

GALLAGHER, ARCHAMBEAULT & KNIERIM

PROFESSIONAL CORPORATION - ATTORNEYS AT LAW

FRANCIS GALLAGHER
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605 3RD AVENUE SOUTH - BOX 512
GLASGOW, MONTANA 59230
(406) 228-9331

October 6, 1980

Mr. C. Delos Putz, Jr.
Attorney at Law
1525 Cole Street
San Francisco, CA 94117

Re: EIS

Dear Delos:

At the last Board of Directors meeting with the game range directors, I was informed that the individuals who did the original range site condition survey for Fish and Wildlife Service were dissatisfied. Basically, they were unhappy with how Fish and Wildlife Service had used their work product in preparing the EIS.

As I understand it, the U. S. Fish and Wildlife Service did not have anyone with the expertise to prepare an on the ground range site and condition survey. Therefore, Fish and Wildlife Service did the work on private contract. The individuals who contracted for the work were:

Robert L. Ross
306 E Storey
Bozeman, MT 59715

Claude Dillon
Spokane, Washington

Phillip E. Vancleave
Miles City, MT 59301

Hugh Cosby
9714 Forester Drive
Sun City, Arizona 85351

These men are retired government employees. Vancleave, Dillon, and Ross are retired SCS (Soil Conservation Service) employees. Hugh Cosby was the head range conservationist for the U.S. Fish and Wildlife Service for six years prior to his retirement. Cosby has extensive experience in range management work for the Fish and Wildlife Service and was familiar with the SCS system.

Mr. C. Delos Putz, Jr.

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Also, I understand that the only agency with any expertise in range management and evaluation of forage for cattle and other needs was the Soil Conservation Service. The SCS over a number of years has developed a system for range site evaluation and this system is the only system in existence for evaluating range.

I talked with Robert L. Ross on September 27, 1980, on the telephone. Ross informs me that they did, on private contract, a soil and range survey under the SCS system for the U. S. Fish and Wildlife Service on CMR from June of 1978 to October of 1978. All four men worked together and primarily, Ross, Vancleave, and Cosby did the work. Dillon has an agronomy background and basically acted as the camp cook. These men actually went out on the refuge and worked day by day in the field from allotment to allotment. They used the aerial maps and made surveys of the land, shaded the maps and marked on them according to what they found. All of the different soil types, terrain, and forage were noted and classified under the SCS system. In talking with Ross, I sense he has a fair amount of pride in the SCS system and feels that it is time proven and reasonably objective. He mentioned to me at one point that he thought the good name of the Soil Conservation Service was being bandied about in support of an unscientific scheme on the part of the Fish and Wildlife Service to simply cut cattle grazing. In fact, he said that he would testify that he was told prior to starting the survey that Fish and Wildlife Service intended to make a forty percent cut in grazing. So much for agency objectivity in these matters.

Mr. Ross said that he had received a copy of the EIS and had looked through it but had not studied it in any real detail. He promises that he will do so in the next couple of weeks and try to formulate some ideas in writing. However, he did make the following points with reference to the EIS:

1. In reviewing appendix 9, you will note that there is an allotment by allotment break down of the range condition by percentage in the categories of poor, fair, good, or excellent. Looking at the first allotment, Mitchell, it indicates the allotment is 10,065 acres in size, one percent of the allotment is in poor condition, that two percent of the allotment is in fair condition, and ninety-seven percent is in good condition, and none of the allotment is in excellent condition. Ross felt that overall about eightyfive percent of the CMR range is in good to excellent condition. The basic contention of U. S. Fish and Wildlife is that the wildlife habitat and the grazing has been damaged by grazing pressure. Ross

disputes this in that anytime there is this high of a percentage of native range in good to excellent condition, it is clear that it has not been damaged by grazing pressure or it wouldn't be in that high of condition. As to those areas marked poor and fair, Ross states that a close check will show nearly all of it is in prairie dog towns. Of course, U. S. Fish and Wildlife Service policy is encouragement, or at least non-interference, of the prairie dog towns. This is related to the black-footed ferret, in that if they protect the prairie dogs they hope that they will bring back the black-footed ferret. Ross told me this was like creating a swamp over the whole world so we might bring back the dinosaurs.

2. When Ross and the others completed their final report, they made a statement in the report that since such a very high percentage of the refuge was in good to excellent range condition, the team felt there was no need of any livestock cuts to be made on the refuge. In short, they argued that the status quo was probably the best way of leaving the range in good condition. From that point on, they have been fairly much ignored by U. S. Fish and Wildlife Service. Ross understands that U. S. Fish and Wildlife Service is still using the report but they refuse to follow any recommendations on the part of the study team with regard to stocking levels.

