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OFFICE OF ATTORNEY GENERAL
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OFFICE OF HEARINGS AND APPEALS
UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL WILDLIFE FEDERATION,)	
SOUTHERN UTAH WILDERNESS)	
ALLIANCE, JOSEPH M. FELLER, AND)	Appeal of the San Juan
TOM NOBLE)	Resource Area's issuance of
)	a grazing permit and schedule
Appellants)	for the 1991-92 season on the
v.)	Comb Wash Allotment
)	
BUREAU OF LAND MANAGEMENT,)	
)	
Respondent)	

APPEAL AND STATEMENT OF REASONS

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APPEAL AND STATEMENT OF REASONS

Pursuant to 43 C.F.R. §§ 4.470 and 4160.4, the National Wildlife Federation, Southern Utah Wilderness Alliance, Joseph Feller, and Tom Noble appeal the September 19, 1991 decision of BLM's Moab District Manager to issue a one-year permit, grazing schedule, and stipulations for the 1991-92 grazing season on the Comb Wash Allotment.

This appeal challenges three aspects of BLM's decision.

1. BLM refused to consult with affected interests regarding the annual permit. This violated:
 - (a). Judge Rampton's order in *Feller v. Bureau of Land Management*, August 13, 1990, No. UT-06-89-02; and
 - (b). 43 C.F.R. §§ 4.160.1-1 and 4.110.3-3(c);
2. The annual permit that was issued violated the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Clean Water Act (CWA); and
3. The annual permit is arbitrary and capricious because it incorporates excessive forage utilization limits.

DESCRIPTION OF APPELLANTS

National Wildlife Federation: The National Wildlife Federation (NWF) is a not-for-profit national environmental organization dedicated to the wise use and conservation of our natural resources. Approximately 4,000 of its 5 million members live in Utah. In addition, the Utah Wildlife Federation, an affiliate of NWF, has over 1,000 members.

NWF has a long-standing interest and history of involvement in issues related to grazing on BLM lands. Its actions include commenting on BLM's grazing regulations, testimony to Congress on grazing issues, publication for its

members of information on use of the public lands by livestock, and litigation over BLM grazing decisions. NWF expressed specific concerns regarding livestock use of Comb Wash in its comments on the Proposed San Juan Resource Management Plan.¹ Furthermore, the BLM granted NWF affected interest status pursuant to 43 C.F.R. § 4100.0-5 for the Comb Wash Allotment.²

Several of NWF's members, including Joe Feller, Leslie Malville, Tom Noble, Joe Powell, and John Ritchey use the public lands in the Comb Wash Allotment for outdoor recreation, hiking, photography, and aesthetic appreciation.³ Their continued enjoyment of these lands will be adversely affected unless grazing on the Allotment is properly managed in accordance with applicable laws and regulations.⁴

Southern Utah Wilderness Alliance: The Southern Utah Wilderness Alliance (SUWA) is a non-profit Utah corporation with 7000 members, dedicated to the preservation of the wilderness and recreational values of the land in southern Utah. SUWA's participation in the decisions affecting Comb Wash has been extensive.⁵ It commented on the San Juan Resource Management Plan and associated EIS on which the grazing schedule is based, and subsequently protested

¹ Final Environmental Impact Statement for the Proposed San Juan Resource Management Plan at 2-53 through 2-67.

² Letter from Area Manager Edward Scherick to Tom Lustig, August 21, 1991.

³ See NWF's June 7, 1991 Response to Motion to Dismiss at 6-7 and attachments 10-13 to the Response.

⁴ NWF's June 7, 1991 Response to Motion to Dismiss: attachment 10 ¶¶ 3-4; attachment 11 ¶ 3; attachment 12 ¶ 3; attachment 13 ¶ 3.

⁵ See NWF's June 7, 1991 Response to Motion to Dismiss at 9-10.

that plan on August 28, 1989. In addition, SUWA has submitted numerous comments specifically addressing grazing on the Comb Wash Allotment. On June 7, 1989, SUWA was designated an affected interest by the BLM for the Comb Wash Allotment,⁶ and on January 31, 1990, it filed a formal protest to the proposed grazing schedule.⁷

Several members of SUWA, including Joe Feller, Scott Groene, and Tom Noble, use and enjoy the public lands included in the Comb Wash Allotment. Their enjoyment of the Comb Wash area has been severely and adversely affected by the use of the area by livestock in numbers far exceeding what is biologically feasible.⁸ The experiences of these members will continue to be adversely affected by the presence of livestock until grazing on the Allotment is managed according to applicable laws and regulations.

Joseph Feller: Mr. Feller is a member of both the National Wildlife Federation and the Southern Utah Wilderness Alliance. He has made and will continue to make frequent hiking, camping and sightseeing trips into the canyons of the Comb Wash Allotment. His enjoyment of the canyons' resources has been adversely affected by water pollution and by destruction of vegetation and natural scenery caused by excessive and improperly managed livestock grazing.⁹ Mr. Feller was granted affected interest status with respect to the Comb Wash

⁶ See NWF's June 7, 1991 Response to Motion to Dismiss attachment 2.

