

L 12/23/02



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Winnemucca Field Office
5100 East Winnemucca Boulevard
Winnemucca, Nevada 89445
(775) 623-1500
<http://www.nv.blm.gov/winnemucca>

In Reply Refer To:
4160.3
(NV-022.18)

CERTIFIED MAIL NO. 7002 2030 0003 0283 4329
RETURN RECEIPT REQUESTED

DEC 23 2002

Notice of Assistant Field Office Manager/Renewable Resources Final Decision

Irv Brown
P.O. Box 478
Winnemucca, NV 89446

Dear Mr. Brown:

On February 13, 1996, you signed a ten-year grazing permit for the Paiute Meadows Allotment. The grazing permit reads as follows:

| | | | | |
|------------|----------------|------------------|------------|-----------|
| 524 cattle | 03/15 to 07/17 | 100% public land | Active Use | 2153 AUMs |
| 524 cattle | 07/18 to 10/06 | 100% public land | Active Use | 1395 AUMs |

The above schedule is also consistent with the 1995 Paiute Meadows Allotment Final Multiple Use Decision.

On July 24, 2001, a Biological Assessment (BA) was submitted by the Winnemucca Field Office to the US Fish and Wildlife Service (USFWS) for the Paiute Meadows/Soldier Meadows Allotments. A part of the BA outlined a proposed fall/winter grazing use on the Paiute Meadows Allotment as follows:

300 C 11/15 to 01/15 = 612 AUM's. This use area is not within Lahontan cutthroat trout (LCT) and/or designated critical T&E habitat.

On July 2, 2002, the BLM received a Biological Opinion from the USFWS on the proposed management actions for the Paiute Meadows/Soldier Meadows Allotments. As stated in Biological Opinion "... it is the Service's biological opinion that the Soldier/Paiute Meadows Allotment Livestock Grazing and Wild Horse

and Burro Management Decision, as proposed, is not likely to jeopardize the continued existence of the threatened LCT...”

On August 13, 2002, the Winnemucca Field Office received a faxed Temporary Non-Renewable (TNR) grazing application dated August 10, 2002, in which you applied for livestock grazing in the southern portion of the Paiute Meadows Allotment as follows:

300 cattle 11/01 to 01/15 100% public land 750 AUM's

On August 19, 2002, Ron Pearson of my staff notified you that I would not approve your grazing application dated August 10, 2002. Also, at this time, you told Ron that you would submit a letter to the BLM requesting the grazing application dated August 10, 2002, be withdrawn.

On August 23, 2002, Ron Pearson contacted you and inquired about your letter to withdraw the grazing application dated August 10, 2002. At this time, you told him that you were not going to withdraw your grazing application.

On September 30, 2002, I issued you a proposed decision denying your grazing application for TNR dated August 10, 2002.

On October 17, 2002, I received a protest of the proposed decision from Budd-Falen Law Office. No other protests were received.

Based on the above information, it is my **final decision** to deny your grazing application dated August 10, 2002.

RATIONALE:

The season of use outlined in your grazing application is not within the Terms and Conditions of your current grazing permit and/or the 1995 Paiute Meadows Final Multiple Use Decision. Although fall/winter livestock use is being proposed, it has not received final approval. Currently, members of my staff are working on the Environmental Assessment (E.A.) for the livestock and wild horse/burro management for the Paiute Meadows Allotment. After this E.A. is completed, the Final Allotment Re-Evaluation and Proposed Multiple Use Decision will be issued to you and other interested publics. After the issuance of the Proposed Multiple Use Decision and subsequent protest period, I will issue the Final Multiple Use Decision, which will have an appeal period. Baring an appeal and grant of petition of stay, a new grazing permit will be issued reflecting the fall/winter use.

Along with this, the BLM Winnemucca Field Office has issued four (4) letters, within the past two (2) years, to all grazing permittees, including you concerning the current drought conditions in northern Nevada. Due to the lack of precipitation and forage production in the past three years the vegetative resources are stressed and the need for some relief from livestock grazing is evident. Also, the entire state of Nevada has been declared a disaster area because of the prolonged drought. In years when precipitation is below normal, temperatures above normal and water/forage are limited; the BLM's management is

geared toward avoiding long-term adverse impacts and maintaining long-term productivity. I believe your TNR grazing application is not geared toward avoiding long-term adverse impacts and maintaining long-term productivity.

The Bureau of Land Management is mandated to manage the public lands for multiple use. In addition to livestock grazing, wildlife habitat, watershed protection, recreation, and wild horse/burro management are a few of the other uses within the Paiute Meadows Allotment. With the drought conditions, this proposed season of use within the lower elevation areas of the allotment may have to be used in the spring of 2003. Thus, this use area had a complete growing season rest in 2002 and should have both forage and water available this spring if climatic conditions do not change. By planning your livestock management in the proposed conservative way, this will allow you to make fewer changes to your normal operation.

