

L 6-5-98

Monte Cristo AMM



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Ely Field Office
HC 33 Box 33500
Ely, NV 89301-9408

In Reply Refer To:
4130 (NV-042)

JUN - 5 1998

Dear Interested Public:

Enclosed is a Notice of Final Decision regarding the term permit held by Barry K. & Norma S. Bradshaw for grazing use on the Duckwater Allotment. A Notice of Proposed Decision was issued April 16, 1998. The Ely Field Office received a Protest of Proposed Decision from Barry K. Bradshaw on May 18, 1998. I have reviewed that protest and have served my final decision.

The final decision permanently cancels the grazing permit and the total number of animal unit months of specified livestock grazing that are attached to the Bradshaw Ranch base properties.

This decision also accepts payment for charges and damages incurred as a result of unauthorized grazing use which has occurred since April 1997 in addition to costs associated with the recent livestock impoundment.

Since Mr. Bradshaw was issued a term permit on May 16, 1996 he has repeatedly been in violation of the terms and conditions of the term permit and annual grazing authorizations. BLM has made numerous attempts to negotiate settlement, resolve the unauthorized use and avoid taking this action. Despite notices, numerous meetings and telephone calls, a court decision, participation by the Chairman of the Nye County Commission Mr. Dick Carver, and other attempts at resolution over the past year, Mr. Bradshaw has ignored or refused to comply with BLM requests to comply with his grazing permit. Mr. Bradshaw grazes in common use on the Duckwater allotment. Other permittees on the allotment had requested BLM to remove the unauthorized cattle.

BLM would have preferred a negotiated resolution to the unauthorized use and willing removal of the unauthorized livestock by Mr. Bradshaw.

Any questions regarding this decision may be directed to Chris Mayer, Rangeland Management Specialist on my staff at (702) 289-1844.

Sincerely,

James Perkins
Assistant District Manager,
Renewable Resources

1 Enclosure

1. Notice of Final Decision



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Ely Field Office
HC 33 Box 33500
Ely, NV 89301-9408

In Reply Refer To:
4160 (NV-042)

JUN 3 1998

CERTIFIED RECEIPT NO. P 216 079 991
RETURN RECEIPT REQUESTED

NOTICE OF FINAL DECISION

Barry K. & Norma S. Bradshaw
Bradshaw Ranch
Duckwater, NV 89314

Dear Mr. & Mrs. Bradshaw:

You were recently issued a Notice of Proposed Decision dated April 16, 1998 which you received on May 1, 1998. That decision proposed to permanently cancel the total number of animal unit months of specified livestock grazing (which includes a total of 470 AUMs) that are attached to the Bradshaw Ranch base properties for the Duckwater Allotment.

The Ely Field Office received your Protest of Proposed Decision dated May 12, 1998 on May 18, 1998. I have reviewed your protest and have reconsidered my final decision.

In accordance with Title 43 of the Code of Federal Regulations (CFR) 4170.1-1(b), my final decision is as follows:

Your grazing permit and the total number of animal unit months of specified livestock grazing (which includes a total of 470 AUMs) that are attached to the Bradshaw Ranch base properties for the Duckwater Allotment are hereby permanently cancelled in their entirety.

Based on your history of unauthorized grazing use which includes five trespasses which have occurred since April 1996, the facts and circumstances involving Trespass Numbers NV-040-405 (Nonwillful), NV-040-414, NV-040-416, NV-040-421 and NV-040-422 and the livestock impoundment on March 31, 1998, I consider your actions to be a flagrant disregard of the federal grazing regulations for the administration of grazing use on the public lands of the United States. Your conduct has been negligent and lacking in responsibility. Your lack of remedial actions after being notified of unauthorized livestock as well as your intentional

disregard of the grazing regulations has resulted in two repeated willful violations and two willful violations. Your livestock have been in continual unauthorized use for a two year period, since April of 1996. You have been in continuous trespass with unauthorized cattle numbers as high as 104 head from January 23, 1998 to March 30, 1998 (67 days totalling 207 AUMs) when your cattle were impounded and removed from the public lands. Since April 1996 your unauthorized grazing use with unauthorized cattle numbers as high as 220 head totals 324 AUMs. You have failed to take any action especially prompt action upon repeated notification to remove all your unauthorized cattle. This is emphasized by the continuous 67 days of unauthorized use associated with repeated willful trespass numbers NV-040-421 and 422. It is further emphasized by the fact that you did not remove your livestock even after the March 11, 1998 Notice of Proposed decision was personally delivered to you which suspended 25% of the total number of animal unit months of specified livestock for a three year period as a disciplinary action for two repeated willful trespasses.

