

1 W. Alan Schroeder, Esq.
 2 Schroeder & Lezamiz Law Offices
 3 P.O. Box 267
 4 Boise, Idaho 83701-0267
 5 208-384-1627-w

6 lawyer for proposed intervenor.

7
 8 UNITED STATES DEPARTMENT OF INTERIOR
 9 OFFICE OF HEARINGS AND APPEALS
 10 HEARINGS DIVISION

11 California Department of) CA-02-95-01
 12 Fish & Game,)
 13))
 14 Appellant,) Appeal from the Area
 15 v.) Manager's Letter
 16 Bureau of Land Management,) dated February 1, 1995,
 17) Eagle Lake Resource Area,
 18 Respondent,) Susanville District,
 19) California.
 20 John Espil Sheep Co., Inc.,)
 21)
 22 Proposed Intervenor.)

23 Commission for the Preservation) CA-02-95-02
 24 of Wild Horses,)
 25))
 26 Appellant,) Appeal from the Area
 27 v.) Manager's Letter
 28 Bureau of Land Management,) dated February 1, 1995,
) Eagle Lake Resource Area,
) Susanville District,
) California.
) Respondent,)
) John Espil Sheep Co., Inc.,)
) Proposed Intervenor.)

COPY

1
2 Nevada Department of Wildlife,
3 Appellant,
4 v.
5 Bureau of Land Management,
6 Respondent,
7 John Espil Sheep Co., Inc.,
8 Proposed Intervenor.

) CA-02-95-03
)
) Appeal from the Area
) Manager's Letter
) dated February 1, 1995,
) Eagle Lake Resource Area,
) Susanville District,
) California.

9
10 Wild Horse Organization
Assistance,
11 Appellant,
12 v.
13 Bureau of Land Management,
14 Respondent,
15 John Espil Sheep Co., Inc.,
16 Proposed Intervenor.

) CA-02-95-04
)
) Appeal from the Area
) Manager's Letter
) dated February 1, 1995,
) Eagle Lake Resource Area,
) Susanville District,
) California.

17
18 **PROPOSED INTERVENOR'S MOTION TO
INTERVENE, CONSOLIDATE, AND DISMISS.**

19 JOHN ESPIL SHEEP CO., INC. (Proposed intervenor) moves to
20 intervene, consolidate, and dismiss the above-entitled appeals.

21 Motion to Intervene.

22 Proposed intervenor moves to intervene in the above-entitled
23 appeals pursuant to 43 CFR 4.471 and 43 CFR 4.470(c). Nevada
24 Division of Wildlife et al. v. Bureau of Land Management, 138
25 IBLA 382 (1997).

26 The above-entitled appeals relate to the Twin Peaks
27 Allotment and to the livestock grazing use by Proposed
28 Proposed Intervenor's Motions - Page 2

1 | intervenor. Said appeals make a variety of claims regarding the
2 | livestock use within the Twin Peaks Allotment, and if appellants
3 | prevail in any of their claims, it will adversely impact Proposed
4 | intervenor's Grazing Preference, which it owns and controls.

5 | Wherefore, Proposed intervenor moves that the Hearings
6 | Division grant its motion to intervene.

7 | Motion to Consolidate.

8 | Proposed intervenor moves to consolidate in the above-
9 | entitled appeals under 43 CFR 4.471 and 43 CFR 4.470(c).

10 | Each of the above-entitled appeals relate to complaints
11 | about a Federal Court Order, Stipulation, and Agreement. The
12 | issue and issues involved therefore are common, and judicial
13 | economy and efficiency suggests that said appeals be
14 | consolidated.

15 | Wherefore, Proposed intervenor moves that the Hearings
16 | Division grant its motion to consolidate the above-entitled
17 | appeals.

18 | Motion to Dismiss.

19 | Proposed intervenor moves to dismiss the above-entitled
20 | appeals for lack of jurisdiction and/or administrative finality.
21 | 43 CFR 4.470(d).

22 | **Statement of Facts.**

23 | The relevant history of this matter began on February 28,
24 | 1994, when the BLM issued a "full force and effect" decision to
25 | change and modify Proposed intervenor's Grazing Permit to graze
26 | livestock upon the Twin Peaks Allotment. Immediately and
27 | adversely impacted by said BLM Decision, Proposed intervenor
28 | Proposed Intervenor's Motions - Page 3

1 filed a complaint in Federal District Court on March 11, 1994,
2 seeking to enjoin the implementation of said BLM Decision.
3 Proposed intervenor was subsequently successful in enjoining the
4 implementation of said BLM Decision pursuant to a "Order for
5 Preliminary Injunction" dated March 28, 1994, which is attached
6 as Exhibit "A".

7 In the meantime, in lieu of seeking intervenor status in
8 said Federal Court matter, the above-noted appellants (and
9 others) filed administrative appeals. The above-noted appellants
10 complained to the Office of Hearings & Appeals (OHA) that the BLM
11 Decision dated February 28, 1994, was wrong for a variety of
12 reasons. However, while these administrative appeals were
13 pending, the Federal Court matter was resolved via an Order by
14 U.S. District Judge David W. Hagen on January 19, 1995, pursuant
15 to a Stipulation and Agreement between the parties. The Federal
16 Court Order, Stipulation, and Agreement are attached as Exhibit
17 "B".

