

Mt. Stirling Allot

3-2-92

~~Johnnie HMB~~



IN REPLY REFER TO:

United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Stateline Resource Area

4765 Vegas Drive

P.O. Box 26569

Las Vegas, Nevada 89126

In Reply
Refer To:
4160
(NV-055)

March 2, 1992

DELIVERED IN PERSON ON
MARCH 3, 1992

FULL FORCE AND EFFECT DECISION
MT. STIRLING ALLOTMENT

Lonesome Dove Cattle Co.
c/o Cal Baird
7043 N. Jones
Las Vegas, NV. 89131

Dear Mr. Baird:

I issued a full force and effect decision dated February 3, 1992 modifying your grazing permit/lease of June 9, 1988 for the Mt. Stirling allotment and issued a new permit implementing the terms and conditions of the Biological Opinion File No.: 1-5-91-F-36 dated August 14, 1991, as amended. Your new grazing permit/lease was mailed on February 12, 1992 reflecting this decision.

In the decision, I referred to your allotment as being classified as ephemeral. This was an administrative typographical error we discussed with you on February 28, 1992.

The Mt. Stirling Allotment is a perennial allotment with an active preference of 1500 AUMs. The Record of Decision for the Esmeralda-Southern Nye Resource Management Plan does not classify the Mt. Stirling Allotment as ephemeral.

The decision dated February 3, 1992 had specific terms and conditions in addition to the ones related to ephemeral classification.

Your base property lease expires on April 30, 1993.

I have considered the above and following information in my final decision concerning your grazing permit/lease:

On August 4, 1989 the U.S. Fish and Wildlife Service (USFWS) listed the Desert Tortoise within its range in the Mojave Desert as endangered under an emergency ruling in the Federal Register Notice, Vol. 54, No. 149 in compliance with the Endangered Species Act of 1973 as amended and 50 CFR 424.20.

On October 13, 1989 the USFWS published a proposed rule in the Federal Register Vol. 54, No. 197, to list the Desert Tortoise as an endangered species within its range in the Mojave Desert.

On April 2, 1990 the USFWS published Rules and Regulations in Federal Register Vol. 55, No. 63 listing the Mojave population of the Desert Tortoise to be a threatened species pursuant to the Endangered Species Act of 1973 as amended.

In accordance with Section 7 (a) titled Federal Agency Actions and Consultations of the Endangered Species Act of 1973 as amended and 50 CFR Sub Part B, 402.14 titled Formal Consultations "Each Federal Agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required..." The BLM has determined that livestock grazing on public lands within desert tortoise habitat is an action that requires formal consultation.

I have met with the Las Vegas District Grazing Advisory Board first on October 17, 1989 and later on a number of occasions during the development of the Las Vegas District's *Biological Evaluation for Managing Livestock Grazing in Desert Tortoise Habitat*. I requested and received recommendations from permittees that were considered along with monitoring data in the biological evaluation prior to initiating formal Section 7 consultation with the U. S. Fish and Wildlife Service. The Bureau of Land Management, Las Vegas District's Biological Evaluation was submitted to the USFWS on January 23, 1991.

A copy of the Biological Evaluation was mailed on February 12, 1991 with a letter to all affected interests. The letter stated in part that "You are entitled to an opportunity to submit information to the USFWS for consideration during the consultation (50 CFR Section 402.14 (d) (Vol. 51, No. 106, June 3, 1986)."

The *Biological Opinion for the Proposed Livestock Grazing Program Within Desert Tortoise Habitat in Southern Nevada* (File No.: 1-5-91-F-36), herein referred to as the Opinion, was issued on August 14, 1991, by the USFWS. The Opinion stated that "The proposed licensing of livestock within Desert Tortoise habitat in southern Nevada is not likely to jeopardize the continued existence of the Desert Tortoise." The Opinion also stated "In order to be exempt from the prohibitions of Section 9 of the Act, the Bureau must ensure that all allottees/lessees comply with various terms and conditions which implement the reasonable and prudent measures

described . . . in the Opinion.

The Bureau of Land Management, Stateline Resource Area staff specialists met with you on November 5, 1991 and discussed alternative management options for livestock grazing on the Mt. Stirling allotment consistent with the Opinion. This decision reflects issues discussed in the November 5, 1991 meeting and management actions which are in accordance with the Opinion of August 14, 1991. Those portions of the Mt. Stirling allotment which are not categorized as Prescription 1 or 2 areas within the Opinion and can not be managed or grazed separately from the prescription areas are included in this decision.