On March 31, 1998 you personally delivered a Cashier's Check (#017861) in the amount of \$18,000.00 to Ely Field Office personnel at the corral site during impoundment of your unauthorized cattle. This payment included \$10,072.43 for the monetary amounts due for the following Trespass Numbers;

- NV-040-414 Willful Violation
- NV-040-416 Willful Violation (combined with NV-040-414).
- NV-040-421 Repeated Willful Violation
- NV-040-422 Repeated Willful Violation

This payment also included additional charges due associated with the impoundment of your unauthorized cattle in the amount of (\$7,927.57). You refused to complete and sign the Settlement of Unauthorized Use Obligation Offer presented to you at the corral site but instead delivered a written statement reiterating your position that the federal government has no authority to regulate livestock grazing on the public lands.

The Bureau of Land Management accepts this payment as full payment for monetary amounts owed the United States.

Unauthorized Grazing Use History

Prior to issuance of a grazing permit on May 16, 1996, you were found to have allowed unauthorized livestock to graze on the public lands without a permit or grazing authorization which occurred between 04/11/1996 and 05/16/1996. On May 16, 1996 a meeting was held with you for the purpose of discussing the alleged trespass and to acquire acceptance and signature of your grazing permit. You made monetary payment on May 23, 1996 in the amount of \$199.80 which the Bureau of Land Management accepted for monetary amounts owed the United States for trespass number NV-040-405. This trespass violation was settled as a nonwillful trespass violation. The Settlement of Unauthorized Use Obligation Offer was

signed by you on May 16, 1996. In addition, you accepted the terms and conditions of the grazing permit and thus signed the grazing permit on May 16, 1996.

During February 1997, you were again found to have allowed unauthorized livestock to graze on the public lands prior to being issued an annual grazing authorization. On February 19, 1997 you made payment for grazing use and were authorized grazing use in accordance with grazing bill number G27460311. This billing authorized grazing use for the period 02/03/97 to 02/28/97. You were not issued a Trespass Notice for this unauthorized use however, this incident was considered unauthorized use.

On April 7, 1997 you were personally delivered Trespass Notice (NV-040-414). This notice was issued for violation of the terms and conditions associated with grazing bill number G27460312. This notice was issued for grazing livestock in excess of the number authorized in the Ike Bench Use Area and for allowing livestock grazing to occur in the Broom Canyon Use Area where livestock grazing use was not authorized. This trespass constituted a willful trespass. You failed to respond to this notice.

On April 25, 1997 you were personally delivered another Trespass Notice (NV-040-416) along with a "Notice of Intent to Impound". This notice was issued for grazing livestock in the Ike Bench Use Area without a grazing authorization. This unauthorized grazing use also constituted a willful trespass.

On Thursday May 8, 1997, a trespass settlement meeting was held at the Ely Field Office. The purpose of the meeting was to settle the unauthorized grazing use violations associated with Trespass Numbers NV-040-414 and NV-040-416. After discussion of the facts and circumstances related to the alleged unauthorized grazing use, the unauthorized grazing use violations were considered willful trespass. The charges due the United States caused by the said unauthorized use for Trespass Numbers NV-040-414 and NV-040-416 were determined to be \$3,399.70. The trespass fee was reduced from \$5,705.60 to \$3,399.70. As part of the negotiated settlement the unauthorized livestock grazing use which occurred between 03/01/97 and 04/08/97 was billed at the regular grazing fee rate. This grazing use was taken from grazing use which would have taken place during the fall of 1997. You were personally delivered grazing billing number G27460313 in the amount of \$186.85 on May 15, 1997. The unauthorized grazing use which occurred from 4/09/97 to 4/30/97 was considered willful trespass. The trespass fee of \$3,399.70 was associated with this period of unauthorized grazing use. You submitted a Settlement of Unauthorized Use Obligation Offer signed May 15, 1997. Payment in the amount of \$3,399.70 was not made until payment was received on March 31, 1998 during the livestock impoundment of your unauthorized livestock. You protested and considered the action to be extortion and demanded due process.

On May 19, 1997 a Notice of Proposed Decision and demand for payment was personally delivered to you. This decision was associated with Trespass Numbers NV-040-414 and NV-040-416. A protest was received from you on June 3, 1997. In response to the proposed decision, payment for grazing bill number G27460313 in the amount of \$186.85 was received

on May 30, 1997. However payment in the amount of \$3,399.70 was not made as demanded in the decision.

