

UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF HEARINGS AND APPEALS  
~~HEARINGS DIVISION~~  
INTERIOR BOARD OF LAND APPEALS

Badger Ranch, Chiara Ranch, and  
Daniel E. & Eddyann U. Filippini

Appellants

vs.

Bureau of Land Management,

Respondent

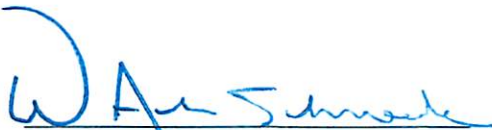
IBLA 2014-66

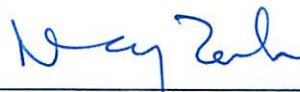
Appeal from May 23, 2013 Full, Force  
and Effect Decision Closing Allotments  
due to Drought Conditions, BLM  
Battle Mountain District Office, Nevada

**JOINT MOTION TO DISMISS APPEAL**

On December 27, 2013, Appellants filed a Notice of Appeal from the November 23, 2013, Decision issued by the Hearings Division. This appeal was docketed as IBLA 2014-66. The parties have entered into a settlement agreement that fully resolves the pending appeal. See Attachment 1. As a result of this settlement agreement, the parties respectfully request that the Board approve the attached agreement and dismiss the above-referenced appeal.

Dated this 5<sup>th</sup> day of June, 2015.

  
W. Alan Schroeder  
Counsel for Appellants

  
Nancy S. Zahedi  
Counsel for Respondent

## SETTLEMENT AGREEMENT

This Agreement is entered into by and between the U.S. Department of the Interior, Bureau of Land Management (“BLM”) and Badger Ranch, Chiara Ranch, Dan and Eddyann Filippini (“Filippini”).

### PREAMBLE

1. Whereas, Filippini holds a grazing permit for the North Buffalo and Copper Canyon Allotments, which include a significant amount of unfenced, intermingled private land within the allotment boundaries;
2. Whereas, on May 23, 2013, BLM issued a decision temporarily closing the North Buffalo and Copper Canyon Allotments to grazing, due to drought conditions;
3. Whereas, Filippini filed an appeal from the May 23, 2013, Decision, which was docketed as NV-06-13-01;
4. Whereas, on November 23, 2013, the Hearings Division in the Department of the Interior’s Office of Hearings and Appeals upheld the BLM’s Decision;
5. Whereas, on December 27, 2013, Filippini filed a Notice of Appeal to the Interior Board of Land Appeals, which was docketed as IBLA 2014-66;
6. Whereas, the parties have fully briefed the pending appeal and are awaiting a ruling from the Interior Board of Land Appeals;
7. Whereas, the North Buffalo and Copper Canyon Allotments, also known as the Battle Mountain Complex (“BMC”), have been rested for two growing seasons and have experienced some recovery, including late spring rains in May 2015;
8. Whereas, Filippini is committed to ensuring that any grazing of the North Buffalo and Copper Canyon Allotments is consistent with drought conditions and resource objectives, and to resolving unauthorized grazing use on the North Buffalo Allotment; and
9. Whereas, the Parties desire to enter into this agreement to resolve the pending IBLA appeal.

### NOW THEREFORE:

### AGREEMENT

The parties hereby agree to a modification of the BLM’s May 23, 2013, Decision consistent with the following terms and conditions:

10. Filippini shall make settlement of the unauthorized grazing use that occurred on the North Buffalo Allotment between June 2, 2015 and the effective date of this Agreement, consistent with BLM’s regulations at 43 C.F.R. § 4150.3(b), as a pre-condition to BLM authorizing Filippini to graze the North Buffalo and Copper Canyon Allotments under the terms of this Agreement, consistent with regulatory provisions at 43 C.F.R. § 4150.3(e).
11. Based on Filippini’s accurate reporting of the number and dates of livestock turn out in the North Buffalo Allotment between June 2, 2015 and the effective date of this Agreement, BLM shall waive any administrative expenses for investigating and resolving the unauthorized

grazing. Settlement of the unauthorized grazing shall be limited to the value of forage consumed by the unauthorized livestock on public lands (taking into account private land acreage) for a willful violation. Filippini is authorized under its Badger Ranch Grazing Permit for 153 AUMs (6% of the authorized AUMs) and under its Badger Ranch Exchange of Use authorizations at 2,259 (953 + 1306) AUMs (94% of the authorized AUMs) for the North Buffalo Allotment.

