

United States
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Forest
Service

Intermountain
Region

324 25th Street
Ogden, UT 84401-2310

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Date: December 4, 1996

Mr. Carl V. Haas, Agent
RO Livestock
Haas and Associates
HC 60 Box 54802
Round Mountain, NV 89045

CERTIFIED MAIL - RETURN
RECEIPT REQUESTED

Dear Mr. Haas:

This letter contains my decision on the second level appeal filed by you on behalf of RO Livestock, a livestock grazing permittee on the Toiyabe National Forest. The decision being appealed is a 25 percent suspension of RO Livestock's term grazing privilege on the Cloverdale (winter) Allotment for one year. This decision was made on August 7, 1996, by Michael A. Valdes-Tonopah District Ranger and Rene Crompton-Austin District Ranger. Their decision was affirmed on October 21, 1996, by Alan Pinkerton, Appeal Reviewing Officer for the Humboldt and Toiyabe National Forests. Your timely appeal to the second level was received on October 31.

The suspension action was taken as a result of excess livestock use made by RO Livestock cattle on several allotments during 1996. The appeal record indicates this is a continuation of livestock accountability problems, which were documented in the record, over the past 4 or 5 years. While RO Livestock has made attempts to control livestock, again documented in the appeal record, it is still evident that livestock are grazing in places and at times that are not authorized.

The suspension action taken by the District Rangers and information related to this suspension are the only issues in this appeal. There were no intervenors in this appeal.

BACKGROUND

RO Livestock has held term grazing permits on the Tonopah and Austin Ranger Districts since 1989. These permits authorized cattle grazing on 7 summer allotments and 5 winter allotments. Since 1992, RO Livestock has grazed reduced livestock numbers on the National Forest and has requested permittee convenience nonuse on all summer allotments on the Tonopah Ranger District. In a number of instances, at the end of the 3-year limit for approved permittee convenience nonuse, RO Livestock chose not to restock the allotments with at least 90 percent of the authorized livestock number and the permits on these allotments were cancelled. One of

the allotments on which the term grazing privilege was cancelled is the Cloverdale/Reese River Allotment, which is adjacent to the Cloverdale (Winter) Allotment, the subject allotment in this appeal.

In the instant appeal, you raised 2 basic issues related to the suspension action taken by Rangers Valdes and Crompton. These appeal points will be discussed below:

APPEAL POINT 1: "Ranger Valdes suspended RO Livestock's permit without reading the contents of the reply submitted by RO Livestock."

RESPONSE: The appeal record indicates that your statement is correct. It is unfortunate that due to an oversight at the District level, this letter was not reviewed prior to the initial decision. However, your letter was reviewed as a part of this appeal decision and we found no information which would have influenced the Ranger's decision.

In the reply signed by Russell Berg on July 31, 1996, RO Livestock confirms that livestock control is a problem. Mr. Berg states, "It is our practice in the early spring months to put the drift cattle into Indian Valley field and leave the gate open, so that other strays (if any) will go into the field . . . Cattle have a tendency to drift up Cloverdale Canyon in the spring, and because of the large expanse of the area and the trees, it is difficult to see all of them . . . ". This situation, cattle which are not seen and are not on private land, is the center of this livestock control problem. They are grazing on National Forest System (NFS) land without authorization, as confirmed by numerous letters in the appeal record which discuss cattle being in or around the private land of the Indian Valley field, with the gates left open and livestock not exclusively in the field, but dispersed throughout the surrounding area. We believe positive control of livestock, through closed gates and maintained fences which will turn livestock, is the only solution to this situation. We recognize how difficult it is for RO Livestock to maintain positive livestock control and that they have made attempts to control livestock; but the fact remains, livestock control by RO Livestock is not occurring at a level which is acceptable.

