



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Winnemucca Field Office
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In Reply Refer to:
4150
(NV-022.15)
NV-020-11-1276

SEP 08 2008

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CERTIFIED MAIL NO. 7007 2680 0002 2821 5978
RETURN RECEIPT REQUESTED

DEPARTMENT OF ADMINISTRATION
OFFICE OF THE DIRECTOR
BUDGET AND PLANNING DIVISION

**PROPOSED DECISION
DEMAND FOR PAYMENT**

John Espil Sheep Company Inc.
c/o John Espil
2889 Granville Drive
Sparks, NV 89436

Dear Mr. Espil:

On April 11, 2008, during a compliance check of the Buffalo Hills Grazing Allotment, members of my staff observed one hundred and thirty two (132) head of unauthorized sheep belonging to John Espil Sheep Company Inc. In addition to the sheep my staff also documented the presence of an unauthorized water trough and a temporary lambing pen site (Refer to attached photos). The dates and locations of the unauthorized sheep, trough and pen within the Buffalo Hills Pasture of the Buffalo Hills Allotment are as follows:

Date	Item	Number	Township	Range	Section
04/11/08	Band 1	72 hd.	32 North	20 East	15
04/11/08	Band 2	60 hd.	32 North	20 East	09
04/11/08	Trough	1	32 North	20 East	27
04/11/08	Pen site	1	32 North	20 East	27

During the compliance check my staff stopped along the trail and talked with you about the unauthorized sheep. You said you knew there were a few ewes that had lambed while trailing and the lambs were too young to move. When they told you how many sheep they had counted you seemed surprised that there were that many and stated that you would get them moved in a day or so. You also informed them that the fence that separates the Buffalo Hills Allotment, administered by the Winnemucca Field Office (Nevada) from the Twin Peaks Allotment,

administered by the Eagle Lake Field Office (California) is bad and the sheep drift back and forth through the fence. You said you would call the office when you got the sheep moved.

On April 17, 2008, my staff conducted a follow-up compliance check of the Buffalo Hills Pasture in the Buffalo Hills Allotment. They again observed unauthorized sheep at the following locations:

Date	Item	Number	Township	Range	Section
04/17/08	Band 1	75 hd.	32 North	20 East	15
04/17/08	Band 2	63 hd.	32 North	20 East	09

On April 18, 2008, a Notice of Trespass (NV-020-11-1276) was issued to you by the Winnemucca Filed Office of the Bureau of Land Management (BLM) by certified mail.

On April 28, 2008, you signed for and received the Notice of Trespass (NV-020-11-1276).

On April 24, 2008 my staff conducted another compliance check and did not find any unauthorized sheep in the Buffalo Hills Allotment and the water trough had been removed.

Based upon the above information, I have determined that you are in violation of the following law(s):

Taylor Grazing Act of June 28, 1934, as amended;
Section 2, 48 stat. 1270; 43 U.S.C. 315a.

Federal Land Policy and Management Act of October 21, 1976, as amended;
Section 303 and 402, 43 U.S.C. 1733 and 1152 respectively.

And that you are in violation of the federal regulation:

43 CFR 4140.1 states:

“The following acts are prohibited on public lands and other lands administered by the Bureau of Land Management:

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under §4170.1:

(1) Violating special terms and conditions incorporated in permits or leases;”

(b) Persons performing the following prohibited acts on BLM-administered lands are subject to civil and criminal penalties set forth at 4170.1 and 4170.2:

(1) Allowing livestock or other privately owned or controlled animals to graze or be driven across these lands

(i) Without a permit or lease, or other grazing use authorization (see §4130.6) and timely payment of grazing fees.

- (ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;
- (2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

My staff have been attempting unsuccessfully since April 11, 2008, to resolve this matter with you. Therefore, my proposed decision is as follows:

I hereby demand payment of fees due the United States for the willful grazing of livestock owned or controlled by you on public lands without authorization in the amount of \$1,366.50, within thirty (30) days from receipt of this notice. Monetary damages will continue to accumulate until this unauthorized use case is settled. Currently, the distribution of fees for the willful trespass #NV-020-11-1276, are as follows:

Date	Trespass fees	Wages	Mileage	Subtotal
04/11/08	\$36.00	\$317.52	\$113.98	\$467.50
04/17/08	\$36.00	\$317.52	\$113.98	\$467.50
04/24/08	0	\$317.52	\$113.98	\$431.50
Total Monetary Charges due the U.S. Government as of 08/28/2008				\$1,366.50

Failure to comply and make payment within the time allowed shall result in further action to protect the interest of the United States as provided in 43 CFR 4170.1 (c) Enclosed is form 1371-21 "Notice of Actions in Event of Delinquency" which outlines the sequence of actions for delinquent accounts.