3. Prior to commencing the survey, they were told that the Fish and Wildlife Service intended to make a forty percent cut in livestock numbers. I believe I elaborated on this above.

4. The U. S. Fish and Wildlife Service in making stocking rates, ignored the SCS guidelines and standards. First of all, the Fish and Wildlife Service has taken the rough lands, i.e. badlands and thin breaks and disqualified them entirely as properties suitable for livestock grazing. In the SCS method, standards and guidelines adjust the stocking rate to fit these fragile areas but they do not eliminate grazing absolutely. Thus, the stocking rate system that was built into the SCS specs was not following in the making the Fish and Wildlife cuts in grazing.

5. I can't be sure whether this point has been made by Jerry Coldwell or by Bob Ross. At any rate, Ross says he has talked to Coldwell about this and Ross did attribute most of this to Jerry Coldwell. Apparently, one of the rules of thumb in range management is graze half and

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leave half of the forage each year. Thus, in a grazing unit about half of the primary or management type plants are consumed and the remaining half left for the future. The SCS standards and specs adopt this practice in the recommended stocking rates. However, the Fish and Wildlife Service used the SCS standards and set a stocking rate and then again cut them in half, with a take half and leave half figure. In short, they halved the half and reduced grazing by more than is necessary.

6. The net result of these practices is that Ross feels there will be under-utilized range and stalemated forage. In short, grass will simply grow up and stagnate with no particular benefit to either wildlife or to the cattle users. While I did not discuss this with Ross, it seems to me this is another argument with reference to the executive order which requires "remaining forage" to be allocated to livestock.

7. Ross feels that the EIS generally does not discuss or acknowledge that livestock grazing can be complementary to wildlife animals. The fact that livestock grazing can complement wildlife is readily seen. As Ross indicated, they always saw more game animals off the CMR on private lands than they ever did on CMR itself.

As I stated, Ross is busy formulating some of this in written form. I think it could be quite effective in that it calls into question the basis of the entire grazing cuts. I am copying this letter to Chuck Hitch, as I know he is interested in some of the same information.

My basic question is at what point does an administrative agency so contrive the situation or "cook the books" to justify their proposed actions that it becomes an abuse of discretion? It seems to me that the cattleman has been set up on this entire situation.

I also intend to write to Hugh Cosby for his comments as well as Vancleave. I was told to avoid Claude Dillon since he did not participate in a lot of the range surveys and his background is such that he does not have any real expertise in the area. As I indicated above, he was the camp cook.

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October 6, 1980

I think we should develop this andget it in written form to be submitted during the comment period.

Sincerely,

MW Knierim
MATTHEW W. KNIERIM

MWK/cb

cc: Jerry Coldwell
Chuck Hitch

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October 15, 1980

Mr. C. Delos Putz, Jr.
Attorney at Law
1525 Cole Street
San Francisco, Ca 94117

Dear Delos:

Enclosed are the federal response to our request for documents and the admissions and interrogatories. Also enclosed is a letter from Chuck Hitch with his letter of June 2, 1980, to Marlenee. I also forwarded copies of the interrogs on to Chuck Hitch.

Sincerely,



MATTHEW W. KNIERIM

MWK/cb

Enclosure

MONTANA PUBLIC LANDS COUNCIL

Old West Rangeland Monitoring Project

2819 2nd Avenue N. - 306 Fratt Bldg.

Billings, Montana 59101

(406) 248-3030

June 2 1980

Matt,

Here is a copy of the letter I
wrote to Wendell on the CWR
stocking note. Jerry requested I do so
after he talked to the Congressman in
Washington

Chuck Hotal

MONTANA PUBLIC LANDS COUNCIL

Old West Rangeland Monitoring Project

2819 2nd Avenue N. - 306 Fratt Bldg.

Billings, Montana 59101

(406) 248-3030

June 2, 1980

The Honorable Ron Marlenee
House of Representatives
128 Cannon Building
Washington, D. C. 20515

Dear Ron:

A call from Jerry Coldwell requested I send you some information on the methods used to arrive at stocking rates, especially as they relate to the CMR Game Refuge.

Early attempts to limit grazing in this area were based on commensurate property. It was tying summer grazing to what you could winter on that property. It was a real effort to limit transient and stray stock. From reports these were very plentiful in the 30's and even into the 50's in some areas. The State Grazing Districts played an important part in that battle. Their records show a reduction of about 15% in licensed livestock from the mid 30's to the 50's. This does not count the unlicensed transient and stray stock.

