

AL 5-4-92

To: STRICKLAND.R (SIE038)
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Paiute

May 1, 1992

Bill R. Templeton, State
Director
Bureau of Land Management
Nevada State Office
P.O. Box 12000
Reno, Nevada 89520-0006

Re: Appeal of Paiute Meadows Allotment Agreement

Dear Director Templeton:

This letter is a formal appeal of your decision to enter into an agreement concerning the level of livestock use that would be permitted for the above-captioned allotment which is located in the Paradise-Denio Resource Area. According to a letter from Thomas S. Van Horne, dated January 20, 1992, you orally agreed that Dan Russell, Mr. Van Horne's client, "would be allowed to graze no fewer than ... 4,350 aums" in this grazing year in a telephone conversation initiated by you and your Associate State Director, on January 16, 1992. According to Mr. Van Horne's letter, a copy of which is attached as Exhibit A, "[y]ou assured [him] that you could and would guarantee that level of grazing for this season" -- a commitment appellants are informed and believe you have kept. Because this appeal is being filed within 30 days after the Natural Resources Defense Council (NRDC) first received a copy of this letter and learned of your decision, this appeal is timely.

This appeal is filed on behalf of NRDC and the Sierra Club, Toiyabe Chapter, environmental membership organizations which have long been concerned about the management of livestock in the Paiute Meadows allotment (and other allotments) in the Paradise-Denio Resource Area. Both organizations have been recognized as "affected interests" with respect to grazing decision-making involving allotments in the Resource Area, including in particular the Paiute Meadows allotment in light of our longstanding concern and participation in Bureau of Land Management (BLM) decisionmaking processes. We appeal your decision to guarantee a certain level of grazing to the permittee on the ground that our rights to have the BLM consult, coordinate and cooperate with us before final decisions are made concerning the management of grazing in the Paiute Meadows allotment have been

violated.

NRDC and the Sierra Club participated extensively in the scoping, draft and final stages of the land use planning and environmental impact statement (EIS) processes carried out by the BLM for this Resource Area. In addition, we have been participating in the allotment evaluation process that the Resource Area has been carrying out since our appeal (IBLA #89-318) of 14 "livestock use agreements" that were improperly negotiated without the participation of any members of the public, including affected interests, in 1988 was settled. We have tried to participate in decisionmaking for the Paiute Meadows allotment, but your January 16, 1992 agreement with the permittee marks the second time that our rights as members of the public and affected interests have been blatantly ignored by the Bureau.

NRDC and the Sierra Club reviewed the draft allotment evaluation for the Paiute Meadows allotment and submitted comments on its contents. However, neither organization was given any opportunity to comment on the Area Manager's November 22, 1991, decision for this allotment prior to the time it was finalized. Instead, the Area Manager entered into closed door negotiations with the livestock permittee (or his representative) concerning the contents of the decision. The outcome of those negotiations was a livestock use agreement dated November 19, 1991, which was signed by the permittee and the Area Manager on November 21 and 22, respectively, and which dictated the terms of the final decision issued November 22. On December 20, 1991, NRDC and Sierra Club appealed the Area Manager's decision on the ground, inter alia, that the process he had followed violated our public participation rights. A copy of our appeal is attached as Exhibit C and is incorporated by this reference.

As Mr. Van Horne's letter makes clear, other organizations also appealed the Area Manager's decision, including wild horse groups. The latter appealed not only the grazing decision, denominated a multiple use decision in this case, but also the final, full force and effect wild horse roundup decision for the Paiute Meadows Allotment which was issued simultaneously. Mr. Van Horne's letter refers to your efforts, prior to January 16, to obtain the agreement of the wild horse groups to forego their right to stop the pending horse gather.

The wild horse groups did subsequently agree to drop their appeal, based on your assurance that the multiple-use decision would be vacated and "[c]onsultation among affected interests" would be undertaken "in anticipation of a new proposed multiple-use decision." January 31,

1992 letter to you from Russell J. Gaspar, Attorney for AHPA and The HSUS, Dawn Lappin, Wild Horse Organized Assistance, Cathy Barcom, Nevada Commission for the Preservation of Wild Horses, attached as Exhibit D. At least one meeting of affected interests has been held since then, on[rose: is this the meeting we went to or just Dawn and Cathy?] However, your assurance to the wild horse groups and the consultation process have been totally compromised by your prior -- and illegal -- "guarantee" to the permittee that he would be permitted to graze at a level that had already caused significant riparian damage, according to monitoring data presented in the draft and final allotment evaluation summary for this allotment. See, e.g., Paiute Meadows Final Allotment Evaluation Summary (November 22, 1991), pp. 13-14.

