



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Carson City Field Office
5665 Morgan Mill Road
Carson City, Nevada 89701
775-885-6000
<http://www.nv.blm.gov>



In Reply Refer To:
4160/4770
(NV-032)

MAR 13 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Interested Public:

The Flanigan Allotment's cattle grazing operation has been affected by a wildland fire, the Fish Fire Complex (J787), that occurred during August of 1999. The entire summer pasture of the Flanigan Allotment was burned. Maps of this burn are available at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

The Carson City Field Office has seeded the entire burn area in the Flanigan Allotment which includes all 10,550 acres of the HMA.

GRAZING DECISION
FLANIGAN ALLOTMENT

In order to allow seeded areas to establish and the surviving native vegetation time to attain growth and vigor, my decision relating to livestock grazing within the Flanigan Allotment is as follows:

- A. In accordance with 43 CFR §4110.3-3(b), the following areas are closed to grazing for the next two growing seasons or until rehabilitation objectives have been met. Upon determination that the rehabilitation objectives have been met, authorized grazing use may resume.

The legal descriptions of the areas closed include the following sections or portions thereof::

<u>Fire</u>	<u>Township</u>	<u>Range</u>	<u>Sections</u>
Fish	25 North	18 East	1, 2, 11-14, NE ¼10, E ½ 3
	25 North	19 East	1-12
	26 North	18 East	36, E ½ 35
	26 North	19 East	25-28, 31, 36, S½ 24, SW ¼ 22, W ½ 21, SE ¼ 20, E ½ 29

The above legal descriptions include 100 percent of the Cold Springs Pasture. None of the other pastures are affected to any great extent.

- B. In accordance with §4130.3-2, where fencing is ineffective, intensified herding will be necessary to more fully control livestock.
- C. In accordance with §4130.3-2(c), authorization is granted to use salt and/or supplements. Per the terms and condition of the grazing permit, salt and/or supplements will be placed at least one-quarter mile from live waters (springs/streams) and outside associated riparian areas, permanent livestock watering facilities, wet or dry meadows, and aspen stands. Also salt and/or supplements will not be placed in known historic properties.
- D. In accordance with §4130.3-2, the treatments and schedules will be monitored to determine the effectiveness of management applications. Any action(s) and/or modifications may be taken that are deemed appropriate to limit the spread and establishment of exotic and/or noxious plant species.
- E. In accordance with §4130.3-2, in the event that livestock drift into the areas closed to grazing becomes a recurring problem, it may be necessary to close the winter and spring pastures entirely to livestock grazing.

RATIONALE

Adequate time is needed for the burned and rehabilitated areas to reestablish a vigorous native perennial vegetative community. This will move toward meeting the standards for rangeland health identified in the Standards and Guidelines as established by the Sierra Front – Northwestern Great Basin Resource Advisory Council.

Establishing temporary and/or permanent water haul sites and the use of salt and/or supplements are effective means to control livestock distribution. Although burned in the fire, an existing fence appears adequate to prevent livestock movement onto the burned areas. Should this fail a

more intense herding program can further limit the potential of animals entering the burned areas.

Flexibility is an integral part of any management activity. It is crucial that adaptive management techniques are available to managers to confront the potential problem of exotic plant species, particularly cheatgrass, becoming the dominant vegetation.

The permittee has taken a voluntarily reduction of 1404 AUMs and will have no livestock on the allotment between July 15th and December 1st for the next two years. The Cold Springs Pasture will receive no use for the next two growing seasons.

It is not felt that drift onto the burned areas will be a persistent problem. It is, however, expected that some drift may occur. If it does, the permittee will take immediate action to remove the livestock. If a recurrent problem develops, appropriate BLM action will be taken, ranging from portions of the other pastures being closed to total closure of the allotment. This could result in further reductions in the herd size or additional time on private lands.

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 continued 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 (a) 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."

§4120.3-1(a) states that "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."

§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 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."

§4130.3-2 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 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 that “Persons performing the following prohibited acts related to rangelands shall be subject to civil and criminal penalties set forth at §§4170.1 and 4170.2: Allowing livestock or other privately owned or controlled animals to graze on or 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.

