

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Carson City Field Office
5665 Morgan Mill Rd.
Carson City, NV 89701
(775) 885-6000

In Reply Refer To:
4160/4770
(NV-032)
CF-2703011

CERTIFIED MAIL (7003 0500 0000 3691 8653)
RETURN RECEIPT REQUESTED

Robert R. Depaoli
1415 Arobio Lane
Lovelock, NV 89419

Dear Mr. Depaoli:

NOTICE OF PROPOSED DECISION

RECEIVED
OCT 04 2005
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE DIRECTOR
BUDGET AND PLANNING DIVISION

INTRODUCTION

The Cleaver Peak Allotment consists of a total of 41,229 acres of public lands in the Carson City Field Office. Current active preference is 1,250 AUM's. A variable number of cattle graze the allotment each year during the period 11/01-03/31. The permittee runs a commercial range cattle operation consisting of a cow and calf herd with replacement heifers and yearlings. The Cleaver Peak Allotment is primarily arid-land fan with rugged mountain foot hills and mountains. Elevation ranges from 4,100 feet on the low lying alkali flats to 6,711 feet on Cleaver Peak.

The Record of Decision for the Lahontan Environmental Impact Statement and Resource Management Plan (RMP) was issued in 1987. These documents established the multiple use goals and objectives which guide management of the public lands on Cleaver Peak Allotment. The Lahontan Rangeland Program Summary (RPS) was issued in 1989, which further identified the allotment specific objectives for Cleaver Peak Allotment. The Carson City Field Office established the 2001 Consolidated Resource Management Plan which incorporates decisions from eight major field office planning documents and five amendments to these plans.

As identified in the Lahontan Rangeland Program Summary, monitoring was established on the Cleaver Peak Allotment to determine if the existing multiple uses for the allotment were consistent with attainment of the objectives established by the Resource Management Plan. Since 1992, monitoring data has been collected and this data has been analyzed, through the allotment standards & guidelines analysis process, to determine progress in meeting multiple use objectives for the Cleaver Peak Allotment, and to determine if changes in the existing management are required in order to meet specific multiple use objectives for this allotment.

BACKGROUND

An allotment standards and guidelines analysis was completed on the Cleaver Peak Allotment in order to document current conditions and determine if the allotment is currently achieving applicable Rangeland Health Standards and conforming to the proper Guidelines for Livestock Grazing Management. As a result of this determination, it was found that current livestock practices meet the Standards. Action will be taken in order to provide for improved condition of the range resource in areas where shrub die off (winterfat and four-wing saltbush) occurred in the early 1990's. There are not an adequate number of mature shrub plants to provide a viable seed source for recruitment. Over time by lowering the utilization levels to 35% where winterfat and four-wing saltbush exists, this would result in conditions that would favor both these key shrubs.

An Environmental Assessment (#EA-NV-030-05-16) has been completed. This EA analyzed various actions that could be taken to address this situation. The Proposed Action analyzed in this EA has become the basis for my proposed decision on a course of action to correct and improve vegetation conditions on the allotment.

The vegetation condition needs improvement on about 2,000 acres because of lack of desirable shrubs (winterfat) and (four-wing saltbush) where mealy bugs and root borer's along with drought years in the 1990's has contributed to the massive die-off of the shrubs. The affected area is slowly recovering.

CP-01 trend is downward for four-wing saltbush. The period from 1999 to 2004 during March to June, we have been in an extreme drought which resulted in some areas of heavy utilization since the plants didn't have the normal growth patterns. Plants were only growing about half their normal size.

The Cleaver Peak Allotment has less than 10% heavy utilization. The permittee had used approximately 53% of his permit. Most of the allotment had slight to moderate utilization, which means some of the native plant species were not even grazed. There was a problem with cattle remaining too long in some areas. This caused the perennial grass utilization around the water developments to exceed 55% in some small localized areas.

The proposed limit of 35% utilization on desirable shrubs such as winterfat and four-wing saltbush should improve the condition of the plants. This should improve both the condition and trend. With proper management, the areas of heavy utilization should decrease significantly.

