

Battle Mountain
Roberts Mtn. JMH 12/15/94

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT
Battle Mountain District
P.O. Box 1420
Battle Mountain, Nevada 89820

In Reply refer to:
1020/N6-95-7,8
(NV-060)

DEC 15 1994

Memorandum

To: State Director (NV-931)

From: District Manager, Battle Mountain

Subject: Report of Appeal No. N6-95-8 (Livestock) and N6-95-7 (Wild Horses) - (Wild Horse Organized Assistance) Roberts Mountain Allotment.

I. CHRONOLOGICAL NARRATIVE

On October 16, 1989 a letter was sent out to all interested parties for the Roberts Mountain and Three Bars Allotments announcing the Shoshone-Eureka Resource Area was now in the process of evaluating the monitoring data and asked the interested parties to offer information about the allotments which may assist in the evaluation (Ref. 3). On October 12, 1990 a letter was sent out stating the allotment evaluation schedule has changed and Roberts Mountain and Three Bars should be completed in 1991. In June of 1991 Wild Horse Organized Assistance (WHOA) and other interested parties were sent the draft evaluation for the Roberts Mountain Allotment (Ref. 8). The purpose of this evaluation was to identify existing/continuing problems and issues concerning grazing management in the Roberts Mountain Allotment, and to provide recommendations for resolving those problems. The evaluation assessed progress in meeting the Land Use Plan objectives established by the Record of Decision for the Shoshone-Eureka Environmental Impact Statement and Resource Management Plan (RMP) issued November 6, 1987. The Rangeland Program Summary (RPS) issued in December, 1988 further specified objectives for the Roberts Mountain Allotment.

Written comments on the evaluation were received from the Nevada Division of Wildlife, Nevada Commission for the Preservation of Wild Horses, Eureka Livestock, U.S. Fish and Wildlife Service, Resource Concepts Incorporated, Jim Linebaugh, and the Sierra Club. WHOA failed to submit comments.

A public meeting (Ref. 3) was held at 9:00 AM on July 16, 1991 to discuss the evaluation and listen to any additional proposals or concerns. WHOA did not attend. Due to the concerns raised in the public meeting a field tour was decided to be necessary and was held on August 27, 1991.

WHOA did not attend the field tour either (Ref. 3). In July of 1992 a letter was sent addressing the continuing of the evaluation process.

On July 8, 1994, the Shoshone-Eureka Area Manager completed the Management Action Selection Report (Ref. 6) and Final Evaluation (Ref. 7). The Management Action Selection Report accepted the recommendation of the Robert Mountain Allotment Evaluation to reduce active cattle grazing use in the allotment to 9624 AUMs and actual wild horse use to 1106 AUMs in the Roberts Mountain portion of the Roberts Mountain Herd Management Area. The Management Action Selection Report (MASR) also selected both cattle and sheep follow a rest - rotation system, periodical monitoring to insure RPS utilization objectives are not exceeded, restrict livestock use on Pete Hanson Creek above the falls, and implement range improvements.

A proposed decision (Ref. 5) detailing the method to implement the action recommended was issued by the Shoshone-Eureka Area Manager on July 15, 1994. The Proposed decision was received on July 19, 1994 by Bert Lappin as evidenced on the proof of service (Ref. 3). Protest and comment letters on the proposed multiple use decision were received from Commission for the Preservation of Wild Horses, Stewart Wilson representing Eureka Livestock, Eureka County Commissioners, Trout Unlimited, and U.S. Fish and Wildlife Service, but WHOA did not comment or submit a protest (Ref. 4).

A meeting addressing the protest to the proposed multiple use decision was requested by Stewart Wilson representing Eureka Livestock on August 31, 1994. WHOA was informed of the meeting on August 25, 1994 at 9:34 AM by message (Ref. 3). They did not in attend.

