



Delamar L 12/15/95  
United States Department of the Interior

Bureau of Land Management  
Caliente Resource Area  
P.O. Box 267  
Caliente, Nevada 89008

In Reply Refer To:

4160  
~~Brackenbury~~  
Grazing Case File  
(NV-055.09)

CERTIFIED MAIL #Z 696 301 351  
RETURN RECEIPT REQUESTED

DEC 15 1995

PROPOSED DECISION  
RESCINDING NOTICE OF CLOSURE  
AND MODIFYING THE GRAZING PERMIT TO OPEN THE CLOSURE  
TO LIVESTOCK GRAZING ON THE  
LOWER RIGGS ALLOTMENT

Hank and Joi Brackenbury  
7 J Ranch  
Rainbow Route  
Caliente, NV 89008

Dear Mr. and Mrs. Brackenbury:

A full force and effect Grazing Decision was issued to James and George Tennille which modified their Federal Grazing Permit on October 15, 1993 in order to implement a full force and effect Notice of Closure to livestock grazing issued on October 7, 1993. Upon transferring part of the preference for the Lower Riggs Allotment to you, the terms and conditions of the Grazing Decision were made a part of your Federal grazing permit.

The closure was issued for a minimum of two (2) years beginning on October 15, 1993 to protect the soil resources and allow rehabilitation of vegetative resources to occur within the Meadow Fire burn area. The burn area included 860 acres or approximately 5 percent of the Lower Riggs Allotment (reference map Attachment 1). The grazing decision and Notice of Closure was sent to the Tennilles and affected interests. Neither one was appealed by the permittee or any affected interest.

The Meadow Fire was reported on July 28, 1993 and burned on the Lower Riggs Allotment until contained on July 31, 1993. On September 29, 1993, I signed a Fire Rehabilitation

Environmental Assessment (EA) (#NV-055-93-29) Finding of No Significant Impact and Record of Decision to implement Alternative 1 - Natural Revegetation with Controlled Livestock Grazing, for closure of grazing on the burn within the allotment with no reduction in grazing preference (permitted use). This document was also mailed to the Tennilles and affected interests. This decision was not appealed.

The Record of Decision stated, in part, "Following a determination through monitoring that the burned area has successfully recovered, the burn closure will be lifted, appropriate livestock grazing authorized..." The EA stated, in part, "The Bureau would monitor use of the burn area and the effects of the grazing strategies to assess if management objectives are being met. A determination would be made by BLM at the end of the closure period when and if livestock grazing could resume, given sufficient recovery of the burn area."

The Notice of Closure dated October 7, 1993 stated, in part, "This Notice of Closure is effective immediately and will remain in effect for a minimum of 2 years or until rehabilitation objectives for the burn area have been met. When perennial vegetation has been re-established and sufficient cover exists to protect soil resources within the closure area, authorized grazing use may be resumed."

The basis for my grazing decision dated October 15, 1993 was the above Record of Decision and EA and Notice of Closure. The specific terms and conditions in the decision stated, in part, "...shall remain in effect for a minimum of two years, beginning October 15, 1993 and continuing until monitoring indicates resource objectives for the burn area have been attained."

The Lower Riggs allotment does not fall within the Meadow Valley wild horse and burro Herd Management Area.

On October 24, 1995, I directed my staff to evaluate the management actions identified in the livestock grazing decision and their success in meeting the resource objectives for the burn area within the Lower Riggs Allotment.

The management actions required in the specific terms and conditions for your permit as modified in the October 15 decision were:

- A. "The Meadow Fire Closure Area Specific Terms and Conditions shall remain in effect for a minimum of two years, beginning October 15, 1993 and continuing until monitoring indicates resource objectives for the burn area have been attained."
- B. "You shall continuously herd and manage your livestock away from the burn closure area by riding and controlling livestock access to the water trough located in t. 7 S., R. 66 E., Sec. 4 as identified in Attachment 1."
- C. "Any livestock found within the burn closure area (Attachment 1) shall be

removed immediately from the burn area by you. You are to notify the Caliente Resource Area office within 24 hours of such actions."

D. "Should these practices fail to keep the livestock from the closure area, livestock shall be remove from the allotment immediately. The total closure of the Lower Riggs Allotment to grazing in order to insure protection of the burn area will be implemented by the Bureau of Land Management under the authority of this decision."