FINDING OF NO SIGNIFICANT IMPACT (FONSI):

I have reviewed the environmental assessment including the explanation and resolution of any potential significant environmental impacts. Based on the analysis of Environmental Assessment EA-NV-030-05-16, I have determined that the proposed action will not have a significant effect on the human environment, and therefore, an environmental impact statement will not be prepared. I have determined that the proposed project is in conformance with the approved land use plan.

PROPOSED DECISION

It is my proposed decision to implement the Proposed Action as described in Environmental Assessment EA-NV-030-05-16 for authorization of livestock grazing use on the Cleaver Peak Allotment. Implementation of the Proposed Action will authorize (1) A new ten year grazing permit for grazing use on the Cleaver Peak Allotment, (2) In the Cleaver Peak Allotment, 250 cattle would be grazed with a period of use (November 1 to March 31) each year, with a total of 1,250 AUMs. The BLM Federal Range is 100% of the allotment, (3) Limit utilization on desirable shrubs (winterfat (EULA) and four-wing saltbush (ATCA2)) so as not to exceed 35% in the upland key areas in the allotment, (4) Limit utilization on desirable grasses (Indian ricegrass (ORHY) and Needle-and-thread grass (STCO4)) so as not to exceed 55% in the upland key areas in the allotment, and (5) Improve existing ecological condition and trend.

RATIONALE

The Proposed Action will improve the livestock distribution and lower utilization levels within the service area of existing waters will result, while the acreage utilized in the allotment will increase. The improved distribution pattern will make progress towards meeting objectives outlined in the 2001 Consolidated Resource Management Plan and technical recommendations in the Cleaver Peak Allotment Standards and Guidelines Analysis.

The degree of allowable use (55%) grasses and (35%) shrubs was taken from Nevada Rangeland Monitoring Handbook, page 23, for a winter and spring grazing operation. The general allotment use is from 11/01 to 03/31. These plants can sustain as much as 55% use of the current year's growth without damage to the plant. The grasses and shrubs enter dormancy after 08/15. The growing period for the key plant species is from 03/01 to 08/15 each year. Use during the growing season will be limited by the 35% utilization on the desirable shrubs from year to year. The utilization level should be decreased to 35% for identified key perennial shrubs which should increase the number of shrub plants and be in the light (21% to 40%) utilization class. This utilization level was recommended as the proper use. The proper use is the degree of utilization of current year's growth which, if continued, will maintain or improve the long term productivity of the site.

When the utilization level is reached on shrubs or perennial grasses, cattle will be removed from the area or the allotment.

AUTHORITY

{§4100.0-8} 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)."

{§4110.3} states that "The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer."

{§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."

{§4130.3-1} states that "(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment." "(b) All permits or leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease." "(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part."

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 Assistant Manager, Renewable Resources, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701 within 15 days after receipt of such decision. 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©, 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 Assistant Manager, Renewable Resources, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 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.

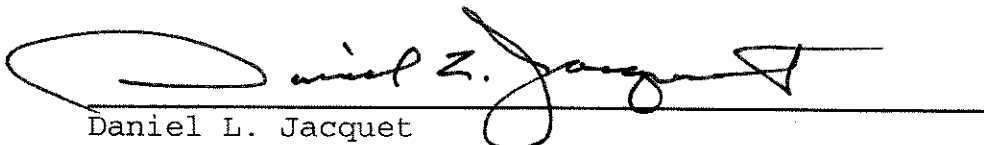
Pursuant to 43 CFR 4.471©, a petition for stay, if filed, must show sufficient justification based on the following standards:

- (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 it's 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©(2)).



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

10/3/05
Date

cc (by certified mail):

1. Western Watersheds Project (7003 0500 0000 3565 5764)
2. Fallon Paiute-Shoshone Tribe (7003 0500 0000 3565 5771)
3. Walker River Paiute Tribe (7003 0500 0000 3565 5788)
4. Yerington Paiute Tribe (7003 0500 0000 3565 5795)
5. Pyramid Lake Paiute Tribe (7003 0500 0000 3565 5801)
6. Nevada Clearing House (10 copies) (7003 0500 0000 3565 5818)