



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
SUSANVILLE DISTRICT OFFICE
705 Hall Street
Susanville, California 96130

8-1-97
IN REPLY REFER TO:

4160
CA-028
AMP File

CERTIFIED MAIL NO. P 145 104 742
RETURN RECEIPT REQUESTED

AUG 1 1991

Dawn Lappin
WHOA
15640 Sylvester Road
Reno, NV 89511

Dear Ms. Lappin:

Enclosed is a copy of the Massacre Mountain Allotment Final Decision. This information is being provided to you because you have been identified as an affected interest. This determination was based on your request to be considered or through your participation on the Massacre Mountain/High Rock Technical Review Team.

This decision allocates active preference to Sam Jaksick (White Pine Ranch), Bob Bunyard, and Dan Russell in the Massacre Mountain Allotment (No. 1008) and the Little High Rock Allotment (No. 1018). The decision also combines the two allotments into one allotment. Each party is receiving an identical decision.

This Final Decision will become effective October 1, 1991. As an affected interest you may appeal this decision for the purpose of a hearing before an Administrative Law Judge, as provided under 43 CFR 4160.4 and 4.470, you must file within 320 days from receipt of this Final Decision. This appeal must be in writing and shall be filed with the District Manager, Susanville District, Bureau of Land Management, 705 Hall Street, Susanville, California 96130. The appeal shall state clearly and concisely why you think this decision is in error.

In the event of an appeal within the 30 day time period, grazing use as authorized prior to this decision will continue pending final action on the appeal (43 CFR 4160.3(c)).

Sincerely,

Robert J. Shreve

for

Herrick E. Hanks
Susanville District Manager

Enclosure



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
 SUSANVILLE DISTRICT OFFICE
 705 Hall Street
 Susanville, California 96130

4160.1(CA-028)
 AMP File

FINAL DECISION
 (43 CFR 4160.3)

CERTIFIED MAIL NO.
 RETURN RECEIPT REQUESTED

AUG 1 1991

Bob Bunyard
 P.O. Box 489
 Cedarville, CA 96104

Dear Mr. Bunyard:

INTRODUCTION:

On December 7, 1988, Judge Edward C. Reed, Federal District Court of Nevada, vacated the Susanville BLM District Manager's Final Grazing Decision of April 14, 1983 (Case #CV-N-87-618-ECR Bunyard vs. Donald Hodel). The Judge ruled that the Bureau's final decision was clearly based on a misinterpretation of 43 CFR 4110.4-2(a) rather than on a reasoned analysis of what constitutes an "equitable apportionment". The Judge made this conclusion based in part on the testimony of the then Susanville District Manager. He testified, "I had no choice under interpretations of the regulations but to distribute the reduction on a proportionate basis." However, the court expressed no opinion about whether proportionate share reduction in grazing privileges would be a valid solution in this matter under a proper interpretation of 43 CFR 4110.4-2(a).

The issue of "equitable apportionment" of the grazing reduction was presented to the Modoc/Washoe Experimental Stewardship Steering Committee for its assistance in complying with the court's ruling. A subcommittee was appointed to identify and analyze alternatives to readjudicate the grazing privileges, and to recommend a grazing decision that would be equitable to all permittees involved.

This Final Decision is the result of our consultations with the Modoc/Washoe Experimental Stewardship Committee and its subcommittee, Susanville District Grazing Advisory Board, and the affected permittees.

The Taylor Grazing Act of 1934 and the Federal Land Policy and Management Act of 1976 provide for livestock grazing use of the public lands. The Federal Regulations for grazing on the public lands require that authorized livestock grazing use shall not exceed the grazing capacity of the federal lands. These Federal Regulations give the District Manager the authority to classify the public lands for kinds of livestock, periods of use, and grazing capacity. They also provide for limits or exclusions of livestock use to the extent necessary to achieve resource management goals set up for an allotment.

