

6-6-90
IN REPLY REFER TO:



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
EAGLE LAKE RESOURCE AREA
2545 Riverside Drive
Susanville, California 96130

CF 2017
4160.1 (CA-026)

JUN 6 1990

NOTICE OF PROPOSED DECISION

CERTIFIED MAIL NO. P-145-101-832
RETURN RECEIPT REQUESTED

Espil Sheep Company
c/o Brent B. Espil
P.O. Box 150
Gerlach, NV 89412

RECEIVED
June 11, 1990
Gerlach, NV.

Dear Mr. Espil:

This proposed decision addresses issues associated with the Cal-Neva - Winnemucca District Boundary Fence (project 5523, hereinafter referred to as the "Cal-Neva/Winnemucca Fence or as the "fence") which is located on the common boundary between the Bureau of Land Management (BLM) - Susanville District's Twin Peaks Allotment, within which you hold a grazing permit, and the BLM - Winnemucca District's Buffalo Hills Allotment, within which Andy Jackson holds a grazing permit.

This fence was reconstructed by the Susanville and Winnemucca BLM Districts in 1987 and 1988 in order to provide a livestock barrier between the Buffalo Hills Allotment and the Twin Peaks Allotment for the purpose of promoting orderly administration of the range. All but a 0.3 mile stretch (which crossed Buffalo Creek in T.34N., R.19E., Sec. 24 NE1/4; this portion was not rebuilt) of the reconstructed fence followed the route of the original district boundary fence constructed in 1970 and 1971 in accordance with Winnemucca District Manager's Decision of January 17, 1969. This 0.3 mile stretch was not rebuilt because as originally constructed, it impaired the movements of wild horses in winters when heavy snow was received which resulted in them being trapped in that part of Buffalo Canyon located to the south of the fence.

In August, 1987, you eliminated the trap by removing the 0.3 mile portion of the fence which crossed Buffalo Creek. You also constructed a small portion of fence which ties into the Buffalo Canyon wall in order to keep livestock confined to their proper areas. However, the newly-constructed fence blocked the access to water along this portion of the creek that previously was enjoyed by Jackson's cattle. This work was done without consultation with Andy Jackson.

An on-the-ground meeting occurred on June 27, 1989, attended by BLM personnel from this office and Winnemucca, as well as yourself and Andy Jackson. At that meeting, Mr. Jackson stated that the previously enjoyed water source in Buffalo Creek was an important water source to them for the management of their livestock. In addition, the BLM representatives stated that the fence as previously located was beneficial to management of the riparian area associated with this stretch of Buffalo Creek. You presented the position that

reconstructing the fence along the old route would recreate the trap. During this consultation, it was decided that the fence would need to be put back to its original route in order to allow for the watering of Jackson's cattle. It was decided also that the entire portion of the fence located along Buffalo Creek would be maintained by the permittee whose grazing use included the pasture adjacent to the fence that year and that this permittee would open the gates in this portion at the end of the grazing season in order to allow for the free movement of wild horses during the winter. Furthermore, it was decided that in those years when neither permittee was using the area divided by the fence, the BLM would open the gates.

At the June 27, 1989, meeting, maintenance responsibility of the remainder of the Cal-Neva/Winnemucca fence also was discussed. At that time, verbal agreement was reached which provided that Jackson and you jointly would maintain the portion of the fence along Buffalo Creek, Jackson solely would maintain the portion from Burnt Mountain north to Buffalo Creek, and you solely would maintain the portion from the Smoke Creek Desert north to Burnt Mountain and from Stone Corral south to Buffalo Creek.

At a meeting held in this office on March 5, 1990, you told BLM representatives that you would not enter into a Cooperative Agreement for the maintenance of the Cal-Neva/Winnemucca fence due to its inaccessibility and because of the additional maintenance that likely would be required due to the fence being located within a wild horse herd area. You stated further that the fence was in a poor location. At that time, you were reminded that pursuant to BLM range improvement maintenance policy which requires that structural range improvements be maintained by the primary beneficiary(ies), you and Mr. Jackson would be considered liable for the maintenance of this fence, following formal assignment of maintenance responsibility.