Therefore, based on the opportunities for you to provide comments on this matter, the Opinion dated August 14, 1991, the existence of the classification error in the February 3, 1992 Decision, consultation with affected interests, and recommendations from my staff, my Final Decision is to cancel the decision dated February, 3, 1992, cancel the Federal Grazing Permit/Leases of June 9, 1988 and February 12, 1992 and issue you a new Federal Grazing Permit/Lease with the terms and conditions listed below effective 03/03/92 and expires 04/30/93. This Final Decision is to be placed in Full Force and Effect commencing March 3, 1992 in order to be in compliance with Section 7 (a) (2) and (b) (4) of the Endangered Species Act of 1973 as amended.

I have instructed my staff to hand deliver this decision to you by March 3, 1992. All the terms and conditions listed below are the same as the February 3, 1992 Decision except those related ephemeral classification.

Your Federal Grazing Permit/Lease will be issued as follows:

FROM:

EXISTING FEDERAL GRAZING PERMIT/LEASE
FOR THE MT. STIRLING ALLOTMENT
FROM 06/09/88 TO 05/21/93

ALLOTMENT NAME	NUMBER OF LIVESTOCK	KIND OF LIVESTOCK	SEASON OF USE		PERCENT FEDERAL LAND	ACTIVE PREFERENCE
			BEGIN DATE	END DATE		
Mt. Stirling	125	Cattle	03/01	02/28	100	1500 AUMs

No more than 30 cattle will be grazed in the Big Timber Springs service area. No more than 50 cattle will be grazed on the north side of the Mountain. The Mountain area will be grazed June 1 to November 14 each year.

Water will be made available at all springs sources for wildlife, and wild horses and burros.

That area of Mt. Stirling seeding that is fenced around Rock Springs will be closed to all livestock grazing until written approval is issued by this office.

The desert area will be grazed from November 15 to May 31 each year.

TO:

NEW FEDERAL GRAZING PERMIT/LEASE
FOR THE MT. STIRLING ALLOTMENT
FROM 03/03/92 TO 04/30/93

ALLOTMENT NAME	NUMBER OF LIVESTOCK	KIND OF LIVESTOCK	SEASON OF USE		PERCENT FEDERAL LAND	ACTIVE PREFERENCE
			BEGIN DATE	END DATE		
Mt. Stirling	125	Cattle	03/01	02/28	100	1500 AUMs

SPECIFIC TERMS AND CONDITIONS
FOR THE NEW FEDERAL GRAZING PERMIT/LEASE

Mt. Stirling Allotment

1. Grazing will be permitted in accordance with grazing Prescriptions 1 and 2 identified in the Opinion as amended.
2. Grazing prescription areas within your allotment are delineated on Attachment 1, titled Mt. Stirling allotment Map.
3. Livestock grazing use shall be authorized in the Mt. Stirling allotment from 03/01 through 02/28 each quarter (the three month periods beginning 03/01) forage is determined available for the term of the permit. See the following table and Attachment 1.

SPECIFIC USE AREAS AND
IDENTIFIED PERIODS OF USE
FROM 03/03/92 TO 04/30/93

PRESCRIPTION AREAS	SEASON OF USE	
	BEGIN DATE	END DATE
Prescription 1 ^a	06/15	02/28
Prescription 2 ^b	03/01	02/28
Non-Prescription	03/01	02/28

^a Refer to Attachment 1.

^b Prescription 1, Tortoise Habitat Category I, II, and non-intensive III.

Prescription 2, Tortoise Habitat Category III non-intensive.

4. All vehicle use in desert tortoise habitat within the Mt. Stirling allotment shall be restricted to existing roads and trails.
5. Trash and garbage shall be removed from each camp site that is associated with livestock grazing operations (branding, sheep herding, roundup, etc.) and disposed of off site in a designated facility. No trash or garbage shall be buried at camp sites.
6. Use of hay or grains as a feeding supplemental shall be prohibited in desert tortoise habitat to avoid the introduction of non-native plant species. Mineral, protein and salt blocks are authorized subject to 43 CFR section 4130.6-2(c).
7. The allotment shall include at a minimum the following key species for monitoring purposes where appropriate based upon density and availability: galleta grass (*Hilaria jamesii*) and (*H. rigida*), bush muhly (*Muhlenbergia porteri*), sand dropseed (*Sporobolus cryptandrus*), Indian ricegrass (*Oryzopsis hymenoides*), black grama (*Bouteloua eriopoda*), desert needlegrass (*Stipa speciosa*), range ratany (*Krameria parvifolia*), ephedra (*Ephedra spp.*), white burrobrush (*Hymenoclea salsola*) and winterfat (*Eurotia lanata*).
8. As key species and key areas are determined necessary for monitoring purposes, maximum allowable use levels will be established based upon the conditions as set forth in the Opinion for Prescription 1 and 2 areas.