⁷ See NWF's June 7, 1991 Response to Motion to Dismiss attachment 6.

⁸ See NWF's June 7, 1991 Response to Motion to Dismiss: attachments 11, 13, 17-19.

⁹ See NWF's June 7, 1991 Response to Motion to Dismiss attachment 13 ¶ 3.

Allotment on February 3, 1989.¹⁰

Tom Noble: Mr. Noble is a member of the National Wildlife Federation and the Southern Utah Wilderness Alliance. He has visited Arch Canyon four times in the past three years, and recently explored Fish Creek, Mule and Road Canyons. In the spring of 1989, he and his family camped at the mouth of Arch Canyon in order to visit the ruins and enjoy the scenery. He observed the detrimental effects of grazing, particularly cow manure, throughout the canyon, including in the creek itself. Mr. Noble's enjoyment of the Comb Wash area has been adversely affected by improperly managed livestock grazing.¹¹ Noble was granted affected interest status with regard to the Comb Wash Allotment by the BLM on June 11, 1991.

STATEMENT OF FACTS

In March of 1989, Joe Feller filed an appeal of BLM's issuance of a 10-year grazing permit on the Comb Wash Allotment. Chief Administration Law Judge John Rampton, Jr. issued a final decision in that appeal on August 13, 1990.¹² In response to Judge Rampton's ruling, BLM issued a final decision on March 6, 1991, which was appealed by the NWF, SUWA, and Joe Feller on April 5, 1991. Judge Rampton issued an interim order in this second appeal on July 25, 1991.¹³

Since the filing of the initial appeal, BLM has authorized grazing on the Comb Wash Allotment through the issuance of annual and seasonal grazing

¹⁰ Letter from Acting San Juan Resource Area Manager Sherwin Sandberg to Joe Feller, February 3, 1989.

¹¹ See NWF's June 7, 1991 Response to Motion to Dismiss attachment 11.

¹² *Feller v. BLM*, August 13, 1990, No. UT-06-89-02.

¹³ *National Wildlife Federation et al. v. BLM*, July 25, 1991, No. UT-06-91-01.

permits and accompanying grazing schedules. Seasonal permits were issued in the fall of 1989 and the spring of 1990, and an annual permit was issued in the fall of 1990. Appellants' belief that these permits did not comply with NEPA, FLPMA, the Clean Water Act, or BLM's regulations is included in the issues yet to be resolved in *National Wildlife Federation v. BLM*, UT-06-91-01.

BLM's duty to consult with affected interests, however, appeared to have been resolved by Judge Rampton's August 13, 1990 decision in *Feller v. BLM*, UT-06-89-02. Although BLM failed to consult with affected interests when it issued the ten-year permit in 1989, after the first appeal in *Feller v. BLM*, the agency gave affected interests advance notice and opportunity to comment on the permits and grazing schedules that it issued in the fall of 1989, the spring of 1990, and the fall of 1990.

After reviewing these proposed annual permits and grazing schedules, Mr. Feller and other affected interests submitted written comments on the proposals¹⁴ and met with the BLM to discuss them. The BLM appeared to consider these comments and discussions before issuing final permits and grazing schedules. Accordingly, the affected interests did not appeal the fall of 1989 or the 1990 permits.

On August 16, 1991, Mr. Feller wrote to the San Juan Resource Area requesting notice of and an opportunity to comment on the proposed grazing schedule and the proposed stipulations for the 1991-92 grazing season on the

¹⁴ The comments were technically protests within the meaning of 43 C.F.R. § 4160.2. However, both the BLM and the protesters have referred to them as comments, in order to emphasize the non-adversarial nature of the process.

Comb Wash Allotment. (Attachment A). In response — and contrary to its practice of the past two years of providing affected interests with notice and opportunity to comment on proposed grazing decisions — BLM disregarded Mr. Feller's request, informing him in a September 23, 1991 letter that "[c]onsultation with affected interests is not required on grazing applications." (Attachment B).

The San Juan Resource Area based its denial of Feller's request to review the proposed annual grazing permit on a local internal administrative policy which provides: "Routine correspondence, applications, or grazing bills do not require consultation, coordination, or cooperation (three Cs) with affected interests."¹⁵ Relying on this new policy, which appears to have been formulated without any public consultation or notice, BLM's San Juan Resource Area developed the grazing schedule, areas of use, and other stipulations for the Comb Wash Allotment after consulting with only the permittee. The annual permit was granted in final form on September 19, 1991. (Attachment C). It authorized a 33% increase in livestock numbers (from 225 to 300 cattle) over the previous year, and the accompanying grazing schedule authorized livestock grazing in Arch, Mule, Fish Creek, Owl Creek and Road Canyons. These canyons are the subject of the Appellants' MOTION FOR INTERIM RELIEF in *National Wildlife Federation v. BLM*, UT-06-91-01.