The first real general effort to establish carrying capacity for this area occurred in the early 50's with the Missouri River Basin Rangeland Inventory (MRB). It was done by the BLM. This survey is still used and was the basis of the Missouri Breaks EIS. Although it was like most surveys with a few weak spots, it has proved a rather sound base of grazing operation for over 25 years.

After this survey was run there was a very definite effort on the Fort Peck Game Range, now CMR, to recognize the special designation of the area. A team of Jack Darham, range conservationist, and Charles Rouse, biologist, went over the entire area to adjust carrying capacity to minimize wildlife - livestock conflicts. It was carefully done on a section by section and each range type coverage. The CMR people admit that about 38% of the AUMs were removed from livestock grazing for wildlife benefit. Figures I have on the Indian Butte Grazing District, Northeastern Fergus County, show very close to 50% of the AUMs from Federal land were set aside. There was no additional set aside on State School land, private land, or LU lands. The LU lands were exempted because they were purchased for a specific purpose, stabilization of grazing. That limitation, I understand, is not in the law now.

You will note I stated "additional set aside". All range surveys that are worth anything recognize four things in setting livestock capacity:

1. A plant must have a chance to grow or it will not live.
2. The plants, with live and dead material, are the means to protect the soil and prevent erosion. Perennial plants are more effective than annuals.
3. We live in an area of climatic hazard and extremes where you need a cushion to maintain a stable operation.
4. There must be recognition the cows are not the only consumer. There are others that depend on the plants for food. They vary from very small microscopic life through songbirds, rodents, game birds and larger game animals. Many are out there all twelve months of the year. This is where the old range adage of "take half and leave half" comes together with modern range science. Actually, it varies with many things. The BIM, in preliminary work on the Missouri Breaks EIS, did some work that showed in the Breaks area it was more nearly take 30% and leave 70% in this rough area.

Thus there is a wildlife allowance in the original carrying capacity. With the set aside by Darham and Rouse it is not difficult to see why the entire range is in 85% good and excellent range condition. It is short of water and light of use. The big exception is the prairie dog towns as the range survey team noted all the poor condition and some of the fair is associated with these rodents.

The survey team mentioned above has resurveyed the entire game refuge since the F & WS assumed grazing responsibility. They have noted they see no need to adjust livestock or game numbers. They were four men who have over 150 years experience in the range field, and three knew the area well. They did not set the carrying capacities that are now in question. They set only range site and condition. The F & WS took over and set the AUMs. They claim to have used the SCS figures. Those figures are set by range site and recognize lack of production of certain soils and rough topography that are a part of some sites.

From this figure the F & WS has now come up with another factor. Based on some observations by wildlife people, they have devised a very scientific sounding formula correlating distance from water and slope into another deduction as "unsuitable for livestock."

This is the principle factor discussed on Mitch Etchart's Timber Creek area. It has real serious trouble as it does not recognize that there is difference in cows.

1. Younger animals climb and travel much better than older animals.
2. Season of use is very important as all animals travel much better in cool season as compared to mid-summer. Winter snow is often adequate for water.
3. Livestock that are used to rough country take slope and distance in stride as compared to ones not raised in the hills.

Ron Marlenee
June 2, 1980
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People in the area also point out the CMR people have been very active in stopping the development of water in the area for a long time. Since they have been in charge of grazing they claim there is no money to develop livestock water - and they refuse to let the livestock people do the job.

As Mitch put it when on the tour, "All the years my cows have wintered in Timber Creek they didn't know it was unsuitable."

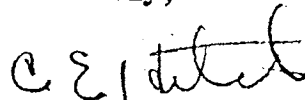
One thing I note in this idea is that the rough topography was an item in the SCS figures for carrying capacity. Here it is again an item which makes for double deduct.

Then the F & WS add another deduct for wildlife "critical area." Rouse and Darham point out in their report that many game animals prefer the rough areas and that this preference produced an area of very limited conflict. This is not new and is fairly well recognized especially for mule deer. They stay in rougher areas much of the time. Since these slopes have been taken out twice already there is room to wonder if this isn't a third time.

There is another item some operators mentioned that affects the present carrying capacity. When they were under BLM grazing plan some had a flexibility factor that allowed more grazing in good years. The F & WS does not recognize or allow this flexibility. For those operators this is another cut in grazing.

