



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Ely Field Office
HC 33 Box 33500 (702 No. Industrial Way)
Ely, Nevada 89301-9408
<http://www.nv.blm.gov>



In Reply Refer To:
4160 (NV-045)

CERTIFIED RECEIPT NO. 7002 0510 0001 2708 6924
RETURN RECEIPT REQUESTED

FEB 17 2006

NOTICE OF PROPOSED DECISION DEMAND FOR PAYMENT

Robert C. Lewis
P.O. Box 520
Moapa, Nevada 89025

Dear Mr. Lewis:

Cattle have been grazing on the public lands of the Grapevine Allotment since October 26, 2004 without authorization. Cattle have been grazing on the public lands of the Breedlove Allotment since November 21, 2004 without authorization. Cattle have been grazing on the Henrie Complex Allotment since March 1, 2005 without authorization. Trespass Notice NV-045-11-05-001 for the Grapevine Allotment was issued to you on January 27, 2005. Trespass Notice NV-045-11-05-002 for the Breedlove Allotment was issued to you on June 28, 2005. Trespass Notice NV-045-11-06-001 for the Henrie Complex Allotment, was issued to you on November 8, 2005.

Chronology

On December 2, 2004 the Bureau of Land Management (BLM) Caliente Field Station received a letter from you dated November 30, 2004 which stated "This letter is to notify you that we will be leaving the cattle out on our ranges because of the abundance of feed due to the recent rainfall. Grapevine Allotment-50 head, Breedlove Allotment-80 head, Henrie Complex-100 head and Cottonwood Allotment-100 head."

The BLM Caliente Field Station responded to you on December 10, 2004 by letter, stated that additional grazing use on the Grapevine and Breedlove Allotment would not be authorized because all of the active use Animal Unit Months (AUMs) had been activated on both allotments for grazing year 2004 (349 AUMs Grapevine Allotment and 698 AUMs Breedlove Allotment). The letter also stated that while you still had AUMs on the Cottonwood Allotment, the season of use ended October 31st and additional grazing use would not be authorized. The letter stated

RECEIVED

FEB 22 2006

DEPARTMENT OF ADMINISTRATION
OFFICE OF THE DIRECTOR
BUDGET AND PLANNING DIVISION

that your application for 100 head on the Henrie Complex Allotment was within the permitted use AUMs and season of use and would be approved through the end of the year. The letter also stated that an environmental assessment would be required to authorize any additional grazing use on these allotments.

The BLM Caliente Field Station, in a letter mailed January 6, 2005, informed you that on December 16, 2004 several cattle were observed on the Grapevine Allotment. This letter also notified you that all cattle were to be removed by January 17, 2005.

When BLM documented that you had failed to remove your livestock from the Grapevine Allotment, Trespass Notice NV-045-11-05-001 was issued to you on January 27, 2005. This was received by you on January 31, 2005. This Trespass Notice notified you that the BLM alleged that you violated the following regulation 43 CFR 4140.1 (b) (1) by allowing cattle in the Northeast Pasture of the Grapevine Allotment without an authorization.

The BLM Caliente Field Station, in a letter mailed to you on February 28, 2005, proposed resolving the trespass through third-party mediation. It further explained that until a trespass settlement occurred the BLM would not issue any further grazing authorizations either on the Grapevine Allotment or on any other allotment in which you hold a grazing permit.

Trespass Notice NV-045-11-05-002 was issued to you on May 10, 2005. This Trespass Notice notified you that the BLM alleged that you violated the following regulation 43 CFR 4140.1 (b) (1) by allowing cattle in the Breedlove Allotment without an authorization. You did not pick up this mail. Trespass Notice NV-045-11-05-002 was sent to you again on June 28, 2005.

On September 19, 2005 a third party mediation meeting was held with you in Tonopah, Nevada. You did not propose to pay grazing fees or remove livestock. Your response was inadequate to resolve the unauthorized grazing use.