Because of BLM's refusal to consult with affected interests, appellants ask that this tribunal set aside the 1991-92 annual grazing permit, require BLM to consult with affected interests (including giving them the opportunity to protest

¹⁵ BLM Instruction Memorandum No. UT-060-91-11 (January 30, 1991), quoted in Letter from Edward Scherick to Joe Feller, September 23, 1991.

required by 43 C.F.R. § 4160.1-1), and grant appellants' related motion for interim relief.

ARGUMENT

I. BLM VIOLATED THIS TRIBUNAL'S PREVIOUS ORDER AND ITS OWN RULES BY REFUSING TO CONSULT WITH AFFECTED INTERESTS REGARDING THE 1991-92 GRAZING PERMIT AND SCHEDULE

A. BLM'S FAILURE TO CONSULT WITH AFFECTED INTERESTS REGARDING THE 1991-92 ANNUAL GRAZING PERMIT VIOLATES JUDGE RAMPTON'S AUGUST 13, 1990 ORDER

In his August 13, 1990 decision in *Feller v. BLM*, UT-06-89-02, Judge Rampton decided that the issuance of a grazing permit is an "action" within the meaning of 43 C.F.R. § 4160.1-1. He vacated the ten-year permit that the BLM had issued for the Comb Wash Allotment because the BLM had not complied with that regulation's requirements of notice to affected interests, a statement of reasons, and an opportunity for protest. He ordered the BLM to issue a new permit in compliance with the required procedures.

The BLM has now issued a new one-year permit for the Comb Wash Allotment without notice to affected interests, a statement of reasons, or any opportunity for protest. This is a direct violation of Judge Rampton's order.

B. BLM'S FAILURE TO CONSULT WITH AFFECTED INTERESTS REGARDING THE 1991-92 ANNUAL GRAZING PERMIT IS CONTRARY TO THE BLM'S GRAZING REGULATIONS

1. THIS WAS AN "ACTION ON [AN] APPLICATION[] FOR [A] PERMIT," REQUIRING NOTICE TO AFFECTED INTERESTS

43 C.F.R. § 4160.1-1 requires notice to affected interests, a statement of reasons, and opportunity for protest when the BLM takes an "action on applications for permits." In direct defiance of this requirement, the BLM asserted in its September 23, 1991 letter to Joseph Feller, that "[c]onsultation

with affected interests is not required on grazing applications."

The BLM has granted the permittee's application for a one-year grazing permit without providing any notice to affected interests, a statement of reasons, or opportunity for protest. The BLM has violated 43 C.F.R. § 4160.1-1.

2. THIS WAS AN "ACTION RELATING TO TERMS AND CONDITIONS OF [A] PERMIT[]" WHICH REQUIRES NOTIFICATION OF AFFECTED INTERESTS

43 C.F.R. § 4160.1-1 also requires notice to affected interests, a statement of reasons, and opportunity for protest when the BLM takes an "action relating to terms and conditions of permits." The BLM's grazing schedule and stipulations for the 1991-92 grazing season on the Comb Wash Allotment set all the terms and conditions of the one-year permit. Nonetheless, the BLM set the schedule and stipulations without providing any notice to affected interests, a statement of reasons, or opportunity for protest.

3. THIS WAS A MODIFICATION OF A GRAZING PERMIT WHICH REQUIRES NOTIFICATION OF AFFECTED INTERESTS

43 C.F.R. § 4110.3-3(c) requires consultation with affected interests when the BLM modifies authorized grazing use because of drought or other conditions requiring temporary protection of an allotment's resources. The BLM has set the grazing use of the Comb Wash Allotment at 300 cattle for the 1991-92 grazing season because it has determined that recent drought and other conditions on the allotment require the cattle to be limited to that number. Yet the BLM has not consulted with affected interests. The BLM has violated 43 C.F.R. § 4110.3-3(c).

C. THE BLM HAS DENIED AFFECTED INTERESTS ANY OPPORTUNITY TO PARTICIPATE IN THE PROCESS THAT ACTUALLY DETERMINES THE ENVIRONMENTAL IMPACTS OF LIVESTOCK GRAZING ON THE COMB WASH ALLOTMENT

The annual grazing schedule and stipulations set out by the BLM decide everything about livestock grazing on the Comb Wash Allotment. They specify how many cattle will graze on the allotment, where on the allotment they will graze, how long they will graze in each area, at what time of year they will graze in each area, and how they will be managed (stipulations for herding, distribution, movement routes, salting). They also specify that cattle will be permitted to graze in the critical and controversial areas of Arch Canyon, Mule Canyon, Fish and Owl Creek Canyons, and Road Canyon.

These specifications, and these specifications alone, determine all the environmental impacts of livestock grazing on the allotment. They determine the effects of grazing on vegetation, riparian areas, water quality, soils, wildlife habitat, scenery, and recreational use. Nonetheless, the BLM did not allow anyone except the permittee to provide input into these critical decisions.