Our review of the appeal record also indicates there is a problem with the managerial delegations for RO Livestock, which compounds the problem of who Forest Service employees should deal with. In a letter dated January 1, 1992, Mr. Wilmans delegated authority to represent Rock Springs Ranch/RO Livestock and to sign various documents on behalf of the ranch operation. However, the delegations were not clear in that letter; and as a result, it is evident that Ranger District personnel were unclear as to who had authority to speak for RO Livestock. The letter stated, the individuals named had the authority to ". . . sign various documents on our behalf:", but does not designate any signing authority, other than for Mr. Doug Groves, for actual use reports and miscellaneous correspondence pertaining to day-to-day operations. The Humboldt and Toiyabe National Forests replied to this letter on February 28, 1992, and notified the permittee, "We cannot honor the letter as a legal arrangement between yourself and the above mentioned agents in matters involving your Forest Service Grazing permit. The authorization is too general and does not specify what each agent can sign or act for you . . . ". The record does not indicate this problem area has ever been resolved. Mr. Wilmans must complete a managerial agreement which specifies in detail who can represent RO Livestock in regard to matters pertaining to the livestock operations and the term grazing permit with the Authorized Officer and have this approved by the Authorized Officer.

Without a managerial agreement, confusion over authority to act for RO Livestock will continue to cloud relations between Ranger District personnel and RO Livestock representatives. This is exemplified by this appeal, wherein you signed as Agent for RO Livestock but there is nothing in the record to indicate that you have any authority to sign, based on the 1992 exchange of correspondence.

APPEAL POINT 2. "There have been extraordinary efforts to find and gather the drift cattle on the Cloverdale/Reese River C&H Allotment. "

RESPONSE. The Appeal Record indicates that excess livestock use has been a problem for a number of years. The District Rangers have worked with RO Livestock representatives to understand the difficulties of grazing livestock in this area, as evidenced in the letter to RO Livestock on April 30, 1991, from Tonopah District Ranger David R. Grider. In this letter, Ranger Grider documented discussions that had been held during the Annual Operating Plan meeting with RO Livestock representatives on April 5, 1991. During this meeting, 2 proposed decisions to suspend permitted livestock use on the Cloverdale/Reese River and Twin Rivers Allotments for lack of livestock control and accountability were discussed. The letter indicated the proposed actions were based on incidents extending from the end of the 1989 grazing season through August of the 1990 grazing season, including:

1. Cattle on allotments outside of the permitted grazing season,
2. Cattle grazing rested units within these allotments,
3. Cattle not removed from grazing units as scheduled,
4. Maintenance of range improvements not performed and,
5. Improper location of salt.

While it was agreed at this meeting that actions would be taken by RO Livestock to deal with these problems, it is evident from the record that there has been a continuation of livestock control problems. The record also indicates that you have attempted control, but your efforts have not produced the success which you told the District Ranger would be accomplished. The suspension decisions were deferred based upon RO Livestock's indicated desire to provide satisfactory performance. We do not doubt your desire to provide for compliance with the terms and conditions of your term grazing permit; but at the same time, it is apparent the methods being used are not satisfactory. Riding and herding in Pinyon-Juniper country is probably one of the least effective methods of livestock control which can be employed. As your representative, Russell Berg stated in his July 31, 1996, letter to District Ranger Valdes, ". . . Cattle have a tendency to drift up Cloverdale Canyon in the spring, and because of the large expanse of the area and the trees, it is difficult to see all of them. . ." Without positive control, as provided by properly located and maintained fences, livestock control and accountability is going to be impossible to provide and a continuation of violations and proposed permit actions will occur.

DECISION

Our review indicates the Tonopah and Austin District Rangers complied with the applicable law, regulation and policy in their actions and in this decision. While we appreciate your

concern over the suspension and the possible impact on your operation, we believe the action taken is required to convey to you the Forest Service's concern over the continuing lack of livestock control and accountability by RO Livestock.

We believe this suspension should have a minimal effect on your operation, especially for one grazing season, which based on the documentation in the Appeal Record has already begun. Therefore, I am affirming the Decision of the Tonopah and Austin District Rangers, as affirmed by the Assistant Forest Supervisor at the First level of appeal.

This is the final administrative decision of the U. S. Department of Agriculture as provided in 36 CFR 251.87(e)(3).

Sincerely,

/s/ Jack A. Blackwell

JACK A. BLACKWELL
Appeal Deciding Officer
Deputy Regional Forester