



United States Department of the Interior
Bureau of Land Management



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DEC 17 2001

In Reply Refer To:
4130
(NV-0320)

NOTICE OF FINAL DECISION

The purpose of this Decision is to open that portion of the Edwards pasture that was closed after the 1999 New Pass Fire. Also being opened to grazing is that portion of the Bell Flat pasture, affected by the by the Sand Springs-Fairview Fires of 1999.

In the summer of 1999, the New Pass Fire (J746) burned approximately 47,626 acres in and adjacent to the New Pass Mountain Range. The burn affected approximately one half of the Edwards pasture of the Clan Alpine Allotment. This affected both the cattle and sheep operations. Also during the summer of 1999, the Sand Springs/Fairview Fire (J708) burned approximately 15,200 acres of the Bell Flat pasture, or approximately thirty percent of the total acreage. This pasture is used by cattle. The burned portion of these pastures were closed to grazing, by way of a Multiple Use Decision, placed in Full Force and Effect, on February 3rd, 2000.

After two growing seasons, that included total rest from livestock grazing and wild horse use (no horse use within the Bell Flat pasture), and based on current monitoring and site recovery information, it is my Decision to open the areas burned in the Edwards and Bell Flat pastures, beginning on December 17th, 2001. Grazing use will again conform to the Allotment Management Plan in place prior to the burn.

Domestic Livestock

- (1) The entire closed area of the Edwards and Bell Flat pastures, affected by the New Pass and Sand Springs/Fairview Fires, respectively, in the Clan Alpine Allotment, will be opened to grazing no later than December 17th, 2001.
- (2) Grazing use by domestic livestock will again conform to the Allotment Management Plan, in place prior to the burn, for the cattle operation. Use by sheep will resume as per the Term Grazing Permit.

Wild Horses

- (1) That portion of the HMA, contained within the Edwards pasture, affected by the New Pass Fire, will again be opened to grazing by both wild horses and domestic livestock.

- (2) At the present time, wild horses have established themselves in the Edwards pasture of the New Pass HMA. Our policy has been to remove any horses that had entered the burned area, however, from this point forward no removal will be necessary until the AML is met or exceeded.
- (3) Should wild horses establish themselves outside of the HMAs, they will be removed.

RATIONALE

Based on monitoring conducted over the last year it was determined that the vegetation in the burns have made sufficient recovery to again handle livestock and wild horse grazing with no ill affects. Very little, if any mortality, occurred on perennial grass plants in the burn. All plants are very vigorous, abundant and productive, this despite the readings taking place in a drought year.

Three Rangeland Health Evaluation transects were completed in the Edwards pasture which indicated the following:

Site 1

T 20 N, R 39 E, Section 10, NE 1/4

Soil/Site Stability	Stable
Biotic Integrity	Stable
Watershed Function	Stable

Site 2

T 21 N, R 40 E, Section 18, SE 1/4

Soil/Site Stability	Stable
Biotic Integrity	Stable
Watershed Function	Stable

Site 3

T 22 N, R 40 E, Section 31, SW 1/4

Soil/Site Stability	Stable
Biotic Integrity	Stable
Watershed Function	Stable

Six Rangeland Health Evaluation transects were completed in the Edwards pasture which indicated the following:

T 16 N, R 34 E, Section 14, SWSW

Soil/Site Stability	Stable
Biotic Integrity	Stable
Watershed Function	Stable

T 16 N, R 34 E, Section 23, SESE

Soil/Site Stability	Stable
Biotic Integrity	Stable
Watershed Function	Stable

T 16 N, R 34 E, Section 36, SWSW

Soil/Site Stability	Stable
Biotic Integrity	Stable
Watershed Function	Stable

T 15 N, R 34 E, Section 11, NWNW

Soil/Site Stability	Stable
Biotic Integrity	Stable
Watershed Function	Stable

R 15 N, R 34 E, Section 15, NESW

Soil/Site Stability	Stable
Biotic Integrity	Stable
Watershed Function	Stable

T 16 N, R 35 E, Section 31, SWSE

Soil/Site Stability	Stable
Biotic Integrity	Stable
Watershed Function	Stable

In addition to these transects, percent cover was determined using line intercept transects. For these range sites, the shrub component is a key indicator in meeting cover requirements. It has, for the most part in these burns, been totally removed. The vegetative composition is dominated by perennial grasses, with varying amounts of cheatgrass, being the dominant annual.

The return of the shrubby component (sagebrush), could take between 20 and 30 years, perhaps longer. This is based on studies conducted within burned areas, throughout the West, that contained Wyoming and Mountain Big Sagebrush. For the other areas that contained shadscale and bud sagebrush, recovery for the shrubby component in these areas could take up to a minimum of 10 years, based on professional judgement. Due to this scenario, the ability to meet a 50% cover criteria, for any of these

range sites, will not be met in the near future.

For both fires, the majority of grazing takes place in areas that generally receive less than 12 inches of precipitation annually, with many of these sites in the 4-8 inch annual precipitation zone. Therefore, the Carson City Field Office has established criteria, based upon areas under 12 inches of precipitation per year and over 12 inches of precipitation per year. These burned areas are classified as under 12 inches of annual precipitation.

CRITERIA FOR AREAS UNDER 12 INCHES OF PRECIPITATION:

1. The burn areas will be rested for grazing of domestic livestock for a minimum of two years, which has been the case for both of these fires.
2. On burns within the fall/winter use areas, grazing will be restored up to 100 percent of the pre-burn stocking rate, with a target utilization level of moderate use. The Edwards pasture is grazed by cattle between 09/01 and 10/31 and by sheep between 12/01 and 03/15. The Bell Flat pasture is grazed between 12/01 and 03/31.
3. On burns within spring/summer use areas, grazing will be restored up to 100 percent of the pre-burn stocking rate, with a target utilization of high slight to low moderate use.
4. All decisions to restore grazing and at what level will be influenced by past experience as to permittee cooperation and ability to follow grazing systems.
5. Each burn will be monitored annually by the Field Office specialists to obtain utilization levels.
6. These utilization levels and the data gathered from the area's line intercept cover transects will be used to indicate the trend of the burn restoration.
7. This trend information will be used to make annual adjustments to stocking rates and/or length of season of use.