II. AREA MANAGER'S FINAL MULTIPLE USE DECISION

The Final Multiple Use Decision was issued by the Shoshone-Eureka Area Manager on October, 20 1994 (Ref. 2). The final decision was received by Bert Lappin on November 7, 1994 as evidenced by the proof of service (Ref. 3). The comments and protests received pertaining to the proposed multiple use decision were carefully considered for incorporation into the final multiple use decision. As a result of these comments and protests, changes were made to the final multiple use decision.

This action was in accordance with the following provisions contained in Title 43 Code of Federal Regulations:

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)."

4100.3: "The authorized officer shall periodically review the grazing preference specified in a 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."

4110.3-2 (b): "When monitoring shows active use is causing an unacceptable level or pattern of utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives."

4110.3-2 (c): "Where active use is reduced it shall be held in suspension or in nonuse for conservation/protection purposes, until the authorized officer determines that active use may resume."

4110.3-3(b): "After consultation, coordination and cooperation, suspensions of preference shall be implemented through a documented agreement or by decision. If data acceptable to the authorized officer are available, an initial reduction shall be taken on the effective date of the agreement or decision and the balance taken in the third and fifth years following that effective date, except as provided in paragraph (a) of this section. If data acceptable to the authorized officer to support an initial reduction are not available, additional data will be collected through monitoring. Adjustments based on the additional data shall be implemented by agreement or decision that will initiate the 5-year implementation period."

4110.3-3(c): "When the authorized officer determines that the soil, vegetation, or other resources on the public lands requires temporary protection because of conditions such as drought, fire, flood, or insect infestation, after consultation with affected permittees or lessees and other affected interests, action shall be taken to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use. Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions which are placed in full force and effect under 4160.3(c) of this title."

4120.3-1(c): "The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under 4130.6-2 of this title."

4130.6: "Livestock grazing permits and leases shall contain terms and conditions necessary to achieve the management

objectives for the public land 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 4110.3, 4110.3-1 and 4110.3-2."

4130.6-2: "The authorized officer may specify in grazing permits and 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..."

4160.3(c): "A period of 30 days after receipt of the final decision is provided for filing an appeal. Decisions that are appealed shall be suspended pending final action except as otherwise provided in this section. Except where grazing use the preceding year was authorized on a temporary basis under 4110.3-1 (a) of this title, an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal. 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."

4700.0-6 (a): "Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the production capacity of their habitat."

4700.0-6 (d): "In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands."

4710.1: "Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans prepared pursuant to part 1600 of this title."

4710.3-1 "Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in 4710.4. The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas."

III. APPEAL AND BLM RESPONSES TO ALLEGATIONS THEREIN

The Wild Horse Organized Assistance Appeal of the Livestock Grazing Management Decision (Ref. 1) and the Wild Horse Management Decision (Ref. 1) of the Final Multiple Use Decision for the Roberts Mountain Allotment was received November 21, 1994 at the Battle Mountain District Office. The appeal addressed two concerns which will be addressed in the order they were presented in the appeal.

I. Carrying capacities that allocate forage to the Roberts Mountain Herd Management Area Appropriate Management Level are flawed.

Response: 1) The Final Evaluation determined from the monitoring data that there is a carrying capacity of 11,958 AUMs on the Roberts Mountain Allotment for livestock, wildlife, and wild horses. The reduction was apportioned between livestock and wild horses because wildlife did not contribute to the over utilization in the allotment. The Bureau is required to reduce livestock AUMs from active preference per 4110.3-2 (b). The Final Decision suspended 1,598 AUMs and an additional 2,016 livestock AUMs as nonuse for conservation/protection purposes until key area objectives are met. The Bureau will continue to monitor and will adjust seasons of livestock use and numbers as well as wild horse numbers as the data indicates.

