use and numbers on the guidance in the analysis and the Allotment Management Plan.

DECISION: I affirm Ranger Valdes on this appeal point.

APPEAL ISSUE: "I am almost 70 years old. My sister is 81 and my sister-in-law is 74. We are too old to do anything else and we do not want to do anything else. My grandad came to Stone Cabin in 1872 and we would all like to finish here. Statement of facts: 1) Voluntarily

cut in 1993 to 250 head to present. 2) Compliance with early removal requests to meet Grazing utilization standards. 3) Scheduled meetings with BLM and Forest Service and County commissioners to see if additional capacities/coordination was possible to offset the proposed changes to my ranch operation. 4) Implemented a three-pasture rest-rotation system on the allotment that is moving conditions in an upward trend. 5) I am requesting approval of a term permit of 250 head of cattle for a season of use from 5/15 to 9/15 on the Monitor Complex C&H Allotment" .

RESPONSE: The Tonopah District would like to work out an acceptable solution for Stone Cabin Partnership. The previously permitted stocking and utilization levels on the Monitor Complex C&H Allotment exceeds standards and guidelines. The Forest Service has and will continue to work with Stone Cabin Partnership on opportunities to increase the capacity of their livestock operation commensurate with range resource capacity and conditions. Until capacity issues are resolved between both Bureau of Land Management and Forest Service administered allotments, only temporary solutions on an annual basis will be the basis of making management decisions.

The three-pasture rest-rotation system on the allotment is generally moving conditions in an upward trend, with the exception of the areas described in the responsive statement. The District has indicated a willingness to utilize monitoring techniques to continue to assess grazing suitability and riparian condition. This information would be the basis for making changes to the Allotment Management Plan.

The May 5, 1997 decision was within the discretion of the authorized Forest Service officer, and was based on the record, existing laws, regulations, orders, policies, and procedures in effect at the time of the decision.

The District has expressed a desire to continue working with and consider proposals from Stone Cabin Partnership regarding use of vacant allotments, water hauling sites, new or rebuilt water developments, rider camps, and other proposals to aid in better distribution of cattle.

DECISION: I affirm Ranger Valdes on this appeal point.

This decision is subject to administrative appeal, under 36 CFR 251, Subpart C. A notice of appeal of this decision must be filed with the Regional Forester, Dale N. Bosworth, USDA Forest Service, 324 25th Street, Ogden, Utah 84401, within 15 days of this decision. A copy must be sent simultaneously to R.M. "Jim" Nelson, Forest Supervisor, Humboldt-Toiyabe National Forests, 1200 Franklin Way, Sparks, Nevada 89431.

/s/ Mary Wagner
MARY WAGNER
Appeal Reviewing Officer