The following are the resource objectives for the burn area that must be met prior to opening the closure to livestock grazing on the burn:

1. Manage for species diversity of the perennial species endemic to the black brush sites for a minimum of 15 species. Three of the species must be native perennial grass species and their growth form must show good vigor as documented photographically.
2. Allow for the re-establishment by seedling and/or resprouting/regrowth of shrub and perennial grass species endemic to the ecological sites burned.
3. Manage for a canopy cover (basal and crown cover) of native perennial species with a minimum of 15 percent. Annuals are not included in the cover since most that occur in the area after a burn are introduced annuals such as cheatgrass, red brome and filaree that are not desirable ecologically and are climatically variable in their potential for cover.
4. Utilization levels of zero or no measurable use during the closure period. Utilization on the current years growth not to exceed 50 percent on any one of the key perennial grass species and 30 percent in the spring and 50 percent the rest of the year for any one of the key shrubs after the burn is reopened to grazing.

The following Tables 1 and 2 summarize whether or not the livestock grazing decisions' management actions and burn resource objectives identified above were followed and met, respectively:

Table 1

MANAGEMENT ACTIONS ASSESSMENT			
ALLOTMENT	GRAZING DECISION MANAGEMENT REQUIREMENTS		MINIMUM TERM OF ACTION MET YES OR NO
	HERDING OF LIVESTOCK AS NEEDED MET YES OR NO	RESTRICTING WATER ACCESS NEAR BURN AS NEEDED MET YES OR NO	
LOWER RIGGS	YES Livestock herded as needed.	YES Livestock access was restricted at the water trough located in T7S R66E Sec. 4.	YES MINIMUM OF 2 YEARS CLOSE TO GRAZING

Table 2

RESOURCE DATA ASSESSMENT FOR THE CLOSURE AREA	
RESOURCE OBJECTIVES IDENTIFIED	RESOURCE OBJECTIVES MET YES OR NO AND RESULTS
1. Species diversity of min. 15 with 3 grasses. Good vigor.	1. YES The burned blackbrush sites had between 23 and 26 perennial species overall with 4 native perennial grass species. Excellent vigor documented photographically.
2. Seedling, regrowth, and re-sprout of native species.	2. YES All parameters met. Plants were growing from seed, regrowth and sprouting.
3. Perennial species cover a minimum of 15%.	3. YES Cover for most of the area fell within 24 to 28%. A small area (approx. 20 acres) in a previous burn had 17% cover.
4. Utilization overall of no measurable use during closure period.	4. YES No measurable use.

As the above assessments in Tables 1 and 2 show, the grazing decisions' burn management actions were followed and the resource objectives were met. Additionally, the observed trend for the allotment burn was upward based on native plant vigor and diversity.

Therefore, based on the Fire Rehabilitation Environmental Assessment (EA) (#NV-055-93-29) Finding of No Significant Impact and Record of Decision dated September 29, 1993, the full force and effect Notice of Closure to livestock grazing issued on October 7, 1993, the full force and effect Grazing Decision dated October 15, 1993 modifying your Federal Grazing Permit and the results of the burn evaluation showing that the resource management objectives have been met, it is my Proposed Decision to modify your existing Federal Grazing Permit signed November 9, 1994, as it relates to the Lower Riggs allotment only, by rescinding the notice of closure and opening the burn area to livestock grazing. I will issue a modified Federal Grazing Permit reflecting my decision.

The permitted use (AUM's) of your existing permit are not affected by this decision. Nothing in this decision affects the Meadow Valley, Rainbow, Pennsylvania, or Ash Flat allotments included in this permit.

Your ten year Federal Grazing Permit is modified for the Lower Riggs allotment only as follows:

**FROM:**

EXISTING FEDERAL GRAZING PERMIT  
FOR THE LOWER RIGGS ALLOTMENT PORTION ONLY  
03/30/92 to 02/28/2002

ALLOTMENT NAME	NUMBER OF LIVESTOCK	KIND OF LIVESTOCK	SEASON OF USE		PERCENT FEDERAL LAND	ACTIVE PREFERENCE AUM'S
			BEGIN DATE	END DATE		
LOWER RIGGS	29	CATTLE	05/01	03/24	100	309

**TO:**

MODIFIED FEDERAL GRAZING PERMIT  
OPENING BURN CLOSURE ON THE LOWER RIGGS ALLOTMENT ONLY  
03/30/92 to 02/28/2002

ALLOTMENT NAME	NUMBER OF LIVESTOCK	KIND OF LIVESTOCK	SEASON OF USE		PERCENT FEDERAL LAND	ACTIVE PERMITTED USE AUM'S
			BEGIN DATE	END DATE		
LOWER RIGGS	29	CATTLE	05/01	03/24	100	309

In order to insure the continued recovery of the burned areas, the following management objective continues as a part of the terms and conditions of your permit in accordance with the February 24, 1984 grazing decision for the Lower Riggs allotment:

Utilization on the current years growth must not exceed 50 percent on any one of the key perennial grass species, and 30 percent in the spring and 50 percent the rest of the year for any one of the key shrub species within the burn area. If these use levels are reached or exceeded for any one of the key species, the livestock must be removed from and kept out of the burn area. Key grass species are Indian ricegrass, sand dropseed, desert needlegrass, and purple threeawn. Key shrub species are mormon tea and desert bitterbrush.

