

Joe Dahl
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July 10, 2008

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Bureau of Land Management
Tonopah Field Office

Mr. Thomas J. Seley
Bureau of Land Management
Tonopah Field Manager
P.O. Box 911
Tonopah, Nevada 89049

Reply to: 4400 (NV065.06)

Dear Tom,

I enjoyed our conversation of a few days ago concerning the Ralston Allotment and the most resent Hage vs U.S. decision. Then, when I got home there was a "Dear Interested Party" letter from you concerning your intention to issue temporary non-renewable grazing on the Ralston Allotment.

ENCLOSED:

Please find a pertinent letter written nearly four years ago to Bill Fisher from Eureka County Natural Resources Department, written by Jon Hutchings. The underlined parts, and more, of this letter seem to apply to the present Ralston Allotment question. May I, please, ask for your comments?

Beside the Temporary Non-renewable misuse I'm sure that by now you are well aware of the disease that the transient cattle brought when you allowed them onto Ralston Allotment last year.

Your misuse of Temporary Non-renewable is creating instability similar to the tramp sheepherders that was a big consideration for the enactment of the Taylor Grazing act.

There should be a stability in the community by having the grazing allotment attached to the ranch.

As far as the Hage decision which we discussed:

No value in the permit, nothing was taken when the permit was canceled. Hage still holds all the livestock water right and what the judge called the fee lands, in Hage IV, in the Ralston Allotment.

It is improper for you to allow anyone other than the holder of the water to use that allotment.

Your act of canceling the permit ended your authority in managing that allotment.

Canceling the permit logically and naturally would create the circumstances prior to the permit when Hages predecessors grazed on the allotment mapped by the State Engineer based on the filed livestock water rights. As we discussed, this clashes with the court in COLVIN explaining about grazing by suffrage of the Government which the Government may end at will and creates no right. However, in the accumulation, in the Hage trial, of facts and decisions, the only clear conclusion is that Hage holds the livestock water which was not affected by the cancellation of the permit ("There is no taking of the right to water livestock when a grazing permit is cancelled." HAGE V page 8, footnote 8). The only way Hage can enjoy this property right remaining after the permit is cancelled is to have a cow or cattle drink the water to continue showing beneficial use and the cow is expected to eat the available feed in the area of the water.

Between us I don't think we need to talk about the impracticalities of leading the cow from some other feed to one of these isolated desert water sources nor for that matter diverting this small amount of water to some distant farm where it would become a small fraction of the water required to grow crops.

I understand that your guide is the CFR's, but they only apply when there is a permit.

Thank you for the opportunity to comment and protest, please respond, to me, or in your decision. I encourage you to not allow this further abuse to the Hage family.

Respectfully,



Joe Dahl

cc:

Ron Wenker

EUREKA COUNTY
DEPARTMENT of NATURAL RESOURCES
PO BOX 682
EUREKA, NV 89316

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August 12, 2004

William Fisher
Assistant Field Manager-Tonopah
P.O. Box 911
Tonopah, NV 89049

Dear Bill,

This letter is in response to your July 28th, 2004 Notice of Proposed Multiple Use Decision (PMUD) for the Magruder Mountain Allotment. The PMUD is in error, because existing law does not provide that permits of less than ten years in duration be issued to satisfy temporary needs of graziers.

The Magruder Mountain Allotment is vacant only in as much as the recent ten-year permit was cancelled for non-compliance with Terms and Conditions. 43 USC 1752 requires that forage be reallocated by ten-year permit unless a shorter period is "...in the best interest of sound land management." There is no provision, nor did Congress intend, that short-term permits be issued from time to time and at the whim of the authorizing officer to make forage available to at-large graziers on a temporary basis.

Proposed criteria for approving grazing applications are not consistent with the provisions of 43 CFR 4110.2 related to Grazing Preference. You propose that a preference position on another allotment, together with several other criteria that do not appear in regulation, may qualify an individual for a preference position on the Magruder Mountain Allotment. Ultimately, successful applicants may not hold appropriate base property or may not otherwise qualify for the grazing preference at hand. The authorizing officer does not have authority to determine priority position for the purpose of receiving a grazing permit outside of existing regulation. To do otherwise would prejudice otherwise qualified applicants.

Regulations providing for nonrenewable grazing permits are used to justify issuing short-term permits; however, these regulations do not provide authority for issuing permits of less than 10 years in duration, except in specific circumstances. Recognizing the need to provide for occasional use of excess forage, the Secretary of Interior created the nonrenewable permit. As per 43 CFR 4130.6-2, nonrenewable grazing permits are limited to situations in which forage is temporarily available for livestock use. CFR 4110.3-1 qualifies the intent of nonrenewable permits by stating that "[a]dditional forage temporarily available for livestock grazing use may be apportioned..." The words additional forage clearly refer to forage that is in excess of a long-term (or base) carrying

To Tom Seley
July 9th, 2008
for Ralston Allotment

capacity. In the present case, BLM assumes that the base carrying capacity for livestock is zero. Closer analysis of the allotment is likely to reveal the allotment can support a viable number of livestock in the long-term and make significant progress toward meeting Resource Advisory Council Standards. What seems to be lacking in the present case is a desire to develop an appropriate management plan.

If implemented, the present decision will adversely impact citizens of Eureka County, the livestock industry, the State of Nevada and the nation. Livestock-raising is an important economic and cultural component of Nevada's rural community. The viability of cow-calf production in rural Nevada depends on stable access to federal lands. That viability is threatened by the specter of short-term permit renewals. The private sector is equipt to accommodate short-term forage needs of livestock graziers. There is no need to impinge on that valid economic use of private and federal lands. Given the many unresolved issues associated with the Magruder Mountain FMUD, I request that BLM consider extending the present comment period to render a more thorough and public analysis.

Respectfully,

Jon Hutchings, Ph.D.
Natural Resources Manager

cc: Eureka County Public Lands Advisory Commission
Board of Eureka County Commissioners
Board of Esmeralda County Commissioners
Board of Nye County Commissioners
John Milton, Nevada Association of Counties
Pete Goicoechea, Assembly District 35
Dean Rhoads, Legislative Committee on Public Lands
Gary McCuin, Nevada Department of Agriculture
Bob Abbey, BLM State Director
Preston Wright, Nevada Cattlemen's Association
Jeff Eisenberg, Public Lands Council