



L 7-30-92

FRANKIE SUE DEL PAPA  
Attorney General

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
208 NORTH FALL STREET  
CARSON CITY, NEVADA 89710

July 30, 1992

Mr. Scott Billings, Manager  
Paradise-Denio Resource Area  
Bureau of Land Management  
705 East Fourth Street  
Winnemucca, Nevada 89445

Re: Appeal of Paiute Meadows Grazing Permit

Dear Mr. Billings:

This letter is an appeal from your decision dated June 30, 1992, that the yearly license issued for the Paiute Meadows Allotment is not an appealable decision. Attachment A. This appeal is based on the following.

The Nevada Department of Wildlife ("Department") is an affected interest in the Paiute Meadows Allotment, as set forth in the appeal dated June 18, 1992. Attachment B. As an agency of the State of Nevada, the Department exercises its responsibilities over wildlife in the allotment, and has a long history of participation in the BLM's land use planning process in furtherance of those responsibilities.

It is the position of the Department that issuance of an annual grazing permit constitutes an appealable final agency action when the BLM knows that significant deterioration of the rangeland resource will result from the use which the permit authorizes. The BLM retains authority to adjust the year to year grazing authorization based on the condition of the range, 43 U.S.C. § 1752(e), so issuance of the annual permit is not merely a ministerial function. It is a function which rests on the exercise of sound professional judgment and is therefore an appealable agency decision. The failure to properly exercise that judgment is reversible as an arbitrary and capricious agency action not in accordance with the law. It should therefore be appealable pursuant to 43 C.F.R. §§ 4.470 et seq.

The BLM must reduce active use which is "causing an unacceptable level or pattern of utilization or exceeds the livestock carrying capacity as determined through monitoring." 43 C.F.R. § 4110.3-2. "The authorized livestock grazing use

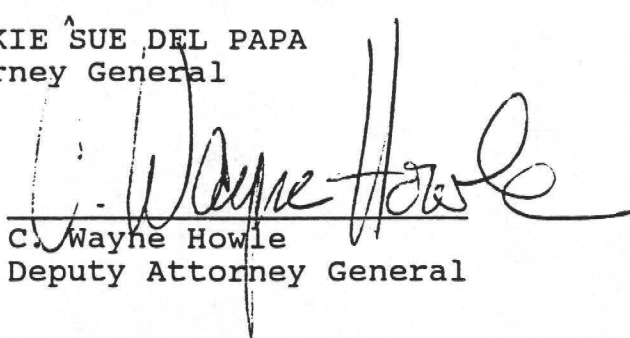
Mr. Scott Billings, Manager  
July 30, 1992  
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The grazing authorization was made in spite of information in BLM's possession which shows that grazing at levels authorized by the permit will cause resource damage. There is no other reasonable interpretation of the data. Furthermore, the BLM has the authority and the responsibility to adjust grazing levels when it has such knowledge. Therefore the issuance of the permit authorizing grazing at harmful levels was arbitrary and capricious and not in accordance with law, and the Department appeal of the permit on this basis is entitled to consideration. The Department therefore asks for reversal of the decision finding that the annual grazing permit is not an appealable agency decision, and that the previous Department appeal dated June 18, 1992, be considered on its merits.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By:

  
C. Wayne Howle  
Deputy Attorney General

CWH/lhe

Enclosures

cc: Billy Templeton, State Director, Bureau of Land Management  
Burton Stanley, Counsel, Bureau of Land Management



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Winnemucca District Office  
705 East 4th Street  
Winnemucca, Nevada 89445

June 30, 1992

4160  
(NV-240)

Mr William Molini  
Director, Nevada Department of Wildlife  
P.O. Box 10678  
Reno, Nevada 89520-0022

Dear Mr. Molini:

This letter is in response to a letter I received from you dated June 18, 1992 in which you indicated that you were formally appealing the issuance of the 1992 Grazing Permit for the Paiute Meadows allotment. You are viewing the issuance of this grazing permit as a final decision because the Multiple Use Decision dated November 22, 1991 was vacated.

Your interpretation of this action is not correct. The yearly license is not an appealable action and was issued based on the transfer of 4350 AUMs of active use to Mr. Dan Russell in April of 1990 when he offered proof of control for the base properties at Paiute Meadows.

