

2/10/95
Twin Peaks Allot

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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 Appellants.)

23 v.)

24 BUREAU OF LAND MANAGEMENT,)
25 Respondent.)
26

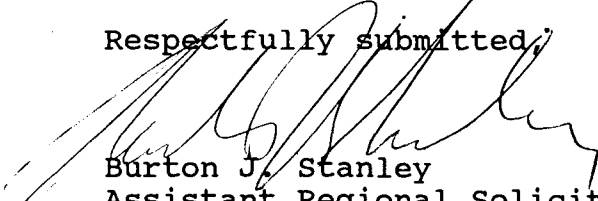
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28 / / /

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)	CA 2-94-06
14	OF WILD HORSES,)	
15	Appellants.)	
16	v.)	
17	BUREAU OF LAND MANAGEMENT,)	
18	Respondent.)	
19	<hr/>		
20	LAVER RANCHES)	CA 2-94-08
21	Appellants.)	
22	v.)	
23	BUREAU OF LAND MANAGEMENT,)	
24	Respondent.)	
25	<hr/>		
26	CALIFORNIA WOOL GROWERS ASSOCIATION,)	CA 2-94-09
27	Appellants.)	
28	v.)	
29	BUREAU OF LAND MANAGEMENT,)	
30	Respondent.)	
31	<hr/>		

1	WESTERN RANGE ASSOCIATION,)	CA 2-94-10
)	
2	Appellants.)	
)	
3	v.)	
)	
4	BUREAU OF LAND MANAGEMENT,)	
)	
5	Respondent.)	
)	
6	<hr/>)	
7	LASSEN COUNTY BOARD OF SUPERVISORS,)	CA 2-94-11
)	
8	Appellants.)	
)	
9	v.)	
)	
10	BUREAU OF LAND MANAGEMENT,)	
)	
11	Respondent.)	
)	
12	<hr/>)	

REQUEST TO SET ASIDE DECISION AND REMAND

Respondent respectfully requests that its Decision dated February 28, 1994, which is the subject of these appeals, be set aside and vacated. Respondent has entered into a Court ordered settlement, approved by the Justice Department, concerning the Decision at issue herein. For information of the parties, a copy of the Court's order and settlement agreement are attached.

Respectfully submitted,

 Burton J. Stanley
 Assistant Regional Solicitor
 Attorney for Respondent

CAROL C. FITZGERALD
CLERK
BY [Signature]
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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:

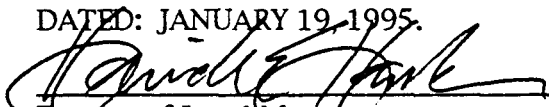
On those areas selected by Espil and BLM for spring turn out of cattle, the turn out date is March 1, 1995, provided that:

 - 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

 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.

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

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

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

14 Mark J. Urban, Esq.
15 Attorney General's Office
16 1515 K Street
17 P.O. Box 944255
18 Sacramento, California 94244-2550

17 W. Alan Schroeder, Esq.
18 Schroeder & Lezamiz Law Offices
19 P.O. Box 267
20 Boise, Idaho 83701

19 William Schroeder, Esq.
20 P.O. Box 220
21 Vale, Oregon 97918

21 Stu Brown, President
22 California Cattlemen's Association
23 1221 H Street
24 Sacramento, California 95814-1910

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

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

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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