As demonstrated below, your January 1992 agreement with the permittee is a flagrant violation of the BLM's duty to consult, coordinate and cooperate with appellants prior to making decisions. It also violates other applicable duties. [or should we leave this out totally?]

The Federal Land Policy and Management Act of 1976 (FLPMA) unequivocally directs that the "public [be given] adequate notice and opportunity to comment upon, and participate in the formulation of plans and programs relating to the management of the public lands." 43 U.S.C. § 1712 (f). See also id., § 1739 (e) (the public "shall" be given the opportunity to participate in "the management of[] the public lands" as well as in "the preparation and execution of plans and programs"). FLPMA requires that the BLM must "provide means for input by the interested public before decisions are made." H.R. Rep. No. 1163, 94th Cong. 2d Sess. 7 (1976) (emphasis added).

The grazing regulations provide for participation by members of the general public in the grazing decision-making process and, specifically, for "consultation, cooperation and coordination" in that process. "Consultation, cooperation and coordination" is defined to mean

an interactive process for seeking advice, agreement, or interchange of opinions on issues, plans, or management actions from other agencies and affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by an allotment management plan and other affected interests.

43 CFR § 4100.0-5 (1990) (Definitions) (emphasis added). In turn, the phrase "affected interest" is defined to mean

an individual or organization that has expressed in

writing to the authorized officer concern for the management of livestock grazing on specific grazing allotments.

Id. The Bureau's Grazing Manual, in Section 4400.06B, specifies that the "active participation [of rangeland users and other interested parties] must be sought when analyzing, interpreting, and evaluating monitoring data." (emphasis added). Following the Paradise-Denio Resource Area's 1988 flaunting of these binding requirements, the Nevada BLM entered into a stipulation in IBLA #89-318 containing public participation prescriptions. In particular, the BLM acknowledged that "[a]ll affected interests [must] be provided the same information and be afforded the same opportunities in arriving at the selected management action." Stipulation to Withdraw Appeal, pp. 2, 3 (emphasis added).

As noted above, NRDC and the Sierra Club are affected interests with respect to this allotment. Notwithstanding our status -- to say nothing of FLPMA's passage some 15 years ago, we were not given the "same opportunities" given the permittee. Instead, we were totally excluded from the process by which the minimum level of livestock use in the Paiute Meadows allotment was "guarantee[d]" by you. The "consultation" that is taking place now is a sham, given that the single most important decision -- the stocking level -- has already been established by a process which included no public review and, indeed, until recently, was a closely held secret between the BLM and the permittee. Frankly, it is hard to imagine a more blatant -- and illegal -- attempt to return to the days when management of the public's rangelands was the exclusive prerogative of the BLM and permittees. In sum, it is indisputable that NRDC and Sierra Club's rights under FLPMA and the grazing regulations to participate in the making of decisions about the future management of the Paiute Meadows allotment were flagrantly violated. The BLM must consult, coordinate and cooperate with us as well as permittees before final decisions are made.

Your decision also fails to comply with other applicable duties. In particular, for the reasons set out in our December 20, 1991, appeal of the Area Manager's decision for this allotment, the level of livestock use "guarantee[d]" by you exceeds the livestock carrying capacity of the allotment, will cause riparian damage in violation of national BLM policy, and was not arrived at in accordance with the requirements of the National Environmental Policy Act of 1969. See pp. 5-7 of Exhibit C.

CONCLUSION AND REQUEST FOR RELIEF

To remedy the serious violations of law documented above, appellants, the Sierra Club and NRDC, respectfully request the following relief:

*emergency
with your check
who will be dependent
on large allotment
to livestock
over CC*

1) the invalidation of the agreement with the permittee that was entered into on January 16, 1992;

2) the invalidation of the written livestock use agreement with the permittee that was signed by the Area Manager on November 22, 1992;

2) notification to the permittee of the invalidation of both of those agreements and of the BLM's authority to adjust livestock levels in accordance with applicable legal and regulatory requirements, without regard to any prior agreements or commitments;

3) the initiation of consultation, coordination and cooperation with all affected interests regarding the level of livestock use in the Pauite Meadows allotment as well as other management practices within 30 days;

4) an order prohibiting the agency from making any grazing management decisions without consulting, coordinating and cooperating with all affected interests and without complying with applicable statutory and regulatory requirements for public participation; and

5) such other relief as is requested in the appellants December 20 1991, appeal as is appropriate. [chiefly grazing capacity, riparian policy. EIS covered. I got lazy, but think this is alright.]
Sincerely,

Johanna H. Wald
NRDC

Rose Strickland
Sierra Club, Toiyabe

cc: Burton J. Stanley, Esq.

Original paper copy to follow via certified, first class mail