As you are aware, part of the proposal from the wild horse groups was to drop their appeal of the gathering of wild horses on the Black Rock East HMA if the Bureau would vacate the Full Force and Effect decision for the Paiute Meadows allotment that was issued on November 22, 1991. Once that decision was vacated, then the permittee is allowed to use 4350 AUMs (the amount allowed in the transfer process) until another decision is issued to adjust that amount.

The stipulated agreement with the wild horse groups states that a new Proposed Multiple Use Decision will be issued in consultation with the interested parties and in coordination with the Paiute Meadows evaluation.

The consultation process leading to another decision can be lengthy. In addition to the meetings that you attended in Reno on January 7 and January 14, the Resource Area held a consultation meeting on March 10, 1992 to discuss the issues surrounding Paiute Meadows. Representatives from the Nevada Department of Wildlife were present at that meeting and part of the discussion centered around the action that would be taken if a new decision was not completed and issued prior to the 1992 grazing season.

My staff is currently working to develop alternatives for management on the allotment that address the concerns you identified in your appeal dated December 18, 1991 as well as the concerns of the wild horse groups, NRDC and the Sierra Club. A copy of the alternatives will be sent to all interested parties for their review and comment. Once my staff and I have reviewed the comments, a determination will be made if another consultation meeting is necessary before the management action is developed.

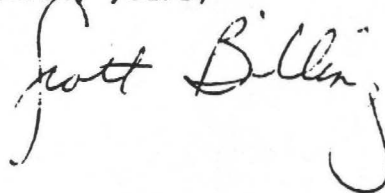
ATTACHMENT A

In closing, I want to reiterate that your interpretation of the yearly grazing permit being a final decision is not correct. Therefore, I view your letter dated June 18, 1992 as a protest as described in 43 CFR 4.450-2 and not as an appeal.

If you wish to appeal this final decision in accordance with 43 CFR Part 4, you are allowed thirty (30) days from receipt of this notice within to file such appeal with the Area Manager, Paradise-Denio Resource Area, Bureau of Land Management, 705 East Fourth Street, Winnemucca, Nevada 89445. The appeal should state clearly and concisely why you think the decision is in error.

If you have any other questions, please give me a call.

Sincerely yours,

A handwritten signature in cursive script that reads "Scott Billings". The signature is written in dark ink and is positioned to the right of the typed name "Scott Billings".

cc: Mr. Richard Heap  
Ms. Cathy Barcomb  
Ms. Dawn Lappin  
Mr. Thomas Van Horne  
NRDC  
Sierra Club  
Humane Society of the United States  
American Horse Protection Association  
Animal Protection Institute  
Mr. William Cummings  
Mr. Andy Johas  
Mr. Dan Russell

**PAIUTE MEADOWS ALLOTMENT MONITORING 1992**

Streambank Riparian Habitat - North Battle Creek T44N, R27E, S19  
Final Allotment Evaluation (11-22-91):

**Short Term Allotment Objective:**

"Utilization of key streambank riparian plant species shall not exceed 30% on Paiute, Battle and Bartlett Creeks."

**1992 License**

North Pasture - 700 Cattle - 2,175 AUMs - 5/1 to 7/31

June 23, 1992 - Roy Leach, Jim Jeffress, Jim French



All cattle were observed within 1/4 mile of water sources. Significant use of riparians were common and licensed use allows for five more weeks before movement to South Pasture.

Field Notes: Streambank riparian vegetation appeared to be used by cattle exclusively. BLM monitoring data confirms this observation by NDOW. Young willows were all hedged by livestock this spring and summer. Mature willows were used. Uplands appeared to have perennial grasses available to cattle, but cattle use is limited to 1/4 of water.

Wetland Riparian Habitat - Burnt Springs - T40N,R26E, S 10

Final Allotment Evaluation 11-22-91

Short Term Objective:

"Utilization of key plant species in wetland riparian habitats shall not exceed 50%."

June 23, 1992 - Roy Leach, Jim French, Jim Jeffress



Heavy use by cattle and wild horses. Bare soils are present. Wild horses use this stringer meadow all spring and summer. There will be no residual cover.

#### NDOW Appeal/Argument

NDOW used BLM monitoring data to estimate the livestock carrying capacity of 1,268 AUMs of spring/summer use. The 1992 Grazing License authorized 2,175 AUMs from 5/1 to 7/31. This use is known to cause damage to riparian habitats. We assume that these sites will receive continuous use for five additional weeks after these photographs. These sites are typical of the allotment and critical to sage grouse, antelope, mule deer and nongame wildlife.

