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Interior Board of Land Appeals
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APR - 3 1996

IBLA 93-88	:	N2-92-10
	:	
NEVADA DEPARTMENT OF WILDLIFE <u>ET AL.</u>	:	Grazing Permit
	:	
	:	Appeals Referred to
	:	Hearing Division

ORDER

The State of Nevada, Department of Wildlife (NDOW), the State of Nevada, Commission for the Preservation of Wild Horses (NCPWH), and the Wild Horse Organized Assistance (WHOA) have separately appealed decisions of the Paradise-Denio Resource Area Manager, Bureau of Land Management (BLM), holding that issuance of grazing bills for the Paiute Meadows Allotment to grazing permit holder Dan Russel were not subject to appeal.

Background

In 1990, Russell applied for transfer of the grazing preference associated with the Paiute Allotment and for the related grazing permit. See 43 CFR 4110.2-3(a)(4), (b). BLM reviewed the applications to determine whether to approve transfer of the grazing preference and to establish the terms and conditions of a new grazing permit. Upon approving the preference transfer, BLM authorized grazing use on an interim basis "for the 1990 grazing year or until [the allotment evaluation process] is complete" (Mar. 21, 1990, Notice). At that time, the Paiute Meadows evaluation was "scheduled to be drafted and issued for public comment and review by June 1990" (Mar. 21, 1990, Notice). A grazing bill, indicating that the grazing permit was approved, was issued by BLM on May 2, 1990.

On November 22, 1991, BLM issued "Notice of Full Force and Effect Final Multiple Use Decision Paiute Meadows Allotment and the Black Rock Range East Wild Horse Herd Management Area." That decision, based on the completed allotment evaluation, reduced the number of wild horses on the allotment and established a deferred grazing system for livestock, but affected no change to Russell's previously established preference and use. Appellants and others appealed that decision to the Board. On March 16, 1992, Administrative Law Judge John R. Rampton, granted BLM's request to set aside and remand its November 22, 1991, decision for further consideration. On remand, BLM issued a Notice of Proposed Decision for the Paiute Meadows Allotment, dated May 11, 1992. On April 12, 1993, BLM issued a Final Full Force and Effect Multiple Use Decision for the Paiute Meadows Allotment. The decision included a "Wildlife Management Decision," a "Full Force and Effect Livestock Decision" and a "Full Force and Effect

Wild Horse Management Decision." Russell, NDOW, NCPWH, WHOA, and others appealed the wildlife management and wild horse management portions of the decision to this Board and the livestock management portion to an Administrative Law Judge pursuant to 43 CFR 4.470. By order dated August 12, 1993, this Board referred the appeals docketed here (IBLA 93-481, IBLA 93-482, IBLA 93-483, and IBLA 93-484) to the Administrative Law Judge assigned to the grazing appeal for a consolidated factual hearing.

The BLM actions at issue in the current appeals occurred subsequent to the remand of March 16, 1992, and prior to BLM's April 12, 1993, decisions. The procedural history of the various appeals filed and decisions issued during that period is set forth below.

Appeals of NDOW

On May 12, 1992, the Winnemucca District Office, BLM, sent a grazing bill to Russell for the period of May 1 to July 31, 1992. By letter dated May 22, a copy of the bill was sent to NDOW. Subsequently, on June 22, NDOW filed a "Formal Appeal of Paiute Meadows Grazing Permit" appealing the authorized use set forth in the grazing bill pursuant to 43 CFR 4.470. The Area Manager responded in a June 30, 1992, decision, stating that the authorization reflected in the grazing bill was "not an appealable action," and that he viewed NDOW's filing as a protest under 43 CFR 4.450-2. On July 31, NDOW filed its appeal of the June 30 decision, again arguing that BLM's actions were appealable under 43 CFR 4.470.

Thereafter, Russell applied for a change in use of the allotment for the remainder of the 1992 grazing season. The District Office approved the application on July 31, and sent a grazing bill to Russell depicting a reduced herd size in the allotment from 700 cows to 300, and limitations on areas of use. By cover letter dated August 6, BLM sent copies of the bill to all appellants. On September 15, NDOW filed "an appeal of [BLM's] re-authorization of grazing livestock on the Paiute Meadows Allotment of August 6, 1992," arguing that the authorization is a final agency action subject to appeal. On September 18, the Area Manager issued a decision essentially the same as his June 30, 1992, decision. NDOW filed its appeal of the September 18 decision on July 31, again arguing that BLM's actions were appealable pursuant to 43 CFR 4.470.

Appeals of NCPWH and WHOA

On July 24, 1992, NCPWH and WHOA filed identical appeals of "the issuance of the 1992 Grazing Permit for the Paiute Meadows Allotment." BLM's August 25 responses to the appeals were identical to BLM's June 30 decision. After BLM issued its August 6 notices regarding changes in grazing bill, NCPWH and WHOA filed separate notices of appeal on September 18, appealing the "grazing decision issued in August," and subsequently filed identical reasons in support of their appeals on October 20 and 21. The Area Manager responded by issuing two decisions

dated October 28 which were identical to his September 18 decision. Later, on November 30, NCPWH and WHOA filed identical appeals of BLM's October 28 decisions, arguing that when they filed their appeals, they believed that "it was to be IBLA that would decide if our appeal was valid."

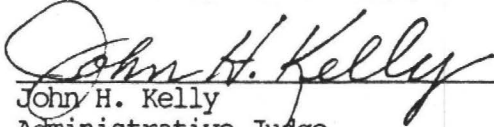
Disposition of the Appeals

All of the appeals forwarded to the Board challenge BLM decisions to issue a grazing bill and subsequently issue a modification of that bill. Appeals of grazing decisions are governed by 43 CFR 4.470.1(a) which provides that "any applicant, permittee, lessee, or any other person whose interest is adversely affected by a final decision of the authorized officer may appeal to an Administrative Law Judge by filing his appeal in the office of the authorized officer within 30 days after receipt of the decision."

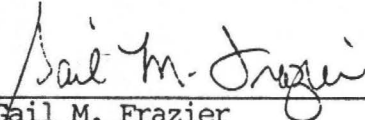
Instead of forwarding the appeal of NDOW to the Hearings Division for assignment of an Administrative Law Judge as required by 43 CFR 4.470(d) and specifically requested by the appellant, BLM erroneously forwarded the appeals to the Board. The issues of whether BLM's decisions were subject to appeal and if so, whether such decisions were proper are issues within the jurisdiction of the Administrative Law Judge, not the Board.

The appeals of WHOA and NCPWH are apparently intended to be appeals to this Board. As indicated above, this Board has no jurisdiction over the subject matter of the appeals at this time. This Board would have jurisdiction only if appellants timely appealed a decision of the Administrative Law Judge to the Board pursuant to 43 CFR 4.476. Thus, the appeals of WHOA and NCPWH are premature.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals filed by NDOW, WHOA and NCPWH are referred to the Hearings Division for assignment of an Administrative Law Judge to consider and rule on the issues raised by the appeals.


John H. Kelly
Administrative Judge

I concur:


Gail M. Frazier
Administrative Judge