The BLM Caliente Field Station in a letter mailed to you on September 28, 2005 demanded payment in the amount of \$13,635.89 and informed you that all cattle were to be removed from the Grapevine and Breedlove Allotments. You returned the Demand for Payment letter to the BLM without payment and challenged the BLM's authority and jurisdiction. The calculation of charges for the \$13,635.89 identified in the September 28, 2005 letter included trespass rates and the regular grazing fee rates. The regular grazing fee was charged for some of the grazing use that was not authorized in an attempt to resolve the trespass. No administrative costs were included in this calculation of charges. The calculation of charges included costs for trespass and grazing use through September 28, 2005. A late fee for a previous unpaid billing was also included.

Trespass Notice NV-045-11-06-001 was issued to you on November 8, 2005. This Trespass Notice notified you that the BLM alleged that you violated the following regulation 43 CFR 4140.1 (b) (1) by allowing cattle on the Henrie Complex Allotment without an authorization. You returned the Notice of Trespass to the BLM without payment and challenged the BLM's authority and jurisdiction.

Unauthorized Grazing Use History

Your history of unauthorized grazing use includes the following violations:

- | | |
|---|------------------------------------|
| • Desert Livestock Producers | Willful Violation |
| • IBLA 98-237 (NV-04-97-03 and NV-04-98-01) | Repeated Willful Violation |
| • NV-045-11-01-004 | non-willful/monetary |
| • NV-045-11-01-005 | nonwillful/monetary |
| • NV-045-11-03-001 | nonwillful/monetary |
| • NV-045-11-04-001 | nonwillful/non-monetary |
| • NV-045-11-05-001 | willful (current case not settled) |
| • NV-045-11-05-002 | willful (current case not settled) |
| • NV-045-11-06-001 | willful (current case not settled) |

Conclusion

Cattle have been grazing on the public lands of the Grapevine Allotment since October 26, 2004 without authorization. Cattle have been grazing on the public lands of the Breedlove Allotment since November 21, 2004 without authorization. Cattle have been grazing on the Henrie Complex Allotment since March 1, 2005 without authorization.

I have attempted to resolve the unauthorized grazing use with you. This has included a third party mediation meeting, telephone calls, and correspondence. All attempts have proven to be unsuccessful. You have refused to pay grazing fees and remove unauthorized livestock.

Based on the facts and circumstances associated with the three current unsettled trespasses along with your history of unauthorized grazing use, I am issuing this proposed decision affecting your grazing term permit and demanding payment for unauthorized livestock grazing.

Proposed Decision

Based on your history of trespass and the facts and circumstances involving the three current trespasses NV-045-11-05-001 Grapevine Allotment, NV-045-11-05-002 Breedlove Allotment and Henrie Complex Allotment NV-045-11-06-001, 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. I consider these trespasses to be willful violations. Your conduct indicates a complete disregard for the terms and conditions of your grazing permit and for federal grazing regulations.

Based on these facts and in accordance with Title 43 of the Code of Federal Regulations (CFR) 4170.1-1(a), my Proposed Decision is as follows:

1. You are required to make payment for unauthorized cattle grazing use on the Grapevine, Breedlove and Henrie Complex Allotments. The current charges and damages due the

United States caused by your unauthorized grazing use violations as of the date of this decision have been determined to be \$62,707.65 (see the tables below). Full payment must be made within 30 days of this decision becoming final. Total charges and damages will be calculated upon the removal of all livestock from the public lands including the allotments identified above. This is for monetary charges due the U.S. Government associated with trespasses NV-045-11-05-001 Grapevine Allotment, NV-045-11-05-002 Breedlove Allotment and Henrie Complex Allotment NV-045-11-06-001.

2. You must remove all livestock from the Grapevine, Breedlove, Henrie Complex and Cottonwood Allotments within 30 days of this decision becoming final.
3. If full payment is not made in the amount of \$62,707.65 and all cattle are not removed within 30 days of this decision becoming final, 25% of the active AUMs will be permanently cancelled for the Grapevine, Breedlove, Henrie Complex and Cottonwood Allotments as reflected in the following table:

Allotment	Active Use (25% Reduction)	Cancelled Use (25% Reduction)	Total Suspended	Permitted Use
Grapevine 11032	262	87	211	473
Breedlove 11010	524	174	166	690
Henrie Complex 11034	1,035	345	2,780	3,815
Cottonwood 21021	972	324	1,704	2,676

