



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Tonopah Field Office
P.O. Box 911
Tonopah, Nevada 89049
<http://www.blm.gov/nv/st/en.html>



In Reply Refer To:
4400 (NV065.06)

SEP 11 2008

CERTIFIED MAIL NO. 7007 3020 0000 1708 6612
Return Receipt Requested

Mr. Gary Snow
P.O. Box 5520
Fallon, NV 89407

NOTICE OF PROPOSED DECISION

Dear Mr. Snow:

INTRODUCTION

You applied for Temporary Non-Renewable (TNR) grazing use on the East Portion of the South Pasture of the Ralston Allotment on October 25, 2008 for 500 head of livestock from October 15, 2008 to May 10, 2009 and the West Pasture of the Ralston Allotment on April 14, 2008 for 100 head of livestock from November 1, 2008 to May 15, 2009. You signed the Terms and conditions on June 2, 2008. The Bureau of Land Management has completed a Determination of Land Use Plan Conformance and National Environmental Protection Act (NEPA) Adequacy (DNA) (NV065-DNA08-156) (Appendix I) on the TNR application. The TNR lease is based on the findings from the DNA and previous environmental assessments listed in the DNA.

Each TNR is subject to modification if it is discovered that the allotment is not maintaining or moving toward meeting objectives, standards and guidelines of the 1997 Tonopah Resource Management Plan (RMP) and Record of Decision, the 1997 Mojave-Southern Great Basin Resource Advisory Council (RAC), and the Bureau of Land Management (BLM) regulations and policies.

A letter was sent to the interested parties on June 23, 2008 for their comments relating to the proposed decision in accordance with 43 Code of Federal Regulation (CFR) 4130.2. The following interested parties provided comments during the 15 day period and are available for review in appendix II:

- Katie Fite, Biodiversity Director, Western Watersheds Project, P.O. Box 2863, Boise, ID 83701; Mr. Joe Dahl, P.O. Box 2392, Fallon, NV 89407
- Mr. Al Steninger, Western Range Service and for Colvin & Son, LLC, Range Management Consultants, P.O. Box 1330, Elko, NV 89803
- Tracy Kipke, Habitat Biologist, Nevada Department of Wildlife, Southern Region Office, Las Vegas, NV
- Krista Coulter, Dept. of Conservation and Natural Resources, Division of Water Resources, 901 South Stewart St., Suite 2002, Carson City, NV 89701
- Catherine Barcomb, Commission for the Preservation of Wild Horses, 885 Eastlake Blvd. Carson City, NV 89049 (telephone conversation).
- Mr. Gary Snow, P.O. Box 5520, Fallon, NV 89407

The comments were carefully reviewed and taken into consideration in developing the DNA (NV065-DNA08-156) and the proposed decision. Some of the comments were beyond the scope of this proposed decision and/or the area of consideration, and was not considered as part of the analysis.

Some of the information that was included in one of the comment letters is subject to the privacy statutes of the State of Nevada. For this reason we have not included this letter in the attachments.

Data and other documents requested are available for the interested party's review at the Tonopah Field Office, Bureau of Land Management, Tonopah, NV 89049.

BACKGROUND

The Ralston Allotment is a vacant allotment. The Final Decision of the Ralston Allotment Evaluation, dated, September 22, 1989, set the animal unit months within the Ralston Allotment at 10,727 AUMs. The proposed TNR is well under the preference of 10,727 AUMs.

Table 1 – Comparison of Preference under Final Decision and Proposed TNR

Ralston Allotment	Final Decision	Proposed TNR
Animal Unit Months	10,727	4,501

PROPOSED DECISION

Through the consultation, coordination and cooperation (CCC) process, your input as well as input from other interested parties has been considered in the development of the proposed decision. It is therefore, My Proposed Decision to permit:

Livestock Grazing Management Decision

Temporary Non-Renewable (TNR) grazing use on the East Portion of the South Pasture of the Ralston Allotment for 500 head of livestock from October 15, 2008 to May 10, 2009 and the West Pasture of the Ralston Allotment for 100 head of livestock from November 1, 2008 to May 15, 2009.

The BLM would authorize use in accordance with this decision and 43 CFR 4130.6-2 Non-renewable grazing permits and leases.

Terms and Conditions

"Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part" in accordance with 43 CFR 4130.3.

The following stipulations will be incorporated into the terms and conditions of the grazing authorization (refer to Appendix III for location of pasture).

