

UNITED STATES DEPARTMENT OF THE INTERIOR

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OFFICE OF HEARINGS AND APPEALS

NOV 16 2005

HEARINGS DIVISION

DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE DIRECTOR  
BUDGET AND PLANNING DIVISION

IN RE *FILIPPINI RANCHING COMPANY; HANK AND MARIAN FILIPPINI FAMILY TRUST*

The interests of *FILIPPINI RANCHING COMPANY* and *HANK AND MARIAN FILIPPINI FAMILY TRUST* ("Appellants") are adversely affected by a "Final Multiple Use Decision Carico Lake Allotment" dated September 30, 2005 ("2005 FMUD") including its associated Decision Record, EA, FONSI and Rangeland Health determinations (hereinafter all referred to as "Decision"), and hereby appeal said Decision pursuant to 43 CFR 4.470 and 4160.4. The Decision was issued by an authorized officer of the U.S. Department of Interior, Bureau of Land Management with the Battle Mountain Grazing District, Nevada. The Statement of Reasons of Appellants are attached hereto and incorporated by reference to this notice of appeal.


Designation of representative. Appellants designate W. Alan Schroeder, P.O. Box 267, Boise, Idaho 83701 (208-384-1627, Ext. #2), as the representative of Appellants in all aspects of this appeal. He is eligible to practice before the Department under the provisions of 43 C.F.R. 1.3(b)(2), being an attorney at law admitted to practice before the courts of Washington and Idaho. Appellants direct the Department and its officers and agents to serve its representative in all aspects of this appeal and authorizes its representative to bind Appellants in all aspects of this appeal.

Reserve right to Petition for a Stay. This Notice of Appeal and Statement of Reasons do not petition for a stay at this time, but reserves the right to Petition for a Stay.

Demand to Transmit appeal. Appellants give notice to the Bureau of Land Management to transmit this filing to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah "within 10 days after receipt" of this filing, as required by 43 CFR 4.472(a) (as amended). See 68 Fed.Reg. 68765, 68770 (12/10/03). Appellants request that you simultaneously serve a copy of your transmittal upon Appellants' lawyer at the above noted address.

Privacy Act Request for Access. This request is made pursuant to 43 CFR 2.45, et. seq. Appellants request access to all records which relate to it which are contained in a system under the control of the Department and the Bureau of Land Management, and to review the records and, on separate specific request, have a copy made of all or any portion thereof for a copying fee which appellants are willing to pay according to the schedule of the Department published as Appendix A to 43 CFR Subtitle A Pt.2. Appellants authorize the Department and the Bureau of Land Management to open said records to its representative (or designee) designated herein within or without the presence of the Appellants, and further authorizes discussion of said records with such representative.

Respectfully submitted, October 31, 2005.

  
\_\_\_\_\_  
W. Alan Schroeder  
the lawyer for Appellants

## STATEMENT OF REASONS

HANK AND MARIAN FILIPPINI FAMILY TRUST owns, and FILIPPINI RANCHING COMPANY controls a Grazing Preference within the Carico Lake Allotment, Battle Mountain Grazing District, Nevada. This Grazing Preference is authorized under a Grazing Permit issued to FILIPPINI RANCHING COMPANY to the extent of 777 AUMs.

Appellants only appeal the Decision as it relates to the public land that exists within what the 2005 FMUD prescribes in Appendix A as the Filippini Ranching Company Use Area, and then only as related to Appellants. While the Decision implicates other permittees within the Carico Lake Allotment, Appellants do not appeal the Decision as related to them. In addition, Appellants do not appeal the Wild Horse Management Decision (2005 FMUD, pp. 68-75) or the Wildlife Management Decision (2005 FMUD, pp. 74-75).

(1) Appellants appeal the Decision for the reasons stated in their comments to the assessment and protest to proposed decision, which are incorporated herein.

(2) Appellants appeal the determinations made that standard were not being met within the area of use assigned by the Decision, i.e. the Filippini Ranching Company Use Area. See Appellants' comments to the assessment and protest to proposed decision, which are incorporated herein.

(3) Appellants appeal the application of the applicable Standards for Rangeland Health and Guidelines for Livestock Grazing Management as being beyond statutory authority, as being inconsistent with the applicable land use plan, and/or as being unreasonable in their application to the now established Filippini Ranching Company Use Area of the Carico Lake Allotment.

(4) Appellants appeal the Assessment and determinations. See Statement of Reasons (1).