Also enclosed is the Settlement of Unauthorized Use Obligation Offer form. Please fill out sections B, C, and D and return the form with your payment.

As required by CFR 4150.3(e), you shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until this amount due the United States has been paid. **Any and all grazing authorizations that you may have to graze livestock on public land administered by the Bureau of Land Management are hereby suspended and any additional applications for grazing use will be rejected until such time as the amount due has been paid.**

RATIONALE

John Espil Sheep Company Inc. is authorized annually to trail sheep through the Buffalo Hills Allotment but does not have a permit for active grazing use in this allotment.

On May 11, 2008, unauthorized sheep were observed scattered on public lands in the vicinity of Horse Canyon in the Buffalo Hills Pasture, approximately three miles from the designated sheep trail route. There were also signs of an unauthorized lambing pen and water trough on public lands approximately .5 to 1 mile, respectively, from the trail route. You informed BLM staff that you would move the sheep from public land in the Buffalo Hills Allotment within a couple of days.

During a follow-up compliance check on May 17, 2008 your sheep were once again observed in the same areas of the allotment they were found on May 11. BLM staff conducted another compliance check on May 24 and noted that the sheep had been removed from the Buffalo Hills Pasture.

Your 2008 grazing bill (R613676) authorized you to trail three separate bands of sheep through the Buffalo Hills Allotment on the following dates; March 15 to April 1, March 19 to April 5 and May 1 to May 15. The permit Terms and Conditions for trailing states; "The trail will follow the existing designated trail route between the Cal-Neva unit and Lovelock and the sheep will be moved toward their destination at all times at no less than 5 miles per day and will not exceed 16 days in crossing. If a change is anticipated in scheduled trailing dates, you are required to notify BLM personnel 10 days prior to trailing." Based upon this term and condition and the bill dates no sheep should have been on the trail in the Buffalo Hills Allotment on April 11th or 17th.

I have determined this trespass to be willful and subject to administrative fees based on the following. On May 11, 2008, you informed BLM employees that you would move the sheep within a few days, when BLM employees returned approximately a week later the sheep were still on public land. Installation and use of water troughs on public lands are prohibited without prior authorization. This practice shows that you were aware of your sheep being on public lands and were trucking in straw and water to them.

AUTHORITY

The authority for this decision is contained in Title 43 of the Code of Federal Regulations, which states in pertinent parts:

§ 4140.1(a) "Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under §4170.1:"

- (1) "Violating special terms and conditions incorporated in permits or leases;"

§4140.1(b) "Persons performing the following prohibited acts on BLM-administered lands are subject to civil and criminal penalties set forth at §§4170.1 and 4170.2:"

- (1) "Allowing livestock or privately owned or controlled animals to graze on or be driven across these lands:"
 - (i) "Without a permit or lease, or other grazing use authorization (see §4130.6) and timely payment of grazing fees.
- (2) "Installing, using maintaining, modifying, and/or removing range improvements without authorization."

§4150.1 "Violation of §4140.1(b)(1) constitutes unauthorized grazing use."

- (a) "The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful."
- (b) "Violators shall be liable in damages to the United States for the forage consumed by their livestock, for injury to Federal property caused by their unauthorized grazing use, and for expenses incurred in impoundment and disposal of their livestock, and may be subject to civil penalties or criminal sanction for such unlawful acts."

§4150.2(a) "Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both, by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under §4150.3."

§4150.3 "Where violations are repeated willful, the unauthorized officer shall take action under §4170.1-1(b) of this title. The amount due for settlement shall include the value of the forage consumed as determined in accordance with paragraph (a), (b) or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs."

§4150.3(a) "For nonwillful violations: The value of the forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned (excluding irrigated land) in each State as published annually by the Department of Agriculture..."

§4150.3(b) "For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.

§4150.3(c) "For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section.

§4150.3(e) "Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under §4160-1 of this title to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment."

§4150.4 "Unauthorized livestock remaining on the public lands or other lands under the Bureau of Land Management control, or both, after the date set forth in the notice and order to remove sent under §4150.2 may be impounded and disposed of by the authorized officer as provided herein."