18 Before, during, or at the time the Federal Court Order,
19 Stipulation and Agreement were made and signed, the above-noted
20 appellants did not express any complaint to the Federal Court or
21 appeal Exhibit "B" to the U.S. Court of Appeals, or otherwise ask
22 for any other relief from Exhibit "B" before the Federal Courts.

23 As a consequence of the resolution of the Federal Court
24 matter, the Assistant Regional Solicitor moved the Hearings
25 Division on February 10, 1995, to "set aside and vacate" the BLM
26 Decision dated February 28, 1994, pursuant to Exhibit "B". The
27 above-noted appellants received a copy of said Motion and
28 Proposed Intervenor's Motions - Page 4

1 thereafter did not respond or object to said Motion. The Motion
2 is attached as Exhibit "C".

3 Receiving no objection to the Solicitor's Motion, the
4 Hearings Division granted the motion on March 10, 1995, stating:

5 "By document filed February 14, 1995,
6 respondent requests that its decision dated
7 February 28, 1994, which is the subject of
the captioned appeals, be set aside and
vacated.

8 The appeals are from the Susanville,
9 California, District Manager's full force
and effect decision of said date. The basis
10 for the motion is a Court ordered
settlement, approved by the U.S. Department
11 of Justice, concerning said decision.

12 In consideration of the premises, the motion
is granted. These several matters are
13 accordingly remanded to respondent."

14 Said Order is attached as Exhibit "D". The above-noted
15 appellants received a copy of said Order and thereafter never
16 objected to the Order or appealed the issuance of the Order to
the Board of Land Appeals.

17 Notwithstanding the variety of remedies and venues which the
18 above-noted appellants had to challenge Exhibit "B", said
19 appellants did nothing, except purport to appeal a general letter
20 dated February 1, 1995, from the Area Manager, giving said
21 appellants (and others) the same Notice which the Solicitor
22 attached to his Motion as well as other information. It is these
23 appeals which are at issue.

24
25
26
27
28 Proposed Intervenor's Motions - Page 5

1 **Argument.**

2 Assuming for the sake of argument that the Office of
3 Hearings & Appeals has jurisdiction¹, the Hearings Division
4 should dismiss the above-entitled appeals because the appeals
5 involve "issue or issues ... included in a prior final decision
6 from which no timely appeal was made, or all issues involved
7 therein have been previously adjudicated in an appeal involving
8 the same preference, the same parties or their predecessors in
9 interest". 43 CFR 4.470(d).

10 In the present case, the appeals at issue purport to appeal
11 a Federal Court Order, Stipulation, and Agreement (ie. Exhibit
12 "B"). However, all the issues involved in Exhibit "B" where
13 included in a final decision of the Federal Court and of the
14 Hearings Division, or were previously adjudicated by the Federal
15 Court or the Hearings Division pursuant to the Federal Court
16 Order within Exhibit "B", and the Hearings Division Order which
17 set aside and vacated the BLM Decision dated February 28, 1994
18 attached as Exhibit "D". Because these appellants (1) did not
19 elect to participate in the Federal Court matter, (2) did not
20 appeal the Federal Court Order (ie. Exhibit "B"), (3) did not
21 object to the Solicitor's Motion (ie. Exhibit "C"), and (4) did
22

23 ¹ Proposed intervenor suggests that OHA does not have
24 jurisdiction to review a Federal Court Order issued in
25 consideration of a Stipulation and Agreement by the parties.
26 Proposed intervenor also suggests that OHA does not have
27 jurisdiction because no final decision pends. What has been
28 issued is simply a letter to the above-noted appellants notifying
them of "information", which included Exhibit "B".

1 not appeal the Hearings Division Order (ie. Exhibit "D"), these
2 appellants can not now complain or appeal Exhibit "B". Assuming
3 these appellants had asserted anyone of the above-mentioned
4 remedies, then appellants may have had a legitimate complaint
5 about Exhibit "B", but the fact is that these appellants did
6 nothing when the issue or issues involved in Exhibit "B" were
7 before the Federal Court or Hearings Division. Therefore, these
8 appellants are barred from now complaining and appealing Exhibit
9 "B".

10 Wherefore, Proposed intervenor moves that the Hearings
11 Division grant its motion to dismiss the above-entitled appeals.

12 July 29, 1997.

13 

14 W. Alan Schroeder
15 lawyer for Proposed intervenor.

1
2 CERTIFICATE OF FILING & SERVICE: 43 CFR 4.401.