PRESENT SITUATION:

Current status of grazing permits for the Massacre Mountain Allotment (#1008):

	Preference (AUMs)		
	<u>Total</u>	<u>Susp.</u>	<u>Active</u>
White Pine Ranch	7,769	1,486	6,283
Bob Bunyard (sheep)	2,420	485	1,935
(cattle)	<u>398</u>	<u>79</u>	<u>319</u>
	2,818	564	2,254
Dan Russell	<u>569</u>	<u>114</u>	<u>455</u>
Allotment Totals:	11,156	2,164	8,992

Current status of grazing permit for the Little High Rock Allotment (#1018) as adjusted to carrying capacity by the July 7, 1987 Final Decision:

	Preference (AUMs)		
	<u>Total</u>	<u>Susp.</u>	<u>Active</u>
Dan Russell	2,622	1,622	1,000

REVIEW OF PROTESTS:

White Pine Ranch and Bob Bunyard filed the only two protests on the Proposed Decision dated August 19, 1990.

White Pine Ranch's protest presented the following points:

1. They asked for the elimination of all domestic sheep AUMs for the purpose of allowing reintroduction of bighorn sheep.
2. They felt there was an inequity in keeping all the domestic sheep AUMs intact and reducing only the cattle AUMs. They felt there should be a proportionate reduction to both sheep and cattle AUMs.
3. They opposed the reduction of 340 AUMs from White Pine Ranch permit due to the High Rock-Fortynine Mountain land exchange.

Bob Bunyard's protest consisted of only a single point:

He opposed the split season of use for the domestic sheep operation.

I have carefully reviewed each of the protests and will address each point as identified above.

Regulation 43 CFR 4110.4-2(a)(ii) requires reductions to be "equitably apportioned". The following discussion covers the major issues which were key to that determination and consequently influenced the content of this decision.

A subcommittee of the Modoc/Washoe Experimental Stewardship Committee provided recommendations on an equitable decision for the Massacre Mountain Allotment. I considered their input very carefully in the development of this Final Decision.

1. Elimination of domestic sheep AUMs and reintroduction of bighorn sheep. The Cowhead/Massacre Management Framework Plan (MFP) of June, 1981, decisions are currently in conflict on this issue. Two separate land use plan decisions state that bighorn sheep will be reintroduced into High Rock Canyon and domestic sheep grazing will continue on the bench areas west of High Rock Canyon. At the time these decisions were adopted there was a belief that even though bighorn and domestic sheep areas of use would overlap, the frequency of contacts between the two species was considered low and the perceived risk was acceptable. Since that determination was made, evidence from other locations has shown that even minimal contact should be avoided to eliminate the possibility of disease transmission between the two species. Based on current information, the reintroduction of bighorn sheep into High Rock Canyon is not compatible with the continuation of domestic sheep grazing as currently authorized in the Massacre Mountain Allotment. The conflict is one of two valid, but incompatible, land use allocations. Since the grazing privileges for domestic sheep grazing in the allotment are currently valid and no bighorn sheep are currently in the allotment, it is appropriate at this time to establish a stocking rate for domestic sheep.

The resolution of this conflict in the existing MFP should not be addressed in a grazing decision. The appropriate means for addressing this issue is to modify the land use plan as prescribed by the Bureau Planning System (43 CFR 1600). An MFP amendment will be initiated in FY 1992 to resolve the conflict between domestic sheep and bighorn sheep. The MFP amendment may eliminate or greatly restrict domestic sheep grazing in the allotment.

