

✓ 1-23-96



United States Department of the Interior

Bureau of Land Management
Caliente Resource Area
P.O. Box 237
Caliente, Nevada 89008

In Reply Refer To:

4130
Kenneth D. Lee
Grazing Case File
(NV-055.18)

CERTIFIED MAIL #P310374690
RETURN RECEIPT REQUESTED

JAN 23 1996

AREA MANAGERS PROPOSED DECISION

Kenneth D. Lee
P.O. Box 123
Panaca, NV 89042

Dear Mr. Lee:

On February 17, 1995, the Caliente Resource Area Office sent you a ten year grazing permit for renewal. To date we have no record that you have signed and returned the permit for Area Manager approval. Your previous permit expired on February 28, 1995.

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 The superseded regulations required a grazing permit **or** other grazing use authorization.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.

You have been provided a copy of the terms and conditions which you signed and accepted. I have decided to offer you a ten year permit by proposed decision. You and other interested publics will then 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.

Therefore, it is my proposed decision to offer you a ten year grazing permit for renewal as follows:

ALLOTMENT NAME	KIND OF LIVESTOCK	SEASON OF USE	PERMITTED USE (Animal Unit Months AUM's)			
			SUSPENDED		ACTIVE	
			HISTORICAL	OTHER	LIVESTOCK GRAZING	CONSERVATION
Uvada	Cattle	3/1-2/28	355	0	1425	0
Black Hills	Cattle	3/1-2/28	156	0	31	0

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.

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, Area Manager, Caliente Resource Area Office, P.O. Box 237, Caliente, NV 89008 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.

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, 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 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 office of the authorized officer.

Sincerely,



Curtis G. Tucker
Area Manager

CERTIFIED MAIL #

cc: NV-043	
NV-053	
Nevada Department of Wildlife	(P310374691)
Resource Concepts, Inc., c/o John McClain	(P310374692)
Natural Resources Defense Council, c/o Johanna H. Wald	(P310374694)
Conservation Chair, Sierra Club	(P310374695)
Wilderness Society Regional Associate, Barbara Spolter	(P310374696)
Karen Budd-Falen, Budd-Falen Law Offices	(P310374697)
Lincoln County Public Lands Commission	(P310374698)
Lincoln County Commission	(P310374699)
Commission for the Preservation of Wild Horses, c/o Cathy Barcomb	(P310374700)
Wild Horse Organized Assistance, Dawn Lappin	(P310374701)
Animal Protection Institute, Nancy Whitaker	(P310374702)
Nevada Wild Horse Association	(P310374703)
International Society for the Protection of Mustangs and Burros	(P310374704)



**COMMISSION FOR THE
PRESERVATION OF WILD HORSES**

255 W. Moana Lane

Suite 207A

Reno, Nevada 89509

(702) 688-2626

February 2, 1996

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

Subject: Protest - Uvada and Black Hills Permits

Dear Mr. Tucker:

The Commission for Preservation of Wild Horses protests the proposed decision to issue a 10 year grazing permit for Uvada and Black Hills Allotments. The action does not comply with the National Environmental Policy Act. The proposed action violates 4100 CFR Subpart 4120 (c) concerning proper planning and consultation with the public.

No terms or conditions were proposed to meet specific resources objectives as defined in Section 4130.3-2 (f).

No information has been provided concerning impacts to other resources present on the allotment.

Sincerely,

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

CATHERINE BARCOMB
Executive Director