4. If full payment is not made in the amount of \$62,707.65 and all cattle are not removed within 60 days of this decision becoming final, your grazing term permit and grazing preference will be permanently cancelled for the Grapevine, Breedlove, Henrie Complex and Cottonwood Allotments. This is reflected in the following table:

Allotment	Active Use	Cancelled Permitted Use AUMs		
		Active	Suspended	Permitted Use
Grapevine 11032	0	349	211	560
Breedlove 11010	0	698	166	864
Henrie Complex 11034	0	1,380	2,780	4,160
Cottonwood 21021	0	1,296	1,704	3,000

Total Costs To Date

Trespass Charges	\$44,576.00
Administrative Costs	\$18,131.65
Total Amount Due	<u>\$62,707.65</u>

Summary of Administrative Costs

Grapevine Travel - Vehicle Costs	\$517.80
Breedlove Travel - Vehicle Costs	\$599.20
Henrie Complex Travel - Vehicle Costs	\$35.95
General Travel - Vehicle Costs	\$392.08
Wage Costs for Grapevine	\$6,523.16
Wage Costs for Breedlove	\$2,466.03
Wage Costs for Henrie Complex	\$370.58
Trespass Decision Writing/Reviewing - Wages (2005)	\$4,112.42
Trespass Decision Writing/Reviewing - Wages (2006)	\$ 673.72
Correspondence Letters and Trespass Notice Issuance/Reviewing - Wages (2005)	\$936.36
3 rd Party Mediation Meeting on Monday 9/19/05	\$1,504.35
Total Costs	<u>\$18,131.65</u>

Calculation of Trespass Charges

Grapevine Allotment

Number	Kind	Begin and End Date	% P.L.	AUMs	AUM Cost*	Fee Amount
50	C	10/26/04 to 01/24/05	100	150	\$21.00	\$3,150.00
39	C	01/25/05 to 02/14/05	100	27	\$21.00	\$567.00
47	C	02/15/05 to 02/28/05	100	22	\$21.00	\$462.00
47	C	03/01/05 to 03/06/05	100	9	\$21.20	\$190.80
40	C	03/07/05 to 03/20/05	100	18	\$21.20	\$381.60
29	C	03/21/05 to 03/29/05	100	9	\$21.20	\$190.80
35	C	03/30/05 to 04/05/05	100	8	\$21.20	\$169.60
50	C	04/06/05 to 04/26/05	100	35	\$21.20	\$742.00
39	C	04/27/05 to 05/15/05	100	24	\$21.00	\$508.80
73	C	05/16/05 to 06/07/05	100	55	\$21.20	\$1,166.00
74	C	06/08/05 to 07/18/05	100	100	\$21.20	\$2,120.00
74	C	07/19/05 to 09/11/05	100	134	\$21.20	\$2,840.80
20	C	09/12/05 to 10/30/05	100	32	\$21.20	\$678.40
18	C	10/31/05 to 2/10/06	100	61	\$21.20	\$1,293.20
AUM Subtotal:				<u>275</u>	Subtotal:	<u>** \$14,461.00</u>

* Trespass rate for 2004 grazing year was \$10.50 x 2 = \$21.00 (willful) for 12/01/04 thru 2/28/05 (WO-IM-2004-112).

Trespass rate for 2005 grazing year \$10.60 x 2 = \$21.20, for willful, beginning March 1, 2005.

** Total fees subject to change based upon removal of all cattle.

Breedlove Allotment

Number	Kind	Begin and End Date	% P.L.	AUMs	AUM Cost*	Fee Amount
80	C	11/21/04 to 02/28/05	100	263	\$21.00	\$5,523.00
80	C	03/01/05 to 04/27/06	100	153	\$21.20	\$ 3,243.60
45	C	04/28/05 to 05/17/05	100	30	\$21.20	\$636.00
21	C	05/18/05 to 10/31/05	100	115	\$21.20	\$2,438.00
6	C	11/01/05 to 2/10/06	100	20	\$21.20	\$424.00
AUM Subtotal:				581	Subtotal:	** \$12,264.60

* Trespass rate for 2004 grazing year was $\$10.50 \times 2 = \21.00 (willful) for 12/01/04 thru 2/28/05 (WO-IM-2004-112).

