



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Carson City Office
5665 Morgan Mill Rd.
Carson City, Nevada 89701-1448
<http://www.nv.blm.gov/Carson>

In Reply Refer to: 4130 (NV-032) 4160

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE OF PROPOSED DECISION

INTRODUCTION

The Belleville Allotment is comprised of 154,491 acres of public lands in Mineral County, Nevada. These are low production desert lands as precipitation averages only around 5 inches a year. The allotment has historically been a cattle allotment during the winter and spring, with the majority of the use being west of the Candelaria Hills. This area is comprised of lands that were once included in the Candelaria and Marietta Allotments. The one grazing permit on the Belleville Allotment belongs to Robert McKay. His authorization is for 55 cattle from November 1 to April 15, for a total of 303 Animal Unit Months (AUM's).

A Standards and Guidelines Assessment was completed for the Belleville Allotment in 2006, followed by a Determination, which was signed by the authorized officer July 31, 2006. An Environmental Assessment (EA-NV-030-07-020) was completed in May 2007, which included a Proposed Action and two additional alternatives. A copy of this document was sent to you via e-mail on May 21, 2007 at your request.

On July 19, 2007, we received an expired grazing application from you for the Belleville Allotment. This outdated application was returned to you and new forms sent on September 25, 2007.

On March 14, 2008, we received an updated grazing application from you, in which you applied for the following:

	Livestock		Period of Use		<u>% Public Land</u>	<u>AUM's</u>
	<u>No.</u>	<u>Class</u>	<u>Begin</u>	<u>End</u>		
Belleville	119	Cattle	11/01	04/15	100	768
Belleville/Candelaria	119	Cattle	11/01	04/15	100	303

BACKGROUND

The Standards and Guidelines Assessment, which was completed for the Belleville Allotment in 2006, included a set of recommendations, and they are as follows:

- Limit authorization on the Belleville Allotment to 303 AUM's (55 cattle from November 1st through April 15th on 100% Federal range);
- Limit utilization of key grass and desirable shrub species to 45%; and
- Require the use of water haul sites in order to more evenly distribute cattle.

As a result of the above assessment, the Determination was made that all applicable Standards and Guidelines are being met on the Belleville Allotment under the current livestock grazing practices.

The Proposed Action Alternative in Environmental Assessment (EA-NV-030-07-020) was written to implement the above recommendations from the Standards and Guidelines Assessment.

Based on our Standards and Guidelines Assessment and the resulting recommendations, there is no additional forage on the Belleville Allotment for you to apply for.

On Form 4130-1a, Grazing Preference Application and Preference Transfer Application, the offered base property is described as T. 6 N., R. 35 E., Section 7. We have reviewed all of our records relating to the Belleville Allotment as well as your grazing case file and have concluded that this property does not have a grazing preference attached for the Belleville Allotment.

If there was additional forage on the Belleville Allotment, it would first be allocated to the current permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production. Then it would go to the permittee(s) or lessee(s) in proportion to the amount of their permitted use, and finally, to other qualified applicants under 43 CFR 4130.1-2 of this title.

PROPOSED DECISION

My Proposed Decision is to deny your grazing application for authorization of livestock grazing use on the Belleville Allotment.

RATIONALE

First, under 43 CFR 4110.3-1, the authorized officer must determine if there is additional forage available on an allotment and if there are adequate water sources for proper distribution of cattle placed on the allotment. According to the Standards and Guidelines Assessment and through the EA process, it was determined that additional forage beyond Robert McKay's grazing preference of 303 AUM's does not exist on the Belleville Allotment. Therefore, the CCFO must reject your grazing application.

Second, under 43 CFR 4110.2-2(a), "Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases." Under 43 CFR 4110.2-2(b), "The permitted use specified shall attach to the base property supporting the grazing permit or grazing lease." You do not hold a grazing preference in the Belleville Allotment. The offered base property does not meet the requirements of the above grazing regulations since there is no grazing preference attached to this property for the Belleville Allotment. Therefore, you are not a qualified applicant, and we must reject your grazing application.

Finally, as stated above, there is no additional forage available on the Belleville Allotment to apply for. Under provisions at 43 CFR 4110.3-1(b), if additional forage was available, it would first be apportioned for those permittee(s) or lessee(s) with suspended use and authorized to graze in the allotment. Then under § 4110.3-1(c), additional forage would be apportioned in the following priority: 1) to a permittee or lessee in proportion to the contribution or stewardship efforts which result in increased forage; 2) permittee or lessee in proportion to the amount of their permitted use; and 3) lastly, the additional forage would be allocated to other qualified

applicants under §4130.1-2 of this title. Therefore, if there was additional forage available for allocation, Robert McKay, as the only preference holder for the Belleville Allotment, would be entitled to any such forage.

AUTHORITY

The following citations come from 43 CFR, Subpart 4100:

{§4110.3-1} states that “The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).”

{§4110.2-2(a)} states that “Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, any suspended use, and conservation use, except for permits and leases for designated ephemeral rangelands where livestock use is authorized based upon forage availability, or designated annual rangelands. Permitted livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under 43 CFR 4110.3-3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.”

{§4110.2-2(b)} states that “The permitted use specified shall attach to the base property supporting the grazing permit or grazing lease.”

{§4110.3-1(b)} states that “Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in satisfaction of suspended permitted use to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available.”

{§4110.3-1(c)} states that “After consultation, cooperation, and coordination with the affected permittees or lessees, the State having lands or managing resources within the area, and the interested public, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be apportioned in the following priority: (1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production; (2) Permittee(s) or lessee(s) in proportion to the amount of their permitted use; and (3) Other qualified applicants under §4130.1-2 of this title.”

{§4130.1-2} states that “When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional forage for livestock or additional acreage becomes available, the authorized officer may authorize grazing use of such land or forage on the basis of §4110.3-1 of this title or on the basis of any of the following factors: (a) Historical use of the public lands (see §4130.2(e)); (b) Proper use of rangeland resources; (c) General needs of the applicant’s livestock operations; (d) Public ingress or egress across privately owned or controlled land to public lands; (e) Topography; (f) Other land use requirements unique to the situation. (g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and (h) The applicant’s and affiliate’s history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any records of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.”

RIGHT OF PROTEST AND/OR APPEAL

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, Elayn Briggs Assistant Manager, Renewable Resources, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701 within 15 days after receipt of such decision. At this time, the Bureau of Land Management will not accept protests or appeals sent by electronic mail. 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 (a), in the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice.

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 protestant and the interested public.

APPEAL

In accordance with 43 CFR 4.470, 4160.3 (c) 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 4.471 and 4160.3(c), 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, Elayn Briggs, Assistant Manager, Renewable Resources, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. 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 that 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)).

Sincerely,

Elayn Briggs
Assistant Manager
Renewable Resources
Carson City Field Office

CC: (by certified mail):

Western Watersheds Project (CRR# 7007 0710 0002 5045 5850)
Attn: Katie Fite
P.O. Box 2863
Boise, ID 83701

Mr. Robert W. McKay (CRR# 7005 1820 0003 8678 3228)
P.O. Box 17
Smith, NV 89430

Mr. & Mrs. Tony Tipton (CRR# 7005 1820 0003 8678 3204)
Box 138
1 Muletown Road
Mina, NV 89422

CC: (by electronic mail):

Nevada State Clearinghouse (clearinghouse@budget.state.nv.us)
209 E. Musser Street, Room 200
Carson City, NV 89701