



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WINNEMUCCA DISTRICT OFFICE
705 East 4th Street
Winnemucca, Nevada 89445

4130
(NV-024.14)

m 4-27-95
APR 27 1995

Dear Interested Party:

A Final Full Force and Effect Multiple Use Decision (FMUD) for the Paiute Meadows Allotment was issued on April 12, 1993. This FMUD was appealed by Nevada Division of Wildlife (NDOW), The Commission for the Preservation of Wild Horses and Burros (CPWHB), Wild Horse Organized Assistance (WHOA), William Cummings, and Daniel Russell. Irvin E. and Sandy Brown filed a motion in which they sought to substitute themselves as the "real party in interest."

William Cummings and Daniel Russell withdrew their appeals, and Irvin E. and Sandy Brown withdrew their motion to be substituted as the real party in interest. NDOW, CPWHB, and WHOA have entered into a stipulated agreement with the Bureau of Land Management to withdraw their appeals.

Therefore, the enclosed court orders for the dismissal of the appeals for NDOW, CPWHB, WHOA, William Cummings, Daniel Russell, and Irvin E. and Sandy Brown were issued.

Should you have any questions or comments please respond in writing to the attention of Mandy McCutcheon at the above address.

Sincerely yours,

Area Manager
Paradise-Denio Resource Area

Enclosure:

Court Order (April 7, 1995)
Court Order (April 14, 1995)
Stipulated Agreement

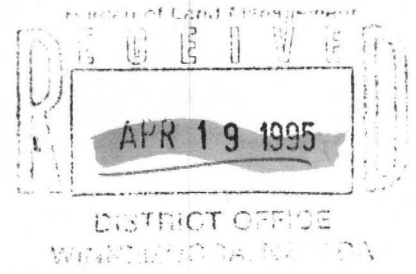
4-19-95



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Hearings Division
6432 Federal Building
Salt Lake City, Utah 84138
(Phone: 801-524-5344)



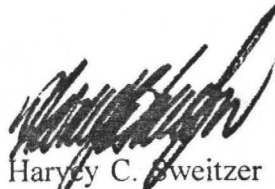
April 14, 1995

ORDER

WILLIAM C. CUMMINGS and	:	N2-93-8, IBLA 93-481
DANIEL H. RUSSELL,	:	
	:	
Appellants	:	
	:	
v.	:	
	:	
BUREAU OF LAND MANAGEMENT,	:	
	:	
Respondent	:	

Appeals Dismissed

Based on filings with this office to the effect that appellants hereinabove have no further interest in these matters; and that Irvin E. and Sandy Brown, asserted successors in interest to said appellants, withdraw their motion that they be substituted as real parties in interest; these appeals are **dismissed**. Accordingly, the hearings in these matters set to commence April 17, 1995, in Reno, Nevada, are vacated.


Harvey C. Sweitzer
Administrative Law Judge

Distribution
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Bureau of Land Management
705 East 4th Street
Winnemucca, Nevada 89445



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Hearings Division
6432 Federal Building
Salt Lake City, Utah 84138
(Phone: 801-524-5344)

April 7, 1995

RECEIVED

APR 11 1995

OFFICE OF ATTORNEY GENERAL
DEPUTY ATTORNEY GENERAL

ORDER

WILLIAM C. CUMMINGS and : N2-93-8, IBLA 93-481
DANIEL H. RUSSELL, :

Appellant :

v. :

BUREAU OF LAND MANAGEMENT, :

Respondent :

.....
NEVADA DIVISION OF WILDLIFE, : N2-93-9, IBLA 93-482

Appellant :

v. :

BUREAU OF LAND MANAGEMENT, :

Respondent :

.....
COMMISSION FOR THE : N2-93-10, IBLA 93-484
PRESERVATION OF WILD HORSES, :

Appellant :

v. :

BUREAU OF LAND MANAGEMENT, :

Respondent :
.....

