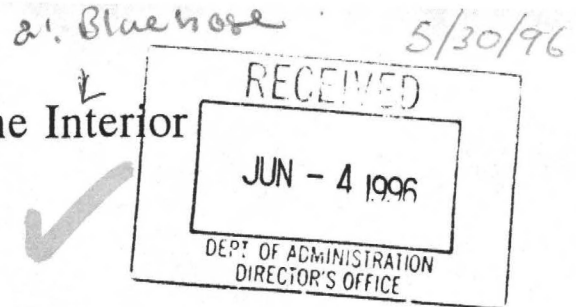




United States Department of the Interior

Bureau of Land Management
Caliente Field Station
P.O. Box 237
Caliente, Nevada 89008



In Reply Refer To:
4130
Newby Cattle Co.
Grazing Case File
(NV-055.09)

NOTICE OF PROPOSED DECISION

CERTIFIED RECEIPT #P310374603
RETURN RECEIPT REQUESTED

MAY 30 1996

Newby Cattle Company
c/o Ken Newby
517 Belmont Drive
St. George, Utah 84770

Dear Mr. Newby:

One of the requirements of the new grazing regulations (effective August 21, 1995) is that each permittee must have a grazing permit **and** an annual authorization (43 CFR 4140.1(b)(1)(i)) before grazing livestock on public land. The superseded regulations required a grazing permit **or** other grazing use authorization. A paid annual authorization met the requirement under the old rule. Your two Federal ten-year grazing permits will expire on June 30, 1996. Under the new regulations the Bureau is required to consult, cooperate, and coordinate with the affected permittees or lessees, and the interested public prior to the issuance or renewal of grazing permits and leases.

You have signed and returned the Acceptance of Terms and Conditions form indicating your acceptance of those terms and conditions as written, therefore, I have decided to offer you a ten year permit by proposed decision. You and other interested publics will have 15 days from receipt of the proposed decision to file a protest. In the event that a protest is received, the protest points will be carefully considered and a final decision will be issued. You and the interested publics will have 30 days to appeal the decision to the Office of Hearings and Appeals.

If no protests are received, the decision will become final and you and interested publics will then have 30 days to appeal the decision. If the decision is appealed, you will either be granted a license reflecting your previous year's authorized use or one which reflects the enclosed permit. The option taken will depend upon whether a stay of the decision is requested and granted. Should no protest or appeal be filed, at the end of the 45 day period, I will approve the Grazing Permit.

It is my Proposed Decision to offer you a ten year grazing permit for renewal as follows:

PERMIT NUMBER	ALLOTMENT NAME	KIND OF LIVESTOCK	SEASON OF USE	PERMITTED USE (Animal Unit Months AUMs)			
				SUSPENDED		ACTIVE	
				HISTORICAL	OTHER	LIVESTOCK GRAZING	CONSERVATION USE
275036	Garden Spring Summit Spring White Rock	Cattle	10/1-5/31	0	0	2809	0
				0	0	715	0
				0	0	2880	0
275050	Sheep Flat Barclay	Cattle	6/1-9/30	1657	0	1309	0
			5/16-11/15	726	0	361	0

General Terms and Conditions:

1. The payment of grazing fees are due on the due date specified on the grazing fee bill. Failure to pay the grazing fee bill within 15 days of the due date specified in the bill shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed \$250.00.
2. 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, if you do not sign and return your grazing application by the date specified on the application you will receive a bill for all of your active livestock grazing permitted use. If you wish to place all or a portion of your active livestock grazing use into non-use for the grazing year, you must indicate this in writing on your grazing application, along with your reasons.
4. Signed Actual Use Statements are due annually to the Caliente Resource Area Office within 15 days after completing annual grazing use. In the case of year round grazing, Actual Use Statements must be received in our office by March 15.
5. The Federal ten year 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.
6. When standards and guidelines are developed in accordance with 43 CFR 4180.2 dated August 21, 1995, these standards and guidelines are to be considered part of the terms and conditions of this permit.