Following the March 5, 1990, meeting, a Cooperative Agreement for the purpose of formally assigning maintenance responsibilities for this fence was drafted by this office with the concurrence of the Winnemucca office and a copy of this agreement is enclosed with this proposed decision. This agreement provides for maintenance of the fence as verbally agreed upon in the June 27, 1989, meeting, as well as the removal and reconstruction of the Buffalo Creek portion of the fence as discussed above. In addition, it outlines procedures that may be used by you and Jackson to mutually propose a rerouting of this fence following the assigning of its maintenance. These provisions were included for the purpose of addressing the issue concerning the fence's existing location.

This Cooperative Agreement was signed by Andy Jackson on April 9, 1990, and hand-delivered by BLM representatives to you at your ranch for your signature on April 26, 1990. At that time, you were reminded of BLM range improvement maintenance policy and that if you were planning to sign the Cooperative Agreement, you should do so and return it to this office by May 15, 1990. You also were told that if you did not sign the agreement, maintenance responsibilities for this fence would be assigned through decision.

It is BLM policy that maintenance of all structural range improvements, such as the Cal-Neva/Winnemucca Fence, is the responsibility of the principal beneficiary. Because this fence was constructed for the purpose of confining livestock owned by you and Mr. Jackson to your respective grazing allotments, you and Mr. Jackson are the principal beneficiaries of this improvement.

Based upon the facts on record as summarized above and in accordance with 43 CFR 4120.3-1(c), my proposed decision is as follows:

Espil Sheep Company henceforth shall be bound by terms and conditions numbers 4 through 12 found in the "Cooperative Agreement for Range Improvements for the improvement known as the Cal-Neva - Winnemucca District Boundary Fence, Job Number 5523," which is enclosed herewith and made part of this proposed decision.

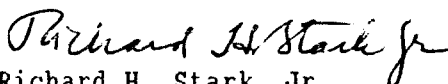
If you wish to protest this proposed decision in accordance with 43 CFR 4160.2, you are allowed 15 days from receipt of this notice within which to file such a protest with the Area Manager, Bureau of Land Management, Eagle Lake Resource Area, 2545 Riverside Drive, Susanville, California, 96130.

A protest may be made either in person or in writing to the Area Manager and shall specify the reasons why you think the proposed decision is in error.

If a protest is filed within the time allowed, the protest statement of reasons and other pertinent information will be considered and a final decision will be issued with a right of appeal (43 CFR 4160.3(b) and 4160.4).

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 the decision for the purpose of a hearing before an Administrative Law Judge, in accordance with 43 CFR 4.470, you are allowed 30 days from receipt of this notice within which to file such appeal with the District Manager, Bureau of Land Management, Susanville District, 704 Hall Street, Susanville, California, 96130. This appeal should state clearly and concisely why you think the decision is in error.

Sincerely,


Richard H. Stark, Jr.
Area Manager

Enclosure

Cooperative Agreement for Range Improvements, Cal-Neva - Winnemucca District Boundary Fence, Job Number 5523

cc:

Espil Sheep Company, Drawer N, Susanville, CA 96130
Federal Land Bank of Sacramento, P.O. Box 13106-C, 3636 American River Drive,
Sacramento, CA 95813

*** Espil Sheep Co. ("Espils") are considered Cooperators for the purposes of Terms and Conditions 4 through 12 pursuant to the proposed decision issued June, 1990.

(b) Upon notice from the authorized officer of the Bureau, cooperator(s) will promptly supply labor, materials, and equipment as specified in paragraph 3(a) as required. Contributed materials in excess of the amount required shall be returned to the contributor. Equipment contributed shall be returned promptly following completion of the work. Work will be conducted under the supervision and direction of the authorized officer and shall be pursued with diligence until completed.

***4(a) The cooperator(s) shall be liable, jointly and severally, for the repair and maintenance of the improvements following completion, in good and serviceable condition. The cooperator(s), without further notice from the authorized officer shall do the necessary work promptly. If work is not performed as necessary, the authorized officer shall notify the cooperator(s) and specify a period within which to complete the work as required.

(b) In event the cooperator(s) default in the repair and maintenance of the improvements the authorized officer may do or cause such work to be done for and in behalf of the cooperator(s); and the necessary cost and expense thereof shall become a charge and obligation upon and shall be paid by the cooperator(s). It is further understood in case of default that any grazing permit or lease may be cancelled and may not be renewed or extended or any assignment thereof may not be approved unless and until all charges and costs owed by the cooperator(s) hereunder shall have been paid; and provided that the Bureau may pursue such other remedies, legal or administrative, as may be authorized.

