



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Elko Field Office
3900 Idaho Street
Elko, Nevada 89801-4611

*rec.
1-21-99*

In Reply Refer To:
9230 (NV-010)
T-NV-010-96-11-018

JAN 21 1999

NOTICE OF PROPOSED DECISION

Dear Interested Public:

The TeMoak Livestock Association (TLA) previously held a permit to graze public lands administered by the Elko District BLM located in the Odgers, Bald Mtn., Shoshone, and Crane Springs Allotments since about 1940. The Odgers and Bald Mtn. Allotments comprised the TLA's Butte Valley operation. The Shoshone, and Crane Springs Allotments comprised the TLA's South Fork operation. A proposed decision was issued by the Elko Field Office on 6/19/98, which cancelled in its entirety the grazing preference qualifications, preference, and/or privileges, including suspended non-use, previously held by the TLA which are attached to Griswold Ranch, Ogilvie Ranch, Drown Ranch, Dewar Ranch, Dewar Railroad purchase, Bull Pasture, and Carson Place: base properties for the TLA's Shoshone and Crane Springs grazing permits. Base properties for the TLA grazing permit were lands which were in private ownership and operated during the priority period. During the period of 1939-1941, the U.S. Government purchased the base properties which were subsequently incorporated into the TeMoak Bands Reservation. These lands were offered by the TLA as base property to establish priority of use. That portion of the TLA grazing preference and base property attached to the Odgers and Bald Mtn. Allotments (i.e. the TLA Butte Valley operation) are outlined in Table 1 below:

Table 1. Previous TeMoak Livestock Association Grazing Preference for the Butte Valley Operation.

Base Property		Allotment	Grazing Preference		
Name	Acres		Active	Suspended	Total
Odgers Ranch	1,907	Bald Mtn.	736	403	1,139
		Odgers	1,596	0	1,596

The Odgers and Bald Mtn. Allotments were licensed at 100% public land. The TLA paid for grazing use each year through the 1983 grazing season with their 1983 annual authorization ending 10/16/83. Beginning in 1984, the Elko District BLM was informed by the Chairman of the TLA that they would no longer be paying grazing fees to the BLM, claiming the Western Shoshone still hold aboriginal title to these lands. The TLA

was informed by the Elko District BLM on 4/23/84 that the Bureau would consider this an action of unauthorized use and subject to appropriate actions as per the grazing regulations. A Notice of Trespass was issued to the TLA on 9/10/84 (NV-010-84-3-021).

On 5/14/87, another Notice of Trespass (NV-010-87-3-021) was issued to the TLA. In July, 1987 a final decision was issued, demanding payment of unpaid fees. This decision was appealed by the TLA in August, 1987. However, in November, 1989 the TLA withdrew their appeal to this decision. This resulted in the final determination of the BLM being that grazing use by the TLA constituted unauthorized use, it was willful and repeated in nature, as of that date the TLA owed the United States \$28,726.08, and failure to make payment within 30 days may result in suspension or cancellation, in whole or part, of the TLA's grazing permit and preference. To date, fees due the United States have not been paid, nor has an offer of settlement been made. Grazing trespass by the TLA has been ongoing since 1984 and currently remains unresolved with fees and interest continuing to accrue. Because this grazing trespass remained unsettled, the TLA's term grazing permit was not renewed in 1989.

During 1996, the Elko Field Office BLM twice attempted to meet with members of the TLA to discuss settlement of the outstanding grazing trespass. The members of the TLA chose not to meet with BLM representatives. Subsequently, the Elko Field Office BLM received written notice that livestock grazing the public lands in the above referenced allotments did not belong to the TLA, rather they belong to individuals identifying themselves as "Traditional Western Shoshone Cattlemen" who "will continue not to pay the Bureau of Land Management for grazing on Disputed Lands". The list of individual "Traditional Western Shoshone Cattlemen" included Robert Healy, Sr., Gordon Healy, and Harvey Healy (hereafter referred as the Healy's).

A Notice of Unauthorized Use and Order to Remove was issued to the TLA and other individual "Traditional Western Shoshone Cattlemen" (including the Healy's) on 9/20/96. Because no response or offer of settlement was received, the Elko District BLM again attempted to meet with the TLA and others to discuss settlement twice between January, 1997 and August, 1997. Again, no offers of settlement were received.

