



**File Code:** 1570; 2230  
**Date:** April 13, 2020

Mr. Dennis Hunzeker  
c/o May, Rammell & Thompson, Chtd.  
216 W. Whitman St.  
Pocatello, ID 83204

CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED  
NUMBER: 7013 2630 0000 7157 8547

Dear Mr. Hunzeker:

In accordance with 36 CFR 214, I have reviewed the appeal record for Caribou-Targhee National Forest District Ranger, Mike Duncan's decision, dated October 29, 2019, to suspend 30 percent of your (i.e. appellant) Term Grazing Permit No. 5328H for the 2020 and 2021 grazing seasons. The permit violation cited in the record is the allowance of livestock to graze in greater numbers, or at times and places outside those authorized by your grazing permit. Your permit authorizes 71 head of cow-calf pairs during the season of June 16 through September 25 on the Montpelier Elk Valley C&H Allotment. The appeal record was closed after your oral presentation on March 17, 2020. My review focused on the appeal of the suspension, the District Ranger's responsive statement, your reply to the responsive statement, and your oral presentation.

I find District Ranger Duncan's decision consistent with all applicable laws, regulations, and agency policy. However, I am instructing District Ranger Duncan to investigate options within his jurisdiction to reduce the public impacts on your private land.

### **Background**

As documented in Ranger Duncan's Responsive Statement and the appeal record, you have been repeatedly notified of your livestock grazing in the wrong pasture, places, and time over the last thirty years. After receiving District Ranger Duncan's suspension decision you filed a timely appeal on December 13, 2019. Mediation occurred February 18, 2020 with no agreement being met, at which time I reinstated the appeal. I received your reply to the responsive statement, dated March 13, 2020. After hearing your oral presentation on March 16, 2020, I informed you that I would render a decision within 30 days.

As discussed in the reply to the responsive statement and further clarified in the oral presentation, I will address issues which are in the bolded print, and my response follows:

### **Excess Use Charge (patently unfair) and grazing alternative- FS managed public.**

Private lands are not under District Ranger Duncan's jurisdiction. He does have the responsibility and authority to suspend or cancel up to 100 percent of a term permit for violation of terms or conditions (Exhibit 2). You reviewed and accepted the terms and conditions in the Term Grazing Permit (Exhibit 1) that includes Part 2, section 8, paragraph (d) states, "...the



*permittee shall be billed for excess use at the unauthorized use rate.”* The appeal record included Bill for Collections for excess use/unauthorized use issued in 2000, 2004, 2007, 2008, 2013, 2016, 2018 and 2019.

### **Frequency of rider being sent out- actions of compliance**

The 2018 Notice of Noncompliance and Opportunity to Remedy letter, sent by District Ranger Duncan, included the actions and timeframes required by the appellant to resolve the non-compliance violations. The letter required you to adhere to the number, class, and places designated on Part 1 of the Term Grazing Permit and upon being contacted about excess or unauthorized cattle you will have 72 hours to have them removed, and no more than three instances will be allowed before permit action will occur (Exhibit 7). You were contacted six times from September 5 to October 16 to remove your livestock from the South of Oil Division. The documentation confirmed riders were sent; however, your cattle were not removed from the South of Oil Division until October 25th (Exhibit 6c).

### **Cattle at Issue are not part of permit being sanctioned- unauthorized use rather than Excess Use**

Forest Service Manual 2230 (Exhibit 2) direct a District Ranger to suspend or cancel grazing permits, rather than taking criminal action against a permit holder, if any livestock owned by the holder of a National Forest System grazing permit that grazes outside the permitted area, or at times other than specified in the permit. As designated in the Montpelier Elk Valley Cattle Allotment Annual Operating Instructions (Exhibit 9), livestock owned by the you were permitted to graze within the Lower Home Canyon/Aegetter Hollow/Whitman Area from June 16 to September 25, not the South of the Oil Division. You signed and accepted the annual operating instructions (Exhibit 9). Exhibit 6c documents that livestock owned by you grazed the South of the Oil Division from September 5 to October 25. District Ranger Duncan followed the appropriate agency direction on excess use, rather than unauthorized use.