D. THE BLM HAS WILLFULLY ABANDONED A PROCESS THAT HAD WORKED SMOOTHLY AND EFFICIENTLY FOR THE LAST TWO YEARS

In the fall of 1989, the spring of 1990, and the fall of 1990, the BLM gave affected interests notice and opportunity to comment on its proposed grazing schedules and stipulations for the Comb Wash Allotment. The BLM also invited affected interests and the permittee to visit the allotment with BLM staff and discuss the schedule and stipulations.

This simple consultation process was effective and efficient. Affected interests provided their comments very promptly, and the BLM considered the

comments and made some modifications to the schedule and stipulations in response. BLM staff themselves stated publicly that this consultation had improved their management of the allotment. The process was mutually beneficial and it resulted in final decisions which were not appealed.

On August 16, 1991, Joseph Feller wrote to BLM Area Manager Edward Scherick to request that the same process be followed in the fall of 1991. But this time BLM jettisoned the process and set a grazing schedule and stipulations in consultation with the permittee alone. By this action, the BLM chose stonewalling over public participation, and confrontation over cooperation.

II. THE TERMS OF THE 1991-92 ANNUAL GRAZING PERMIT VIOLATE NEPA, FLPMA, AND THE CLEAN WATER ACT

A. BLM DID NOT COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

In issuing the 1991-92 annual grazing permit, BLM failed to consider the actual environmental impacts of livestock grazing on the Comb Wash Allotment. This lack of analysis is a direct violation of the National Environmental Policy Act (NEPA) and of the mandate of the court in *National Resources Defense Council v. Morton*, 388 F.Supp. 829 (1974). As we previously explained, the general EIS for the proposed San Juan Resource Management Plan cannot satisfy either the requirements of NEPA or the mandate of the *NRDC v. Morton* court because it does not contain any specific information about the environmental consequences of particular grazing permits in the Comb Wash Allotment.¹⁶

¹⁶ See Notice of Appeal, March 14, 1989, Statement of Reasons, pages 6-7; Reply of Appellant to the BLM's Answer, March 26, 1990, pages 20-23; and Appeal of Final Decision and Statement of Reasons, April 5, 1991, pages 7-13.

B. BLM DID NOT COMPLY WITH THE CLEAN WATER ACT

In issuing the 1991-92 annual grazing permit, BLM failed to analyze the effects of livestock grazing on water quality in the Comb Wash and its canyons. This violates the Clean Water Act's requirement that all federal permitting actions comply with federal, state and local water pollution regulations. Since livestock can degrade water quality, BLM has a duty to consider the effects of grazing on streams in the Comb Wash before issuing any permits. The BLM's failure to do so makes the Comb Wash permit unlawful.¹⁷

C. BLM DID NOT COMPLY WITH THE FEDERAL LAND POLICY AND MANAGEMENT ACT

FLPMA requires that the public lands be managed by the BLM according to the principle of "multiple use," which 43 U.S.C. § 1702(c) defines as "management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." An important element of the definition of multiple use is "consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."

Despite this well-articulated balancing test required by the statute, BLM's final decision and the documents upon which BLM claims to have relied show no evidence of the required comparison of uses to attain the ratio that "will best meet the present and future needs of the American people." Rather than undertaking a

¹⁷ See Notice of Appeal, March 14, 1989, Statement of Reasons, pages 7-8; Reply of Appellant to the BLM's Answer, March 26, 1990, pages 23-24; and Appeal of Final Decision and Statement of Reasons, April 5, 1991, pages 13-15.

balancing of interests to decide which uses are most appropriate for these canyons, BLM has authorized continued heavy grazing as a matter of course, without evaluating any of the competing interests it is required to consider under FLPMA.¹⁸

III. THE 1991-92 ANNUAL GRAZING PERMIT IS ARBITRARY AND CAPRICIOUS BECAUSE IT INCORPORATES EXCESSIVE FORAGE UTILIZATION LIMITS

Stipulation 2 attached to the 1991-92 grazing permit for the Comb Wash

Allotment provides:

Utilization of key forage species cannot exceed 60% of the current year's growth in the main Comb pastures and 40% in the canyons through 3/15. Utilization after this date cannot exceed 50% in any pasture.

These utilization limits are arbitrary and capricious because they exceed BLM's own Proper Use Factors and because they violate the BLM's San Juan Resource Management Plan.

A. THE UTILIZATION LIMITS IN THE 1991-92 PERMIT EXCEED THE BLM'S OWN PROPER USE FACTORS

The principal range grasses on the Comb Wash Allotment are Indian Ricegrass (*Oryzopsis Hymenoides*), galleta grass (*Hilaria Jamesii*), and sand dropseed (*Sporobolus Cryptandrus*). According to the Proper Use Factors established by the BLM in 1976 (Attachment D), the proper utilization for winter (Oct. 1 - Mar. 31) cattle grazing on galleta grass is 45%, on Indian ricegrass is

¹⁸ See Notice of Appeal, March 14, 1989, Statement of Reasons, pages 10-11; Reply of Appellant to the BLM's Answer, March 26, 1990, pages 28-31; and Appeal of Final Decision and Statement of Reasons, April 5, 1991, pages 15-17.