PROTEST

In accordance with 43 CFR 4160.2, any applicant, permittee, lessee or other interested public may protest the proposed decision under 4160.1 of this title in person or in writing to the authorized officer, Bob Edwards, Acting Assistant Field Manager, Renewable Resources, Bureau of Land Management, 5100 East Winnemucca Boulevard, Winnemucca, NV 89445, within 15 days after receipt of such decision. The protest, if filed, must clearly and concisely state the reason(s) why the protestant thinks the proposed decision is in error.

In accordance with 43 CFR 4160.3(a), in the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice.

In accordance with 43 CFR 4160.3 (b), Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

APPEAL

In accordance with 43 CFR 4.470, 4160.3(c), and 4160.4, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 CFR 4.470, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

Pursuant to 43 CFR 4.471 and 4160.3(c), an appellant may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision.

The appeal and any petition for stay must be filed at the office of the authorized officer Bob Edwards, Filed Manager, Humboldt River Field Office, Bureau of Land Management, 5100 East Winnemucca Boulevard, Winnemucca, NV 89445. Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Solicitor, Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825-1890.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

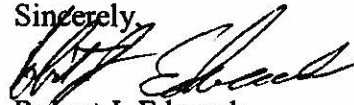
- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for stay may file with the Hearings Division in Salt Lake City, Utah, a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response to the petition, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the decision (43 CFR 4.472(b)).

