



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Winnemucca Field Office  
5100 East Winnemucca Boulevard  
Winnemucca, Nevada 89445  
<http://www.nv.blm.gov/winnemucca>

L 5/10/02  
In Reply Refer To:  
4160.1  
(NV-022.15)

May 10, 2002

CERTIFIED MAIL NO. 7001 0360 0002 6666 5286  
RETURN RECEIPT REQUESTED

## Notice of Assistant Field Office Manager/Renewable Resources Proposed Decision

Estill Ranches, LLC  
c/o John Estill  
P.O. Box 67  
Likely, CA 96116

Dear Mr. Estill:

On December 8, 1997, you accepted the terms and conditions of the ten-year grazing permit for the Soldier Meadows Allotment. The permit authorization is as follows:

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>	<u>AUMs</u>
1.	500 cattle	01/01 to 03/31	100% public land	Active Use	1496
2.	1117 cattle	04/01 to 04/30	100% public land	Active Use	1102
3.	1117 cattle	07/15 to 10/14	100% public land	Active Use	3379
4.	1117 cattle	11/16 to 12/31	100% public land	Active Use	1689

On February 15, 2001, a grazing application was mailed to you for your review and signature. This grazing application that was sent was in conformance with the current grazing permit and the 1994 Solider Meadows FMUD. This application was as follows:

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>	<u>AUMs</u>
1.	500 cattle	03/01 to 03/31	100% public land	Active Use	510
2.	1117 cattle	04/01 to 04/30	100% public land	Active Use	1102
3.	1117 cattle	07/15 to 10/14	100% public land	Active Use	3379
4.	1117 cattle	11/16 to 12/31	100% public land	Active Use	1689
5.	500 cattle	01/01 to 02/28	100% public land	Active Use	970

In August, 2001, a grazing bill (G27200838) was issued to you which you paid on 10/17/01. This grazing authorization was consistent with the current grazing permit and the Soldier Meadows Allotment FMUD of 1994. The grazing bill was as follows:

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>	<u>AUMs</u>
1.	500 cattle	03/01 to 03/31	100% public land	Active Use	510
2.	1117 cattle	04/01 to 04/30	100% public land	Active Use	1102
3.	1117 cattle	07/15 to 10/14	100% public land	Active Use	3379
4.	1117 cattle	11/16 to 12/31	100% public land	Active Use	1689
5.	500 cattle	01/01 to 02/28	100% public land	Active Use	970

On December 12, 2001, a member of my range staff was contacted by you regarding a request for a grazing refund. This requested refund was based on no livestock being turned out onto the Soldier Meadows Allotment for the period, 11/16 to 02/28 of 2001-02.

On January 3, 2002, I received a faxed copy of a grazing application from you requesting a refund. The refund was for the following:

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>
1.	1117 cattle	11/16/01 to 12/31/01	100 % public land	Non Use
2.	500 cattle	01/01/02 to 04/30/02	100% public land	Non Use

Noted on the application was the following: "due to drought and to rest the range after 2 dry years."

On February 7, 2002, BLM received a grazing refund application from you requesting a refund based upon non-use for the 2001 grazing season as follows:

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>	<u>AUMs</u>
1.	500 cattle	03/01/01 to 03/31/01	100% public land	Active Use	510
2.	700 cattle	04/01/01 to 10/14/01	100% public land	Active Use	4534
3.	608 cattle	03/01/01 to 03/31/01	100% public land	Non Use	620
4.	408 cattle	04/01/01 to 10/14/01	100% public land	Non Use	2642
5.	1108 cattle	10/15/01 to 11/30/01	100% public land	Non Use	1712
6.	1108 cattle	01/01/02 to 02/28/02	100% public land	Non Use	2149

Noted on the application was the following: "I withdraw my application for Non-use dated 1/3/02." Thus, your grazing application dated January 3, 2002, is considered withdrawn and will not be acted on by the BLM.