Garden Spring, Summit Spring, and White Rock Allotment Specific Terms and Conditions:

1. Grazing on the Garden Spring, Summit Spring and White Rock allotments shall occur in accordance with the terms and conditions provided in the full force and effect grazing decision relating to desert tortoise habitat dated January 31, 1992. Refer to **Attachment 1 - Terms and Conditions for Grazing in Desert Tortoise Habitat.**
2. Domestic horse use on the Garden Spring Allotment shall occur only within the boundaries of the south (Stratton) pasture which is outside the boundaries of the Blue Nose Peak Wild Horse Herd Management Area. Domestic horse use north of the pasture fence is prohibited. **Refer to Map 1.**

Sheep Flat Allotment Specific Terms and Conditions:

1. Grazing authorizations on the Sheep Flat Allotment shall be made in accordance with the established utilization objectives for key species at the key areas issued by proposed/final decision dated November 28, 1983 as follows:

KEY AREA LOCATION	KEY SPECIES	UTILIZATION OBJECTIVES (%)	
		SUMMER	FALL
KA#1 - FIFE FLAT AT T.5S., R.68E., SEC35	CRESTED WHEAT	50	60
KA #2 - BURN AT T.5S., R.68E., SEC35	CRESTED WHEAT INTERMEDIATE WHEATGRASS	50 50	60 60
KA#3 - SHEEP FLAT AT T.6S., R.69E., SEC7	CRESTED WHEAT	50	60
KA#4 - PINE CHAINING AT T.6S., R.69E., SEC7	CRESTED WHEAT NEVADA BLUEGRASS	50 50	60 60
KA#5 - MIDDLE PASTURE AT T.5S., R.68E., SEC36	CRESTED WHEAT	50	60

NOTE: Utilization objectives are established by season, however, where grazing occurs over both seasons, the desired use level would be an average of the two season use levels;.

Barclay Allotment Specific Terms and Conditions:

1. Grazing authorizations on the Barclay Allotment shall be made in accordance with the Barclay AMP and three-pasture deferred rotation system as follows:

PERIOD OF USE	PASTURE #3		PASTURE #1		PASTURE #2		PASTURE #3	
	BEGIN	END	BEGIN	END	BEGIN	END	BEGIN	END
YEAR 1	MAY 16	JUNE 15	JUNE 16	AUG 10	AUG 11	OCT 15	OCT 16	NOV 15
YEAR 2	MAY 16	JUNE 15	AUG 11	OCT 15	JUNE 16	AUG 10	OCT 16	NOV 15

Note: The grazing cycle is complete following the conclusion of grazing in year 2. Flexibility is incorporated into the AMP to allow for up to 14 days to move from one pasture to the next except at the end of the season of use (Nov. 15).

2. Use of forage on the Barclay Allotment will be made in accordance with the established utilization objectives issued by proposed/final decision dated July 29, 1982 as follows:

KEY AREA LOCATION	KEY SPECIES	UTILIZATION OBJECTIVES (%)	
		SUMMER	FALL
PASTURE 1 - KA 1 BARCLAY BURN PLOT	CRESTED WHEAT	50	60
	WESTERN WHEAT	50	60
	NEEDLEGRASS	50	60
PASTURE 2 - WINDMILL PLOT	CRESTED WHEAT	50	60
PASTURE 2 DOC'S PASS PLOT	CRESTED WHEAT	50	60
	WESTERN WHEAT	50	60
	SERVICEBERRY	50	50

3. Use of forage on the remaining key areas on the Barclay Allotment will be made in accordance with the utilization objectives established by key area for the key species as follows:

KEY AREA LOCATION	KEY SPECIES	UTILIZATION OBJECTIVES (%)	
		SUMMER	FALL
KA#1A - MARBLE RESERVOIR AT T.5S. R.69E., SEC35 PASTURE 1	ANTELOPE BITTERBRUSH	55	55
KA#2 - WINDMILL WELL AT T.6S., R.70E., SEC2 PASTURE 1	WESTERN WHEAT	50	60
	CRESTED WHEAT	50	60
KA#2A - MIDDLE PASS RESERVOIR AT T.6S., R.70E. SEC1 PASTURE 1	CRESTED WHEAT	50	60
	WESTERN WHEAT	50	60
	ANTELOPE BITTERBRUSH	50	55
	GAMBEL OAK	50	55
	SERVICEBERRY	50	55
KA#3 - SIMKINS CHAINING A T.5S., R.70E., SEC36 PASTURE 2	CRESTED WHEAT	50	50
	ANTELOPE BITTERBRUSH	50	60
KA#4 - BEAVER DAM FLAT CHAINING AT T.5S., R.70E., SEC12 PASTURE 2	CRESTED WHEAT	50	60
KA#5 - T.5S., R.71E., SEC19 PASTURE 2	SQUIRRELTAIL	50	60
	ANTELOPE BITTERBRUSH	50	50
	GAMBEL OAK	50	50
	SERVICEBERRY	50	50
KA#7 - BUNKER PASS AT T.6S., R.70E., SEC14 PASTURE 3	GAMBEL OAK	50	50
	ANTELOPE BITTERBRUSH	50	50
	SERVICEBERRY	50	50
KA#7AR - MUD SPRING WASH AT T.6S., R.70E., SEC34 PASTURE 3	WILLOW	50	50
	ASH	50	50
KA#7AT - AT T.6S., R.70E., SEC 34	ANTELOPE BITTERBRUSH	50	50
	CEANOTHUS	50	50