50%, and on sand dropseed is 25%.¹⁹

According to this table, the 60% *winter* utilization standard for the main pastures contained in stipulation 2 of the 1991-92 annual permit exceeds BLM's Proper Use Factors for every grass species: for galleta the grazing permit exceeds BLM's proper use factor by 15% (60% vs. 45%); for Indian ricegrass the grazing permit exceeds BLM's proper use factor by 10% (60% vs. 50%); and for sand dropseed the grazing permit exceeds BLM's proper use factor by 35% (60% vs. 25%).

For the pastures in the canyons on the allotment, the 40% *winter* utilization standard contained in stipulation 2 of the 1991-92 annual permit exceeds BLM's utilization standard for sand dropseed by 15% (40% vs. 25%).

The 50% *spring* utilization limit in stipulation 2 of the 1991-92 permit also exceeds the BLM's Proper Use Factors for galleta and for sand dropseed. It exceeds the Proper Use Factor for spring cattle grazing on galleta by 30% (50% vs. 20%) and for spring cattle grazing on sand dropseed by 35% (50% vs. 15%).

B. THE UTILIZATION LIMITS IN THE 1991-92 PERMIT VIOLATE THE SAN JUAN RESOURCE MANAGEMENT PLAN

An alternative set of Proper Use standards is specified on page 1-275 of the Final Environmental Impact Statement for the San Juan Resource Management Plan (RMP). However, the utilization limits in the 1991-92 annual permit for the Comb Wash Allotment also violate those standards.

¹⁹ On the copy of this table supplied to Appellants, the printed figures were crossed out and higher numbers penciled in. Without further explanation, this substitution of higher utilization standards should not be accepted. Moreover, for sand dropseed, even the penciled-in 50% winter utilization figure is lower than the 60% utilization stipulation for the main Comb pastures in the 1991-92 annual permit.

1. THE PERMIT'S SPRING UTILIZATION LIMIT EXCEEDS THE PROPER USE STANDARDS SPECIFIED IN THE RMP

The table of Proper Use standards in the RMP specifies that for pastures grazed every year, as are those on the Comb Wash Allotment, utilization in the spring should not exceed 25%. However, stipulation 2 of the 1991-92 Comb Wash permit allows spring utilization of up to 50%, which is 25% higher than the standard set in the RMP.

2. THE PERMIT MISAPPLIES THE PROPER USE STANDARDS IN THE RMP

For the fall and winter, the Proper Use standard specified in the San Juan RMP is 60%. On the surface, therefore, the 60% winter limit in the 1991-92 Comb Wash permit appears to be consistent with the RMP. In fact, however, the standard in the permit is far too high as it is applied by the BLM.

The 60% winter standard in the RMP is for *key species*, i.e., for those forage species that are most palatable to livestock. The key species on the Comb Wash Allotment is Indian ricegrass.²⁰ Therefore, the 60% standard should be applied only to Indian ricegrass.

The other grass species on the Comb Wash Allotment, galleta and sand dropseed, are far less palatable than Indian ricegrass. If the utilization of Indian ricegrass is 60%, then the utilization of these other species will be much less than 60%. Conversely, if the utilization of these other species is 60%, then the

²⁰ Indian ricegrass was identified as the key grass species in the San Juan Resource Area on page 5a of the Watershed section of the San Juan Management Framework Plan in 1972. In 1985, the BLM affirmed that Indian ricegrass is the key species on the Comb Wash allotment when the BLM set objectives for substantially increasing the amount of Indian ricegrass at almost all of the range trend study sites on the allotment. See March 26, 1990 Reply of Appellant to the BLM's Answer, page 27 and Attachment E.

utilization of Indian ricegrass will be much *more* than 60%. That is why the BLM's Proper Use Factors (Attachment D) for galleta (45%-winter / 20%-spring) and sand dropseed (25%-winter / 15%-spring) are much lower than those for Indian ricegrass (50%-winter / 55%-spring).

On the Comb Wash Allotment, the BLM has consistently misused the 60% winter utilization standard in the RMP by applying it to galleta and sand dropseed. This misapplication of the RMP's standard has led to substantial overutilization of the key species, Indian ricegrass.

Unfortunately, the utilization limits in the 1991-92 Comb Wash permit refer to "key species," but do not identify the key species. If BLM continues its past practice, it will misuse these limits by applying them to galleta and sand dropseed.

BLM should have specified that these utilization limits apply only to Indian ricegrass and should provide lower utilization limits for galleta and sand dropseed. BLM's failure to do so in the 1991-92 Comb Wash permit is, accordingly, arbitrary, capricious, and contrary to the San Juan Resource Management Plan.