Proposed Grazing Authorization

Table 2 – Allocation of Livestock Number per Pasture

Pasture	Grazing Period		Maximum Number of Livestock	Animal Unit Months (AUMs)
	Begin	End		
Ralston (South Pasture East Portion)	10/15/08	02/28/09	500	2334
Ralston (South Pasture East Portion)	03/01/09	05/10/09	500	1167
Ralston (West Pasture)	11/01/08	02/28/09	100	395
Ralston (West Pasture)	03/01/09	05/15/09	100	250

Terms and Conditions (the following terms and condition were signed by the applicant on June, 2008)

1. The terms and conditions of this grazing authorization must be consistent with the Standards and Guidelines for Healthy Rangelands established by the Mojave Southern Great Basin Area Resource Advisory Council in 1997.
2. Notify the Tonopah BLM two days prior to the turnout of livestock as agreed by the affected parties.
3. Proper use levels for grasses at 55 percent and for shrubs at 45 percent. Livestock will be removed or moved to a new area prior to attaining the maximum allowable utilization level of 50 percent.
4. Livestock will not be allowed to concentrate at any water haul sites.
5. Grazing will not occur in the spring if drought (75 percent of normal) persists through the winter months.
6. 43 CFR §4130.8-1 (f) states: Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed \$250.00.
7. Salt blocks will be placed more than one mile from water developments.
8. Changes requiring the reissue of a grazing bill after the bill has been sent to the lessee will be subject to a service charge of \$10.00 per bill under 43 CFR §4130.8-3.
9. The holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of Native American remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined in 43 CFR 10.2). Further pursuant to 43 CFR 10.4(c) and (d), the holder must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer. The holder is responsible for the cost of consultation, evaluation and mitigation. Any decision on treatment and/or mitigation will be made by the authorized officer after consulting with the holder.
10. Temporary water haul sites will used to distribute livestock on the Ralston Allotment.
11. Request for temporary water haul sites will be made to the authorizing officer one month prior to the onset of grazing.
12. Temporary water haul sites will be removed when no longer required or authorized in accordance with 43 CFR 4120.3-1(a) States "Range Improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple use management."

13. Temporary water haul sites must have a cultural clearance before the placement of the temporary water hauls.
14. The temporary water haul sites will be removed if the utilization levels have reached the maximum allowable use levels within a three-mile radius.
15. Water hauls sites will not be placed next to or adjacent to range improvement projects on the Ralston Allotment.
16. Range improvement projects on the Ralston Allotment will not be used for watering livestock or other activities.
17. Bird ladders are required in all water troughs in accordance with Executive Order 13186 – Responsibilities of federal Agencies to Protect Migratory Birds.

RATIONALE

The rationale for this decision is based on a DNA and corresponding environmental assessments conducted pursuant to the National Environmental Policy Act (NEPA), which is enclosed with this document.

Temporary Non-Renewable use was applied for by a qualified applicant in a vacant allotment with available forage. This temporary authorization is consistent with the multiple use objectives. The recent monitoring (Appendix IV) data indicates that utilization levels at the following Key Areas in the area of consideration were 0-5 percent or negligible use.

AUTHORITY

The authority for this decision is contained in Title 43 of the Code of Federal Regulations (CFR) including, but not limited to the following:

§ 4130.2 states in part:

"(a) Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other BLM administered lands that are designated in land use plans as available for livestock grazing. ..."

"(c) Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources."

§ 4130.3 states:

"Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part."

4130.3-1 states:

"(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment."

"(b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or any terms or condition of the permit or lease."

§ 4130.3-2 states in part:

"The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands."

§ 4130.6-2 (a) states:

"Nonrenewable grazing permits or leases may be issued on an annual basis, as provided in § 4110.3-1 (a), to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands. The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance of nonrenewable grazing permits and leases."

§ 4160.1(a) states:

"Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public."

§ 4160.2 states:

"Any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision."

PROTEST

In accordance with 43 CFR 4160.2, any applicant, permittee, lessee or other interested public may protest the proposed decision under 4160.1 of this title, in person or in writing to the authorized officer (Thomas J. Seley, Field Manager, Tonopah, Tonopah Field Office, Bureau of Land Management, P.O. Box 911, Tonopah, NV 89049) within 15 days after receipt of such

decision. The protest, if filed, must clearly and concisely state the reason(s) why the protestant thinks the proposed decision is in error.

In accordance with 43 CFR 4160.3 (b), should a timely protest be filed with the authorized officer, the authorized officer will reconsider the proposed decision and shall serve the final decision on the protestor and the interested public.

In accordance with 43 CFR 4160.3 (a), in the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice.

APPEAL

In accordance with 43 CFR 4.470, 4160.3 (d), and 4160.4, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 CFR 4.470, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

Pursuant to 43 CFR 4.461 and 4160.3 (d), an appellant also may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision.

The appeal and any petition for stay must be filed at the office of the authorized officer (Thomas J. Seley, Assistant Field Manager, Tonopah, Tonopah Field Station, Bureau of Land Management, P.O. Box 911, Tonopah, NV 89049), within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Solicitor, Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825-1890. Pursuant to 43 CFR 4.471 (c), a petition for stay, if filed, must show sufficient justification based on the following standards:

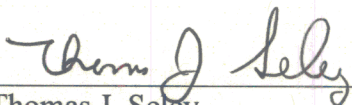
- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division in Salt Lake City, Utah, a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the

person must serve copies on the appellant, the Office of the Solicitor, and any other person named in the decision (43 CFR 4.472 (b)).

At the conclusion of any document that a party must serve, the party or its' representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c) (2)).



Thomas J. Seley
Field Manager

Enclosures

cc:

List of interested parties who provided comments