



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>



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9-30-02

In Reply Refer To:
(NV-22.15)
4160.1

CERTIFIED MAIL NO. 7002 0460 0001 5212 2631
RETURN RECEIPT REQUESTED

SEP 30 2002

Notice of Assistant Field Office Manager/Renewable Resources Proposed 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 11/01 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 2153 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you told Ron that you would submit a letter to the BLM requesting the grazing application dated August 10, 2002, be withdrawn.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.

Based on the above information, it is my **proposed 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.

So, until the Multiple Use Decision process is complete, and a new grazing permit is issued reflective of the Final Multiple Use Decision, the proposed season of use outlined in your 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."

4160.2 "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."

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,



Colin P. Christensen
AFM, Renewable Resources