NOTE: Utilization objectives are established by season, however, where grazing occurs over both seasons, the desired use level would be an average of the two season use levels.

The authority for this decision is contained in Title 43 of the Code of Federal Regulations, which states in pertinent part:

Sec. 4130.2 Grazing permits or leases. (a) "Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits or leases shall also specify terms and conditions pursuant to 4130.3, 4130.3-1, and 4130.3-2."

Any applicant, permittee, lessee or other affected interest may protest the proposed decision under Sec. 43 CFR 4160.2, in person or in writing to Curtis Tucker, Field Station Manager, Caliente Field Station, P.O. Box 237, Caliente, NV 89008 within 15 days after receipt of the decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error.

In absence of a protest, the proposed decision shall constitute my final decision without further notice unless otherwise provided in the proposed decision, 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. The appeal and petition for stay must be filed in the office of the authorized officer (Caliente Field Station), 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 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. As noted above the petition for stay must be filed in the Caliente Field Station.

Sincerely,



Curtis G. Tucker
Field Station Manager

Attachments:

1. Terms and Conditions for Grazing in Desert Tortoise Habitat
2. Allotment Map

cc:

CERTIFIED MAIL #

NV-043	- - - -
Jeri Newby	P310374617
Nevada Division of Wildlife	P310374604
Resource Concepts, Inc., John McClain	P310374605
N-5 Grazing Board, Merlin Flake	P310374606
Natural Resources Defense Council, Johanna H. Wald	P310374607
Wilderness Society Regional Associate, Barbara Spolter	P310374608
Lincoln County Public Lands Commission	P310374609
Lincoln County Commission	P310374610
Commission for the Preservation of Wild Horses, Cathy Barcomb	P310374611
Wild Horse Organized Assistance, Dawn Lappin	P310374612
Animal Protection Institute, Nancy Whitaker	P310374613
National Wild Horse Association	P310374614
International Society for the Protection of Mustangs and Burros	P310374615
Nevada State Clearinghouse, Julie Butler	P310374616
Sierra Club, Conservation Chair, Randy Harness (DO NOT SEND CERTIFIED)	

BOB MILLE
Governor

STATE OF NEVADA

CATHERINE BARCOMB
Executive Director



COMMISSION FOR THE
PRESERVATION OF WILD HORSES

255 W. Moana Lane

Suite 207A

Reno, Nevada 89509

(702) 688-2626

June 12, 1996

Mr. Curtis G. Tucker
Caliente Resource Area
Bureau of Land Management
P.O. Box 237
Caliente, Nevada 89008

Subject: 10-Year Garden Spring/Blue Nose Peak HMA

Dear Mr. Tucker:

Thank you for consulting the Commission for the Preservation of Wild Horses concerning the issuance of 10-year Grazing Permits for Garden Spring, Summit Spring, White rock, Sheep Flat and Barclay Allotments.

We appreciate the terms and conditions limiting grazing utilization of key species on key management areas for some of the allotments.

Licenses for domestic horses adjacent to or within the Blue Nose Wild Horse Herd Management Area may be in violation of existing federal regulations. These pastures of the Garden Spring Allotment should not be "inhabited" by wild horses. The permit does not quantify the amount or season of use by domestic horses.

We appreciate your attention concerning this matter.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Barcomb".

CATHERINE BARCOMB
Executive Director