2. Inequity of reducing only cattle AUMs. The AUM allocation to cattle and sheep, as a result of the livestock exclusion area, is primarily based on our 1982 vegetative survey. Additional adjustments were made to this information to account for current resource conditions, forage quality, and water availability. Sheep and cattle are using this allotment together, however, due to herding practices, water requirements and different vegetative preferences they impact other resource values differently. These differences result in more AUMs being harvested under dual use than if this same area was utilized by a single class of stock. Therefore, the maximum use appropriate for either cattle or sheep grazing alone is something less than the 8,000 AUMs allocated to this allotment. In making this allocation, the following points were considered:

- a. The primary grazing areas for cattle have been Massacre Mountain and High Rock Canyon, which is within the exclusion area. The sheep trail routes and lambing grounds are the Little High Rock area, Massacre Mountain, and the benches west of High Rock Canyon, none of which are within the exclusion area.
- b. In determining the AUMs available for sheep and cattle grazing, consideration was given to present management actions, seasonal vegetative quality, and resource conditions. Our analysis indicates that about 1,000 head is the maximum number of cattle that could use the allotment for the allotted season on a sustained basis. The current sheep use of 2,000 head for the allotted season appears to be right for the allotment. The number of AUMs and maximum number of animals that would be permitted to graze on this allotment is based on the most recent vegetative survey, professional judgement of the BLM staff and permittees, and actual use records on each kind of animal.
- c. A proportionate share suspension applied to both cattle and sheep was considered. An analysis of this allocation indicated that the allotment would still be overstocked by cattle. An additional suspension in cattle numbers would still be needed before the allotment would be properly stocked under a proportionate share reduction. Any reduction in sheep numbers will not provide any significant increase in grazing use for cattle. The limitations on cattle grazing involve conflicts with other resource values rather than competition with domestic sheep for forage and water.

The total amount of forage available, the kind of animal using the area, and the total number of animals the area can support at any one time were all taken into consideration in establishing this carrying capacity. I feel that this approach is the most equitable way to establish a grazing capacity which is also in balance with the other resource values within the allotment.

The allocation of AUMs to cattle and sheep based on the historical use of the area was also a factor considered in the Proposed Decision. In reviewing the historical use of the area, the original Powers permit made significant use within the canyon and some use in the area to the east. The original Lartirigoyen sheep permit never used the area which is now the livestock exclusion area. Cattle were the sole livestock within the exclusion area. Therefore, the subcommittee recommended this grazing use should have some influence in developing an "equitable" decision.

3. Inequity of canceling 340 AUMs from White Pine. A land exchange in 1975 between White Pine Ranch and the BLM resulted in a trade of about 4,920 acres of private land in High Rock Canyon for approximately 5,790 acres of public land inside the Fortynine Mountain Field, an individual allotment used by White Pine Ranch. Upon completion of this exchange, no federal land or AUMs existed in the Fortynine Mountain Field. The White Pine Ranch permit in Massacre Mountain Allotment received an additional 340 AUMs for those private High Rock Canyon lands acquired by the BLM. The allocation of this increase of 340 AUMs was not done on a proportionate basis. This was an exclusive increase to White Pine Ranch. All of these traded lands within the canyon are included in the livestock exclusion area. Therefore, the subcommittee felt, and I agree, that it would not be equitable to proportionately reduce those AUMs originally allocated exclusively to White Pine Ranch.

4. Split season of use with the domestic sheep permit. The split season was a decision in the Cowhead/Massacre Management Framework Plan and can not be changed without amending the land use plan. The season of use is not a change to the permit and is not an item for protest. This matter will be addressed in the land use plan update.

FINAL DECISION:

In conclusion, after review of each point of protest, I have determined that my Proposed Grazing Decision is still appropriate. The protests have not presented any new facts or information which would change my decision. Therefore, to bring livestock use into balance with the forage allocated to livestock grazing and to provide for the orderly and proper management of the federal range, my final decision is set forth as follows:

1. To provide that livestock use be in balance with forage allocated and under 43 CFR 4110.2-2(a), 4110.4-2(a), the active preference for the Massacre Mountain Allotment (#1008) is adjusted from 8,992 AUMs to 7,000 AUMs. The difference, 1,992 AUMs, shall be held in suspended preference. The allocation of this reduction in active use will be as follows:
 - a. Suspend White Pine Ranch cattle permit by 340 AUMs before any other permittees suspension. This was a exclusive 340 AUM increase that White Pine Ranch received in the 1975 land exchange.

