



IN REPLY REFER TO:

# United States Department of the Interior

## OFFICE OF HEARINGS AND APPEALS

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August 6, 1998

### ORDER

JERRY AND DEBORAH KELLY,	:	N2-97-01
	:	
Appellants	:	Appeal to the grazing portion of the
	:	Assistant District Manager's Final Multiple
v.	:	Use Decision, dated January 9, 1997, Hole
	:	in the Wall, Jersey Valley, and Home
BUREAU OF LAND MANAGEMENT,	:	Station Gap Allotments, Winnemucca
	:	District, Nevada
Respondent	:	
.....		
JERRY AND DEBORAH KELLY,	:	IBLA 97-237
	:	
Appellants	:	Appeal to the Wild Horse Portion of the
	:	Assistant District Manager's Final Multiple
v.	:	Use Decision, dated January 9, 1997, Hole
	:	in the Wall, Jersey Valley, and Home
BUREAU OF LAND MANAGEMENT,	:	Station Gap Allotments, Winnemucca
	:	District, Nevada
Respondent	:	

### APPELLANTS' MOTION TO RESET HEARING DENIED

On August 4, 1998, the Appellants filed a Motion to Reset Hearing in this matter. Therein the Appellants aver that, "BLM council [sic] has agreed to an extension being favorable to them. It would be beneficial to Kelly's & BLM if the extension of time could be 6 to 9 months."

On August 5, 1998, counsel for the Bureau of Land Management (BLM) filed a Response To Appellants' Motion To Reset Hearing. Therein, counsel for the BLM avers that, "The Appellants represented that the undersigned agreed that the extension would be favorable and beneficial to the Bureau of Land Management (BLM). This is not entirely correct. The BLM will be prepared for the hearing to commence as scheduled . . ." (BLM Response, p. 1)

This matter was initially formally scheduled for public hearing on April 6, 1998, in Winnemucca, Nevada. Subsequent thereto on March 11, 1998, counsel for the Government submitted a Motion For Continuance. Appellants herein did not oppose that Motion. Pursuant thereto, on March 17, 1998, the undersigned issued a formal Order which Indefinitely Postponed the previously scheduled public hearing. On April 23, 1998, counsel for the BLM filed a Motion To Reset Hearing, which set out three alternative potential time

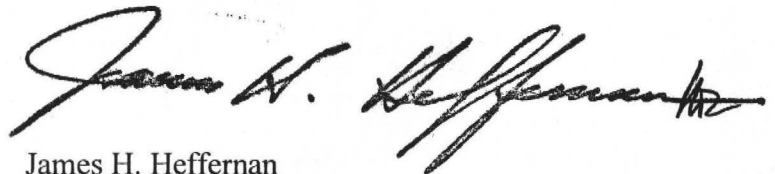
frames for rescheduling the public hearing in this matter. The third such time frame was the period of September 9-11, 1998. Therein counsel for the BLM specifically stated that, "The BLM has contacted the Appellants in Kelly and is authorized to state that they do not oppose this motion or the dates indicated." (BLM Motion to Reset, p. 2) Pursuant thereto, the undersigned issued a formal Scheduling Order on April 30, 1998, which rescheduled the public hearing in this matter for Tuesday, September 8, 1998, at 1:30 p.m. in Winnemucca, Nevada.

### DISCUSSION

43 C.F.R. § 4.472(a) authorizes a presiding Administrative Law Judge (ALJ) in a Taylor Grazing Act proceeding to ". . . conduct the hearing in an orderly, impartial, and judicial manner . . ." The Hearings Division schedules its public lands and Indian probate hearings several months in advance. The scheduling of any particular hearing always involves balancing limited internal budgetary resources and personnel, as well as balancing other pending cases in both the public lands and Indian probate jurisdictional areas, all of which seek to be scheduled at the earliest possible time. Additionally, the scheduling and rescheduling of the Kelly case has already consumed considerable time of the undersigned, the Hearings Division administrative staff, the administrative staff in the district of the BLM, and counsel in the Solicitor's office. Considerations of judicial economy and judicial efficiency therefore dictate that Appellants' Motion be denied. Relatedly, Appellants' set out no particular good cause in their Motion to compel any other result. Indeed, the taxpayers have already incurred significant administrative expenses in scheduling and rescheduling this matter. If Appellants no longer wish to pursue this appeal, they are, of course, free to withdraw their appeal. Short of that it is the intention of the undersigned to be present on the currently scheduled hearing date, and Appellants are hereby cautioned that, should they fail to appear, I will not hesitate to enter a Default Judgment in favor of the BLM.

### CONCLUSION

For the reasons reiterated above, the Appellants' Motion To Reset Hearing is hereby **DENIED**, and the public hearing herein will commence on **Tuesday, September 8, 1998, at 1:30 p.m. at The Humboldt County Library Conference Room, 85 East 5<sup>th</sup> Street, Winnemucca, Nevada.**



James H. Heffernan  
Administrative Law Judge

See pages 3 and 4 for distribution