2) Regardless of stating Desired Stocking Level versus Potential Stocking Level the BLM determined from the monitoring data those calculated AUMs are available in accordance with the proposed rest - rotation system followed by both sheep and cattle, periodic monitoring to enforce utilization objectives, and range improvements for better livestock distribution. The BLM understands Technical Reference 4400-7 to infer weighted average utilization can be use to interpret proper stocking rates while also considering distribution from use pattern mapping. Due to the nature of livestock congregating in riparian and watering areas, conditions in the riparian areas will not improve without improved livestock distribution. The terms and conditions assigned to the permittee by the final decision are designed to improve livestock distribution in upland and riparian areas, additionally, continued monitoring will determine whether more management changes are needed or not.

3) CFR 4110.3-2(b) states: "When monitoring shows active use is causing an unacceptable level or pattern of utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives."

II) Failure to issue decision in full force and effect immediately is arbitrary and capricious and biased against wild horses.

Response: In the event of an appeal of the grazing management decision, the permittee's active use cannot exceed that of the previous grazing season. Therefore, livestock will be affected pending resolution of any appeals.

The Bureau issued the gather plan in full force and effect for immediate removal of wild horses outside the herd management area for the protection of riparian areas.

IV. SUMMARY

The major point of this appeal relates to the analysis and interpretation of the monitoring data for the Roberts Mountain allotment as it relates to livestock and wild horses.

V. RECOMMENDATION

This appeal should go before an Administrative Law Judge for a decision.

*Michael E. Mitchell
Acting*

MEMORANDUM

SUBJECT: Roberts Mountain/Three Bars Field Tour on 8/27/92

Attending were:

Jim Etcheverry	Permittee
Filbert Etcheverry	Permittee
Don Henderson	Resource Concepts Inc.
Jim Linebaugh	Etcheverry's Consultant
Chuck Saulisberry	Consultant
Jim Currivan	BLM
Jeff Weeks	BLM
Bob Sherwood	BLM
Duane Erickson	Nevada Department of Wildlife
Larry Gurrell	Atlas Mining
Wayne King	BLM
Mike Podbourney	NDOW
Valerie Dobrich	BLM
Larry Teske	NDOW
Floyd Thompson	BLM

The tour started at the JD turnoff at the North end of the Alpha Ranch. Introductions were made with participants explaining their interest in the allotments. Jim Etcheverry said their family has been there a long time and they want to continue to run cattle. Jim Linebaugh stated that livestock grazing is one of the multiple uses on the public lands and that there is plenty of room if everyone works together. He said it is possible to make it all work together. Don Henderson said that Resource Concepts (RCI) represents the N-6 Grazing Board. Don stated that the resolution to problems is management on the ground. He said RCI wants specific goals. Duane Erickson said the Nevada Department of Wildlife is very interested in the Roberts and Three Bars allotments and will be a major player.

Jim Etcheverry said a crested wheatgrass seeding north of the Alpha Ranch would alleviate early use problems. Jim Linebaugh said some of the soils are suitable for a seeding and some are not. Duane Erickson is not opposed to all seedings, but reviews each seeding on a case by case basis to determine if there are conflicts or not. Jim Linebaugh said the Etcheverry's want 3000 acres of seeding by Alpha to use in the spring. He said 1500 acres of seeding north of Alpha and 1500 acres by Rabbit Spring would be helpful for a pasture rotation. He also said an early spring pasture would reduce pressure on sage grouse leks in the 3 Bars allotment. Mike Podbourney said a seeding by Rabbit Spring is questionable because there are sage grouse values by Rabbit Spring. Jim Linebaugh said the soils have more potential for a successful seeding by Rabbit Spring. Jim Etcheverry said they want a seeding and they would be willing to cost share the seeding. He stated that the unsigned 3 Bars AMP had a seeding

planned and that the Alpha seeding in Roberts Mountain allotment would help the 3 Bars allotment by providing an alternate early turnout area. Jim Etcheverry said it would be easy to run a pipeline from Rabbit Spring. He pointed out the area where it burned in 1987 in the Chimney pasture and how successful the reclamation seeding was.