3 I certify that on this date, I transmitted the foregoing
4 document to the office in which filing is required, and I did so
5 by depositing at Boise, Idaho an envelope containing the original
6 of said document, with postage for certified mail, return receipt
7 requested, addressed to said office, as follows:

8 Office of Hearings & Appeals
9 Hearings Division
10 139 East South Temple, Suite 600
11 Salt Lake City, Utah 84111

12 and, in addition, I served a copy thereof by sending it by
13 certified mail return receipt requested to the address of the
14 person upon whom pertinent regulations require service, as
15 follows:

16 Office of the Regional Solicitor
17 U.S. Department of the Interior
18 2800 Cottage Way, Room E-2753
19 Sacramento, California 95825-1890

20 California Department of Fish & Game
21 Attn: Richard L. Elliott - Reg. Mang.
22 601 Locust Street
23 Redding, California 96001

24 Commission for the Preservation of Wild Horses
25 Attn: Catherine Barcomb - Ex. Dir.
26 255 West Moana Lane, Suite 207A
27 Reno, Nevada 89509

28 Nevada Department of Wildlife
Attn: Richard T. Heap, Jr.
1100 Valley Road
Reno, Nevada 89520-0022

W.H.O.A.
Attn: Dawn Lappin - Director
P.O. Box 555
Reno, Nevada 89504

Dated July 30, 1997.

24 
25 W. ALAN SCHROEDER

A

FILED

MAR 28 3 50 PM '94

CAROL S. FITZGERALD
CLERK
By *Bette Stadelby*
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN ESPIL SHEEP CO., INC.,

Plaintiff,

CV-N-94-172-DWH

v.

BRUCE BABBITT, in his official
capacity as SECRETARY, UNITED
STATES DEPARTMENT OF THE
INTERIOR, et a.,

ORDER FOR
PRELIMINARY INJUNCTION

Defendants.

STATEMENT OF THE CASE

This matter is before the court on plaintiff's Notice and Motion for Temporary Restraining Order and Preliminary Injunction (#7) filed on March 16, 1994. The court denied plaintiff's Motion for a Temporary Restraining Order by Order (#9) Regarding Motion for Preliminary Injunction, and scheduled a hearing on the Motion for Preliminary Injunction. On March 23, 1994, defendants filed an Opposition to plaintiff's Motion for Preliminary Injunction (#10).

1 On March 25, 1994, defendants filed an Addendum to Opposition
2 (#15). Plaintiff's Reply (#17, #18) was filed on March 28, 1994.
3 Oral argument was heard on this matter on March 28, 1994.
4

5 **Statement of Facts**

6 The plaintiff holds a grazing permit authorized under the
7 Taylor Grazing Act. The term of the permit is March 1, 1990 to
8 February 28, 2000. The permit is recognized as a "preference"¹,
9 and subject to "modification, suspension or cancellation as
10 required by land places and applicable law", and annual review.

11 On February 28, 1994, the defendants issued a decision
12 modifying the terms of plaintiff's grazing permit and modifying the
13 plaintiff's Allotment Management Plan. The decision affects,
14 inter alia, the plaintiff's livestock numbers (reducing that number
15 from 971 to 800), and season of use and area of use for grazing on
16 public lands. The decision provided it was in "full force and
17 effect".

18 **Analysis**

19 **I. Preliminary Injunction**

20 A preliminary injunction should issue upon a clear showing of
21 either 1) probable success on the merits and possible irreparable
22 injury, or 2) sufficiently serious questions going to the merits to
23 make the case a fair ground for litigation and a balance of
24 hardships tipping decidedly toward the party requesting the

25 ¹ A grazing preference means the total number of animal
26 unit months (AUM's) of livestock grazing on public lands
apportioned and attached to base property owned or
controlled by a permittee. 43 CFR § 4100.0-5. An AUM is
the amount of forage necessary for the sustenance of one
cow or its equivalent for a period of one month. Id.

1 preliminary relief. Oakland Tribune, Inc. v. Chronicle Publishing
2 Co., 762 F.2d 1374 (9th Cir. 1985). These are not separate tests,
3 but 'merely extremes of a single continuum.' Topanga Press, Inc.
4 v. City of Los Angeles, 989 F.2d 1524, 1528 (9th Cir. 1993)
5 (citation omitted.)

6 The purpose of a preliminary injunction is to maintain the
7 "status quo ante" pending a determination of the action on the
8 merits. Larry P. v. Riles, 502 F.2d 963, 965 (9th Cir. 1974).

9 The test this court will apply is whether plaintiff has shown
10 sufficiently serious questions going to the merits to make the case
11 a fair ground for litigation and that the balance of hardships tips
12 decidedly toward plaintiff.

13 II. Jurisdiction

14 The merits of the defendants' decision to modify plaintiff's
15 grazing permit are not at issue in the motion for preliminary
16 injunction. Rather, the issue is whether defendants followed the
17 applicable regulations in making its decision to place the
18 modifications in full force and effect. Therefore, the
19 jurisdiction of this court is narrowly confined to the
20 determination of four issues:

21 1. Whether plaintiff raises a serious legal question as to
22 whether defendants followed the consultation requirement in making
23 its February 28, 1994 decision of full force and effect;

24 2. Whether plaintiff raises a serious legal question as to
25 whether defendants findings in its February 28, 1994 decision
26 support placing that decision in full force and effect;

3. Whether plaintiff has shown a threat of irreparable

1 injury; and

2 4. Whether the balance of hardships tips heavily in favor of
3 the plaintiff.