(c) Repair and maintenance, as herein required, shall mean normal upkeep and maintenance necessary to preserve, protect, and prolong the useful life of the improvements, but shall not include major repairs where the damage is due to floods, earthquakes, or other acts of God, or fire not the result of fault or negligence of the cooperator(s) as determined by the authorized officer.

5. IT IS FURTHER AGREED:

(a) This agreement does not convey right, title, or interest in any lands or resources held by the United States.

(b) Title to nonstructural or nonremovable improvements authorized by this agreement shall be in the United States of America.

(c) Title to structural or removable improvements authorized by this agreement shall be shared by the United States and the cooperator(s) in proportion to the actual amount of their respective contribution to the initial construction of said improvements. The improvements may be removed, in whole or in part, during the term of this agreement or any extension thereof, by mutu-

al consent of the parties or by direction of the authorized officer; such removal shall be made by the cooperator(s), or by the Bureau at its option. During the course of salvaging material, the United States assumes no responsibility for the protection or preservation of said material. Upon removal of the improvements, any salvageable materials, after deducting an amount to compensate for the actual cost of removal, shall be available for distribution to the parties then subject to this agreement in proportion to the actual amount of their respective contributions to the initial construction of the improvements. The parties shall take possession and remove their portion of the salvaged materials within one hundred and eighty (180) days after first notification in writing that such material is available; upon failure to do so within the time allowed, the materials shall be deemed to have been abandoned and title thereto shall thereupon vest in the United States.

(d) In the event lands containing improvements described under (a) or (b) above are devoted to another public purpose which precludes grazing, including disposal, the cooperator(s) shall be entitled to compensation for the adjusted value of the cooperator's contribution to the improvements.

6. If the cooperator(s) shall assign or transfer any grazing permit or lease embracing the lands upon which the improvements are constructed or in connection with which they are used, the cooperator(s) shall include in such assignment or transfer his interest in this Cooperative Agreement. Before the assignee or transferee will be recognized as successor to the cooperator(s)'s interest hereunder, such assignee or transferee will be required by the authorized officer to accept an assignment of this agreement and agree to be bound by the provisions respecting the use and maintenance of the improvements.

7. The cooperator(s) use of the improvements will be in conformance with any special conditions, the grazing permit(s) or lease(s), and regulations of the Secretary of the Interior.

8. This agreement shall not accord to cooperator(s) any preference, privilege, or consideration with respect to any grazing permit or lease not expressly provided herein or in the rules and regulations governing such grazing permit or lease.

9. Items 2, 3, and 4(a) of this agreement may be modified or cancelled by written agreement of the parties, which agreement shall become a part hereof.

10. This contract is subject to the provisions of Executive Order No. 11246 of September 24, 1965, as amended, which sets forth the nondiscrimination clauses.

Bureau of Land Management
RECEIVED
APR 09 1990
DISTRICT OFFICE
WINNEMUCCA, NEVADA

FORM APPROVED
OMB NO. 1004-0068
Expires: January 31, 1986

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FOR BLM USE ONLY

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**COOPERATIVE AGREEMENT
FOR RANGE IMPROVEMENTS**

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|---------------------------------------|--|--|--|
| Job Number(s) 5523 5523 | | | |
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INSTRUCTIONS - Cooperator(s) to receive original, and one copy each to the District case or lease file and District job file.

Job Name(s)
Cal-Neva/Winnemucca Fence

1. I, (We) **Espil Sheep Co.** of **Susanville, Calif.**
 [Espil Sheep Company did not enter into this agreement.] See reverse, beginning with
 Term and Condition Number 4).
 of
 and **Andy Jackson** of

hereinafter called cooperator(s) and the United States of America, by the Bureau of Land Management, hereinafter called the Bureau, for and in consideration of the mutual benefits hereunder, and in accordance with the Taylor Grazing Act (43 U.S.C. 315, 315a-r), as amended, the National Soil Conservation Act (16 U.S.C. 590a-q(1)), as amended, the Federal Land Policy and Management Act (43 U.S.C. 1701, et. seq.), and the Public Rangelands Improvement Act (43 U.S.C. 1904) do enter into this cooperative agreement for the construction and/or maintenance of range improvements, installation of conservation works or establishment of conservation practices, hereinafter referred to collectively as improvements, for the benefit of the public lands and of the cooperator(s).