WILD HORSE ORGANIZED	:	N2-93-11, IBLA 93-483
ASSISTANCE,	:	
	:	
Appellant	:	
	:	
v.	:	
	:	
BUREAU OF LAND MANAGEMENT,	:	
	:	
Respondent	:	

Certain Appeals Dismissed
Motion to Continue (regarding remaining appeals) Denied
Other Rulings as Specified

The captioned cases have been duly set for hearing to commence April 17, 1995, in Reno, Nevada.

On March 10, 1995, Irvin E. and Sandy Brown, asserted successors in interest to William C. Cummings and Daniel H. Russell, in a document modifying the caption hereinabove, but obviously pertinent to at least some of such matters, moved "for substitution," "to consolidate" and "to continue."

On March 27, 1995, respondent filed a "notice of appearance," "opposition" to the aforesaid motions, and a "motion to dismiss" the appeals of Cummings and Russell.

On March 31, 1995, appellants in N2-93-10 and IBLA 93-484, N2-93-09 and IBLA 93-482, and N2-93-11 and IBLA 93-483, and respondent, filed a document wherein the appeals in those matters are withdrawn.

On April 4, 1995, the Browns filed a reply to respondent's "opposition" and "motion to dismiss" (filed March 27 as noted above).

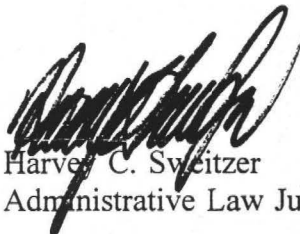
The rulings concerning these several documents are as follows:

1. The appeals in N2-93-10 and IBLA 93-484, N2-93-09 and IBLA 93-482, and N2-93-11 and IBLA 93-483 are **dismissed**. While the document filed March 31 states the withdrawal of the appeals to be subject to a stipulation set out thereafter, it is my opinion I should not condition this dismissal on performance of the stipulation. If performance is assertedly not made with the stipulation, the parties may seek relief through other recourse.

2. Concerning the motions and oppositions (the filings of March 10 and 27, and April 4; for reasons set out in the documents and adopted herein as are apropos to the rulings:

- (a) The issues in the appeals of Cummings and Russell (N2-93-8 and IBLA 93-481) remain justiciable and respondent's motion to dismiss is **denied**.
- (b) No sufficient reason is given to consolidate an appeal assertedly made from a February 6, 1995, decision with the hearing of N2-93-8 and IBLA 93-481; accordingly the Browns' motion for such consolidation is **denied**.
- (c) The motion to substitute the Browns as real parties in interest vice Cummings and Russell is **taken under advisement** and motion in this regard may be reasserted at the beginning of the hearing for further consideration at that time.
- (d) Good cause and proper diligence are not found to justify a postponement of the hearing. The motion to continue is accordingly **denied**.

Therefore the hearing involving N2-93-8 and IBLA 93-481 will commence at 1:30 p.m. on April 17, 1995, in Room 5011, U.S. District Court, 300 Booth Street, Reno, Nevada, and will proceed thereat to conclusion. It seems that in fairness the appellants in N2-93-8 and IBLA 93-481, and the Browns, should have a copy of the document filed March 31, 1995 (containing the withdrawal of appeals of the other appellants, and the stipulation) and a copy is hereby provided those persons.


Harvey C. Sweitzer
Administrative Law Judge

Distribution

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Wayne Howell (sic?)
Howell

UNITED STATES DEPARTMENT OF INTERIOR
OFFICE OF HEARINGS AND APPEALS
HEARINGS DIVISION

IRV & SANDY BROWN, successor in
interest to William C. Cummings
and Daniel Russell

Appellant,

vs.

BUREAU OF LAND MANAGEMENT,

Respondent.

No. N2-93-08

Appeal from the Area
Manager's Final Decision
dated April 12, 1993,
Paradise-Denio Resource
Area, Winnemucca Dist,
Nevada

NEVADA DIVISION OF WILDLIFE,

Appellant,

vs.

BUREAU OF LAND MANAGEMENT,

Respondent.

No. N2-93-09

Appeal from the Area
Manager's Final Decision
dated April 12, 1993,
Paradise-Denio Resource
Area, Winnemucca Dist,
Nevada

THE COMM. FOR THE PRESERVATION
OF WILD HORSES AND BURROS,

Appellant,

vs.