On February 11, 2002, a BLM computer generated grazing application was mailed to you for the 2002-2003 grazing season based on the current grazing permit and the Soldier Meadows Allotment FMUD of 1994. This application was as follows:

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>	<u>AUMs</u>
1.	500 cattle	03/01 to 03/31	100% public land	Active Use	510
2.	1117 cattle	04/01 to 04/30	100% public land	Active Use	1102
3.	1117 cattle	07/15 to 10/14	100% public land	Active Use	3379
4.	1117 cattle	11/16 to 12/31	100% public land	Active Use	1689
5.	500 cattle	01/01 to 02/28	100% public land	Active Use	970

On April 25, 2002, BLM received a grazing application dated 4/24/2002 and a personal check in the amount of \$5,466.59. The application was as follows:

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>	<u>AUMs</u>
1.	700 cattle	03/01/02 to 04/30/02	100% public land	Non Use	1404
2.	700 cattle	05/01/02 to 11/30/02	100% public land	Active Use	4925
3.	700 cattle	01/01/03 to 02/28/03	100% public land	Active Use	1358

Noted in part on the grazing application was the following; "This application is made in conformance with BLM's Decision issued 7/24/01 (aka Biological Assessment)."

On April 29, 2002, the BLM returned your check in the amount of \$5,466.59.

On May 1, 2002, a member of my range staff talked to you and your range consultant related to your grazing application dated 4/24/2002.

On May 2, 2002, members of my range staff talked to you regarding your grazing application dated 4/24/2002. They stated to you that the portion of your grazing application for livestock use during the 05/01/02 to 07/14/02 season would be denied via a grazing decision since the proposed application is outside of the existing permit as identified in the Soldier Meadows Allotment FMUD of 1994. Along with this you were told that the BLM has not received a Biological Opinion from the USFWS concerning the Biological Assessment.

On May 3, 2002, I received a grazing application from you as follows:

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>	<u>AUMs</u>
1.	700 cattle	03/01/02 to 04/30/02	100% public land	Non Use	1404
2.	700 cattle	05/01/02 to 07/14/02	100% public land	TNR	1726
3.	700 cattle	07/15/02 to 11/30/02	100% public land	Active Use	3199
4.	700 cattle	01/01/03 to 02/28/03	100% public land	Active Use	1358

Noted on the grazing application was the following; "(1) This application is made in conformance with BLM's Decision issued July 24, 2001 (aka Biological Assessment). "and "(2) This application replaces without prejudice my application dated April 24, 2002."

After receiving the May 3, 2002, grazing application a member of my range staff initiated contact with the interested publics for the Soldier Meadows Allotment. Phone calls were made to the interested publics in an attempt to allow them the opportunity to provide comments on your proposed grazing application/permit modification dated May 3, 2002. These phone calls were initiated on May 3, 6, & 7, 2002.

The general consensus of the interested publics that were contacted is as follows:

(a) They don't have enough information to make a recommendation and therefore would not support approval of the application.

(b) They don't have enough time to review the information and therefore would not support approval of the application.

Based on the above information, it is my **proposed decision** to deny in part and approve in part your grazing applications dated February 5, 2002 and May 3, 2002.

Grazing refund application dated February 5, 2002, is the following:

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>	<u>AUMs</u>
1.	500 cattle	03/01/01 to 03/31/01	100%	Active Use	510
2.	700 cattle	04/01/01 to 10/14/01	100%	Active Use	4534
3.	608 cattle	03/01/01 to 03/31/01	100%	Non Use	620
4.	408 cattle	04/01/01 to 10/14/01	100%	Non Use	2642
5.	1108 cattle	10/15/01 to 11/30/01	100%	Non Use	1712
6.	1108 cattle	01/01/02 to 02/28/02	100%	Non Use	2149

**It is my proposed decision to deny lines 1 - 5 of the grazing refund application dated February 5, 2002 and to approve line 6 of your grazing refund application dated February 5, 2002.**

#### Rationale

I received this application for refund after the indicated livestock active use and non-use occurred. The Winnemucca Field Office (WFO) does not issue refunds "after the fact". This office will approve and process refund applications. However, the approval and processing of such refund applications will occur at the time when the non-use is occurring. This office was notified on 02/07/02. Thus, lines 1-5 are after the fact and you are not on actual use billing for the Soldier Meadows Allotment. Your billing for the Soldier Meadows Allotment is advanced billing and I received your payment for grazing bill G27200838 on October 17, 2001. I noticed on your grazing refund application dated February 5, 2002, that you indicated that livestock were on the Soldier Meadows Allotment from 05/01/01 to 07/14/01. However, this season of use (05/01/01 to 07/14/01) that you requested a refund for was not approved and to the extent it occurred, this livestock use was unauthorized.