2. The improvements known as the **Cal-Neva - Winnemucca District Boundary Fence**

will be are located upon: **See project file**
 Meridian, County of **Washoe**, T. 31, 32, 33, 34, R. 20E
 State of **Nevada**

3. IT IS MUTUALLY AGREED:

(a) The parties hereto will furnish labor, materials, and equipment as required, the total cost or value not to exceed the amount listed below for each of the parties respectively for the initial construction and/or installation of the improvements indicated in paragraph 2.

| NAME(s) OF COOPERATOR(s) | ITEMS | TOTAL COST OR VALUE |
|---------------------------|--|---------------------|
| -Espil-Sheep-Co.- | Maintenance --- (See Stip 4c) & special ^s condition 12(i) and (ii) | |
| Andy Jackson | Maintenance (See Stip 4c) & special condition 12(ii) and (iii) | |
| | | |
| | | |
| | | |
| | | |
| | | |
| BUREAU OF LAND MANAGEMENT | Construction | 6797 |
| | | |
| | AGGREGATE COST | \$ |

A copy of this order may be obtained from the authorized officer.

mutual written consent of parties, or (3) terminated by the authorized officer after notice in writing because of the cooperator(s) default or violation, or (4) terminated by the authorized officer after notice in writing because the improvements are not compatible with adopted land use plans or classification under the public land laws.

11. This agreement shall remain in effect indefinitely from date of signature unless (1) otherwise designated under item 12. Special Conditions, or (2) terminated by

12. Special Conditions

- i) Espil's will take maintenance on the fence from Smoke Creek Desert to Burnt Mt. and from Stone Corral down to Buffalo Creek. ~~2002~~ (see attached map which is made a part hereof)
- ii) Jackson's will take maintenance from Burnt Mt. to Buffalo Creek. ~~2002~~ (see attached map)
- iii) The riparian area fence and gates will be the responsibility of the permittee who is using the pasture that year. The gates will be closed in the spring and will be opened at the end of the grazing season to prevent any animals from being trapped in the area during the winter. When neither permittee is using the pasture the responsibility will be on the Bureau to open or close the gates. ~~2002~~ (see attached map)
- a) That portion of the fence occurring within the Buffalo Creek drainage in T.34N., R.19E., Sections 24 and 25 (as shown on the attached map), shall be reconstructed by John Espil Sheep Company with BLM-furnished materials to the following specifications:
 - 4 wire cattle/antelope type fencing.
 - Wire spacing: Bottom wire-16"
 - 2nd wire-22"
 - 3rd wire-30"
 - Top wire-42"

Steel posts should be 22 feet apart or at existing spacing if posts are presently in the ground.

ADDITIONAL SPECIAL CONDITIONS ARE ATTACHED ON BACK.

COOPERATOR(S)

THE UNITED STATES OF AMERICA

Andrew F. Jackson

(Signature)

4-7-1990

(Date)

State of Nevada

(Signature)

District Winnemucca

(Signature)

By _____
(Signature)