So, until the Multiple Use Decision process is complete, and a new grazing permit is issued reflective of the Final Multiple Use Decision; along with precipitation returning to normal and above normal to allow for better forage and/or water conditions, the proposed season of use outlined in your TNR grazing application dated August 10, 2002, is denied.

Authority: The authority of this decision is contained in Title 43 of the Code of Federal Regulations, which states in pertinent parts:

4100.0-8 "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b)."

4130.3-1 "The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment."

4160.3 (b) "Upon timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reason for t protest and in light of

other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both and the interested publics."

4160.4

"Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge by following the requirements set out in 4.470 of this title. As stated in that part, the appeal must be filed within 30 days after receipt of the decision or within 30 days after the date of the proposed decision becomes final as provided in 4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the appropriate Office of Hearing and Appeals."

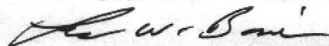
The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

Should you wish to file a motion for stay, the appellant shall show sufficient justification based on the following standards under Sec. 43 CFR §4.21:

- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of immediate and irreparable harm if the stay is not granted.
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer.

Sincerely,



Les W. Boni
Assistant Field Manager
Renewable Resources

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Response to Protest Points

DEC 23 2002

Protest Points

1. The proposed decision lacks a rational basis for denying Mr. Brown's August 10, 2002 TNR grazing application.
 - A. The fact that Fall and Winter use is not within the Terms and Conditions (T&Cs) of Mr. Brown's current grazing permit is an insufficient basis for denial of a TNR. If grazing in the Fall and Winter were within Mr. Brown's permit, there would be no need to file an application for a TNR because Mr. Brown would already have the ability to graze in the Fall and Winter associated with the grazing permit. The entire rationale behind requesting TNR is graze in addition to the T&Cs of the issued grazing permit. Therefore, the fact that the T&Cs of Mr. Brown's grazing permit do not outline grazing for the Fall and Winter is and insufficient basis for denial of the August 10, 2002 grazing application for TNR.

REPOSNE:

In my proposed decision I denied Mr. Brown's TNR grazing application based on the fact that it was not consistent with his current, approved grazing permit and/or the 1995 Final Multiple Use Decision for the Paiute Meadows Allotment. It is my final decision to once again deny the grazing application based on the above along with extreme drought conditions in the state of Nevada. In accordance with 43 CFR 4130.6-2 "Nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple use objectives and does not interfere with existing livestock operations on the public lands....." Temporary non-renewable grazing permits are a discretionary action and as stated in 4130.6-2 "may be issued".

- B. The fact that the 1995 Paiute Meadows Final Multiple Use Decision ("PMFMUD") does not outline the season of use for grazing in the Fall and Winter is an insufficient basis for denial of a TNR. If grazing in the Fall and

Winter were outlined there would be no need to file an application for a TNR because Mr. Brown would already have the ability to graze in the Fall and Winter associated with the grazing permit. The entire rationale behind requesting TNR is graze in addition to the T&Cs of the issued grazing permit. Therefore, the fact that the T&Cs of Mr. Brown's grazing permit do not outline grazing for the Fall and Winter is an insufficient basis for denial of the August 10, 2002 grazing application for TNR.

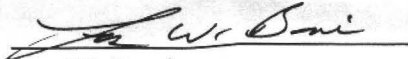
RESPONSE:

See response to "A"

2. The fact that an Environmental Assessment ("EA") is incomplete for the Paiute Meadows Allotment is an insufficient basis for denial of the August 10, 2002 grazing application for TNR. Inaction is not a justification for denial of a TNR. A TNR can be issued without a completed EA, as has been in the past several years for Mr. Brown. Therefore, the fact that the EA for the Paiute Meadows Allotment is incomplete at this time is an insufficient basis for denial of the August 10, 2002 TNR grazing application.

RESPONSE:

In the past, TNR grazing authorizations have been approved and issued to Mr. Brown. Part of the process did include an analysis through the NEPA process. This past analysis was completed through the Documentation of NEPA Adequacy (DNA). The DNA ties back to an existing NEPA document. In this case, the DNA tiered into the Paradise Denio Grazing Environmental Impact Statement (EIS), which was completed in 1981. After taking a hard look at this analysis, the Winnemucca Field Office felt that more recent resource concerns were present on the allotment and these concerns were not addressed in the EIS. Thus, the need to complete an Environmental Assessment for TNR applications has arisen.


Les W. Boni
Assistant Field Manager
Renewable Resources