Based on your protest, the consideration of protest points, and the facts and circumstances involving grazing trespass numbers NV-040-414 and NV-040-416, a Notice of Final Decision dated June 13, 1997 was personally delivered to you on June 17, 1997. The Notice of Final Decision determined the unauthorized use to be willful violations, and demanded payment for the charges due to the United States for \$3,399.70. You filed an appeal dated July 10, 1997 to the final decision which was received on July 11, 1997. On October 14, 1997, Administrative Law Judge Harvey C. Sweitzer issued an Order which Granted the Motion to Dismiss filed by the Nevada State Director on September 2, 1997. An appeal to this Order was not filed. On January 16, 1998 a letter was received dated January 15, 1998 from Administrative Law Judge Harvey C. Sweitzer which closed the case (Barry K. Bradshaw v. Bureau of Land Management, NV-040-97-02).

On January 9, 1998 a letter was personally delivered to you giving you a final opportunity to make payment for the charges due the United States (\$3,399.70) associated with the Notice of Final Decision dated June 13, 1997. During January 1998 you were once again found to have allowed livestock to graze on the public lands without a grazing authorization and without making settlement for previous unauthorized grazing use. On January 23, 1997, an allotment inspection was conducted in which 104 head of your cattle were again found to be grazing public lands without authorization. Additional counts conducted during February and March 1998 indicated your cattle continued to graze public lands without authorization.

Since January 9, 1998, repeated attempts have been made to negotiate with you to settle the trespass violations. On Tuesday February 3, 1998 members of the Ely Field Office conducted an allotment inspection to determine forage availability and forage conditions in the Ike Springs/Ike Bench Use Areas. This inspection was requested by you. Conclusions of that tour were that you could have been issued a grazing authorization to graze cattle in accordance with your term permit. This would have required hauling water in order to utilize the available forage. Spring sources were also inspected for wild horse use. Conditions could not be determined at that time due to snow cover. On February 11, 1998 members of the Ely Field office range staff met with you at your ranch to discuss the unauthorized grazing use and future cooperation related to grazing management. You were provided yet another opportunity to set up a payment plan to settle your trespass for \$2,059.20, further reducing the amount owed to the United States for unauthorized grazing use. At that meeting you said you would cooperate with the BLM and operate in accordance with the federal grazing regulations if the BLM would work with you. You also stated you would remove your unauthorized cattle from the public rangelands within 2 to 3 days. You were informed of the results of the February 3, 1998 allotment tour and the determination that forage was available to graze upon settlement of the prior trespasses. Following that meeting you did not remove your unauthorized livestock and you did not indicate your intentions to settle your unauthorized grazing use charges.

On February 25, Trespass Notice NV-040-421 was personally delivered to you. This Trespass Notice was issued for allowing livestock to graze the public lands without a grazing authorization. This was considered a repeated willful trespass. You responded to the Trespass Notice on March 2, 1998 which was within the time frame specified in the Trespass Notice. However, in your response you did not show that there was no violation, you did not make a settlement offer, and you did not indicate your intent to remove the unauthorized cattle from the public lands. You reiterated your position challenging the authority of the Bureau of Land Management to administer grazing use on the public lands.

A Notice of Proposed Decision dated March 11, 1998 was personally delivered to you on March 11, 1998. This decision proposed to suspend 25% of the total number of animal unit months of specified livestock grazing for a three year period. A protest to that decision was not received. You called the Ely Field Office on March 13 and March 18, 1998 but did not indicate your intent to remove the unauthorized cattle from the public lands or make payment for prior unauthorized use. Again you reiterated your position challenging the authority of the Bureau of Land Management to administer grazing use on the public lands. That decision became a Final Decision on March 27, 1998. That decision allowed you an additional 5 days from receipt to make full settlement of the amount due the United States and to remove all unauthorized livestock from the public lands. You failed to remove unauthorized livestock from the public and to make full monetary settlement.

Another Trespass Notice (Number NV-040-422) dated March 23, 1998 was personally delivered to you on March 24, 1998. This Trespass Notice was also issued for allowing livestock to graze the public lands without a grazing authorization. Trespass Number NV-040-422 was also considered a repeated willful trespass. You did not respond to this Trespass Notice, you did not make a settlement offer, and you did not indicate your intent to remove the unauthorized cattle from the public lands.

On Tuesday March 31, 1998, the Ely Field Office, Bureau of Land Management began impoundment of your unauthorized cattle. This impoundment was in accordance with two Notices of Intent to Impound dated April 25, 1997 and March 11, 1998 which were both personally delivered to you. During the impoundment of your livestock on March 31, 1998 you made payment to the BLM in the amount of \$18,000.00 for charges due for trespass numbers NV-040-414, NV-040-416, NV-040-421 and NV-040-422 and for costs incurred associated with the impoundment of your unauthorized cattle.