Concurrent signature by Eagle Lake Area Manager

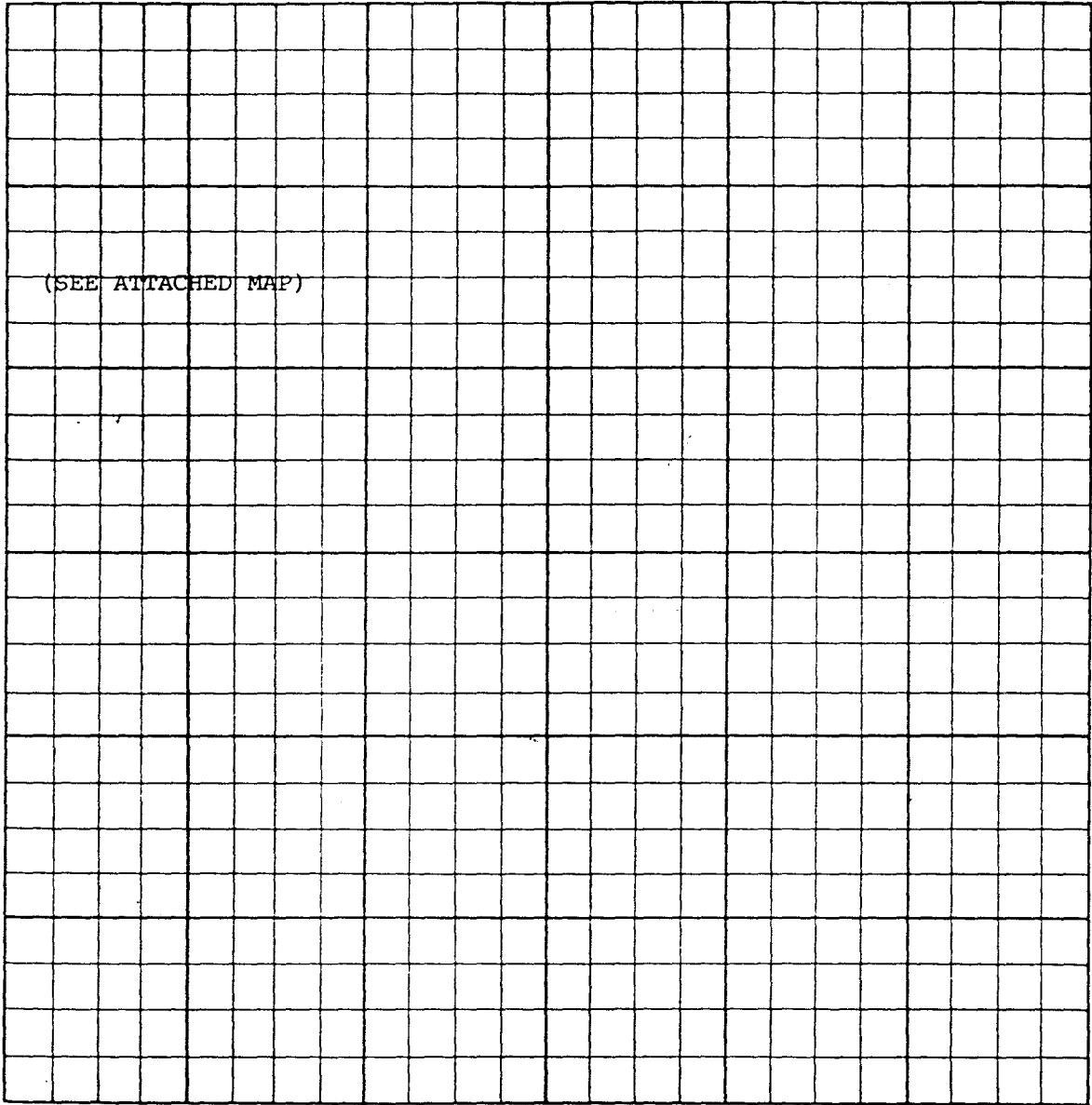
(Signature)

(Title)

(Signature)

(Date)

LOCATION PLAT



Scale: inches equals one mile

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires us to inform you that:

Information is being collected to develop a cooperative agreement for the construction, use, and maintenance of range improvements on its public lands.

Information will be used to document the specific participation of each cooperator on the range improvement(s) to be accomplished under the cooperative agreement. By signature, each cooperator agrees to participate in the manner specifically described in the agreement.

Response to this request is voluntary.

ATTACHMENT TO CAL NEVA WINNEMUCCA COOPERATIVE AGREEMENT
(JOB 5523)