Line 6 of this grazing refund application is approved and a refund has been issued. This Field Office was notified by you on 12/12/01 that you would not turn livestock out on the allotment during the period of use (01/01/02 to 02/28/02).

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On May 3, 2002, you submitted a grazing application for the following use.

<u>Line</u>	<u>Livstock #</u>	<u>Season of Use</u>	<u>% Public Land</u>	<u>Type Use</u>	<u>AUMs</u>
1.	700 cattle	03/01/02 to 04/30/02	100% public land	Non Use	1404
2.	700 cattle	05/01/02 to 07/14/02	100% public land	TNR	1726
3.	700 cattle	07/15/02 to 11/30/02	100% public land	Active Use	3199
4.	700 cattle	01/01/03 to 02/28/03	100% public land	Active Use	1358

You stated on this grazing application, "this application replaces without prejudice my application dated April 24, 2002."

**Therefore, it is my proposed decision to approve line one of the May 3, 2002, grazing application for 1404 AUM's of non-use.**

Rationale

Line 1 of your grazing application is within the referenced season of use and active AUM's of the existing grazing permit and the Soldier Meadows Allotment FMUD of 1994. Along with this, livestock use supervision was conducted in early March 2002, and no livestock were observed on the allotment.

**It is my decision to deny all of line 2 of the May 3, 2002, grazing application for 1726 AUM's of Temporary Non-Renewable (TNR).**

Rationale

The above referenced season of use is NOT within the terms and conditions of the existing grazing permit and/or the Soldier Meadows Allotment FMUD of 1994. After receiving the May 3, 2002, grazing application, a member of my range staff initiated contact with the interested publics for the Soldier Meadows Allotment. Phone calls were made to the interested publics in an attempt to allow them the opportunity to provide comments on your proposed grazing application (permit modification) dated May 3, 2002. These phone calls were initiated on May 3, 6, & 7, 2002.

The general consensus of the interested publics that were contacted is as follows:

- (a) They don't have enough information to make a recommendation and therefore would not support approval of the application.
- (b) They don't have enough time to review the information and therefore would not support approval of the application.

Also of concern is the fact that the U.S. Fish and Wildlife Service has not completed formal Section 7 Consultation and/or issued a Biological Opinion (B.O.) on the proposed actions as outlined in the Biological Assessment (B.A.) dated July 24, 2001. As stated in 50 CFR 402.12(a) a Biological Assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitats are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary. The listed species are Lahontan cutthroat trout (LCT) and Desert Dace. Your proposed grazing use, as indicated on your grazing application, "may affect" the threatened species on the Solider Meadows Allotment. In the LCT recovery plan dated January 1995, Coleman and Donnelly Creeks are listed as recovery habitat to support LCT.

A Biological Opinion is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of the listed species or result in the destruction or adverse modification of their critical habitat. As of May 9, 2002, the Winnemucca Field Office has not received the Biological Opinion (B.O.) from the USFWS as to whether or not the proposed actions are likely to jeopardize the continued existence of the listed species. At issue are the potential adverse impacts to the federally listed threatened Lahontan cutthroat trout and Desert Dace or their critical habitat.

Thus, I will not approve a grazing application that is not in conformance with the current grazing permit and/or the Soldier Meadows Allotment FMUD of 1994 or any livestock grazing proposal that "may affect" a species and/or its habitat without a Biological Opinion. The current grazing permit and the Soldier Meadows Allotment FMUD of 1994 had Section 7 Consultation and a Biological Opinion completed prior to issuance of these documents.

Additionally, as you are aware, you filed an appeal of the B.A. on February 22, 2002, and although you did not appeal the season of use of 01/01 to 11/30, you did specifically appeal the following Terms and Conditions: stubble height criteria, utilization of key woody plant species criteria, mechanical streambank damage criteria and other terms and conditions as they relate to the terms and conditions that were proposed in concert with livestock grazing during this period of use.

