

L 6-11-02



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>

In Reply Refer To:
4160.1
(NV-022.15)

June 11, 2002

CERTIFIED MAIL NO. 7001 0360 0002 6663 6651
RETURN RECEIPT REQUESTED

Notice of Assistant Field Office Manager/Renewable Resources Final Decision

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

Dear Mr. Estill:

On May 10, 2002 I issued you my proposed Decision regarding two grazing applications that you submitted to the Winnemucca Field Office. After further review of my proposed decision I realized that my proposed decision was in error regarding line 1 of your May 3, 2002, grazing Application. Thus my final decision is as follows.

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:

500 cattle	01/01 to 03/31	100% public land	Active Use	1496 AUMs
1117 cattle	04/01 to 04/30	100% public land	Active Use	1102 AUMs
1117 cattle	07/15 to 10/14	100% public land	Active Use	3379 AUMs
1117 cattle	11/16 to 12/31	100% public land	Active Use	1689 AUMs

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:

500 cattle	03/01 to 03/31	100% public land	Active Use	510 AUMs
1117 cattle	04/01 to 04/30	100% public land	Active Use	1102 AUMs
1117 cattle	07/15 to 10/14	100% public land	Active Use	3379 AUMs
1117 cattle	11/16 to 12/31	100% public land	Active Use	1689 AUMs
500 cattle	01/01 to 02/28	100% public land	Active Use	970 AUMs

On August, 2002, 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:

500 cattle	03/01 to 03/31	100% public land	Active Use	510 AUMs
1117 cattle	04/01 to 04/30	100% public land	Active Use	1102 AUMs
1117 cattle	07/15 to 10/14	100% public land	Active Use	3379 AUMs
1117 cattle	11/16 to 12/31	100% public land	Active Use	1689 AUMs
500 cattle	01/01 to 02/28	100% public land	Active Use	970 AUMs

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:

1117 cattle	11/16/01 to 12/31/01	100 % public land	Non Use
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 application from you and a request for a refund based upon non-use for the 2001 grazing season as follows:

500 cattle	03/01/01 to 03/31/01	100% public land	Active Use	510 AUMs
700 cattle	04/01/01 to 10/14/01	100% public land	Active Use	4534 AUMs
608 cattle	03/01/01 to 03/31/01	100% public land	Non Use	620 AUMs
408 cattle	04/01/01 to 10/14/01	100% public land	Non Use	2642 AUMs
1108 cattle	10/15/01 to 11/30/01	100% public land	Non Use	1712 AUMs
1108 cattle	01/01/02 to 02/28/02	100% public land	Non Use	2149 AUMs

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:

500 cattle	03/01 to 03/31	100% public land	Active Use	510 AUMs
1117 cattle	04/01 to 04/30	100% public land	Active Use	1102 AUMs
1117 cattle	07/15 to 10/14	100% public land	Active Use	3379 AUMs
1117 cattle	11/16 to 12/31	100% public land	Active Use	1689 AUMs
500 cattle	01/01 to 02/28	100% public land	Active Use	970 AUMs

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:

700 cattle	03/01/02 to 04/30/02	100% public land	Non Use	1404 AUMs
700 cattle	05/01/02 to 11/30/02	100% public land	Active Use	4925 AUMs
700 cattle	01/01/03 to 02/28/03	100% public land	Active Use	1358 AUMs

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:

700 cattle	03/01/02 to 04/30/02	100% public land	Non Use	1404 AUMs
700 cattle	05/01/02 to 07/14/02	100% public land	TNR	1726 AUMs
700 cattle	07/15/02 to 11/30/02	100% public land	Active Use	3199 AUMs
700 cattle	01/01/03 to 02/28/03	100% public land	Active Use	1358 AUMs

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 **final decision** to deny in part and approve in part your grazing applications dated February 5, 2002 and May 3, 2002.

