



File Code: 1570-1 (251-1)
#02-01-00-0070
Date: October 16, 2002

Richard W. Walden
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Dear Mr. Walden:

This letter is my review decision on your Notice of Appeal (NOA) submitted to the Lolo National Forest Supervisor and Northern Region Regional Forester on July 25, 2002. You have appealed Supervisor Austin's May 31, 2002, Decision Notice (DN) and Finding of No Significant Impact (FONSI) on the Tamarack Creek Grazing Allotment.

My review was conducted pursuant to, and in accordance with 36 CFR Part 251, Subpart C. My responsibilities as Reviewing Officer are to assure both the analysis and decision are in compliance with applicable laws, regulations and policies. This review decision hereby incorporates, by reference, the entire administrative appeal record.

SUMMARY

Forest Supervisor Deborah Austin issued the DN and FONSI on May 31, 2002. At that time Supervisor Austin, the Deciding Officer, stated the appeal period had begun and you had 45 days after the notice of the decision was published in the Missoulian newspaper, Missoula, Montana, to file your appeal with the Regional Forester. The Regional Forester received your appeal, as I have stated above. The Forest Supervisor responded to your appeal on August 28, 2002. You were to reply with any further concerns within 20 days. You did not reply to the Supervisor's Responsive Statement. The record for this appeal was closed on September 17, 2002.

OVERVIEW OF ISSUES AND RELIEF REQUESTED

The following issues were identified from your notice of appeal:

1. You contend that the decision fails to provide a rational basis for selecting Alternative D compared to Alternative B on the issue of water quality and commensurate effects on fisheries.



2. You contend that the decision failed to provide a rational basis for using available forage in a drought period for cutting grazing use on a 10-year term grazing permit.
3. You contend that there is no rationale or reason to have the grazing permittee maintain the riparian fence within the grazing allotment.
4. You contend that the decision fails to recognize the economic effect on the permittee and the local community.
5. You contend that the decision fails to consider the adverse affects on the appellant's private property rights.

Relief Requested: You have requested that the decision to reduce the appellant's permitted grazing to 7 cow/calf pairs be reversed.

REVIEW FINDINGS

I have thoroughly reviewed the appeal record, including the concerns raised in your NOA and the Forest Supervisor's Responsive Statement. The results of my review and a detailed response to the issues you have raised follows:

Issue 1: You contend that the decision fails to provide a rational basis for selecting Alternative D compared to Alternative B on the issue of water quality and commensurate effects on fisheries.

Response: While the documentation indicates that the only difference between Alternative B and D in terms of aquatics is the potential risk of undesirable effects on the non-fenced riparian areas within the allotment, the rationale for selection of Alternative D instead of Alternative B was based primarily on the range forage analysis which indicated that only enough forage to support 7 cow/calf pairs on the allotment is being produced.

Issue 2: You contend that the decision failed to provide a rational basis for using available forage in a drought period for cutting grazing use on a 10-year term grazing permit.

Response: A forage analysis was conducted in 1999, indicating that many of the areas of transitory range within the allotment were no longer suitable, nor being utilized by livestock. The documentation indicates that while the fall was dry, growing season moisture in 1999 was normal. The decision to modify the permitted grazing numbers on the National Forest System portion of the allotment does not in any way affect the total numbers permitted on the Tamarack Allotment. It only recognizes the existing actual use that is estimated to be occurring on the National Forest System portion of the allotment and modifies the grazing permit to recognize that amount of use.

Issue 3. You contend that there is no rationale or reason to have the grazing permittee maintain the riparian fence within the grazing allotment.

Response: The documentation indicates that cattle were negatively impacting riparian areas prior to construction of the riparian fence. It is Forest Service policy for grazing permittees to maintain range improvements established on their respective grazing allotments and that are needed to properly manage livestock use and avoid detrimental affects on other resources. I find nothing to indicate that requiring the permittee to maintain this riparian fence as a condition of grazing livestock on the Tamarack Allotment is out of the ordinary of what is normally required.

Issue 4. You contend that the decision fails to recognize the economic effect on the permittee and the local community.

Response: I find that the documentation does recognize the economic effects of the decision. The permittee will actually be billed for 25 less cattle on an annual basis, while having no effect on the total numbers the permittee is allowed to place on the Tamarack Grazing Allotment. It was recognized that the permittee would incur additional costs in terms of maintaining the riparian fence. These effects were disclosed in an economic analysis contained in the environmental assessment.

Issue 5. You contend that the decision fails to consider the adverse affects on the appellant's private property rights.

Response: I find that the decision has no affect on the permittee's private property rights. The permittee's are not being denied use of their private land or their water rights by this decision. Modifying the permitted numbers of cattle grazing, the National Forest System portion of the allotment does not affect grazing on the permittee's private lands, nor use of water rights held by the permittees.

Requested Relief: You have requested that the decision to reduce the appellant's permitted grazing to 7 cow/calf pairs be reversed.

DECISION

I affirm the Lolo National Forest Supervisor's decision to modify the grazing permit issued to Richard and Betty Johnson, by reducing the permitted number of cattle from 32 to 7 cow/calf pairs. I also affirm the Supervisor's decision to require maintenance of the riparian fence as a condition of the grazing permit.

I am providing some additional instructions to the Lolo Forest Supervisor, as a part of my decision. The type of grazing permit that is issued on the Tamarack Grazing Allotment is called an on/off permit. This type of grazing permit is commonly used where there is intermingled ownership with National Forest System land, and particularly, where the National Forest System lands make up the smaller portion of the grazing allotment. I am instructing the Lolo Forest Supervisor to clearly indicate in Part 3, Special Terms and Conditions, On/Off, (FS-2200-10c) of the grazing permit, the following language:

“This permit provides for grazing of a total of 65 head of cattle for the grazing period from 6/5 to 10/9 on Forest Service administered land and land controlled by the permittee

which together form a natural grazing unit. Use of these cattle will be approximately 11 percent on Forest Service administered land and 89 percent on land controlled by the permittee. Any future adjustments negatively affecting the total numbers of livestock permitted to graze on Forest Service administered land and land controlled by the permittee, will be based actual on the ground monitoring of adversely affected resource conditions.”

This is the final determination of the Department of Agriculture, unless the Chief of the Forest Service, on his own initiative, elects to review the decision within 15 days of receipt [36 CFR 251.87 (e) and 251.100].

Sincerely,

/s/ Robert L. Schrenk
ROBERT L. SCHRENK
Reviewing Officer
Director of Forest and Rangeland

cc:
Lolo NF
WO, Range