Status of White Pine Ranch grazing permit in the Massacre Mountain Allotment (#1008) after 340 AUMs suspension (Land Exchange):

	Preference (AUMs)		
	<u>Total</u>	<u>Susp.</u>	<u>Active</u>
White Pine Ranch	7,769	1,826	5,943

- b. Suspend 1,652 AUMs proportionately (24.59%) among the cattle permits.
- c. This Final Decision has no effect on stocking rate or season of use of B. G. Bunyard sheep permit.

Status of grazing permits at 24.59% proportionate share suspension to current active cattle AUMs and no suspension to sheep AUMs in the Massacre Mountain Allotment (#1008):

	Preference (AUMs)		
	<u>Total</u>	<u>Susp.</u>	<u>Active</u>
White Pine Ranch	7,769	3,287	4,482
Bob Bunyard (sheep)	2,420	485	1,935
(cattle)	<u>398</u>	<u>158</u>	<u>240</u>
	2,818	643	2,175
Dan Russell	<u>569</u>	<u>226</u>	<u>343</u>
Allotment Totals:	11,156	4,156	7,000

2. To provide for the orderly management of the federal range under 43 CFR 4110.2-4, the Massacre Mountain Allotment (#1008) and the Little High Rock Allotment (#1018) will be combined into one allotment. This combination will be done by excluding the boundary line common to both allotments. This area will be a single administrative unit for the purpose of authorizing and managing livestock grazing use. This newly designated allotment will keep the Massacre Mountain Allotment (#1008) name and number. This new allotment will include the grazing preference of the former Massacre Mountain Allotment (#1008), as specified in this decision, plus the preference from the Little High Rock Allotment (#1018) as specified in the Final Decision dated July 7, 1987.

Status of grazing permits after the Massacre Mountain Allotment (#1008) and the Little High Rock Allotment (#1018) have been combined and with the suspension of 1,992 AUMs imposed:

	Preference (AUMs)		
	<u>Total</u>	<u>Susp.</u>	<u>Active</u>
White Pine Ranch	7,769	3,287	4,482
Bob Bunyard (sheep)	2,420	485	1,935
(cattle)	<u>398</u>	<u>158</u>	<u>240</u>
	2,818	643	2,175
Dan Russell	<u>3,191</u>	<u>1,848</u>	<u>1,343</u>
Allotment Totals:	13,778	5,778	8,000

3. To provide for the proper management of the federal range and under 43 CFR 4130.6-1(a), the season of use, as recommended in the Massacre Mountain/High Rock Technical Review Team Report dated May 23, 1982, and as specified in the Cowhead/Massacre MFP III, will be as follows:

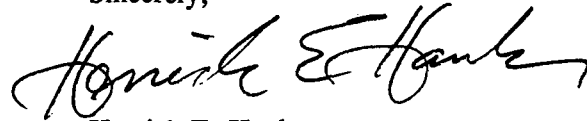
Sheep use will be from 04/01 to 06/30 and 10/08 to 12/07
 Cattle use will be from 04/01 to 09/30

APPEAL PROCEDURES:

This Final Decision will become effective October 1, 1991. If you wish to appeal this decision for the purpose of a hearing before an Administrative Law Judge, as provided under 43 CFR 4160.4 and 4.470, you must file within 30 days from receipt of this Final Decision. This appeal must be in writing and shall be filed with the District Manager, Susanville District, Bureau of Land Management, 705 Hall Street, Susanville, California 96130. The appeal shall state clearly and concisely why you think this decision is in error.

In the event of an appeal within the 30 day time period, grazing use as authorized prior to this decision will continue pending final action on the appeal (43 CFR 4160.3(c)).

Sincerely,

A handwritten signature in cursive script, appearing to read "Herrick E. Hanks".

Herrick E. Hanks
Susanville District Manager