



File Code: 1570  
98-01-02-0001  
Date: Nov. 3, 1998

Myles Carpenter  
P.O. Box 38  
Melrose, MT 59743

Dear Mr. Carpenter:

This letter is my review decision of your Notice of Appeal (NOA) filed in protest of District Ranger Cynthia Tencick's 20% suspension of your permitted cattle grazing on the Trapper Creek allotment for the 1999 and 2000 grazing seasons.

My review is conducted pursuant to, and in accordance with, 36 CFR 251. My responsibility as Reviewing Officer is to ensure the decision is in compliance with applicable laws, regulations, policy, and orders. This review decision hereby incorporates, by reference, the entire administrative appeal record.

## I. HISTORY

The 1997 Trapper Creek allotment inspection record reveals a continuing need to fix the fence between Lockridge and Yanks pastures. The record documents six conversations between May 30 and September 16, 1997 with Shelly, Rochelle, or you about fixing improvements.

The District sent you a letter November 5, 1997, discussing how the season's grazing complied with your grazing permit terms and conditions and Forest Plan standards. The letter documented a lack of maintenance on fences between Upper Trapper and Yanks, and Yanks and Lockridge. This lack of maintenance was in violation of your grazing permit. The letter stated subsequent violations would result in actions against your permit, including possible suspension or cancellation.

A May 6, 1998 letter from the District served as your 1998 Annual Operating Plan (AOP) for the Browns-Cherry and Trapper Creek allotments. Among other direction, the Trapper Creek allotment instructions included maintenance of all interior fences on the allotment before cattle go into each pasture. You were also directed to stay on the Forest side of the fence between Beals Mountain and Louie Lowe while trailing cattle in.

The 1998 Trapper Creek allotment inspection record reveals no maintenance of the fences between Lockridge and Yanks pastures by June 26, 1998. The Pendergasts put cattle into the Lockridge pasture on June 15, 1998. The record documents phone calls with you or Shelly about the required maintenance on June 16 and June 19. The record, on July 6, 1998, also documents 60-75 head of your cattle on the Louie Lowe BLM pasture for 3-4 days, heading for the Trapper Creek allotment. Your Annual Operating Plan specifically stated you were not to trail cattle across this pasture.



The District sent you a letter June 30, 1998 detailing how the lack of fence maintenance between Lockridge and Yanks was a permit violation, and asking you to show cause why your Trapper Creek numbers should not be suspended 20% for two years. By telephone on July 2 you said you had no excuse for not getting maintenance done but you were going up that day to do it. You said you hadn't made Trapper Creek maintenance a priority because your cattle were not on the allotment yet. The District Ranger's Responsive Statement indicates you built a new gate and fixed the fence, except for bending back some iron posts, but not until early July of 1998, after the Pendergast's cattle entered the allotment.

## II. SUMMARY

On July 20, 1998, the Wise River District Ranger issued a decision to reduce your permitted cattle grazing on the Trapper Creek allotment 20%, to 75 cow/calves for the 1999 and 2000 grazing seasons. The letter cited violations to parts 8(a) and 8(i) of your grazing permit. These deal with the Annual Operating Plan and improvements, respectively.

On August 19, 1998, you appealed this decision. On September 16, 1998, the District Ranger issued a Responsive Statement to your Notice of Appeal. On October 5, 1998, you sent a written reply to the Responsive Statement. The letter notifying you the appeal record was closed was sent October 20, 1998.

## III. OVERVIEW OF ISSUES AND RELIEF REQUESTED

The central issues outlined in your NOA are: (1) you felt you fixed the fence adequately before cattle entered the allotment; (2) you felt it was okay to trail your cattle through the BLM's Louie Lowe pasture because you were late going on and the Franko cattle were out of it; and (3) you think you are being treated unfairly.

Your Notice of Appeal contains no requested relief.

## IV. REVIEW FINDINGS

I have thoroughly reviewed the appeal record, the concerns raised in your NOA, the District's Responsive Statement, and your written reply.

You state you completed your required fence maintenance before your cattle went on the allotment. The record indicates the repairs were not done before the Pendergast's cattle entered the allotment. The work must be done before anyone's cattle enter the allotment. Given the many conversations the District had with you in 1997 and 1998 about maintenance of improvements, I agree this is a permit violation for failure to maintain improvements.

Your second issue explains why you trailed cattle across the Louie Lowe BLM pasture to the Trapper Creek allotment, instead of following the direction in your 1998 AOP. Failure to follow instructions in the Annual Operating Plan is clearly a violation of your permit as described in the December, 1995 Beaverhead supplement to FSH 1909.13, Section 1, Point 4.

Your third issue says you feel you are being treated unfairly. Consequences of permit violations are standardized in the Beaverhead National Forest Livestock Grazing Permit Compliance Guidelines, a supplement to the Permit Administration Handbook (FSH 1909.13). For failure to maintain improvements, a first offense calls for the Forest Service to remove livestock from the allotment if the permittee does not complete maintenance after an inspection reveals it has not been done. You suffered no consequences of not completing your maintenance during the 1997 grazing season, although the District could have required you to remove your cattle. For a second offense, the compliance guidelines call for a 20% suspension of permitted grazing for two years. In light of the several times the District asked you to complete your maintenance before cattle entered the Trapper Creek allotment, I find your failure to complete that maintenance before the Pendergast's cattle entered the allotment was a second offense. The 20% suspension is appropriate according to Beaverhead-Deerlodge Forest policy.

You violated your permit by not following the Annual Operating Plan when you trailed your cattle through the Louie Lowe BLM pasture. Although this a first offense in this category, it is the third violation overall of the terms and conditions of your grazing permit in two years. I find it reasonable to factor this into the 20% suspension for two years.

## V. DECISION

Based on my review of the appeal record, it is my decision to affirm District Ranger Tencick's decision to reduce your permitted cattle grazing on the Trapper Creek allotment 20%, to 75 cow/calves for the 1999 and 2000 grazing seasons.

Mr. Carpenter, I strongly encourage you to work with the District Ranger to ensure your operation is within the terms and conditions of your grazing permit. It is clear to me District Ranger Tencick has tried to accommodate you and is more than willing to work with you on your permit.

My decision is subject to further administrative review under 36 CFR 251. Any appeal of this decision to the second level must be fully consistent with 36 CFR 251.90, Content of Notice of Appeal, and must be filed with the Regional Forester within 15 days of the date of this decision. A copy must be sent simultaneously to me.

For additional information concerning this decision or the Forest Service appeal process, contact Diane Petroni, Environmental Coordinator, 5 Forest Service Road, Ennis, Montana 59729 or call (406) 682-4253.

Sincerely,

/s/ Deborah L.R. Austin

DEBORAH L.R. AUSTIN  
Reviewing Officer  
Forest Supervisor