This is a rather quick rundown on the history of carrying capacity for the Missouri area. I hope it covers what Jerry wanted. If not, either of you can ask again.

Sincerely,



C. E. Hitch
Team Leader

CEH:da

cc: Jerry Coldwell
John Melcher

October 20 1980 — Use Oct 24 as start of service

11:45 A Telephone conversation with Delos Putz.

I gave him an estimate of 4 or 5 days for reorganizing The CMR FIS so proposed actions and consequences are clearly understood.

He will notify Mathew Knierim, lawyer, Glasgow. on The ground legal representative of The Fort Peck Grazing Association who is taking court action against reductions in livestock grazing on CMR

Will notify me tomorrow if obligation oked by Knierim. (Oked October 24 but I started working on Draft on October 8/80)
Had 17 copies Xeroxed

Will send me correspondence by Chuck Hitch and Fred Ross relat. to the CMR problem

Economist needed to inquire into The economic analysis in The CMR FIS.
Wayne Cook

AUGUST L. HORMAY
RANGE MANAGEMENT CONSULTANT

101 ACADIA STREET • SAN FRANCISCO, CALIFORNIA 94131

October 22, 1980

Michael Frisina
Game Biologist
Montana Department of Fish,
Wildlife and Parks
1330 West Gold
Butte, Montana 59701

Dear Mike:

Enclosed are suggestions for an attachment to the Mt. Haggin grazing lease covering management of grazing. Specific grazing plans for the 1981 season will be worked up and discussed with the lessee well before the start of the season.

Grazing capacity figures for Mt. Haggin indicate that the location of the proposed fence south of Sugarloaf Mountain on the west side of the large area to be excluded from grazing should fall close to the position of the heavy dashed red line shown on the enclosed work map. It would be difficult to set up 3 balanced pastures if the fence were located much west of this line.

I have roughed out the approximate position and orientation of 3 pastures on the work map. Pasture 1 had to be extended across the highway.

As drawn on the map the pastures are unbalanced in grazing capacity.

Pasture 1	2302	AUMs
Pasture 2	2173	"
Pasture 3	2450	"
	<hr/>	
Total	6925	"
Ave	2308	"

Two thousand AUMs are needed in a pasture. The capacities can be balanced by shifting the location of fences. Exact locations should be settled before the termination of the present lease. Further experience with grazing in existing pastures will be helpful in deciding on final locations.

The estimated capacity of the large area to be excluded from grazing is 1089 AUMs. That of the Mt. Haggin Area as a whole is 8014 AUMs. The figure I gave you over the phone on September 4 for the Mt. Haggin Area was 7882 AUMs. Fairly close agreement. The latter figure is based on type acreages I estimated from the rough type map you gave me in 1976.

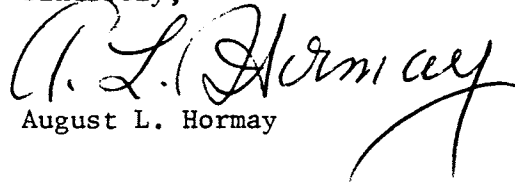
Michael Frisina
October 22, 1980

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The latest capacity figures have not been checked against actual animal use and forage utilization so stand as approximations. However, I feel they are conservative and that the range has the capacities indicated.

Sometime in the next few weeks I will send you copies of the type map data sheets you sent me together with material I worked up from them, so you can go ahead with further summarizations. I will discuss this matter with you after you receive the material.

Sincerely,



August L. Hormay

Enclosures

cc: Joseph L. Egan
Arnold Foss

Plan

A. L. Hormay

October 22, 1980

Suggestions for an attachment to the Mt. Haggin grazing lease

Grazing plan

Mt. Haggin Area

This plan will be administered by the Game Biologist in field charge of management of the Mt. Haggin Area. He is called area manager in this plan.

Grazing area:

The Mt. Haggin Area is about 55,000 acres in size. Less than half of this, about 26,000 acres will be grazed by livestock. The remainder will be fenced against grazing in several parcels to protect and maintain certain wildlife, historic, recreational and other values.

Two of these parcels have been located to date. They are a large area of about 29,000 acres shown as area (1) in figure 1, attached, and a smaller area of about 50 acres around Mule Camp. The others will be located as the Mt. Haggin Area ~~continue~~ *management plan for the* ¹ *is firmed up.*

The southern two-thirds or so of the west boundary of closed area (1) is not fenced. The approximate location of the fence to be built here is shown by the heavy dashed line extending southwestward from near Sugarloaf Mountain to the south boundary of the Mt. Haggin Area.