4 **III. Analysis**

5 1. **Serious Legal Question**

6 a. **Whether defendants followed the consultation requirement**
7 **in making its February 28, 1994 decision of full force**
8 **and effect.**

9 The defendants must follow certain procedures prior to the
10 modification or cancellation of a grazing permit. 43 C.F.R.
11 4130.6-3 provides:

12 Following careful and considered consultation,
13 cooperation and coordination with the lessees,
14 permittees, and other affected interests, the
15 authorized officer may modify terms and
16 conditions of the permit or lease if
17 monitoring data show that present grazing use
18 is not meeting the land use plan or management
19 objectives (emphasis added).

20 Additionally, 43 C.F.R. § 4110.3-3(c) provides:

21 When the authorized officer determines that
22 the soil, vegetation, or other resources on
23 the public lands require temporary protection
24 because of conditions such as drought, fire,
25 flood or insect infestation, after
26 consultation with affected permittees or
27 lessees...action shall be taken to modify
28 authorized grazing use...decisions requiring
29 modification of authorized grazing use shall
30 be issued as final decisions which are placed
31 in full force and effect under § 4160.3(c) of
32 this title (emphasis added).

33 Plaintiff contends that careful and considered consultation,
34 cooperation and coordination before defendants' decision to place
35 the modifications to plaintiff's grazing permit in full force and
36 effect did not occur. At oral argument, counsel for plaintiff
acknowledged that a hearing was held on January 21, 1994, to

1 discuss management objectives for the Twin Peaks Allotment.
2 However, counsel recalls that defendants did not consult with
3 plaintiff concerning their intent to place modifications to
4 plaintiff's permit in full force and effect at that meeting, nor at
5 any time prior to the decision. There appears that other
6 opportunity for consultation occurred proximate to February 28,
7 1994.

8 Defendants argue that the requisite consultation process
9 concerning potential full force and effect permit modifications has
10 been ongoing. Although not present at that meeting, counsel for
11 defendants believes that consultation concerning defendants intent
12 to place modifications to plaintiff's permit in full force and
13 effect did occur at the January 21, 1994 meeting.

14 The court does not have a transcript of the January 21, 1994
15 meeting. However, plaintiff has raised a serious question as to
16 whether defendants made their decision to place modifications to
17 plaintiff's permit in full force and effect after proper
18 consultation with plaintiffs, and the January 21, 1994 meeting as
19 the only meeting near in time to February 28, 1994 that has been
20 identified. There is no evidence before the court to refute
21 plaintiff's contention that before defendants decision to modify
22 plaintiff's permit in full force and effect, the requisite
23 consultation with plaintiff occurred.

24 **b. Whether defendants findings in its February 28, 1994**
25 **decision support placing its decision in full force and**
26 **effect.**

Federal regulations require a decision to modify a grazing
permit to be placed in full force and effect when "the soil,

1 vegetation, or other resources on the public lands require
2 temporary protection because of conditions such as drought, fire,
3 flood or insect infestation." 43 C.F.R. 4110.3-3(c).

4 Plaintiff contends that defendants did not find a scientific
5 or legal basis for placing defendants decision to modify
6 plaintiff's grazing permit in full force and effect. Defendants
7 argue that "overgrazing" is a sufficient basis for placing a
8 decision to modify a permit in full force and effect, and that
9 resource and habitat deterioration was the basis of their full
10 force and effect decision.

11 The decision of February 28, 1994, states:

12 "Based upon the evaluation of monitoring
13 information...recommendations from my staff,
14 and input received ...from you and from the
15 affected interests, my final decision is as
16 follows:

17 I have determined that modifications to your
18 grazing permits and the Twin Peaks Allotment
19 Management Plan...are necessary for the
20 purpose of resource protection and
21 determined...that immediate protection of
22 these resources must now occur. Therefore, I
23 am modifying your grazing use as authorized by
24 your grazing permits from the Twin Peaks
25 Allotment. I have determined that existing
26 management of wildlife does not contribute to
27 resource deterioration and therefore this
28 decision does not address wildlife management.
29 This modification to your grazing permits
30 shall become effective March 1, 1994. Due to
31 lack of recovery of severely deteriorated
32 riparian vegetation and associated
33 habitat...this decision is placed in full
34 force and effect in accordance with 43 CFR
35 4160.3(c).

February 28, 1994 Final Decision, pages 5-8.

Finally, plaintiff claims the final decision is invalid on its
face because it does not set forth what emergency exists for

1 placing it in full force and effect. The court finds that
2 plaintiff has raised a serious legal question as to whether the
3 decision supports a finding of full force and effect pursuant to 43
4 C.F.R. 4110.3-3(c).

5 Based on the above, plaintiff sufficiently satisfies the first
6 prong of the preliminary injunction test.

7 **2. Threat of irreparable injury.**

8 Plaintiff has shown that there exists a threat of irreparable
9 harm if the preliminary injunction does not issue. The 1984 final
10 decision allows 800 cattle to enter the allotment, although under
11 its 10 year Grazing Permit, the plaintiff was permitted to graze
12 971 head of cattle. Plaintiff contends that the loss of 171 head
13 to plaintiff's livestock operation cannot be absorbed on
14 plaintiff's private lands, which are used during the summer months
15 to produce hay to sustain the cattle during the season when the
16 livestock are not authorized on the public lands.