### **Public Trespass – willful action**

As a result of excess use violations within the 2018 grazing season, District Ranger Duncan issued a Notice of Noncompliance and Opportunity to Remedy letter. You were required to adhere to the number, class, and places designated on Part 1 of the Term Grazing Permit and upon being contacted about excess or unauthorized cattle the appellant will have 72 hours to have them removed, and no more than three instances will be allowed before permit action will occur (Exhibit 7). A willful action was not issued, as described in Exhibit 15 Section 16.35 (Exhibit 15).

District Ranger Duncan and his staff inspected if the appellant was adhering to the outlined remedy actions and timeframes. Documentation includes brand identification, photos, cattle counted locations, photography, and mapped locations throughout the South Oil Division with dates witnessed and phone call records (Exhibit 6c). I conclude that the documentation was accurate and supported District Ranger Duncan’s decision to suspend 30 percent permitted use

after the appellant did not correct the remedy outlined in the Notice of Noncompliance and Opportunity to Remedy letter. (Exhibit 8).

### **The suspension and the length of the suspension is arbitrary and capricious**

Forest Service Handbook 2209.13 (Exhibit 15) Section 16.4 Suspension and Cancellation Guideline for Excess use recommends suspending 25 percent or more of the permitted numbers or seasons for at least two years if a violation of the terms and conditions occur. When the excess use noncompliance situation is resolved, a bill for excess use at the unauthorized use rate will be issued. For repeat offenses, a notice of permit action for noncompliance is issued documenting the repeat noncompliance and indicating that the permit is being canceled in whole or in part as appropriate to the circumstances.

District Ranger Duncan suspended 30 percent of permit number on the Montpelier Elk Valley Cattle Allotment for two years and provided a rationale that includes you did not comply with the direction stipulated in the Notice of Noncompliance and Opportunity to Remedy letter (Exhibit 8). District Ranger Duncan's decision followed administration guidelines.

### **Decision**

As documented in the District Ranger Duncan's Responsive Statement to the appeal, the appeal record indicates that violations of part 2 condition #8 of your term grazing permit occurred. Therefore, I find the Notice of Noncompliance and Opportunity to Remedy letter and the decision to take action were appropriate.

As documented in the appeal record, the appellant has demonstrated a history of repeatedly failing with only allowing only the numbers, kind, and class of livestock on the allotment during the period specified in Part 1. In the last thirty years, the appellant received ten letters describing repeated incidents of cattle grazing outside the authorization in your Term Grazing Permit. The reply to the responsive statement stated the root of the problem was the public. However, as I review the documentation (Exhibit 6c), I also noted other issues outside public influence such as riders dispatched, but cattle remain and appellant's band of sheep were documented outside the permitted season, place, and time.

During the oral presentation, the appellant said he was being "targeted" by the Forest Service. I reviewed the appeal record and documentation from 2018 and 2019. I found three other permit holders who received Notice of Noncompliance and Opportunity to Remedy letters in 2018 (Exhibit 12). In the compliance notes 2018 and 2019, several permit holders that were contacted for noncompliance issues addressed those issues and corrected the noncompliance issues. According to the record, the permit administration actions issued by District Ranger Duncan followed agency directives.

Based on the appeal record, I find that District Ranger Duncan applied a reasonable interpretation of the guidelines specified in Forest Service Handbook 2209.13 when he suspended 30% of your permitted use for two years. District Ranger Duncan and his staff gave

ample opportunity to comply with the remedy outlined in the Notice of Noncompliance and Opportunity to Remedy letter.

By this letter, I am upholding District Ranger Duncan's decision to suspend a 30 percent of permitted use for the 2020 and 2021 grazing season. This suspension will be in the form of reduced livestock numbers. I am also upholding his direction to you as specified in his decision letter of October 29, 2019, in that if additional violations of any nature occur during 2021, he will consider cancellation of your permit.

Sincerely,



MEL BOLLING  
Forest Supervisor

cc: Mike Duncan, Montpelier District Ranger

Fred Hunzeker and Sons  
c/o Dennis Hunzeker  
338 Washington Street  
Montpelier, ID 83241