

United States
Department of
Agriculture

Forest
Service

Humboldt/
Toiyabe NF
JARBIDGE RANGER DISTRICT

1008 Burley Avenue
Buhl, ID 83316-1812
(208) 543-4129

File Code: 2230-Horace & Irene Smith

Date: January 21, 1998

Horace and Irene Smith
Cottonwood Ranch
HC 62 Box 1300
Wells, NV 89835

CERTIFIED RETURN RECEIPT REQUESTED
P220-738-148

Dear Horace and Irene:

On December 22, 1997, we received your letter of response to my November 14, 1997 letter proposing to suspend 27 days (25%) from the end of your term permit grazing season in the Cottonwood Creek C&H Allotment which equated to a suspension of 13 days (25%) from the 54 days reported as actual use under the HRM process in 1997. The proposed suspension was based on livestock utilization which exceeded maximum allowable levels and failure to meet Biological Plan objectives during the 1997 grazing season.

The intent of this letter is to advise you of my final administrative decision to proceed with the 25% suspension beginning with the 1998 grazing season. This action will result in a change to your term permit grazing season from 6/16-9/30 to 6/16-9/3. You provided an updated actual use for 1997 of 63 days on National Forest under the HRM process, Based on that update, my decision to proceed equates to a suspension of 16 days, for a maximum of a 47 day season which will be allowed under the HRM process. The suspension will remain in effect through the 2000 season. In arriving at this final decision, I reviewed Agee's letter of response, applicable regulations, and the record which included the following considerations:

1. My November 14, 1997 letter to you in which I presented the results of monitoring during 1997 and gave you chance to 'show cause" why I should not suspend 25% of your permitted season. That letter explained that Part 1, Paragraph 3, of your term grazing permit provides that "the permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2 and 3 of your term grazing permit." As I explained in that letter, the suspension is based not meeting utilization levels or Biological Plan objectives.
2. My October 22, 1996 letter to you which addressed non-compliance with utilization and Biological Plan objectives. I indicated that failure to comply with the Biological Plan during the 1997 season would subject your permit to possible administrative action, including suspension and/or cancellation.

3. Agee's December 18, 1997 response to my November 14 show cause letter. On December 12, 1997, Mike McNeill called Agee and left a message on his answering machine concerning a request for extending the "show cause" deadline. Mike followed that message with a letter to Agee documenting the phone message. You and Irene are the permittee of record. Mike indicated that we did not have anything in the files authorizing Agee to represent you as previously requested. Although we understand your intent is to waive the permit to Agee and other members of the family, he does not technically have the authority to represent you until you formally authorize him to do so. In arriving at a final decision, I must deal with the issue of non-compliance with utilization standards and Biological Plan objectives. Agee's response dealt primarily with a difference in opinion on location of livestock. As confirmed by his summary of the facts, there was awareness that riparian objectives and utilization standards were not met.

4. The September 8, 1997, HRM team meeting and field review at your ranch. The Team visited several riparian areas on the Forest and discussed a mutual concern with utilization levels more indicative of season long grazing. Those use levels not only exceeded permit standards, but were not within Biological Plan objectives.

The intent of this suspension is to gain compliance with utilization standards and the Biological Plan objectives. In Agee's letter of response, he indicated this was a "trial project" and it would take time to learn the HRM process. I agree the process may take time to learn, but learning the process and matching that with what happens on the ground most still be in compliance with term grazing permit, Forest Plan and Biological Plan standards and objectives. Agee's letter mentioned sacrifice and motivation to make the process work. If the Forest Plan and Biological Plan objectives are met next year, I will consider reinstating a portion of the suspended days for the 1999 grazing season. I will also consider further reinstatement for the 2000 grazing season if objectives are met during the 1999 season.

This decision is subject to administrative review in accordance with 36 CFR 251, subpart C. Any appeal of this decision must include the information required by 36 CFR 251.90. A notice of appeal, including the reasons for appeal, must be filed with R.M. "Jim" Nelson, Forest Supervisor, Humboldt-Toiyabe National Forests, 1200 Franklin Way, Sparks NV 89431, within 45 days of the date of this decision. A copy of the notice of appeal must be filed simultaneously with David P. Aicher, District Ranger, Jarbidge Ranger District, 2035 Last Chance Road, Elko, NV., 89801.

I regret having to take this measure but must insist on compliance with the terms and conditions of your term grazing permit. If this violation occurs again, it will subject your permit to further administrative action to include cancellation of the 25% suspension in season and an additional suspension of 25% of permitted livestock numbers and/or season. Quality resource management begins with meeting Forest and Biological Plan standards and objectives. I feel it is important to emphasize the intent of this action is to gain compliance with those standards and objectives, Agee's response of a motivation to gain compliance is progress toward meeting that goal, and we need to continue with collaborative efforts in demonstrating proper land use and stewardship.

If you have any questions, please feel free to contact me at 800-715-9379 or Mike McNeill at 208-543-4129.

Sincerely,

/s/ David P. Aicher

DAVID P. AICHER
District Ranger