17 Plaintiff also claims that the requirements of the Final
18 Decision to remove livestock from the allotment and delaying
19 livestock into the allotment will reduce plaintiff's herd by 278
20 head, rather than merely 171. This is because the requirements on
21 hay/pasture production have changed as a result of the decision.

22 In short, plaintiff claims that the special provisions of the
23 Final Decision render the use of the allotment by cattle
24 commercially non-viable and infeasible. Plaintiffs also claims
25 that the permit modification will result in the use of non-resident
26 cows, which will upset established breeding and culling patterns.
Finally, plaintiff claims that implementation of the terms and

conditions of the permit modification cannot be accomplished through good husbandry.

Although economic injury alone may not support a finding of irreparable harm, at least one court has found that for the purposes of a motion for preliminary injunction, irreparable harm was established where a grazing decision would force some permittee out of business, would adversely affect breeding programs, cause weight loss, and require more time in moving cattle from one pasture to another. Valdez v. Applegate, 616 F.2d 570, 572 (10th Cir. 1980).

While the court is not deciding this issue on the merits at this time, it finds that if the permit modifications are placed in full force and effect, it is possible that plaintiff will suffer irreparable harm. Thus, the second prong of the preliminary injunction test is met.

3. Balance of hardships.

The balance of hardships tips in favor of the plaintiff, as the decision may cause irreparable harm to plaintiffs' cattle and cattle business.

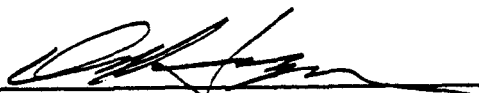
The court, having studied and heard oral argument on plaintiffs' Motion and defendants' Opposition thereto, and finding good cause appearing therefor,

IT IS HEREBY ORDERED that plaintiff's Motion for Preliminary Injunction is **GRANTED**. Consequently, defendants are preliminarily enjoined from giving "full force and effect" to their Final Decision of the District Manager of the Susanville Grazing District dated February 28, 1994.

1 IT IS FURTHER ORDERED that during the pendency of this
2 preliminary injunction the Final Decision of February 28, 1994, is
3 suspended the same as though an appeal had been taken pursuant to
4 43 C.F.R. § 4160.3(c).

5 IT IS FURTHER ORDERED that the security required by plaintiff
6 is in the amount of \$100.00.

7 DATED: March 28, 1994

8 
9 DAVID W. HAGEN
10 UNITED STATES DISTRICT COURT JUDGE

B

CAROL C. FITZGERALD
CLERK

BY [Signature]
DEPUTY

JAN 19 8 52 AM '95

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

RECEIVED
AND FILED

JOHN ESPIL SHEEP CO., INC.,)	
)	
Plaintiff(s),)	CV-N-94-172-DWH
)	
vs.)	
)	MINUTES OF THE COURT
BRUCE BABBITT,)	
)	
Defendant(s).)	January 19, 1995
_____)	

PRESENT: HONORABLE DAVID W. HAGEN, U.S. DISTRICT JUDGE

Deputy Clerk: Donna Casey Reporter: Margaret Griener

Counsel for Plaintiff(s): W. Alan Schroeder

Counsel for Defendant(s): Susan V. Cook

PROCEEDINGS: COURT TRIAL (Day 2)

8:30 a.m. Court convenes.

The Court informs counsel the stipulation by the parties has been reviewed and signed by the Court.

IT IS ORDERED this case is dismissed without prejudice.

8:33 a.m. Court adjourns.

CAROL C. FITZGERALD, CLERK

By: Donna Casey
Deputy Clerk

ENTERED & SERVED

JAN 24 1995

CLERK U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY [Signature] DEPUTY

Rec alan
cc 1/21/95 Bunt Espil
& Athne Carolyn Espil

42

CAROL C. FITZGERALD
CLERK
BY [Signature]
DEPUTY

JAN 19 8 52 AM '95

RECEIVED
AND FILED

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

John Espil Sheep Co., Inc.,)
)
 Plaintiff)
)
 v.)
)
 Bruce Babbitt, in his official)
 capacity as Secretary, United)
 States Department of the)
 Interior; et al.)
)
 Defendants.)
 _____)

No. CV-N-94-172-DWH

STIPULATION
FRCP 41 (a)(1)(ii)

In consideration of the attached Agreement dated January 19, 1995, Plaintiff moves pursuant to FRCP 41 (a)(1)(ii) to dismiss without prejudice Plaintiff's Complaint. It is agreed that this dismissal shall not operate as an adjudication upon the merits of the case filed by Plaintiff. Defendants have no objection to the granting of this motion.

Dated January 19, 1995.

[Signature]
W. Alan Schroeder
Attorney for Plaintiff

[Signature]
Susan V. Cook
Attorney for Defendants

IT IS SO ORDERED.