**It is my decision to deny a portion of line 3 (10/15/02 to 11/15/02) of the May 3, 2002, grazing application and approve a portion of line 3 (11/16/02 to 11/30/02) of the May 3, 2002 grazing application.**

#### Rationale

The approved portion of line 3 (11/16/02 to 11/30/02) is in accordance with the current grazing permit, the Soldier Meadows Allotment FMUD of 1994 and had Section 7

Consultation completed prior to issuance of the FMUD. The denial portion of line 3 (10/15/02 to 11/15/02) is not in conformance with the terms and conditions of the current grazing permit and/or the Soldier Meadows Allotment FMUD of 1994. (e.g. permit 07/15 to 10/14 and 11/16 to 12/31). Along with this the Winnemucca Field Office has not received a Biological Opinion from the U.S. Fish and Wildlife Service concerning this proposed grazing use.

**It is my decision to approve line four of 500 head of cows which is consistent with your current grazing permit and to deny 200 head of livestock.**

#### Rationale

Line 4 is not in conformance with the current grazing permit and/or the Soldier Meadows Allotment FMUD of 1994 (e.g. permit 500 Cows 01/01 to 03/31) due to livestock numbers being exceeded by 200 head and also AUMs being exceeded.

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

- 4130.3-3 "Following consultation, cooperation and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active grazing use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested publics an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use or to change the terms and conditions of a permit or lease."
- 4130.8-2 (a) "Grazing fees may be refunded where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested."
- 4160.2 "Any applicant, permittee, lessee, or other interested public may protest the proposed decision under Sec. 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision."
- 4160.3 (a) "In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision."

- (b) "Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for 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."
- (c) "A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30 day appeal period, except as provided for in paragraph (f) of this section."

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."

Additional authority is contained within the pertinent sections of the Endangered Species Act (Act) and in 50 C.F.R. part 402, which identifies the procedures for complying with the Act.

Section 7 (a) (2) of the Act states in part "Each Federal Agency shall, in consultation with and with the assistance of the Secretary, ensure that any action authorized, funded or carried out by such agency... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species..."

If you wish to protest this decision in accordance with 43 CFR 4160.2 you are allowed fifteen (15) days from receipt of this notice within which to file such protest with the Assistant Field Manager, Renewable Resources, Bureau of Land Management, Winnemucca Field Office 5100 E. Winnemucca Blvd., Winnemucca, NV 89445.

In the absence of a protest within the time allowed, the above proposed decision shall constitute my final decision. Should this notice become the final decision, and if you wish to appeal this decision for the purpose of a hearing before an Administrative Law Judge, in accordance with 43 CFR 4160.4 and 4.470, you are allowed thirty (30) days from receipt of this notice within which to file such an appeal with the Assistant Field Manager, Renewable Resources, at the above address.



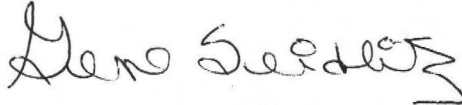
The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

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,



FOR Colin P. Christensen  
AFM, Renewable Resources

cc: Nevada Division of Wildlife - Fallon 7001 0360 0002 6666 5293  
Nevada Division of Wildlife - Winnemucca 7001 0360 0002 6666 5347  
Humboldt County Commissioners 7001 0360 0002 6666 5330  
Western Watershed Project 7001 0360 0002 6666 5316  
Committee for Idaho's High Desert 7001 0360 0002 6666 5323  
Sierra Club 7001 0360 0002 6666 5309  
U.S. Fish and Wildlife Service 7001 0360 0002 6666 5354  
USDA/Natl. Resource Conservation Service 7001 0360 0002 6666 5361  
Wild Horse Organized Assistance 7001 0360 0002 6666 5378  
NV. Comm. for Preservation of Wild Horses 7001 0360 0002 6666 5385  
Natural Resource Defense Council 7001 0360 0002 6666 5392  
Summit Lake Paiute Tribe 7001 0360 0002 6666 6559  
State of Nevada - Dept. of Administration 7001 0360 0002 6666 6566  
Intermountain Range Consultants 7001 0360 0002 6666 6580  
Schroeder & Lezamiz Law Offices 7001 0360 0002 6666 6597