Most of the area designated (2) in figure 1 will be open to grazing. It is about 26,000 acres in size and has capacity for 1000 animal units (AUs) for 4 months--4000 AUMs.

Grazing system

A 3-pasture rest-rotation grazing system, described later, will be used on the area.

Kind of livestock

Grazing will be by cattle.

Season of grazing

The grazing season will be 4 months long. The beginning of the season will be identified by plant growth stage not calendar date. The range is ready for use when buttercup and other early growing yellow-flower plants in the meadows around Home Camp are in full bloom. This occurs about the first week in June.

The grazing season will run for 4 months after this date but not later than 7 days before the beginning of the big game gun hunting season.

The area manager will notify the lessee in writing of the start of the grazing season two weeks or more in advance of the date.

Stocking

The range will be stocked with no more than 1000 AUs a season. AU ratings for classes and kinds of animals are:

Cow (wet)	1.00
Calf (unweaned)	0.25
Cow (dry)	0.90
Steer (2 yrs +)	0.90
Yearlings to 2 years	0.75
Bull	1.25
Horse	1.25

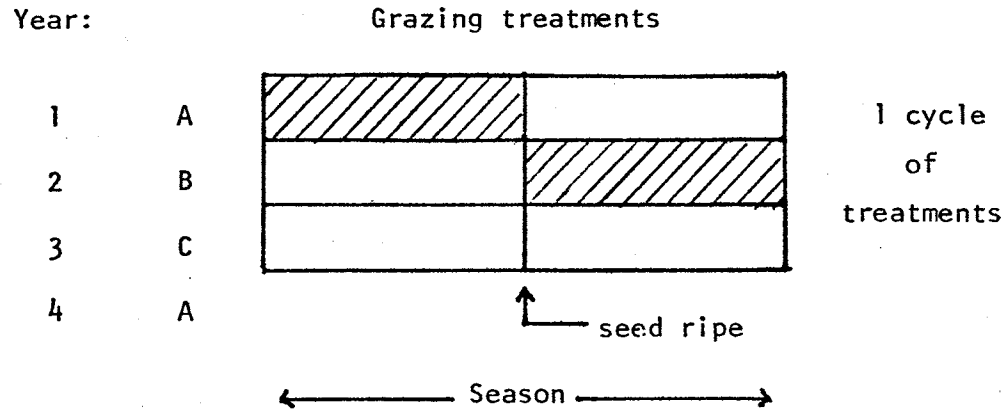
The total grazing use in any season shall not exceed 4000 AUMs, but may be less.

The lessee will keep track of the number of animals by classes and kinds grazed on the range during the season. The area manager will furnish a form for recording the information. A record will be made of each move of livestock on or off the range. The record will be mailed to the office shown on the form.

Grazing system

A 3-pasture rest-rotation grazing system will be used. Two pastures will be grazed and one rested from use each year.

Each pasture will be grazed and rest^{ed} from one year to the next according to the formula diagrammed below



The first year, a particular pasture is grazed from the beginning of the season until the seed of the forage plants is ripe. Then it is rested from use for the remainder of the season. The next year it is rested from use until seed ripe time and grazed thereafter to the end of the season. The third year the pasture is rested the entire season. The fourth year the cycle of three treatments is started over again and repeated indefinitely.

The grazing treatments are applied in the 3 pastures over time according to the following schedule. Each treatment is applied in a particular pasture each year.

Year	Pasture		
	1	2	3
	Grazing Treatments		
1	A	B	C
2	B	C	A
3	C	A	B
4	A	B	C

In this illustration all the cattle to be grazed on the range in year 1 would be put in pasture 1 and grazed there until seed ripe time (treatment A). They would then be moved into pasture 2 and grazed there to the end of the season (treatment B). Pasture 3 would be rested season long (treatment C). A different pasture is grazed first (treatment A) each year.

In years of limited growth causing the lessee unusual economic hardship rested fields could be opened to use with the approval of the area manager.

The area manager will furnish the lessee with a map, before the beginning of each grazing season, showing how the pastures are to be grazed. He will inform the lessee in writing of seed ripe date at least two weeks in advance of the date.

The lessee will be responsible for

1. Moving cattle on and off the range and between pastures. The latter should be accomplished as quickly as practical and in not more than seven days.
2. Rounding up strays in rested pastures and returning them to the pasture they belong as quickly as possible.
3. Reporting any breakdown of facilities that prevent proper application of this grazing system.