All other terms and conditions for the existing permit not related to the burn area in the Lower Riggs allotment remain unchanged (Attachment 2).

Any applicant, permittee, lessee or other affected interest may protest the proposed decision in accordance with 43 CFR Sec. 4160.2, in person to the Caliente Area Manager at the Bureau of Land Management Office in Caliente or in writing to the Caliente Area Manager, P.O. Box 237, Caliente, Nevada 89008, within 15 days after receipt of the proposed decision.

In an absence of a protest, the proposed decision shall constitute my final decision without further notice, in accordance with 43 CFR Sec. 4160.3 (a).

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.


If you wish to appeal this decision for the purpose of a hearing before an Administrative Law Judge and, in accordance with 43 CFR 4160.3 (c), 4160.4 and 4.470, you are allowed thirty (30) days after the proposed decision becomes final within which to file an appeal and a petition for stay with the Caliente Resource Area Manager, Bureau of Land Management, at the address above. The appeal shall state the reasons, clearly and concisely, why you think the final decision is in error.

Should you wish to file a motion for stay in accordance with 43 CFR Sec. 4.21 (b)(1), 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;
4. whether the public interest favors granting the stay.

The appellant requesting the stay bears the burden of proof to demonstrate that a stay should be granted.

Sincerely,



Curtis G. Tucker  
Area Manager

Attachments:

1. Lower Riggs Allotment Map with Burn Area
2. Terms and Conditions for the Lower Riggs Allotment

cc:

NV-043

NV-053

Resource Concepts, Inc., Don Henderson	Certified Mail No. Z696301337
Comm. for the Preservation of Wild Horses, C. Barcomb	Certified Mail No. Z696301338
Wild Horse Organized Assistance, Inc., C. Richards	Certified Mail No. Z696301339
Animal Protection Institute of America, Nancy Whitaker	Certified Mail No. Z696301340
Natural Resources Defense Council Johanna Wald	Certified Mail No. Z696301341
Conservation Chair, Sierra Club	Certified Mail No. Z310374548
Wilderness Society Regional Associate, Barbara Sploter	Certified Mail No. Z696301343
U. S. Fish and Wildlife Service	Certified Mail No. Z696301344
N-5 Board, Kenneth Lee	Certified Mail No. Z696301345
Desert Tortoise Council	Certified Mail No. Z696301346
Nevada Division of Wildlife	Certified Mail No. Z696301347
Silver State Pleasure Riders	Certified Mail No. Z696301348
Nevada Wild Horse Association	Certified Mail No. Z696301349
International Society for the Protection of Mustangs and Burros	Certified Mail No. Z696301350
Lincoln County Public Lands Commission	Certified Mail No. Z696301342
Lincoln County Commission	Certified Mail No. Z696301354
Karen Budd-Falen	Certified Mail No. Z696301355





## ATTACHMENT 2

### TERMS AND CONDITIONS FOR THE LOWER RIGGS ALLOTMENT

1. Utilization on the current years growth must not exceed 50% on any one of the key perennial grass species, and 30% in the spring and 50% the rest of the year for any one of the key shrub species within the burn area. If these use levels are reached or exceeded for only one of the key species, the livestock must be removed from and kept out of the burn area. Key grass species are Indian ricegrass, sand dropseed, desert needlegrass, and purple threeawn. Key shrub species are mormon tea, and desert bitterbrush.
2. Grazing fees are due upon issuance of billings. Applications for changes in grazing use must be in written form and received by the Bureau of Land Management Office no later than 15 days prior to the desired date of change. Applications for changes in grazing use which require the issuance of a replacement or supplemental billing notice shall be subject to a ten (10) dollar service charge.
3. Grazing applications will be issued on a yearly basis showing all grazing use as active. if you desire to take all or partial non-use for the grazing year, you must indicate this in writing on your grazing application, along with your reasons.
4. The term Federal grazing permit is subject to cancellation, suspension, or modification for any violation of the Code of Federal Regulations or specified terms or conditions of this permit.
5. When the standards and guidelines are identified in accordance with the new 43 CFR dated August 21, 1995, these standards and guidelines are to be considered part of the terms and conditions of this permit.