

9/21/95



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Carson City District Office
1535 Hot Springs Rd., Ste. 300
Carson City, NV 89706-0638

IN REPLY REFER TO:

4130-CF
(NV-03480)
273030

Proposed Decision

Certified P 398 785 521
Return Receipt Required

SEP 21 1995

Hodges Transportation, Inc.
P.O. Box 234
Carson City, Nv 89702

Dear Mr. Hodges:

This office recently received your annual grazing application for the Churchill Butte (03008) and Clifton Flat (03011) allotments. You have applied for the following use:

03008 Churchill Butte	165 Cattle	10/01-3/31	94%	Non Use
03011 Clifton Flat	72 Cattle	11/01-3/31	100%	Active Use

Your application has been reviewed and will be approved in part and denied in part. Your application for active use in the Clifton Flat allotment is approved. Your application for non-use in the Churchill Butte allotment is denied. This action is based on the Technical Recommendation of the 1994 Churchill Butte Allotment Evaluation. The evaluation concluded that forage for the full permitted use of 937 AUMs is available and that the allotment had not been grazed since 1988. The evaluation also concluded that the allotment is poorly suited for grazing by cattle due to the lack of water, roads to haul water into the allotment and the absence of boundary fences. Reason given for nonuse on your application state "no fence, no water and no road." We will no longer approve temporary nonuse for the reasons you stated on your application.

If you should fail to make substantial grazing use of the Churchill Butte Allotment as authorized for two (2) consecutive fee years, beginning October 1995, the 937 AUMs of preference attached to the allotment will be cancelled. Authorization for this action is found in 43 CFR 4140.1(a)(2) "Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse, conservation use,

or use temporarily suspended by the authorized officer." and 4170.1-2 "If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of permitted use the permittee or lessee has failed to use."

If you wish to activate grazing in the Churchill Butte Allotment for the 1995-96 grazing season, you must re-submit a grazing application to this office prior to making use.

Protest and Appeal Procedures:

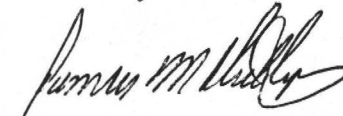
Any applicant, permittee, lessee or other affected interest may protest the proposed decision under Sec. 43 CFR 4160.1, in person or in writing to the Authorized Officer, James M. Phillips, Lahontan Area Manager, 1535 Hot Springs Road Suite 300 Carson City, Nevada 89706-0638 within 15 days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error.

Should no protest be received this proposed decision shall constitute my final decision. 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 on appeal. The appeal and petition for stay must be filed in the office of the authorized officer as noted above within 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final. 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:

- (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.

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

Sincerely Yours,



James M. Phillips
Area Manager
Lahontan Resource Area

Enclosed: Form 4130-3a Grazing Application

cc: American Horse Protection Association
National Mustang Association
Fund for Animals
U.S. Humane Society
American Bashkir Curley Register
Humane Society of Nevada
Dan Keiserman
Craig Downer
Michael Kirk D.V.M.
Ms. Kathy McCovey
Ms. Rebecca Kunow
Paula S. Askew
Natural Resources Defence Council Inc.
Sierra Club - Toiyabe Chapter
Regional Manager, Region I, Nevada Department of Wildlife
Clearing House for the State of Nevada Division of Admin.
The Nature Conservancy, Nevada Public Lands Program
Nevada Cattlemen's Association
Resource Concepts, Inc.
The Wildlife Society, Nevada Chapter
Commission for the Preservation of Wild Horses
Wild Horse Organized Assistance
Animal Protection Institute
International Society for the Preservation of Mustangs and Burros
U.S. Fish and Wildlife Service
The Wilderness Society
Nevada Wilderness Alliance
USDA Natural Resource Conservation Service, Reno (SCS)
N-3 Grazing Board
USDA Natural Resource Conservation Service, Fallon (SCS)
Nevada Woolgrowers Assoc.
Elsie Dupree, Nevada Wildlife Federation
Board of County Commissioners, County of Nye
Bobbi Royle
Ann Earle
Anna Charlton, Rutgers Law School
Ms. Edie Wilson
Paul Clifford, Museum of Natural History, Cleavland OH
Steven Fulstone
The Mule Deer Foundation
American Mustang and Burro Association
Nevada State Department of Agriculture
American Wilderness Alliance
Joe Dahl
home/tirons/hodges application decision