(5) Appellants appeal BLM's Environmental Assessment and Finding of No Significant Impact consistent with the Statement of Reasons herein. The EA does not include a reasonable range of alternatives, fails to analyze various direct and indirect effects,

including cumulative impacts, suffers from a variety of other deficiencies, as identified in Appellants' comments and protest, particularly as related to the apportionment of available forage within Filippini Ranching Company Use Area of the Carico Lake Allotment.

(6) Appellants do not appeal issuance of a Grazing Permit to the Appellants for a period of ten years, though Appellants do not agree with its rationale for the reasons stated herein. 2005 FMUD, p. 46, Number 5. However, Appellants appeal the terms and conditions being incorporated into the permit consistent with the Statement of Reasons herein.

(7) Appellants appeal the limitation of total active permitted use to 777 AUMs within Filippini Ranching Company use area of the Carico Lake Allotment. 2005 FMUD, pp. 42-43, Number 1.

(A) Appellants appeal the quantification of grazing capacity by BLM within such use area. The Decision errs in its quantification of grazing capacity to then drive a rational determination of Permitted use. Specifically, although BLM collected utilization and actual use data by which to make a quantification of grazing capacity via the actual use-utilization method, BLM failed to apply those critical elements and to legally and rationally apply such method to quantify grazing capacity.

(B) Independent of the quantification of grazing capacity by BLM, a change in Permitted use and an increase in Permitted use and Active use was warranted within such use area. 43 CFR 4110.3-1(c).

(8) Appellants do not appeal the establishment of the Filippini Ranching Company use area, though Appellants do not agree with the Rationale for the reasons stated herein. 2005 FMUD, pp. 42-43, Number 2. However, Appellants appeal such use area to the extent that BLM will demand or expect Appellants to maintain their livestock at all times within such use area, since the boundary of such use area is not entirely fenced or otherwise barricaded. Based thereon, drift of livestock should be reasonably expected out of

such use area even though Appellants may exercise best efforts to manage their livestock within such use area.

(9) Appellants appeal the "grazing management system" and "Terms and Conditions" consistent with the Statement of Reasons herein, particularly as stated in Appellants' comments and protest. 2005 FMUD, pp. 44-46, Number 3. However, Appellants do not appeal Term and Condition Number 7, if interpreted and applied as being conditional in nature and that any modification will be issued consistent with 43 Part 4100, Subpart 4160.

(10) Appellants appeal the need for a formal agreement relative to range improvements within the Filippini Ranching Company use area. 2005 FMUD, p. 46, Number 4.

#### CERTIFICATE OF FILING and SERVICE

I certify that on October 31, 2005, I transmitted the foregoing document to " *the BLM field office that issued the decision*" in accordance with 43 CFR 4.470(a), 4.471(a) (*as amended*), and I did so by depositing with U.S. Postal Service at Boise, Idaho an envelope containing the original of said document, with postage for *certified mail, return receipt requested*, addressed to said office, as follows:

USDI-BLM  
Battle Mountain Field Office  
50 Bastian Road  
Battle Mountain, Nevada 89820;

and, in addition, on October 31, 2005, I served a copy on the "*appropriate office of the Office of the Solicitor*" in accordance with 43 CFR 4.471(b)(2) (*as amended*), by depositing with U.S. Postal Service at Boise, Idaho an envelope containing a copy of said document, with postage for *certified mail, return receipt requested*, addressed as follows:

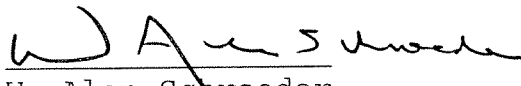
Regional Solicitor, Pacific Southwest Region  
U.S. Department of Interior  
2800 Cottage Way, Room E-2753  
Sacramento, California 95825-1890;

and, in addition, on November 14, 2005, I will serve a copy on the "person(s) named in the decision" in accordance with 43 CFR 4.470(a), 4.471(b)(1) (as amended) by depositing with U.S. Postal Service at Boise, Idaho an envelope containing a copy of said document, with postage for *certified mail, return receipt requested*, addressed as noted in Exhibit "A", attached hereto:

and, in addition, on October 31, 2005, I served a *courtesy copy* thereof by depositing with the U.S. Postal Service at Boise, Idaho an envelope containing a copy of said document, with postage for *first class mail*, as follows:

Filippini Ranching Company  
Hank and Marian Filippini Family Trust  
HC 61, Box 70  
Battle Mountain, Nevada.

Dated: October 31, 2005.

  
W. Alan Schroeder

**EXHIBIT "A"**

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