BUREAU OF LAND MANAGEMENT,

Respondent.

No. N2-93-10

Appeal from the Area
Manager's Final Decision
dated April 12, 1993,
Paradise-Denio Resource
Area, Winnemucca Dist,
Nevada

WILD HORSE ORGANIZED
ASSISTANCE,

Appellant,

vs.

BUREAU OF LAND MANAGEMENT,

Respondent.

No. N2-93-10

Appeal from the Area
Manager's Final Decision
dated April 12, 1993,
Paradise-Denio Resource
Area, Winnemucca Dist,
Nevada

IRV & SANDY BROWN,

Appellant,

vs.

BUREAU OF LAND MANAGEMENT,

Respondent.

No. N2-95-7

Appeal from the Area
Manager's Decision
dated Feb 6, 1995,
Paradise-Denio Resource
Area, Winnemucca Dist.,
Nevada

Irv and Sandy Brown's reply to Respondents Opposition to Motions from the Browns and Respondents Motion to Dismiss the Appeal of William Cummings.

RESPONDENTS OPPOSITION TO MOTION FOR SUBSTITUTION

The BLM claims in their argument that I site no authority for my motion of substitution for William Cummings and Dan Russell. However, substitution of the real party in interest is a common law principle and acknowledged by Federal Rules of Civil Procedure. The concept is also expressed in 43 CFR 4.401(b) where the regulation confirms that a transferee must be made a party to any proceedings thereafter initiated adverse to the entry. The BLM admits that I am the real party in interest, therefore my substitution is appropriate.

**BLM OPPOSITION TO CONSOLIDATE THE FEB 6, 1995 APPEAL OF THE
GRAZING PERMIT WITH THE 1993 FULL FORCE DECISION**

The BLM contends that the Feb 6, 1995 is only a proposed decision and not a final decision. It is my understanding that one has 30 days after the issuance of a proposed decision to file a protest and if no protests are filed it automatically becomes final. Therefore my appeal which was filed on the 30th day should properly be considered an appeal rather than a protest and therefore should be consolidated with the 1993 appeal.

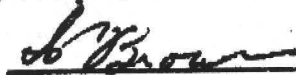
BLM MOTION TO DISMISS THE APPEAL OF WILLIAM CUMMINGS

Contrary to the BLM's position, William Cummings continues to have an interest because he holds a mortgage on the Paiute Meadows Ranch. Should I default on that mortgage, the ownership of the ranch could revert to Mr. Cummings.

BLM OPPOSITION TO MOTION TO CONTINUE

Since the other Appellants are withdrawing their appeals, an opportunity now exists wherein the local BLM authority and myself might use the extra time granted by continuance to negotiate a compromise favorable to both sides without resorting to the court.

Respectfully submitted this 3rd day of April, 1995.



Irvin E. Brown
P.O. Box 478
Winnemucca, NV 89446

CERTIFICATE OF FILING & SERVICE: 43 CFR 4.401

I certify that on this date, I transmitted the foregoing document to the office in which filing is required before the end of the period in which it was required to be filed, and I did so by depositing with the United States Postal Service, at Rancho Cordova, California an envelope containing the original said document, with postage for first class mail addressed to said office, as follows:

Office of Hearings & Appeals
Hearings Division
6432 Federal Building
Salt Lake City, Utah 84138

and I did so by depositing with the United States Postal Service at Rancho Cordova, California an envelope containing a copy of said document, with postage for first class mail addressed to said office, as follows:

William Molini
Director, NDOW
P.O. Box 10678
Reno, NV 89520-0022

WHOA
P.O. Box 555
Reno, NV 89504

Comm. for the Pre. of Wild Horses
Stewart Facility
Capitol Complex
Carson City, NV 89710

USDI - Office of the Regional Solicitor
2800 Cottage Way, Room E-2753
Sacramento, CA 95825-1890

Dated this 3rd day of April, 1995.


IRVIN E. BROWN