ESPIL

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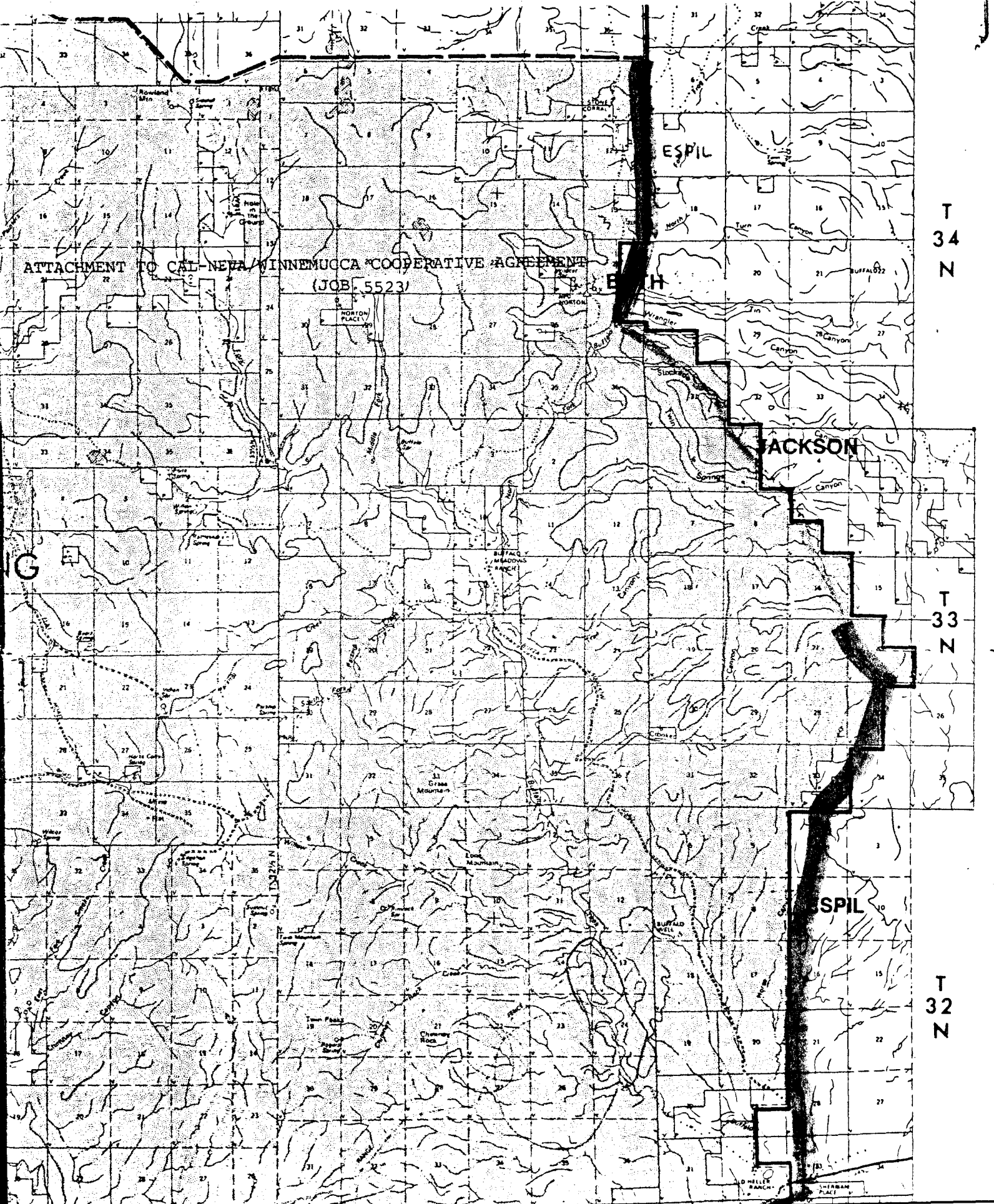
JACKSON

ESPIL

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- Attachment to Cooperative Agreement: Cal-Neva - Winnemucca District Boundary Fence,
Job Number 5523 -

- a-cont. Reconstruction shall be completed by the Espil's by June 1, 1991. Following reconstruction, part 3 of this Cooperative Agreement shall be amended to reflect the respective contributions of each party to the reconstruction.
- b) That portion of the fence constructed by Espil Sheep Company without BLM authorization located on the section line of the NE1/4 of the NE1/4 Section 24, T.34N., R.19E. (as shown on the attached map) shall be removed by Espil Sheep Company and the materials salvaged and used to reconstruct the fence as provided for under "12(a)" above. However, any privately-owned materials that were used to construct the unauthorized fence segment may be salvaged and removed by Espil Sheep Company.
- c) If after entering into this Cooperative Agreement the Espil Sheep Company and the Jacksons mutually desire modification of the fence route, they may propose this modification either to the Winnemucca or Susanville BLM. Any such proposal must: 1) be made in writing; 2) show the desired route modification on a map of scale 1:24000 or less, or any other map acceptable to the BLM; 3) include a narrative rationale in support of the modification; 4) describe the contributions (labor, equipment, materials, monies) to be made by each party for the purpose of implementing the modification; and 5) be signed by both the Espil Sheep Company and the Jacksons. Following receipt of such a proposal, the BLM will timely review and respond to the proposal in light of its administrative responsibilities and either :1) approve it as submitted; or 2) modify it in consultation and coordination with Espil Sheep Company, the Jacksons and any other affected interest; or 3) deny it, providing supporting rationale and affording the opportunity for protest and/or appeal.
- d) The authorized officer may renegotiate, modify, or terminate this agreement, following consultation with the parties involved, as a result of changes in law, regulation, or national BLM policy.