An Order to Remove and Demand for Payment Decision and a Notice of Intent to Impound was issued to the TLA and other individual "Traditional Western Shoshone Cattlemen" (including the Healy's) on 9/26/97. No response or offer of settlement was received from the TLA or those individuals who have been grazing without authorization. An appeal was received from the Healy's on 11/17/97. The BLM's motion to dismiss the appeal was granted by the Office of Hearings and Appeals on 8/6/98. Because all individuals who were served the Order to Remove and Demand for Payment Decision do not hold a grazing permit, all cases have been forwarded to the Department of Justice for further action in accordance with 43 CFR 4170.1-1(c).

The Elko Field Office attempted on several occasions in 1998, to meet with the Healy's and discuss settlement of their outstanding trespass obligations. To date, an acceptable offer of settlement has not been received.

On the basis of the facts outlined above and in accordance with the regulations for grazing administration, Title 43 CFR 4100, my proposed decision is as follows:

- 1. Permanently cancel in its entirety all federal grazing qualifications, preference, and/or privileges, including suspended non-use previously held by the TeMoak Livestock Association which are attached to the Odgers Ranch.**

Rationale:

Based upon the analysis of the facts and circumstances involving grazing trespass #NV-010-84-021 and #NV-010-87-021, the Bureau of Land Management has determined this trespass to be a willful and repeated willful violation of Title 43 CFR 4140.1(b)(1)(i). In accordance with 43 CFR 4150.1(a) which states in pertinent part:

“The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.”

Furthermore, this decision is a mandatory action for repeated willful violations, in accordance with 43 CFR 4150.3 which states in pertinent part:

“Where violations are repeated willful, the authorized officer shall take action under 43 CFR 4170.1-1(b) of this title.”

43 CFR 4170.1-1(b) states:

“The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this for repeated willful violation by a permittee or lessee of § 4140.1(b)(1) of this title.”

The severity of this action is the result of the above outlined history and the repeated flagrant disregard by the TeMoak Livestock Association and individual Traditional Western Shoshone Cattleman of the rules and regulations administering the grazing of the public rangelands.

This proposed decision is issued in accordance with Title 43 CFR 4110.1, 4110.2-1, 4120.3-2, 4130.1-2, 4130.2, 4160.1, 4160.2, 4160.3, and 4160.4.

Any applicant, permittee, lessee, or other affected interest may protest the proposed decision under Title 43 CFR 4160.1, in person or in writing to Clinton R. Oke, Assistant Field Manager for Renewable Resources, 3900 E. Idaho Street, Elko, NV, 89801 within 15 days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error.

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.

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal and petition for stay of the decision pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final.

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:

- (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, and
- (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 yours,

A handwritten signature in black ink, appearing to read "Clinton R. Oke", with a horizontal line underneath.

CLINTON R. OKE, Manager
Renewable Resources

For your information, this Proposed Decision has been sent by mail to the following.

Paula Brady
TeMoak Tribe of Western Shoshone
South Fork Band Council
Bureau of Indian Affairs
Wild Horse Organized Assistance
Commission-Preservation of Wild Horses
HTT Resource Advisors
Jack and Terry Bowers-7-H Ranch
Int'l Society-Protection of Mustangs/Burros
Trout Unlimited-Northeastern NV Chapter
Nevada State Council-Trout Unlimited
Nevada Division of Wildlife
US Fish and Wildlife Service
Elko Board of County Commissioners
Nevada Cattlemen's Assn.
Resource Concepts, Inc.

February 9, 1999

Mr. Clinton R. Oke, Manager
Bureau of Land Management
3900 Idaho Street
Elko, NV 89801-4611

Dear Mr. Oke:

It appears the Bureau of Land Management has done everything, with outstanding patience, in resolving the grazing issues with the TeMoak Livestock Association. By the fact that these lands were offered by the TLA as base property to establish the priority use, allows they understood the grazing privileges that comprised their operation. To claim then in 1983, after having paid fees, those lands held aboriginal title belies the facts. Thus far the Western Shoshone have been unsuccessful in the courts of asserting aboriginal claims.

In order to bring sound management of the public rangelands the BLM has no choice but to regulate use for the benefit of all grazing uses. However, I would caution the District that if this allotment borders a federally protected herd management area,; not to assume that horses within this allotment are the private property of the offending group.

Thank you for notification of this most difficult situation.

Most sincerely,

Dawn Y. Lappin (Mrs.)
Director