C. THE ARBITRARY UTILIZATION LIMITS IN THE 1991-92 PERMIT WILL RESULT IN MEASURABLE HARM TO THE ALLOTMENT'S ENVIRONMENT

BLM's deviation from its Proper Use Factors and from the San Juan RMP is not just a problem because of an inadequate paper trail — the utilization standards fabricated for the 1991-92 annual permit will result in significant environmental damage. For example, excessive utilization has led to the existing degradation of the allotment and the failure of the BLM to meet any of its

objectives for vegetative improvement.²¹ The excessive utilization authorized by the 1991-92 annual permit would perpetuate this degradation and prevent recovery of the allotment's vegetation.

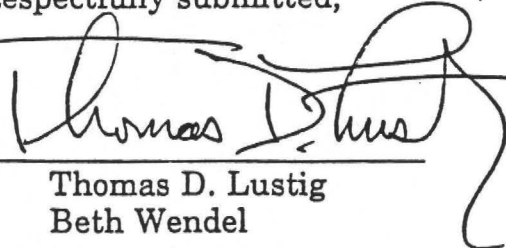
IV. RELIEF REQUESTED

Because the 1991-92 annual use permit for the Comb Wash Allotment was issued without the consultation with affected interests required by Judge Rampton's order and by BLM's regulations; because the 1991-92 annual permit violates NEPA, FLPMA, and the Clean Water Act; and because the 1991-92 annual permit sets utilization standards that are arbitrary because they do not comply with BLM's Proper Use Factors or the San Juan RMP, appellants ask for the following relief:

1. The 1991-92 annual grazing permit for the Comb Wash Allotment should be vacated and remanded;
2. To protect some of the Allotment's most sensitive resources, no grazing should be allowed in Arch, Mule, Fish Creek, Owl Creek, or Road Canyons.²²

Date: October 21, 1991

Respectfully submitted,



Thomas D. Lustig
Beth Wendel

Attorneys for Appellants

²¹ See March 14, 1989 Statement of Reasons for Appeal, pages 8-10; March 26, 1990 Reply of Appellant to the BLM's Answer, pages 24-28.

²² See Appellants' May 6, 1991 Motion for Interim Relief.

LIST OF ATTACHMENTS

- Attachment A August 16, 1991, letter from Joe Feller to the San Juan Resource Area requesting notice of and an opportunity to comment on the proposed grazing schedule and the proposed stipulations for the 1991-1992 grazing season on the Comb Wash Allotment.
- Attachment B September 23, 1991 letter from the Area Manager (Edward Scherick) of BLM's Monticello office to Joe Feller stating that "[c]onsultation with affected interests is not required on grazing applications."
- Attachment C 1991-92 annual grazing permit for the Comb Wash Allotment issued on September 19, 1991.
- Attachment D BLM Proper Use Factors, Moab District, established March 1976

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Form 1541-1
(May 1967)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

SHORT NOTE TRANSMITTAL

10-1-91

(Date)

TO : Joe Feller
FROM : Nick Lundberg
SUBJECT: Comb Wash Grazing Schedule

Attached is the Comb Wash grazing application, schedule and stipulations as requested for 1991-92.

Note: Return this form when action is completed or attach it to data requested

★GPO 1977-779-943

Attachment A

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
GRAZING APPLICATION
GRAZING SCHEDULE

FORM APPROVED
OMB NO. 1024-4445
Expires: October 31, 1991

FOR BLM USE ONLY

Name (last, first, middle initial)

White Mesa Ute Cattle Co.

Address (include street, city, State, and zip code)

State UT
Office 0169
Operator No. 436642
Schedule No.
Billing Code
Special Bill Code

I hereby apply for the following grazing use on the public lands and/or other lands administered by the Bureau of Land Management

(1) LINE NO.	(2) ALLIEMENT		(3) PAS- TURE	(4) LIVESTOCK		(5) PERIOD		(7) USE	(8) E	(9) ACRES	(10) EQUIV
	NAME	NO.		NUMBER	BIND	BEGIN	END				
	CombWash	06836		277	C	101691022992	100A			1249	
				23	C	101691022992		E		102	
				231	C	101691022992	100N			1039	
<i>see attached stipulations</i>											

Show your recorded brands, earmarks, and wattles

Show reason for nonuse, if requested: conservation and protection of the public lands; annual fluctuation of livestock operations; financial or other reasons beyond control of the operator; or livestock disease or quarantine.

Signature

Cleal Bradford

Date

9-16-91

Reason for nonuse: Approved Disapproved
(Decision Required)

Signature of Authorized Officer

Edw. Schmitt

Date

9/16/91

Title 18, U.S.C., Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

(See terms and conditions on the reverse of this form.)