Application dated February 5, 2002, is the following:

500 cattle	03/01/01 to 03/31/01	100% public land	Active Use	510 AUMs
700 cattle	04/01/01 to 10/14/01	100% public land	Active Use	4534 AUMs
608 cattle	03/01/01 to 03/31/01	100% public land	Non Use	620 AUMs
408 cattle	04/01/01 to 10/14/01	100% public land	Non Use	2642 AUMs
1108 cattle	10/15/01 to 11/30/01	100% public land	Non Use	1712 AUMs
1108 cattle	01/01/02 to 02/28/02	100% public land	Non Use	2149 AUMs

It is my final decision to deny lines 1 - 5 and approve line 6 of your grazing 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 has a policy on issuing refunds. This policy states that the refund will occur at the time the BLM is notified. This office was notified on 02/05/02. 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 Solider Meadows Allotment is advanced billing and I received your payment for grazing bill G27200838 on October 17, 2001. I noticed on your grazing 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 although applied for, was not approved by me.

Line 6 of this grazing 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).

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

700 cattle	03/01/02 to 04/30/02	100% public land	Non Use	1404 AUM's
700 cattle	05/01/02 to 07/14/02	100% public land	TNR	1726 AUM's
700 cattle	07/15/02 to 11/30/02	100% public land	Active Use	3199 AUM's
700 cattle	01/01/03 to 02/28/03	100% public land	Active Use	1358 AUM's

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

Therefore, it is my final decision to approve the non-use on line one for the (03/01 to 04/30) season and deny the livestock numbers (700 cattle) for the (03/01 to 03/31) portion of the season. Since the existing permit allows only five hundred (500) head of cattle during the 03/01 to 03/31 season of use, line one would be divided into two lines and approved as follows:

500 cattle	03/01/02 to 03/31/02	100% public land	Non Use	510 AUM's
700 cattle	04/01/02 to 04/30/02	100% public land	Non Use	690 AUM's

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. The 700 head referenced on Line 1 has been corrected to reflect 500 head in accordance with the existing permit and 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.

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 on the proposed actions as outlined in the Biological Assessment 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 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.

It is my decision to deny a portion of line 3 from 10/15/02 to 11/15/02 and approve use on line 3 from 11/16/02 to 11/30/02.

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. 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 deny all of line 4.

Rationale

Line 4 is not in conformance with the current grazing permit and/or the Soldier Meadows Allotment FMUD of 1994 due to livestock numbers and 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."

4160.4 "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..."

Any applicant, permittee, lessee, or other person whose interest is adversely affected by this final decision may file an appeal and petition for stay of the decision pending final determination of the appeal under Sec. 43 CFR §4160.4 and §4.470. Appeals and petitions for a stay of the decision shall be filed in person or in writing to Pete Christensen, AFM Renewable Resources, Bureau of Land Management, Winnemucca District, 5001 E. Winnemucca Blvd., Winnemucca, NV 89445, within 30 days after receipt of the final decision.

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

cc: Nevada Division of Wildlife - Fallon 7001 0360 0002 6663 6668
Nevada Division of Wildlife - Winnemucca 7001 0360 0002 6663 6675
Humboldt County Commissioners 7001 0360 0002 6663 6682
Western Watershed Project 7001 0360 0002 6663 6699
Committee for Idaho's High Desert 7001 0360 0002 6663 6705
Sierra Club 7001 0360 0002 6663 6712
U.S. Fish and Wildlife Service 7001 0360 0002 6663 6729
USDA/Natl. Resource Conservation Service 7001 0360 0002 6663 6736
Wild Horse Organized Assistance 7001 0360 0002 6663 6743
NV. Comm. for Preservation of Wild Horses 7001 0360 0002 6663 6750
Natural Resource Defense Council 7001 0360 0002 6663 6767
Summit Lake Paiute Tribe 7001 0360 0002 6663 6774
State of Nevada - Dept. of Administration 7001 0360 0002 6663 6781
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