1992 License:

South Pasture - 700 Cattle - 2,175 AUMs - 8/1 to 11/5

Wetland Riparian Habitat - Trough Springs - T39N, R25E, S12  
Final Allotment Evaluation (11-22-91)

Short Term Objective:

"Utilization of key plant species in wetland riparian habitats shall not exceed 50%."

June 23, 1992 - Roy Leach, Jim Jeffress, Jim French



Heavy use by wild horses and trespass cattle. Bare soils present and no cover for sage grouse broods.

Field Notes: This spring is typical of the South Pasture. Water sources are critical to antelope and sage grouse. All springs observed were heavily used by wild horses.

Upland Habitat - T39N, R25E, S 1

Final Allotment Evaluation (11-22-91)

Short Term Objective:

"Utilization of key plant species in upland habitats shall not exceed 50%."

June 23, 1992 - Roy Leach, Jim French, Jim Jeffress



Heavy use of the upland grasses by horses and trespass cattle in 1992. Hedged brush indicated heavy winter use.

Field Notes: The site represents heavy yearlong use by wild horses. It would appear that wild horses had to survive on sage brush last winter. BLM removed 489 wild horses from the South Pasture in February 1992. Antelope, sage grouse and mule deer were observed.



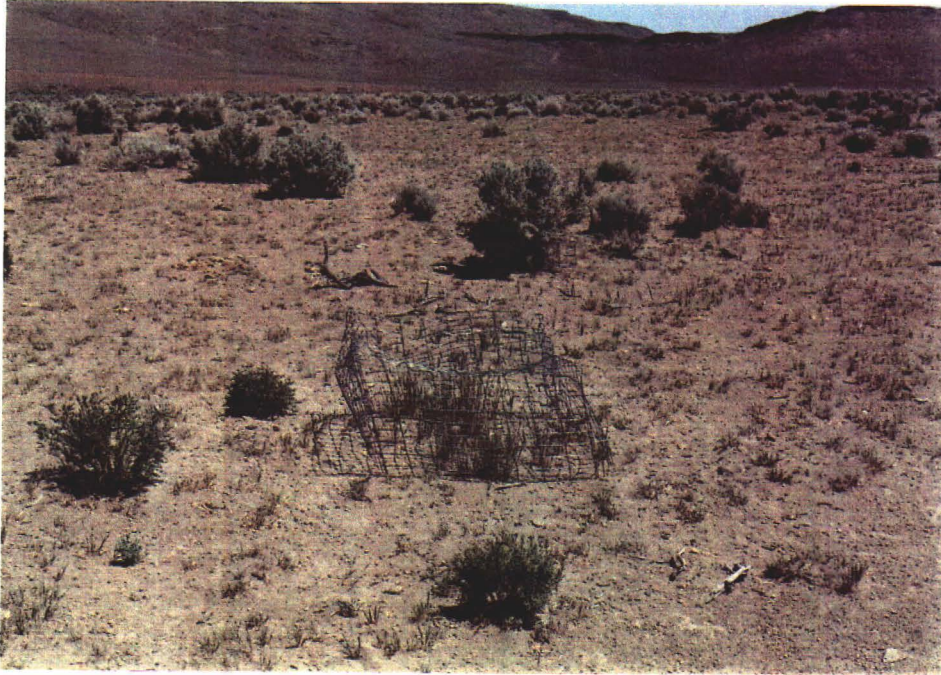
Crested Wheatgrass Site - T39N, R25E

Final Allotment Evaluation (11-22-91)

Short Term Objective:

"Utilization of crested wheatgrass shall not exceed 50%."

June 23, 1992 - Roy Leach, Jim Jeffress, Jim French



Significant use by wild horses at a BLM monitoring site. BLM monitoring data indicate severe use by wild horses prior to the removal in 1992. The observed use is five weeks prior to livestock use. This is a critical antelope summer range.

#### NDOW Appeal/Argument

NDOW used BLM monitoring data and wild horse numbers to estimate carrying capacities. According to our analysis, wild horses will use all available forage prior to livestock moving into the South Pasture. Our photographs clearly show that there is no forage available to livestock on key riparian and upland sites in the South Pasture. Conditions are expected to become worst on the North and South Pastures. The 1992 Grazing License authorizes livestock use known to cause damage. These photographs confirms our argument.