[Signature]
DAVID W. HAGEN
UNITED STATES DISTRICT COURT JUDGE

ENTERED & SERVED

JAN 24 1995

DATED: January 19, 1995

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY [Signature] DEPUTY

AGREEMENT

I. The Bureau of Land Management (BLM) ratifies the Grazing Permit of John Espil Sheep Co., Inc. (Espil), dated May 15, 1990, as modified by the "Agreement Concerning the Twin Peaks Allotment Management Plan" dated March 6, 1992, and as further modified by the "Stipulation" dated February 10, 1994.

II. BLM and Espil agree to the following special terms and conditions for the 1995 grazing season:

1. Lower Smoke Creek:

- a. Cattle turn out date is March 1, 1995, provided that soil moisture condition is such that the soils are sufficiently firm to prevent "punching" of soils on a significant portion of the area as determined by BLM in consultation with Espil.
- b. Cattle will be removed by May 1.
- c. Cattle use will not exceed 400 AUM's (If the turn out date is later than March 1, more cattle can be put into the area for the shorter time).

2. Other Spring Turn Out Areas:

On those areas selected by Espil and BLM for spring turn out of cattle, the turn out date is March 1, 1995, provided that:

- a. soil moisture condition is such that the soils are sufficiently firm to prevent "punching" of soils on a significant portion of the area as determined by BLM in consultation with Espil, and
- b. provided that at least 40% of the residual forage from 1994 is available, as determined by BLM in consultation with Espil.

3. South Fork of Parsnip Wash:

- a. The BLM will construct a fenced enclosure during the 1995 grazing season in a portion of the riparian area already identified and flagged on the ground. Once this enclosure is constructed, cattle will be excluded from the enclosed area during the balance of the 1995 grazing season.
- b. The allowable utilization is 60% for the riparian area outside the enclosed area.

4. Riparian Projects:

BLM will provide a timeline on or before March 1, 1995 for the implementation of the riparian projects as identified in the Espil letter to Linda Hansen (BLM), dated December 15, 1994.

5. BLM and Espil agree to meet, including any interested affected interest, to consult, cooperate, and coordinate the development of an annual plan of operation and subject to the provisions of 43 CFR Part 4100, which include the administrative/judicial remedies.

6. Nothing in this agreement is to be construed as superseding the requirements of 43 CFR Part 4100.

III. This replaces and supersedes the Final Decision of the Bureau of Land Management (Susanville District) dated February 28, 1994, relating to the Twin Peaks Allotment.

DATED: JANUARY 19, 1995.


Bureau of Land Management


John Espil Sheep Co., Inc. Pres.

C

1 DAVID NAWI
Regional Solicitor
2 Pacific Southwest Region
BURTON J. STANLEY
3 Assistant Regional Solicitor
Office of the Regional Solicitor
4 U.S. Department of the Interior
2800 Cottage Way, Rm. E-2753
5 Sacramento, CA 95825
Telephone: (916) 979-2154

6 Attorney for Respondent
7

8 UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
9 HEARINGS DIVISION

10 JOHN ESPIL SHEEP COMPANY, INC.,) CA 2-94-07
)

11 Appellants.)
)

12 v.)
)

13 BUREAU OF LAND MANAGEMENT,)
)

14 Respondent.)
)

15 CALIFORNIA DEPARTMENT OF FISH) CA 2-94-02
16 AND GAME,)
)

17 Appellants.)
)

18 v.)
)

19 BUREAU OF LAND MANAGEMENT,)
)

20 Respondent.)
)

21 NEVADA DEPARTMENT OF FISH AND GAME,) CA 2-94-03
22)
)

23 Appellants.)
)

24 v.)
)

25 BUREAU OF LAND MANAGEMENT,)
)

26 Respondent.)
)

27
28 / / /

1	CALIFORNIA CATTLEMEN'S ASSOCIATION,)	CA 2-94-04
2	Appellants.)	
3	v.)	
4	BUREAU OF LAND MANAGEMENT,)	
5	Respondent.)	
6	<hr/>		
7	WILD HORSE ORGANIZATION ASSISTANCE,)	CA 2-94-05
8	Appellants.)	
9	v.)	
10	BUREAU OF LAND MANAGEMENT,)	
11	Respondent.)	
12	<hr/>		
13	COMMISSION FOR THE PRESERVATION OF WILD HORSES,)	CA 2-94-06
14	Appellants.)	
15	v.)	
16	BUREAU OF LAND MANAGEMENT,)	
17	Respondent.)	
18	<hr/>		
19	LAVER RANCHES)	CA 2-94-08
20	Appellants.)	
21	v.)	
22	BUREAU OF LAND MANAGEMENT,)	
23	Respondent.)	
24	<hr/>		
25	CALIFORNIA WOOL GROWERS ASSOCIATION,)	CA 2-94-09
26	Appellants.)	
27	v.)	
28	BUREAU OF LAND MANAGEMENT,)	
	Respondent.)	