*See
1981 map*

Salting

Salt grounds will be established jointly by the area manager and the lessee.

Where possible salt grounds will be located at least 200 yards away from water and travelled roads. They will be placed on unproductive, erosion resistant soil sites on flat ground or gentle slopes.

Each salt ground should have several widely spaced licking stations.

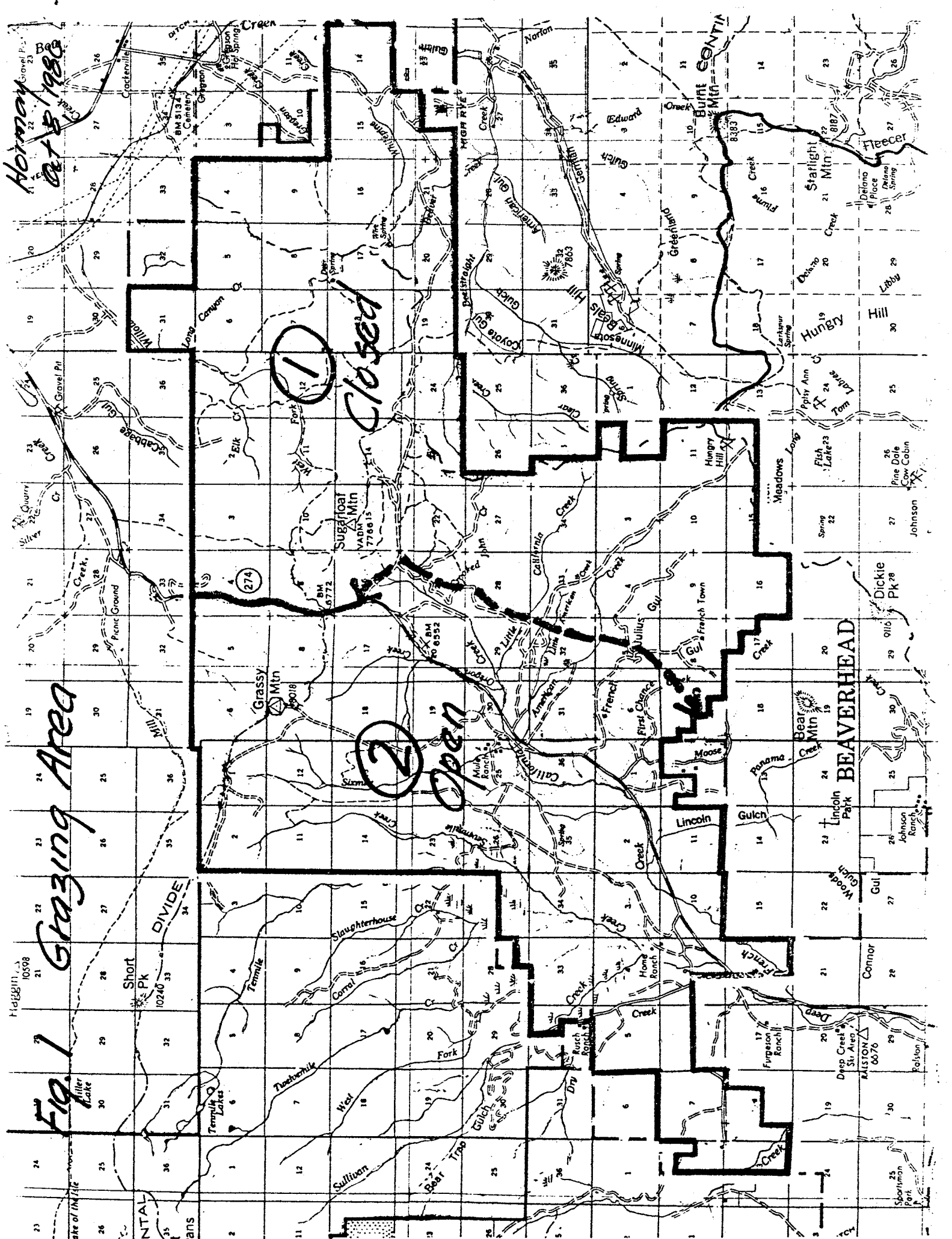
Salt should be distributed in pastures before grazing is started.

The salt grounds will be moved if only a short distance every three years.

Other subjects here or in main body of lease

Construction and maintenance of facilities

Grazing fee payments



Normal Grovel Pt.
Oct 18 1988

Fig. 1
Grazing Area

1
Closed

2
Open

BEAVERHEAD

Fig. 1
Grazing Area