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

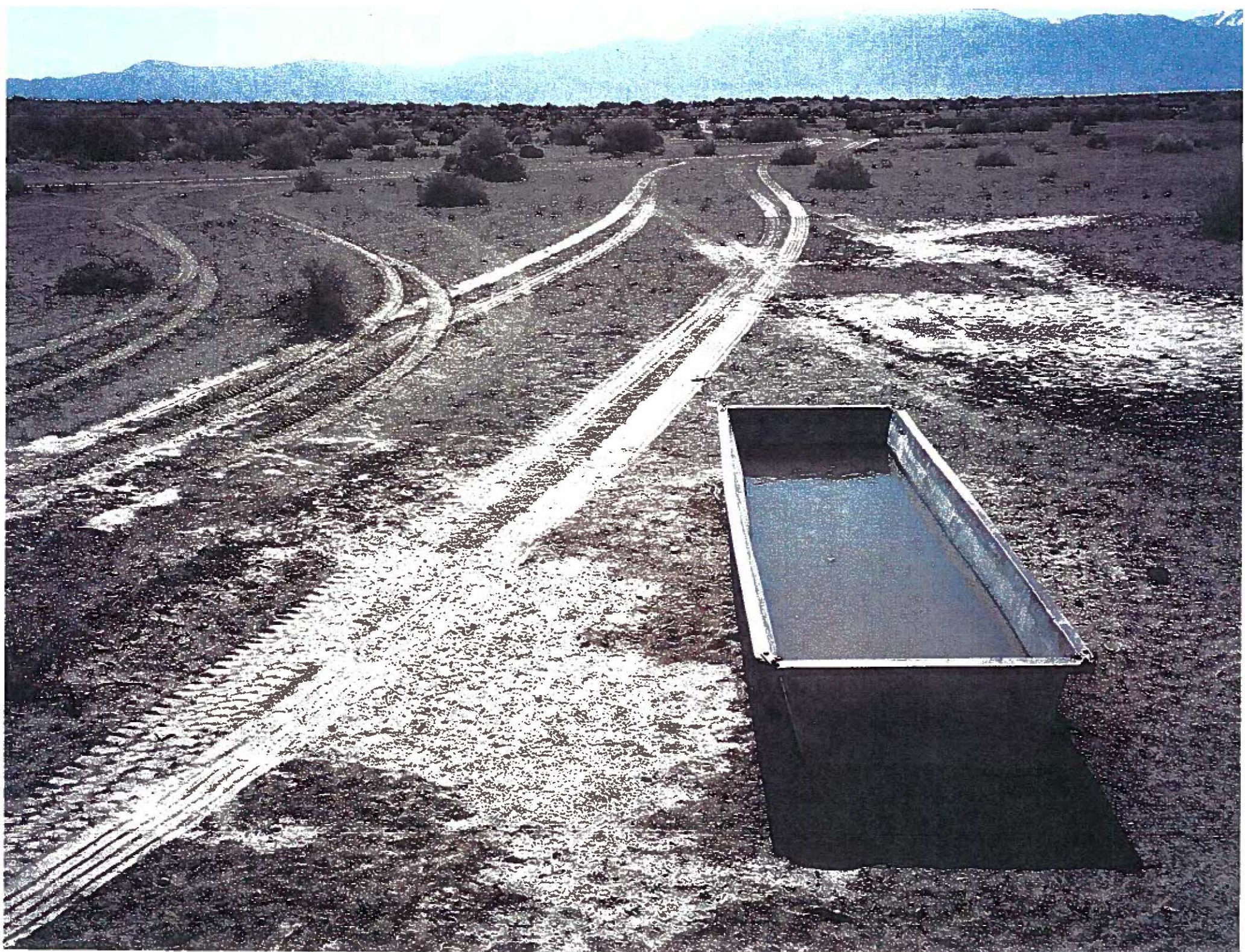
Sincerely,

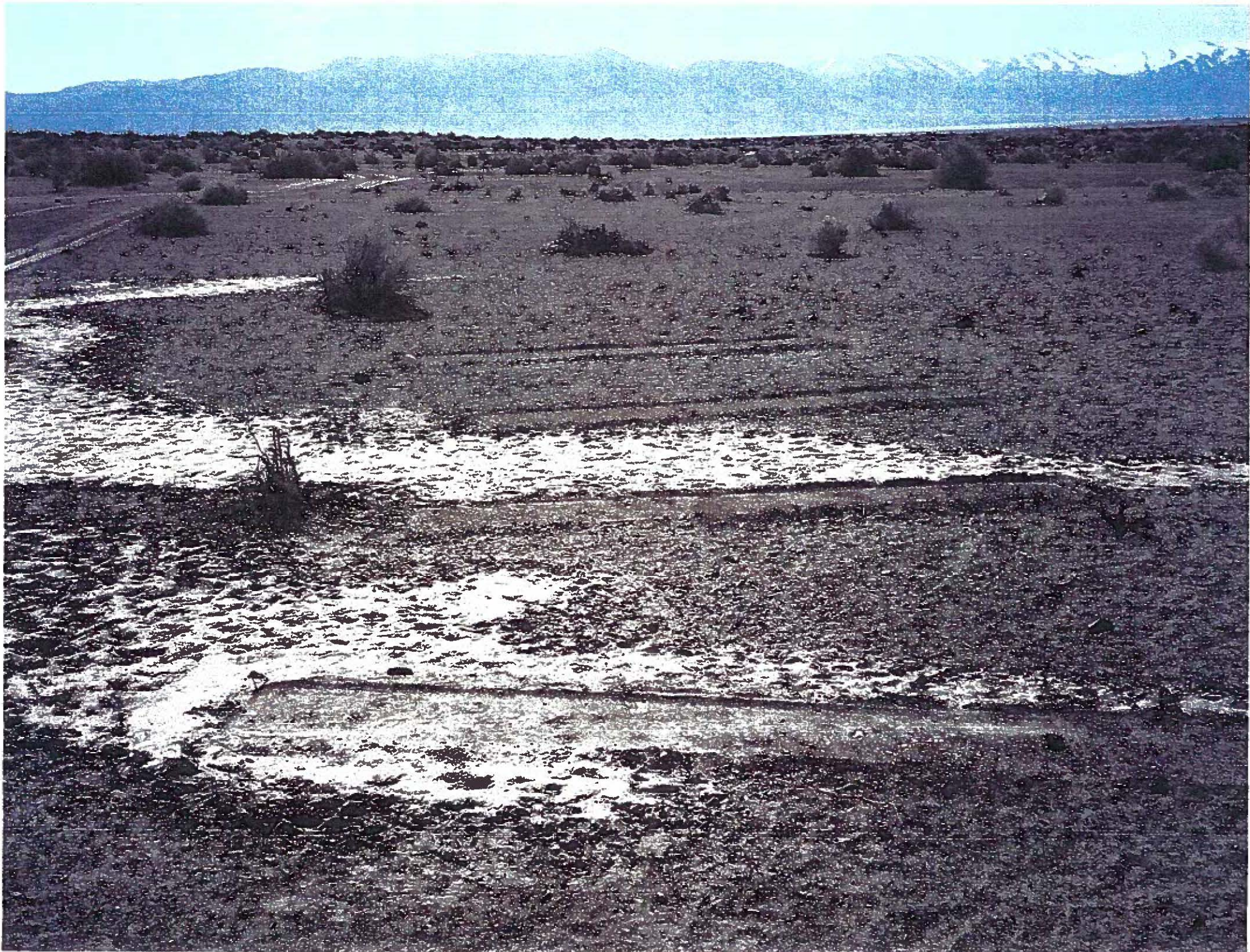


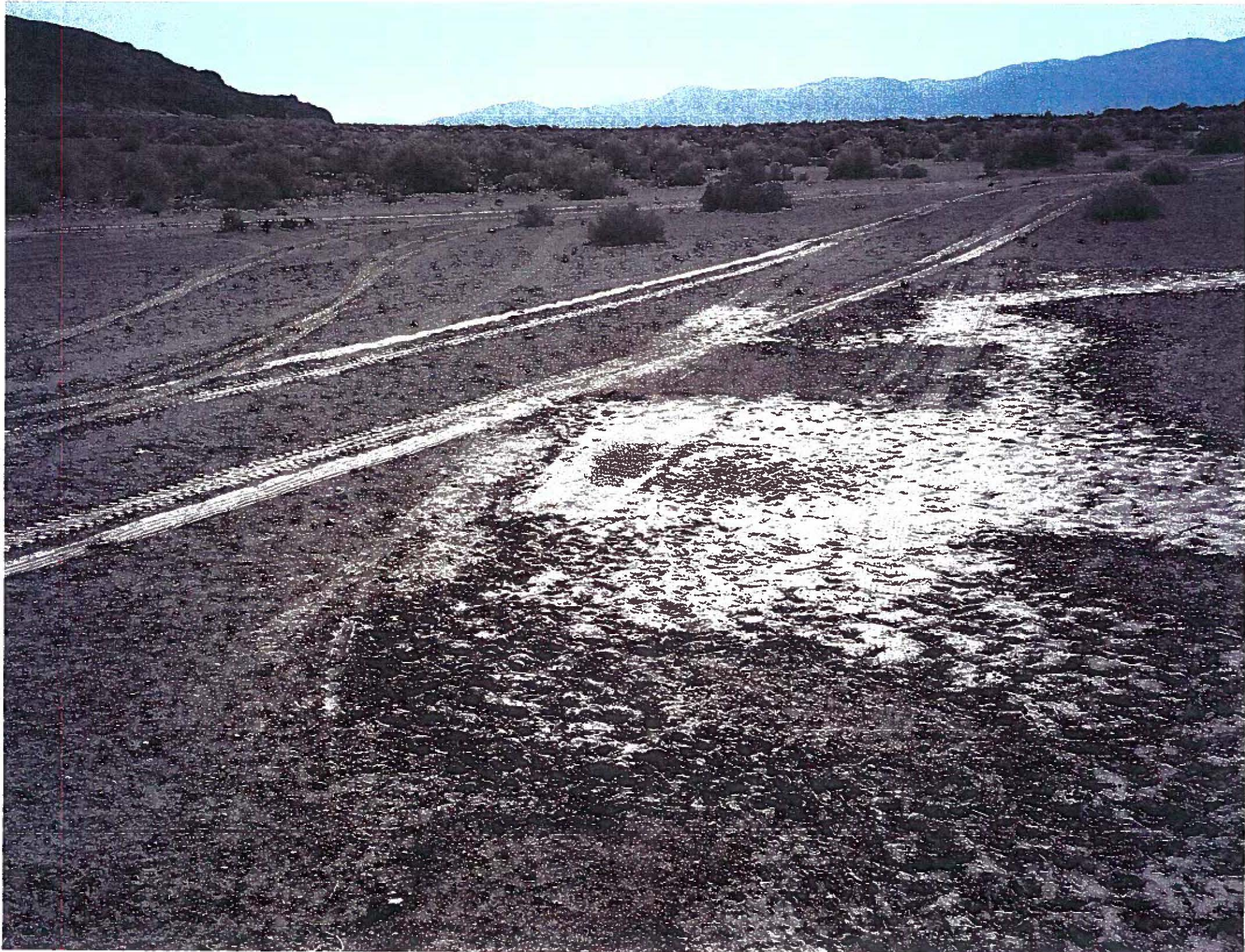
Robert J. Edwards
Acting Assistant Field Manager
Renewable Resources

Enclosures:

cc: Dayne Barron, Eagle Lake FO
Shane DeForest, Surprise FO
Tim Burke, Alturas FO
Jackson Family
Joel Turnbow
Bobbi Royle
Center for Biological Diversity
Department of Administration
Friends of Nevada Wilderness
John Falen
Kudrna Nevada, LLC
Mandy McNitt
NDOW-Fallon
NDOW-Winnemucca
Nevada Cattlemen's Association
Pershing County
RCI
Soldier Meadows Ranch
US Fish and Wildlife Service
Washoe County Commissioners
Commission for the Preservation of Wild Horses
Sustainable Grazing Coalition
Cindy MacDonald
Western Watersheds Project
William Cowan
Humboldt County Commissioners













Buffalo Hills Allotment