Grazing should not be detrimental, rather it should be beneficial. Right now, the overwhelming amount of litter is not in contact with the soil surface. The seed produced remains on the soil surface, for the most part. By opening the former burns to grazing, numerous beneficial effects will occur: 1) Animals moving through the area will place a lot of the litter in contact with the ground, providing for enhanced soil surface protection, allowing the nutrient cycle to begin, enhancing water retention and lowering soil surface temperatures; 2) Hoof action will place the seed produced in closer contact with the soil (seed bed preparation); and, removal of plant material will stimulate greater vegetative growth for next years growing season.

Under the current grazing system, vegetative frequency and health should be enhanced. The grasses, for the most part, are used during the dormant period. The shrub component should gradually increase over the years, reaching the point where overall cover estimates for the various range sites can potentially be met.

AUTHORITY

§4110.3-2(a) states that "Permitted use may be suspended in whole or in part on a temporary basis due to drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements."

§4110.3-3(b) states that "When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continue grazing use poses an imminent likelihood of significant resource damage, after consultation with, or a reasonable attempt to consult with, affected permittee or lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (s) of this section.

Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR §4.21."

§4130.3 states that "Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource conditions 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."

§4130.3-2 states that "The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for the proper range management or assist in the orderly administration of public rangelands. These may include but are not limited to: (c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands; and (f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;"

4140.1(b)(1)(i) states "persons performing the following prohibited acts related to rangelands shall be subject to civil penalties set forth at 4170.1 and 4170.2: Allowing livestock or other privately owned or controlled animals to graze on or to be driven across these lands (iii) in an area or at a time different from that authorized."

§4160.3(f) states that “Notwithstanding the provisions of Sec. §4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of hearings and Appeals when the authorized officer has made a determination in accordance with Sec. §4110.3-3(b) or Sec. §4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place decisions in full force and effect as provided in Sec. §4.21(a)(1) of this title.

§4700.0-2 states that “The objective of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use; protection of wild horses and burros from unauthorized capture, branding, harassment, or death; and humane care and treatment of wild horses and burros.”

§4700.0-6(a) states that “Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.”

§4700.0-6(b) states “Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.”

§4710.1 states that “Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans prepared pursuant to part 1600 of this title.

§4710.3-1 states that “Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in Sec. §4710.4. The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas.”

§4710.4 states that “Management of wild horses and burros shall be undertaken with the objective of limiting the animal’s distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.”

§4720.1 states in part that “Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately in the following order.....”

§4770.3(c) states that “Notwithstanding the provisions of paragraph (a) of Sec. §4.21 of this title, the authorized officer may provide that decisions to remove wild horses and burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

GUIDANCE

Guidance is found within the Standards and Guidelines, as approved by the Secretary of the Interior on February 12, 1997, for the Sierra Front – Northwestern Great Basin Resource Advisory Council.

Guideline #4 states that “After a range fire or other natural catastrophic event, vegetation should be returned to the native species as rapidly as possible, to afford forage and habitat for native animals. If a nurse crop is needed to protect the land from erosion, all native nurse crops should be used first.”

Guideline #5 states that “Treated areas will be rested from livestock grazing to two growing seasons or until seedlings are established or the vegetative response has achieved objective levels. Wild horse and burros removed from herd Management Areas will be restored after rehabilitation objectives have been met.”

Guideline #12 states that “Departure from traditional grazing management practices may be authorized by BLM to achieve Standards on a case by case experimental basis for rangeland restoration and rehabilitation.”

Guideline #18 says to, “Implement aggressive action to reduce the invasion of exotic plant species into native plant communities. Control the spread of noxious weeds through various methods such as, grazing management, fire management and other vegetative management practices.”

Guideline #21 says to “Implement grazing management practices that sustain biological diversity across the landscape.”

APPEAL

Livestock

It is my decision that the opening of the allotment be placed in full force and effect as provided under 43 CFR §4160.3(f). Any applicant, permittee, lessee, or other person whose interest is adversely affected by the Final Decision may file an appeal and petition for stay of the Decision pending final determination of the appeal pursuant to 43 CFR §4160.4 and §4.470. Appeals and petitions for a stay of the Decision shall be filed within 30 days after receipt of the Final Decision in person or in writing to the Assistant Manager, Renewable Resources, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

Should you wish to file a motion for stay, the appellant shall show sufficient justification based on the following standards under 43 CFR §4.21:

- (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.
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer.

Wild horses

It is my decision that the opening of the allotment be placed in full force and effect as provided under 43 CFR §4160.3(f). Any applicant, permittee, lessee, or other person whose interest is adversely affected by the Final Decision may file an appeal and petition for stay of the Decision pending final determination of the appeal pursuant to 43 CFR §4160.4 and §4.470. Appeals and petitions for a stay of the Decision shall be filed within 30 days after receipt of the Final Decision in person or in writing to the Assistant Manager, Renewable Resources, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error. The appeal must be filed in accordance with the procedures outlined in the enclosed Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals.

Should you wish to file a motion for stay, the appellant shall show sufficient justification based on the following standards under 43 CFR §4.21:

- (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.
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer.



Daniel L. Jacquet
Assistant Manager, Renewable Resources
Carson City Field Office

12/17/01
Date