9. The following table identifies the maximum allowable use levels for specified periods of livestock grazing use, which shall be used at a minimum for monitoring purposes within prescription 1 and 2 areas.

ALLOTMENT NAME	PRESCRIPTION	ALLOWABLE USE LEVELS AND USE PERIODS PER GRAZING PRESCRIPTION FOR THE TERM 03/01/92 TO 04/30/93		
		06/15-10/14	10/15 - 02/28	03/01 -06/14
Mt. Stirling	PRESCRIPTION 1	All perennial species - <u>40%</u>	Key perennial grasses - <u>50%</u> Key perennial shrubs & forbs - <u>40%</u>	No livestock use will be allowed during this period
		PRESCRIPTION 2	06/15 -10/14	10/15 - 02/28
	PRESCRIPTION 2	All perennial species - <u>40%</u>	Key perennial grasses - <u>50%</u> Key perennial shrubs & forbs - <u>45%</u>	All perennial species - <u>40%</u>

10. Trailing through the Mt. Stirling Allotment into and out of higher elevation BLM lands (above 4500 feet) and U.S. Forest lands may be authorized on an annual basis upon receipt of an application. Your application for trailing must specify a maximum of a seven (7) consecutive day period between the dates of March 1 and June 14 in which you intend to cross the allotment. Your authorization to trail cattle will be your paid billing for your approved crossing application. Once individual groups of cattle began crossing, they should be continually moved through the trailing corridor (a distance of approximately 6 miles along the Jaybird Spring road). All cattle within a specific group being trailed must be moved through the lower desert areas within a twenty-four (24) hour period once trailing begins.

11. When allowable use levels are reached for prescription 1 and 2 areas, livestock will be removed from the allotment. Other management alternatives may be authorized by the Stateline Resource Area Manager consistent with this decision and the Opinion.

12. By February 28, 1993, all cattle (six months of age or older at turn out) will be required to be ear tagged by you with BLM issued ear tags. Additionally, you are required to submit a list of ear tag numbered cattle that are turned out/authorized on the Mt. Stirling allotment. The list must be submitted to the Stateline Resource Area office within seven (7) days of turn out. At the end of the authorized grazing period, any ear tag numbers not accounted for, shall be reported to the Stateline Resource Area office within 15 days.
 - a. In order to assure adequate cattle control is provided to prevent cattle from continually migrating into the Prescription 1 area, all cattle found in the Prescription 1 area during the period 03/03/92 through 06/14/92 shall be ear tagged by you with a BLM issued ear tag. Terms and Conditions number 14 and 15 will then be followed.
13. You are required to remove and return to the Stateline Resource Area office all BLM issued ear tags of cattle shipped and/or sold. This must be done prior to being issued replacement ear tags.
14. Replacement tags for brush loss, unfound death loss, or other unexplained losses will be issued on a case by case basis at the determination of the Stateline Resource Area Manager.
15. Any livestock found in the Prescription 1 area during the period of 03/01 through 06/14 shall be relocated to the Prescription 2 area within 72 hours. Animals found in the Prescription 1 area shall be ear tagged at this time. The ear tag numbers of cattle found in the Prescription 1 area during the period 03/01 through 06/14 shall be recorded and submitted in writing to the Stateline Resource Area office within five (5) days of being observed.
16. Any livestock found in the Prescription 1 area during the period of 03/01 through 06/14 and which were previously recorded and relocated to the Prescription 2 area shall be removed from the Mt. Stirling allotment within 72 hours of being observed.

17. Adequate livestock control must be provided by existing range improvements within the Mt. Stirling allotment to prevent livestock from continually migrating into the Prescription 1 area during the period 03/01 through 06/14. If livestock continually migrate into the Prescription 1 area, the entire allotment will be required to be managed under Prescription 1 until range improvements become available to stop such action.
18. Applications for changes in grazing use must be in written form and be received by the Stateline Resource Area office no later than 15 days prior to the desired date of change.
19. Applications for changes in grazing use filed after a billing notice has been issued, and which require the issuance of a replacement bill or supplemental bill shall be subject to a ten (10) dollar service charge.
20. Grazing Applications will be issued on a quarterly basis showing all grazing use. If you desire to take all or partial non-use for the grazing year, you can apply for non-use for resource protection purposes, you must indicate this in writing on your Grazing Application, along with your reason(s).
21. A statement of Actual Grazing Use made on the Mt. Stirling allotment by grazing Prescription area and/or non-Prescription areas must be received in the Stateline Resource Area office no later than 15 days after the last day of authorized grazing use. In the case of year round grazing, this Actual Grazing Use statement must be received in the Stateline Resource Area office no later than March 15th of each year. The statement of Actual Grazing Use must include dates and areas grazed on the allotment.