CAROL C. FITZGERALD
CLERK
BY 
DEPUTY

JAN 25 1995
RECEIVED

JAN 19 8 52 AM '95

JAN 30 1995
BIS

RECEIVED
AND FILED
UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

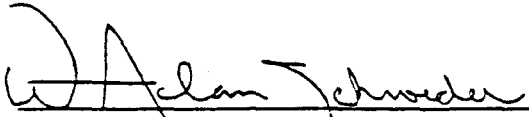
John Espil Sheep Co., Inc.,)
)
 Plaintiff)
)
 v.)
)
 Bruce Babbitt, in his official)
 capacity as Secretary, United)
 States Department of the)
 Interior; et al.)
)
 Defendants.)
 _____)

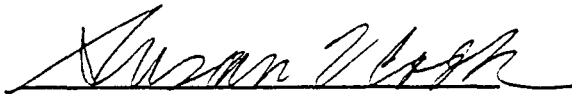
No. CV-N-94-172-DWH

STIPULATION
FRCP 41 (a)(1)(ii)

In consideration of the attached Agreement dated January 19, 1995, Plaintiff moves pursuant to FRCP 41 (a)(1)(ii) to dismiss without prejudice Plaintiff's Complaint. It is agreed that this dismissal shall not operate as an adjudication upon the merits of the case filed by Plaintiff. Defendants have no objection to the granting of this motion.

Dated January 19, 1995.


W. Alan Schroeder
Attorney for Plaintiff


Susan V. Cook
Attorney for Defendants

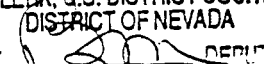
IT IS SO ORDERED.


DAVID W. HAGEN
UNITED STATES DISTRICT COURT JUDGE

ENTERED & SERVED

JAN 24 1995

DATED: January 19, 1995

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY  DEPUTY

AGREEMENT

I. The Bureau of Land Management (BLM) ratifies the Grazing Permit of John Espil Sheep Co., Inc. (Espil), dated May 15, 1990, as modified by the "Agreement Concerning the Twin Peaks Allotment Management Plan" dated March 6, 1992, and as further modified by the "Stipulation" dated February 10, 1994.

II. BLM and Espil agree to the following special terms and conditions for the 1995 grazing season:

1. Lower Smoke Creek:
 - a. Cattle turn out date is March 1, 1995, provided that soil moisture condition is such that the soils are sufficiently firm to prevent "punching" of soils on a significant portion of the area as determined by BLM in consultation with Espil.
 - b. Cattle will be removed by May 1.
 - c. Cattle use will not exceed 400 AUM's (If the turn out date is later than March 1, more cattle can be put into the area for the shorter time).
2. Other Spring Turn Out Areas:

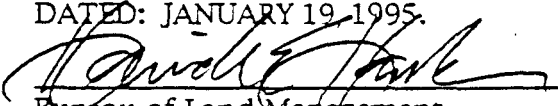
On those areas selected by Espil and BLM for spring turn out of cattle, the turn out date is March 1, 1995, provided that:

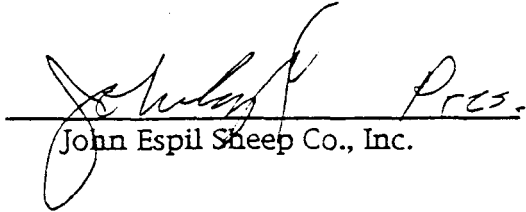
 - a. soil moisture condition is such that the soils are sufficiently firm to prevent "punching" of soils on a significant portion of the area as determined by BLM in consultation with Espil, and
 - b. provided that at least 40% of the residual forage from 1994 is available, as determined by BLM in consultation with Espil.
3. South Fork of Parsnip Wash:
 - a. The BLM will construct a fenced enclosure during the 1995 grazing season in a portion of the riparian area already identified and flagged on the ground. Once this enclosure is constructed, cattle will be excluded from the enclosed area during the balance of the 1995 grazing season.
 - b. The allowable utilization is 60% for the riparian area outside the enclosed area.
4. Riparian Projects:

BLM will provide a timeline on or before March 1, 1995 for the implementation of the riparian projects as identified in the Espil letter to Linda Hansen (BLM), dated December 15, 1994.
5. BLM and Espil agree to meet, including any interested affected interest, to consult, cooperate, and coordinate the development of an annual plan of operation and subject to the provisions of 43 CFR Part 4100, which include the administrative/judicial remedies.
6. Nothing in this agreement is to be construed as superseding the requirements of 43 CFR Part 4100.

III. This replaces and supersedes the Final Decision of the Bureau of Land Management (Susanville District) dated February 28, 1994, relating to the Twin Peaks Allotment.

DATED: JANUARY 19, 1995.


Bureau of Land Management

 Pres.
John Espil Sheep Co., Inc.

**BUREAU OF LAND MANAGEMENT
EAGLE LAKE RESOURCE AREA**

NOTICE CONCERNING TWIN PEAKS ALLOTMENT

January 30, 1995

On January 19, 1995, in consideration of an Agreement reached between John Espil Sheep Company and the Bureau of Land Management, the U.S District Court for Nevada dismissed the lawsuit brought by the Espil Sheep Company against the U. S. Department of the Interior. The suit concerned a Grazing Decision issued by the Bureau of Land Management for the 1994 grazing season.