STIPULATIONS FOR GRAZING IN COMB WASH ALLOTMENT 1991-92

1. Salting and herding of cattle will be necessary to achieve distribution and proper utilization of forage. This will be especially important in canyons to keep cattle dispersed.
2. Utilization of key forage species cannot exceed 60% of the current year's growth in the main Comb pastures and 40% in the canyons through 3/15. Utilization after this date cannot exceed 50% in any pasture.
3. Movement of cattle must be completed by the ending date stated for each pasture. This means cattle moves must be started several days before the ending date. Any change in dates must be approved in advance by BLM.
4. Water hauling may be necessary during the spring use period to achieve proper cattle distribution and utilization of forage. This decision on water hauling will be made during the spring season.
5. No trailing or driving of cattle will be allowed through the Comb Wash riparian area.

Clay Bradford

9-16-91

I concur

Edward R. [Signature]
Area Manager

9/19/91
date

Grazing Schedule 1991-92

Little Baullies	300 head - 10/16 to 10/23
Upper Comb	300 head - 10/23 to 10/31
Arch	50 head - 11/01 to 11/30
Dry Wash Pasture	
Fish Creek	75 head - 11/01 to 11/30
Dry Wash	75 head - 11/01 to 11/30
Bullfrog	50 head - 11/01 to 11/30
Mule Canyon	50 head - 12/01 to 12/31
Comb Wash	50 head - 11/01 to 11/30
Dry Wash/Upper Comb	250 head - 12/01 to 12/31
Dry Wash/Lower Comb	300 head - 1/01 to 2/15
Road Canyon Pasture	
Dead Bull	100 head - 2/16 to 3/15
Road Canyon	75 head - 2/16 to 3/15
Snow Flat	rest
Comb Wash	125 head - 2/16 to 3/15
Comb Wash	300 head - 3/16 to 5/25
Upper Comb	300 head - 5/26 to 5/31
Little Baullies	Spring rest

Joseph M. Feller

College of Law
Arizona State University
Tempe, AZ 85287-7906
(602) 965-3964

August 16, 1991

Mr. Edward Scherick
San Juan Resource Area Manager
U.S. Bureau of Land Management
P.O. Box 7
Monticello, Utah 84535

Re: 1991 - 92 Grazing Season on the Comb Wash Allotment

Dear Ed,

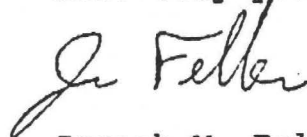
Greetings. The beginning of the fall grazing season on the Comb Wash Allotment is just two months away. I am writing to remind you that, if grazing is to be authorized on the Comb Wash Allotment this year, you should give me and other affected interests notice of, and sufficient time to comment on, the proposed number of livestock, the grazing schedule, and the stipulations.

This is the procedure you have followed for the last two years. If you do not intend to provide such notice and opportunity to comment this year, please inform me immediately.

Finally, I would like to commend you and your staff for your actions in response to violations of the grazing schedule and the stipulations that occurred last year. Your actions were necessary and appropriate, and I am hopeful that they will lead to better compliance by the permittee, and better protection of the invaluable public resources on the Comb Wash Allotment, in the future.

I look forward to hearing from you soon.

Sincerely yours,



Joseph M. Feller



Received on September 23, 1991.
United States Department of the Interior

ATTACHMENT C

Joseph M. Feller

BUREAU OF LAND MANAGEMENT

Comb Wash Allotment
U-069

Moab District
San Juan Resource Area
P.O. Box 7
Monticello, Utah 84535

IN REPLY REFER TO

SEP 23 1991

Mr. Joseph M. Feller
College of Law
Arizona State University
Tempe, Arizona 85287-7906

Dear Mr. Feller:

Consultation with affected interests is not required on grazing applications. Moab District policy regarding affected interests (Instruction Memorandum No. UT-060-91-11, January 30, 1991) states "Routine correspondence, applications, or grazing bills do not require consultation, coordination, or cooperation (three Cs) with affected interests."

We have developed the 1991-92 grazing schedule for the Comb Wash Allotment in consultation with the grazing permittee. The permitted use, although less than that permitted for the 1989-90 season is within the context of Judge John R. Rampton's August 13, 1990 decision which stated "in the interim, grazing levels should be maintained as currently authorized." This also conforms with 43 CFR 4160.3(c) which states "...an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal." As you are aware, the appeal in this case was filed on April 5, 1991. Again, the "preceding year" referred to in the above 43 CFR reference is the 1989-90 year which preceded the appeal.

If you have any further questions, please contact Nick Sandberg of my staff at (801)587-2141.