Calculation of Trespass and Impoundment Costs

Charges due the United States caused by your unauthorized grazing use violations on the Duckwater Allotment have been determined as follows:

Charges due the United States associated with Trespass Number NV-040-422 (Repeated Willful):

104 Cattle 3/4/98 to 3/30/98 = 92 AUMs

92 AUMs X \$27.00	= \$2,484.00
Service Charge	= \$10.00
Administrative Costs	= <u>\$272.00</u>
Sub Total	= \$2,766.00

Charges due the United States associated with Trespass Number NV-040-421 (Repeated Willful Trespass):

104 Cattle 1/23/98 to 2/20/98	= 99 AUMs
45 Cattle 2/21/98 to 2/28/98	= 12 AUMs
<u>45 Cattle 3/01/98 to 3/03/98</u>	= <u>4 AUMs</u>
	115 AUMs

111 AUMs X \$26.40	= \$2,930.40
4 AUMs X \$27.00	= \$ 108.00
Service Charge	= \$ 10.00
Administrative Costs	= <u>\$ 624.00</u>
	= \$3,672.40
	<u>+ \$2,766.00</u>
Sub Total	= \$6,438.40

Charges due the United States associated with Trespass Number NV-040-414 and NV-040-416 (both Willful Trespasses) and Final Decision of June 13, 1997:

220 Cattle 4/9/97 to 4/15/97	= 51 AUMs
150 Cattle 4/16/97 to 4/23/97	= 39 AUMs
132 Cattle 4/24/97 to 4/24/97	= 04 AUMs
<u>118 Cattle 4/25/97 to 4/30/97</u>	= <u>23 AUMs</u>
	= 117 AUMs

117 AUMs x \$17.60	= \$2,059.20
Administrative Costs	+ \$1,340.50
Late Fee (A440347)	+ \$205.92
Interest	+ \$13.41
Handling	+ \$15.00
	<u>+ \$6,438.40</u>
Sub Total (Trespass Costs)	= \$10,072.43

Costs associated with the impoundment of your unauthorized cattle on March 31, 1998:

Personnel and Vehicle Costs	= \$7,692.90
Publish Impoundment Notices	= <u>\$234.67</u>

Sub Total Impoundment Costs = \$7,927.57

Total costs associated with unauthorized grazing use and livestock impoundment:

Trespass Costs	= \$10,072.43
Impoundment Costs	= <u>\$7,927.57</u>
Grand Total	= \$18,000.00

Decision Authority

The authority for this decision is contained in Title 43 of the Code of Federal Regulations (CFR) under Subpart 4140-Prohibited Acts and Subpart 4150-Unauthorized Grazing Use which states in pertinent parts:

- 4140.1 (b) (1) "Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands:
- (i) "Without a permit or lease, and an annual grazing authorization..."
 - (ii) "In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;"
 - (iii) "In an area or at a time different from that authorized;"
- 4150.3 "Where violations are repeated willful, the authorized officer shall take action under 4170.1-1(b) of this title." . . . "Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs."
- 4150.3 (b) "For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.
- 4150.3 (c) "For repeated willful violations: Three times the value of forage consumed as determined in paragraph (a) of this section."
- 4160.3 (b) "Upon the timely filing of a protest, the authorized officer shall reconsider his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. T the conclusion to his review of the protest, the authorized officer shall serve his final decision on the protestant or his agent, or

both, and the interested public."

4170.1-1(b) "The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of 4140.1(b)(1) of this title."

Appeal

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 must be filed in the office of the authorized officer as noted above, within 30 days following receipt of the final decision.

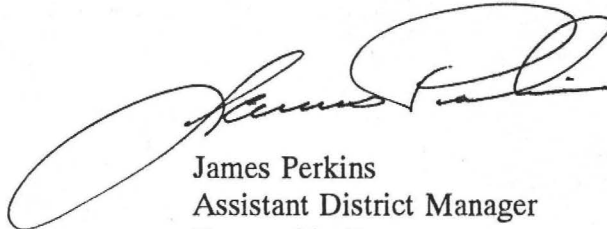
The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

If you decide to also submit a petition for stay of the decision, a copy of the notice of appeal, statement of reasons, and petition for stay should be simultaneously filed with the Office of the Field Solicitor, Suite 6201, Federal Building, 125 South State Street, Salt Lake City, Utah, 84138.

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.

Sincerely,



James Perkins
Assistant District Manager
Renewable Resources

CC:

Nye County Commissioners
Nevada Cattlemen's Association
Resource Concepts Inc.
Nevada State Clearinghouse
Nevada Dept. of Agriculture
Commission for the Preservation of Wild Horses
Nevada Division of Wildlife
UNR Cooperative Extension
Reno Fish and Wildlife Office
Laurel Etchegaray
N-4 Grazing Board