Copies of the Court Order and the Agreement are enclosed. The Agreement calls for Terms 1, 2, 3 and 5 to be made part of the Espil Sheep Company's grazing permit by adding these terms and conditions to the Company's 1995 grazing authorization.

Term and condition 5 requires BLM and Espil Sheep Company to involve "...any interested affected interest to consult, cooperate, and coordinate the development of an annual plan of operation..." for grazing in 1995.

Under the terms of the Agreement, the BLM will replace the 1994 Grazing Decision and add the above referenced special terms and conditions to the Espil Sheep Company's grazing permit.

This agreement is the result of a series of events that began with consultation meeting of affected interests held in Susanville on December 20, 1994. All affected interests were invited to this meeting. At this meeting, participants agreed that a small "core group" of affected interests should meet to discuss interim grazing practices for the 1995 season. Specifically, they were to review data, identify areas of concern, and concur on solutions. The group would then report to the larger body of Twin Peaks affected interests.

On January 13, this core group, consisting of a representative from BLM, Espil Sheep Company, Nevada Department of Wildlife, California Department of Fish and Game, and the Nevada Commission for the Preservation of Wild Horses met to develop a strategy for grazing management of the allotment in 1995.

Twin Peaks Notice

Page Two

This strategy is not yet finalized, however, it does propose the construction of several projects designed to improve livestock control and protect specific riparian areas within the allotment. These projects are referenced in Term 4 of the above mentioned agreement. Accordingly, BLM is proceeding with initial project development work which includes environmental analysis in compliance with the National Environmental Policy Act (NEPA). You will be receiving by separate mail a package of maps and descriptions of the proposed projects. We invite your comments on the proposals.

TWIN PEAKS PLANNING MEETING SET

BLM believes it imperative that the core group continue its work in the development of the annual plan of operation for Twin Peaks Allotment in 1995. We want to have this plan completed before the March 1 livestock turnout. To that end, another core group meeting will be held (INSERT DATE, TIME AND LOCATION) to enable the group to work on formulating the annual plan of operation. All affected interests will be invited to attend and participate.

BLM will continue to keep all affected interests informed of the activities of this core group. If you have any questions or concerns please do not hesitate to call Eagle Lake Resource Area Manager Linda Hansen at (916) 257-0456.

We believe the agreement reached for 1995 sets the stage for all parties to work together to manage the land in ways that will provide for healthy natural resources. We must focus our collaborative effort on the balanced and sustainable use and protection of these resources.

1 CERTIFICATE OF SERVICE

2 The original of the foregoing "Request To Set Aside Decision
3 and Remand" was sent via Certified Mail-Return Receipt Requested,
4 on February 10, 1995, to:

5 Office of Hearings and Appeals
6 Hearings Division
7 6432 Federal Building
8 Salt Lake City, UT 84138

9 Copies of the foregoing "Request To Set Aside Decision and
10 Remand" were sent via "Certified Mail-Return Receipt Requested"
11 on February 10, 1995, to:

12 Wayne Howle, Esq.
13 Deputy Attorney General
14 State of Nevada
15 208 North Fall Street
16 Carson City, Nevada 89710

17 Mark J. Urban, Esq.
18 Attorney General's Office
19 1515 K Street
20 P.O. Box 944255
21 Sacramento, California 94244-2550

22 W. Alan Schroeder, Esq.
23 Schroeder & Lezamiz Law Offices
24 P.O. Box 267
25 Boise, Idaho 83701

26 William Schroeder, Esq.
27 P.O. Box 220
28 Vale, Oregon 97918

Stu Brown, President
California Cattlemen's Association
1221 H Street
Sacramento, California 95814-1910

Dawn Y. Lappin, Director
Wild Horse Organized Assistance
P.O. Box 555
Reno, Nevada 89504

Catherine Barcomb, Executive Director
Commission for the Preservation
of Wild Horses
255 W. Moana Lane, Suite 207A
Reno, Nevada 89509

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Jay B. Wilson, Exec. Vice President
California Wool Growers Association
1221 H Street, Suite 101
Sacramento, CA 95814-1910

Larry Garro, Executive Director
Western Range Association
6060 Sunrise Vista Dr., Suite 2400
Citrus Heights, CA 95610

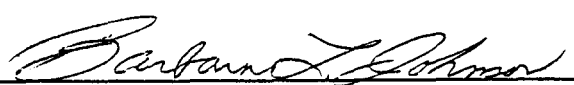
Messrs. Lyle L. Lough and Jean Loubet
Lassen County Board of Supervisors
707 Nevada Street
Susanville, CA 96130

A copy of the foregoing "Request to Set Aside Decision and
Remand" was sent via regular mail on February 10, 1995, to:

State Director
Bureau of Land Management
2800 Cottage Way
Sacramento, CA 95825

I certify that the foregoing is true under penalty of
perjury.

Executed this 10th day of February, 1995 at Sacramento,
California.


Barbara L. Johnson