Sincerely yours,

Edward L. Schuich

Area Manager

cc: David K. Grayson, Regional Solicitor w/enclosure

PROPER USE FACTORS
Moab District
March, 1976

GRASSES

SEASON OF USE

Winter April¹ Spring Summer
Oct. 1-Mar. 31 Oct. 1-May 31 June 1-Sept. 30

Symbol	Scientific Name	Common Name	Cattle			Sheep			Wildlife		
			C	S	W	C	S	W	C	S	W
Ager	Agropyron cristatum H.S.*	Crested Wheatgrass	75	75	5	70	40	5			
Ager	Agropyron cristatum M.S.*	Crested Wheatgrass	50	30	5	70	40	5			
Agda	Agropyron dasystachyum	Thickspike Wheatgrass	10	20							
Agsm	Agropyron smithii	Western Wheatgrass	50	20	5	40	30	10	50	30	5
Agsp	Agropyron spicatum	Bluebunch Wheatgrass	50	20	5	40	30	10	50	30	5
Agtr	Agropyron trachycaulum	Slender Wheatgrass	50	20	5	40	30	10	50	30	5
Agros	Agrostis spp.	Bentgrass									
Arad	Aristida adscensionis	Sixweeks Three-awn	0	0	0	5	5	0	0	0	0
Arfe	Aristida fendleriana	Fendler Three-awn	0	0	0	5	5	0	0	0	0
Arlo	Aristida longiseta	Red Three-awn	0	0	0	5	5	0	0	0	0
Boer	Bouteloua eriopoda	Black Grama									
Bogr	Bouteloua gracilis	Blue Grama	30	20	0	30	20	0	40	25	0
Bran	Bromus anomalus	Nodding Brome									
Brca	Bromus carinatus	Mountain Brome									

* - Desirable I - Intermediate L - Least Desirable H.S. - Homogenous Stand M.S. - Mixed Stand

Symbol	Scientific Name	Common Name	Winter			Spring			Summer		
			C	S	W	C	S	W	C	S	W
Brci	Bromus ciliatus	Fringed Brome	Cattle: Sheep: Wildlife								
Brin	Bromus inermis	Smooth Brome	0	0	0	0	0	0	0	0	
Brte	Bromus tectorum	Cheatgrass	0	0	0	25	15	10	0	0	0
Cagi	Calamovilfa gigantea	Big Sandreed									
Deca	Deschampsia caespitosa	Tufted Hairgrass									
Dist	Distichlis stricta	Desert Saltgrass	20	10	0	20	10	0	20	10	0
Elca	Elymus canadensis	Canada Wildrye	30	10	0						
Elci	Elymus cinereus	Great Basin Wildrye	30	10	0	40	0	0	20	0	0
Elgl	Elymus glaucus	Blue Wildrye	0	0	0						
Feoc	Festuca octoflora	Sixweeks Fescue	0	0	0	25	15	10	0	0	0
Hija	Hilaria jamesii	Galleta	60 45	35	0	20	10	0	45	35	0
Hoju	Hordeum jubatum	Fortait Barley	0	0	0	15	15	5	0	0	0
Kocr	Koeleria cristata	Junegrass	20	10	0	40	20	10	35	20	0
Mupu	Muhlenbergia pungens	Sandhill Muhly	0	0	0	0	0	0	0	0	0
Musq	Nunroa squarrosa	Flase Buffalograss									
Orhy	Oryzopsis hymenoides	Indian Ricegrass	75 50	30	0	55	30	5	30	35	0
Phal	Phleum alpinum	Alpine Timothy									
Phpa	Phleum pratensis	Timothy									

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Symbol	Scientific Name	Common Name	Winter			Spring			Summer		
			Cattle C	Sheep S	Wildlife W	C	S	W	C	S	W
Phco	Phragmites communis	Common Reed									
Poam	Poa ampla	Big Bluegrass	20	10	0	40	20	10	35	20	0
Pofe	Poa fendleriana	Mutton Grass	20	10	0	40	20	10	35	20	0
Polo	Poa longiligula	Longtongue Bluegrass	20	10	0	40	20	10	35	20	0
Pose	Poa secunda	Sandberg Bluegrass	10	5	0	25	15	5	10	5	0
Sihy	Sitanion hystrix	Squirreltail	10	5	0	30	20	5	10	5	0
Spai	Sporobolus airoides	Alkali Sacaton	20	0	0	30	20	10	20	0	0
Spco4	Sporobolus contractus	Spike Dropseed	25	15	0	15	5	5	35	25	10
Spcr	Sporobolus cryptandrus	Sand Dropseed	25 50	15	0	15 20	5	5	35	25	10
Spf12	Sporobolus flexuosus	Mesa Dropseed									
Spgi	Sporobolus giganteus	Giant Dropseed	15	0							
tco-2	Stipa columbiana	Columbia Needlegrass	25	10	0	40	25	10	25	15	0
tco-1	Stipa comata	Needle-Anc-Thread	25	10	0	40	25	10	25	15	0
tle	Stipa lettermani	Letterman Needlegrass	25	10	0	40	25	10	25	15	0
tne	Stipa neomexicana	New Mexican Feathergrass	25	10	0	40	25	10	25	15	0
trpi	Tridens pilosus	Harry Tridens									
trpu	Tridens puchellus	Fluffgrass									