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LEGAL PROCESS FOR DEFENDING YOUR GRAZING PERMIT



Utah Farm Bureau

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The Appeal Process for the **Bureau of Land Management and the Forest Service**

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The information contained in this fact sheet relative to the Bureau of Land Management appeals process is summarized from a presentation by Mr. Glen Davies, Attorney at Law, at the Utah Range & Livestock Conference, held on Monday, January 21, 2002, at the Ramada Inn in St. George, Utah. This conference was an educational program organized and sponsored by Utah State University Extension and the Utah Farm Bureau to inform participants about current issues that affect rangelands and livestock grazing in Utah. Mr. Davies' presentation was entitled "Grazing Appeals and the Legal Process." Information on the Forest Service appeals process was provided by Mr. Robert Hamner, Range Management Program Leader for the Intermountain Region of the Forest Service in Ogden, Utah.

U.S.D.I. Bureau of Land Management (BLM)

1. Following any meeting with BLM officials, permittees should write them a letter and document their understanding of the meeting. This letter by law becomes part of the administrative file kept by the BLM. It is very important to "paper" the record with information that documents the rancher's point of view or may be helpful in the future.
2. A preliminary decision adverse to you must be protested within 15 days of the decision. Individuals or groups other than the permittee can also protest the decision. All they need to do is file a request with the BLM District Office to become an "Interested Public" party with the rights of protest and appeal.
3. You should periodically check BLM files to see whether anyone has filed as a public interest party on your allotment.
4. After the protest is reviewed or if no protest is filed, the deciding officer will issue his final decision. If this decision is adverse to you and you wish to appeal, the decision must be appealed within 30 days.
5. When you appeal, it is essential to list *every* issue in the decision that you want to address. If you don't, the issue is waived, and cannot be raised later.
6. If an appeal is made by a public interest party, you can fully participate in the appeal only if you file a motion to intervene.

7. The final decision from or by BLM cannot go into full force and effect for a 30-day appeal period. Then it becomes effective unless someone files a notice of stay.
8. Getting a stay is *not easy*. In fact, it is very difficult. Factors to be considered include:
 - a. Relative harm to the parties,
 - b. Likelihood of appellant's success,
 - c. Likelihood of immediate and irreparable harm,
 - d. Whether the public interest supports the stay.
9. One of the current bottlenecks in grazing appeals comes from not having enough Administrative Law Judges (ALJ) in the Office of Hearings and Appeals to hear all of the cases that are being appealed. The hearing by the ALJ is like a trial with witnesses, evidence (documents, reports, data, letters) presented, written statements, and other information. The ALJ then issues "Findings of Fact and Conclusions of Law."
10. The ALJ "Findings of Fact and Conclusions of Law" becomes the basis for any appeal to the Interior Board of Land Appeals (IBLA). At that point, the record is closed, and no additional evidence can be offered. Only the actual parties to the case can appeal to IBLA. If you did not file the original appeal and have not intervened, you cannot appeal.
11. If you are dissatisfied with the IBLA decision, the next step is to seek judicial review in federal district court.

12. If the decision was committed to agency discretion, the decision must be shown to be arbitrary or capricious before it can be overruled in court. It is very difficult to overturn such an agency decision.

13. Another basis for review in federal court is if the decision of the BLM did not follow applicable law. Here the court does not have to give any deference (recognition) to how the BLM decided it but can take a fresh look at the decision.

14. Many appeals brought by environmental groups claim that BLM has not followed applicable laws in making its decision. When they get to federal court, they have a much better chance of getting the decision overturned than if they were dealing solely on the arbitrary and capricious basis.

15. One of the favorite statutes for environmental groups to use has been NEPA. In general, NEPA requires that before the federal government implements any decision or action that could potentially impact the environment, they must look at and take into consideration the potential impacts of that decision on the environment. If their initial review reveals that there will be significant impact, then the government agency must prepare an environmental impact statement. Environmental groups have argued that these environmental assessments must be done on an allotment-by-allotment basis.

16. The BLM simply does not have the funds or resources to do the kind of environmental assessment on an allotment-by-allotment basis that environmental groups are demanding and, therefore, they have a ready-made appeal and federal court case in virtually every BLM grazing decision.

17. Ranchers need to enlist as many others as they can on their side. This could include county commissions, the School and Institutional Trust Lands Administration (SITLA), industry groups like the Cattlemen's Association, the Wool Growers, and Farm Bureau, as well as those environmental and conservation groups that are not anti-grazing.

U. S. Forest Service (FS)

1. The Forest Service appeals process is relatively simple and straight-forward. However, appeals must be in writing. All Forest Service decisions notices indicate to whom appeals are to be made and time frame. Generally, appeals are made to the next level of Forest Service Officer above the one who has made the decision, but this depends on the kind of decision being appealed.

2. An appeal of a term grazing permit action under 36 CFR 251 of a decision by a District Ranger is made to the Forest Supervisor, who is the 1st level reviewing

official. If this reviewing officer's decision is unsatisfactory to the appellant, the appellant may appeal to the 2nd level reviewing official, who is the Regional Forester. This is the final level of review by the Forest Service of decisions made by an authorized official and any additional actions would have to be taken in the Federal District Court. A 45 day mediation period is possible after a District Ranger's decision and this mediation process may be extended by 15 days in light of substantial progress toward resolving issues.

3. Appeals under 36 CFR 215 of project level NEPA decisions issued by a District Ranger are made to the Regional Forester as provided in 36 CFR 215.12. If following the Regional Forester's review and determination, the appellant still disagrees with the decision, the appellant may pursue filing in Federal District Court.

4. Appeals of programmatic decisions like forest plans are made to the Regional Forester and appeals of national programmatic decisions are made to the Chief of the Forest Service.

5. With the exception of the mediation process available for individual allotment or permit action decisions at the Ranger District level, there is no outside review process unless the issue is ultimately taken to Federal District Court.

6. Forest Service grazing permit holders should follow up any meeting or contact with Forest Service officials with a letter to the official documenting their understanding of the meeting. This letter will be included in their allotment file.

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