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

4100.0-8: "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b)."

4110.3: "The authorized officer shall periodically review the grazing preference specified in a grazing permit or grazing lease and may make changes in the grazing preference status. These changes shall be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either specified in an applicable land use plan or necessary to manage, maintain or improve rangeland productivity."

4130.2 (c): "Grazing permits authorizing livestock grazing on the public lands and other lands under administration of the Bureau of Land Management shall be issued for a term of 10 years, unless;(iii) it will be in the best interest of sound land management to specify a shorter term."

4130.4: "Exchange-of-use grazing agreements, non-renewable grazing permits or leases, crossing permits, and special grazing permits or leases have no priority for renewal and cannot be transferred or assigned."

4130.4-3: "Any applicant showing the necessity for crossing the public land or other land under Bureau of Land Management control with livestock for proper and lawful purposes may be issued a crossing permit upon such terms and conditions deemed necessary by the authorized officer to achieve the objectives of this part."

4130.6: "Livestock grazing permits and leases shall contain terms and conditions necessary to achieve the management objectives for the public lands and other lands under Bureau of Land Management administration."

4130.6-1 (a): "The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity as determined through monitoring and adjusted as necessary under CFR 4110.3, 4110.3-1 and 4110.3-2."

4130.6-2: "The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands."

4130.6-2 (c): "Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;"

4130.6-2 (d): "A requirement that permittees or lessees operating under a grazing permit or lease submit within fifteen (15) days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;"

4130.6-3 "Following careful and considered consultation, cooperation and coordination with the lessees, permittees, and other affected interests, the authorized officer may modify terms and conditions of the permit or lease if monitoring data show that present grazing use is not meeting the land use plan or management objectives."

Additional authority is contained within the pertinent sections of the Endangered Species Act of 1973 as amended and in Title 50 of the Code of Federal Regulations, part 402, which identifies the procedures for complying with the Act.

Section 7 (a) (2) of the Act states in part "Each Federal Agency shall, in consultation with and with the assistance of the Secretary, ensure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species . . ."

Under Section 7 (b) (4) (A) of the Endangered Species Act of 1973 as amended, it states in part that the Secretary will offer the Agency after consultation ". . . reasonable and prudent alternatives which the Secretary believes would not violate . . ." Section 7 (a) (2) of the Act.

Title 50 CFR, Sub Part B Section 402.14 (i) (1) (iii) states that the U.S. Fish and Wildlife Service will provide in the Opinion to the Agency requesting a formal consultation a statement that, " Sets forth the terms and conditions . . . that must be complied with by a Federal Agency or any applicant to implement the measures specified" as reasonable or prudent measures.

In the Opinion, Reasonable and Prudent Measure number 5 states "Measures shall be taken to insure compliance with all conditions required in this Biological Opinion."

In the terms and conditions of the Opinion for the Proposed Livestock Grazing Program Within Desert Tortoise Habitat in Southern Nevada (File No.: 1-5-91-F-36) it states in part that, "Grazing prescriptions 1 and 2 shall be implemented prior to March 1, 1992, and shall take effect on that date as full force and affect decisions". This decision is placed in Full Force and Effect in order to comply with all provisions of Section 7 of the Act.

In Title 43 CFR 4160.3 (c): states in part: "The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration. Full force and effect decisions shall take effect on the date specified, regardless of an appeal".

If you wish to appeal this decision for the purpose of a hearing before a Administrative Law Judge, in accordance with 43 CFR 4160.3 (c), 4160.4, and 4.470, you are allowed thirty (30) days from receipt of this notice within which to file an appeal with the Stateline Resource Area Manager at the following address: Stateline Resource Area, Attn. Area Manager, P. O. Box 26569, Las Vegas, NV 89126.

The appeal shall state the reasons, clearly and concisely, as to why you think this Final Decision is in error.

Sincerely,



Runore Wycoff
Area Manager

Attachment:

1. Mt. Stirling Allotment Map (1 pp.)

cc: Wild Horse Organized Assistance, Inc.
Nevada Department of Wildlife
Desert Tortoise Council
Animal Protection Institute of America
National Park Service,
Lake Mead National Recreation Area
U.S. Fish and Wildlife Service,
Reno Field Station
Johanna H. Wald,
Natural Resources Defense Council
Sierra Club,
c/o David Brickey
Resource Concepts, Inc.,
c/o John McClain
N-5 Board,
c/o Kenneth D. Lee
Silver State Pleasure Riders
National Wild Horse Association,
National Headquarters
Barbara Spolter,
Regional Associate,
The Wilderness Society
Tom Williams

ATTACHMENT 1

MOUNT STIRLING