Trespass rate for 2005 grazing year $\$10.60 \times 2 = \21.20 , for willful, beginning March 1, 2005.

** Total fees subject to change based upon removal of all cattle.

Henrie Complex Allotment

Number	Kind	Begin and End Date	% P.L.	AUMs	AUM Cost*	Fee Amount
100	C	03/01/05 to 11/01/05	100	809	\$21.20	\$ 17,150.80
10	C	11/02/05 to 2/10/06	100	33	\$21.20	\$699.60
AUM Subtotal:				842	Subtotal:	** \$17,850.40

* Trespass rate for 2005 grazing year $\$10.60 \times 2 = \21.20 , for willful, beginning March 1, 2005.

** Total fees subject to change based upon removal of all cattle.

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 (e) Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under 4160.1-2 of this title to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment."
- 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. At 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(a) "The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part."

Protest and Appeal

Protest

In accordance with 43 CFR 4160.2, any applicant, permittee, lessee or other interested public may protest the proposed decision under 4160.1 of this title, in person or in writing to Richard A. Orr, Assistant Field Manager Caliente Field Station P.O. Box 237 1400 Front Street, Building #1 Caliente, Nevada 89008 within 15 days after receipt of such decision. The protest, if filed, must clearly and concisely state the reason(s) why the protestant thinks the proposed decision is in error.

In accordance with 43 CFR 4160.3 (a), in the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice.

In accordance with 43 CFR 4160.3 (b), should a timely protest be filed with the authorized officer, the authorized officer will reconsider the proposed decision and shall serve the final decision on the protestant and the interested public.

Appeal

In accordance with 43 CFR 4.470, 4160.3(c), and 4160.4, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 CFR 4.470, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

Pursuant to 43 CFR 4.471 and 4160.3(c), an appellant also may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision.

The appeal and any petition for stay must be filed at the office of the authorized officer Richard A. Orr, Assistant Field Manager Caliente Field Station P.O. Box 237 1400 Front Street, Building #1 Caliente, Nevada 89008 . Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Solicitor, Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825-1890.

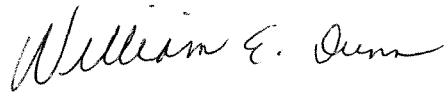
Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (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.

43 CFR 4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division in Salt Lake City, Utah, a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the decision (43 CFR 4.472(b)).

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).



William E Dunn
Assistant Field Manager
Renewable Resources
Ely Field Office

CC:

USFWS, Southern Nevada Field Office
Cynthia T. Martinez
4701 N Torrey Pines Blvd
Las Vegas NV 89130

7002 0510 0001 2708 6849

Nevada State Clearinghouse
Dept of Administration
Budget & Planning Division, Grants
209 E Musser St Room 200
Carson City NV 89701 4298

7002 0510 0001 2708 6818

Brad Hardenbrook
NDOW
4747 W. Vegas Drive
Las Vegas, NV 89108

7002 0510 0001 2708 6917

Katie Fite
Western Watersheds Project
Box 2863
Boise ID 83701

7002 0510 0001 2708 6832

Steve Foree
Nevada Department of Wildlife
60 Youth Center Road
Elko NV 89801

7002 0510 0001 2708 6825

Michael Kuyper
BLM, Eagle Lake Field Office
2950 Riverside Drive
Susanville, CA 96130

7002 0510 0001 2708 6900

Jule Wadsworth
Box 407
Panaca NV 89042

7002 0510 0001 2708 6887

Leo K. Stewart
P.O. Box 535
Alamo, NV 89001

7002 0510 0001 2708 6870

Betsy Macfarlan
ENLC
PO Box 150266
Ely NV 89315

7002 0510 0001 2708 6894

Friends of Nevada Wilderness
P.O. Box 9754
Reno, NV 89507

7002 0510 0001 2708 6863

Mr. Steven J. Carter
Carter Cattle Company
PO Box 27
Lund, NV 89317

7002 0510 0001 2708 6856