12. Upon settlement of Filippini's unauthorized grazing of the North Buffalo Allotment, the May 23, 2013, Decision shall be replaced, superseded, and modified as follows:
  - a. The North Buffalo and Copper Canyon Allotments shall be re-opened to grazing use as of the effective date of this Agreement;
  - b. Filippini shall promptly remove livestock within 5-7 days of grazing use reaching an average 4 inch stubble height on key riparian herbaceous species in established use areas represented by the Designated Monitoring Areas ("DMAs"), or upon reaching 30% utilization of key herbaceous species on uplands at Key Monitoring Areas ("KMAs"). The DMAs and KMAs will be reviewed jointly by BLM and Filippini. The duty to remove means that Filippini will move the livestock to another portion of the BMC where stubble height and/or utilization have not been met, or remove livestock from the BMC to prevent drift back into areas where utilization levels have been met or exceeded.
  - c. If the coordination between the BLM and Filippini is not successful in reaching agreement on the DMAs and KMAs, the USDOJ – National Riparian Service Team ("NRST") will meet and confer with the parties to make a recommendation before the BLM establishes the DMAs and KMAs. After receipt and consideration of NRST's recommendation, BLM will report the establishment of the DMAs and KMAs in a memo and provide a copy to Filippini.
  - d. If the NRST needs to be involved per paragraph 12.c., BLM and Filippini agree to meet and confer with the NRST within 30-days to coordinate with NRST its recommendations as to the DMAs and KMAs to be used.
13. If monitoring at the end of the season shows that either the 4" riparian stubble height or if a 40% upland utilization level has been exceeded, then in the following grazing year, Filippini shall defer livestock grazing on the portion of the allotment(s) associated with the specific DMA(s) or KMA(s) that did not meet the stubble height or utilization objective until October 1. It is acknowledged that the allotments are unfenced. Filippini will make a good faith effort to keep livestock away from these specific DMA(s) and KMA(s) until October 1. If Filippini is unable to keep livestock out of the specific DMA(s) and KMA(s) where utilization levels were exceeded, i.e., because of continued drift of livestock over a minimum of a two week period, then Filippini shall remove all livestock from the BMC until October 1, and if the 4" riparian stubble height or 40% upland utilization has again been exceeded in any DMAs or KMAs at the end of that season, then no livestock will be turned out in the BMC the following grazing year before October 1.
14. The utilization levels in paragraph 12.b. will remain in effect until the date the BLM determines that the drought in the BMC has ended (which shall be reviewed annually at the end of May), or the date a permit renewal decision is issued for the North Buffalo and Copper Canyon Allotments, whichever occurs first, at which time this Settlement Agreement will expire.

15. The parties agree that this Settlement Agreement may be signed in counterparts, which together shall constitute one and the same agreement. The parties further agree that facsimile signature will be sufficient for valid execution of the agreement.
16. Upon signature, the parties shall immediately file a Joint Motion Stipulating to the Dismissal of IBLA appeal 2014-66 and attaching the signed Agreement;
17. This Agreement shall become effective upon signature by the parties listed below and the Interior Board of Land Appeals' dismissal of the pending appeal (IBLA 2014-66).

 , FOR

Jon Sherve  
Acting Field Manager  
Mount Lewis Field Office, Battle Mountain District, Nevada

6-05-2015  
Date

15. The parties agree that this Settlement Agreement may be signed in counterparts, which together shall constitute one and the same agreement. The parties further agree that facsimile signatures will be sufficient for valid execution of the agreement.
16. Upon signature, the parties shall immediately file a Joint Motion Stipulating to the Dismissal of IGLA appeal 2014-66 and attaching the signed Agreement.
17. This Agreement shall become effective upon signature by the parties listed below and the Interior Board of Land Appeals' dismissal of the pending appeal (IBLA 2014-66).

*Eduardo U. Salazar June 5, 2015*  
Eduardo U. Salazar  
Director of Eddyam U. Lopez  
Badger Ranch, Churn Ranch

1 CERTIFICATE OF SERVICE

2  
3 RE: Badger Ranch, Chiara Ranch, and Daniel E. & Eddyann U. Filippi v.  
4 Bureau of Land Management; IBLA 2014-66

5 I, the undersigned, declare that:

6 I am a citizen of the United States, over the age of eighteen, and not a part of this  
7 litigation. On June 5, 2015, I served the

8 **"JOINT MOTION TO DISMISS APPEAL"**

9 by placing a true copy enclosed in a sealed envelope via Federal Express Standard Overnight  
10 Delivery mail and transmitted electronically (e-mail) at Sacramento, California, addressed as  
11 follows:

12 U.S. Department of the Interior  
13 Office of Hearings & Appeals  
14 Interior Board of Land Appeals  
15 801 N. Quincy Street, MS-300-QC  
16 Arlington, Virginia 22203  
17 Email: [ibla@oha.doi.gov](mailto:ibla@oha.doi.gov)  
18 Phone: 703-235-3750

19 by placing a true copy enclosed in a sealed envelope via U.S. Postal Service certified mail at  
20 Sacramento, California, addressed as follows:

21 W. Alan Schroeder  
22 Schroeder & Lezamiz Law Offices; LLP  
23 447 West Myrtle Street  
24 P.O. Box 267  
25 Boise, ID 83701-0267

26 I certify under penalty of perjury that the foregoing is true and correct. Executed on the  
27 5th day of June 2014, at Sacramento, California.

28 

James Hines  
Administrative Assistant