GUIDANCE

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

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 for 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.”

ADDITIONAL GUIDANCE

Emergency Fire Rehabilitation Plan – Fish Fire, approved on 11/5/99

APPEAL

It is my decision that the closure 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 HORSE DECISION
FLANIGAN ALLOTMENT

The Flanigan (HMA) located within the boundary of the Flanigan Allotment has been affected by the Fish Fire (J747) that occurred August of 1999. Approximately 47,600 public acres in three grazing allotments burned, with 10,550 acres burning within the boundaries of the Flanigan HMA. Maps of this burn are available at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

Removal of the wild horses, 198 head, within the Flanigan HMA was completed in October of 1999 and March of 2000.

The Carson City Field Office intends to aerial seed the entire burned area within the Flanigan Allotment boundary which includes 10,550 acres in the HMA. In order to allow seeded areas to establish and surviving native vegetation time to attain growth and vigor, and for the future enhancement of the HMA's.

DECISION

My decision relating to wild horses is as follows:

- A. In accordance with §§4720.1 and 4770.3(c), if during the period of closure to livestock for the Flanigan HMA, wild horses move into the burn area from adjacent HMAs these wild horses will be removed.

RATIONALE

The Flanigan Allotment contains 100 percent of the Flanigan HMA. The Fish Fire, though not burning the entire HMA, has essentially affected 100 percent of the acreage utilized by the wild horses. A total 10,550 acres of the 17,100 acre HMA burned, with Juniper Basin being the only area unaffected. The horses have free movement between the unburned and burned areas. As a result it is necessary to remove all of the horses present within the HMA. Adequate time is needed for the burned and rehabilitated areas to establish a native perennial vegetative community. This will move toward meeting the standards for rangeland health identified in the Standards and Guidelines as established by the Sierra Front – Northwestern Great Basin Resource Advisory Council. In order to achieve and maintain a thriving ecological balance and multiple-use relationship in these HMA's (burned areas), it is necessary to temporarily remove all wild horses and livestock. If grazing by large animals occurs in the burned areas, recovery will be delayed and the carrying capacity may be decreased. Once the vegetation has recovered to a point where rehabilitation objectives have been met, horses will be reintroduced to these portions of the HMA's.

Some drift from the Ft. Sage HMA onto the burn area may occur. The area will be closely monitored. If a problem develops with wild horses taking up residency in the burn, appropriate

action will be taken, which may include further removals.

GUIDANCE

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

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 for 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.”

ADDITIONAL GUIDANCE

Emergency Fire Rehabilitation Plan – Shoshone Fire, as approved on 9/30/99

Emergency Fire Rehabilitation Plan – New Pass Fire, as approved on 10/6/99

AUTHORITY

§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.

It is my decision that the area closed to use by wild horses be placed in full force and effect as provided under 43 CFR §4770.3(c). Any person who is adversely affected by the Final Decision of the authorized officer in the administration of these regulations may file an appeal and petition for stay of the Decision pending final determination of the appeal pursuant to 43 CFR, Part 4. 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 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.

3/13/00

Date

A handwritten signature in cursive script, reading "Daniel Jacquet", written over a horizontal line.

Daniel Jacquet
Assistant Manager, Renewable Resources
Carson City Field Office

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.

2. WHERE TO FILE
NOTICE OF APPEAL BUREAU OF LAND MANAGEMENT
CARSON CITY FIELD OFFICE
5665 MORGAN MILL ROAD
CARSON CITY, NV 89701

SOLICITOR
ALSO COPY TO Department of the Interior
Office of the Solicitor
Salt Lake City Field Office
Suite 6201, Federal Building
125 South State Street
Salt Lake City, UT 84138-1180

3. STATEMENT OF REASONS . . . Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.

SOLICITOR
ALSO COPY TO Department Of the Interior
Office of the Solicitor
Salt Lake City Field Office
Suite 6201, Federal Building
125 South State Street
Salt Lake City, UT 84138-1180

4. ADVERSE PARTIES Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).

5. PROOF OF SERVICE Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a))