Don said the feral horses need to be removed in the Chimney Springs area since they are way outside the Herd Management Area (HMA). Jim Etcheverry said he would help gather these horses.

The tour moved on to the Chimney Spring area by the Alpha Ranch. Bob Sherwood commented on the encroaching pinon and juniper in the Sulphur Springs range. Bob talked about high utilization levels on the ephedra in the McCloud pasture and around the McCloud spring area. Bob said the area is a significant deer migration and winter range because of the ephedra and bitterbrush there. Don Henderson said the Etcheverry's were talking about putting in a cross fence in the McCloud pasture. Don said one pasture could be turned into early while the other one is rested. Don also stated that the heavy use in the pasture could be due to feral horse use. Jim Etcheverry said there are 30-40 feral horses in the Chimney pasture. Duane Erickson said spring use and rest would help the bitterbrush in the McCloud pasture. Duane said the quality of the range for deer increases with a diversity of species. Duane stated that the pinon/juniper (P-J) invasion in the pasture is a concern and that overgrazing and fire suppression have aided the P-J invasion. Don said the soils are the same whether in or out of P-J areas. Duane said prescribed burning opens up P-J area but burns better with an understory. He stated that a burned area needs post treatment management of rest for at least 3-4 years for shrub establishment. Don said that the Land Use Plan should address P-J encroachment. Duane said chainings can be successful but that they are very expensive.

The tour moved on to the corner of the Henderson private field. Jim Etcheverry said building a fence from the Henderson private field to the Poison pasture fence would separate the Henderson pasture from the Frazier Creek pasture. He said the fence would help riparian areas in the Henderson pasture. Jim E. said there are lots of horses on Red Rock 4-5 miles outside the HMA. Jim Linebaugh said rest won't do much in this location. Jim E. said cattle don't graze Henderson much until June. Duane said there is a disturbing lack of key grass species at this site; there are too many Poa (bluegrass) species. Jim L. said we won't see rapid improvement at this spot; rotation grazing would help this site but very slowly. Jim E. said he keeps the sheep moving when they graze through the area. Duane said there is potential at this site. He said NDOW wants the range in a high seral condition. Don and Jim L. both stated that there will be more improvement by rotation than rest. Jim E. said riders could keep

cattle moved off sensitive spots.

The tour moved on to the lower exclosure on Vinini Creek. Jim Etcheverry said he used to catch fish in Vinini Creek in the vicinity of the exclosure.

The tour then proceeded up Vinini Creek to a Habitat Management Plan exclosure. Vinini Creek has cut 8-10 feet down between the road and the exclosure. Don said a new floodplain needs to be established. Duane asked what the hell are we going to do. He said the condition of the creek is unacceptable; there is potential for a riparian area possibly with fish. Don asked what is the potential now, shouldn't this area be managed as an upland site. Duane stated that he wants to see willows and other riparian species. Don said that the creek is not at equilibrium. Duane said the creek needs to be rested to have a chance. Don suggested a grazing system with two years of rest and a release of willows. Duane said beavers wouldn't help this creek. He said Vinini Creek needs several years rest and then a grazing system. Duane said the return of grazing along the creek should be premised on a high condition rating. Duane said use is way too heavy now and the condition is unacceptable; rest is needed to reestablish riparian species. Jim Etcheverry said the area has gotten worse since the Poison pasture fence was installed. Don asked if there is an easy way to manage the creek. Jim Currihan said the BLM can't fence all of the creek. Duane said the hot season (June, July, August, 1st two weeks of September) is the most critical for riparian vegetation. Duane said there shouldn't be more than one season in four of hot season use. Don said the riparian zone ought to be used early, then 3-4" of stubble will maintain the stream. Don said the stream should be allowed to erode to a stable state. He said rest won't build back this riparian area and livestock reductions won't help. Duane stated that changing capacity won't do anything, rest is needed. Don said something else will have to be changed to improve the creek; he said short term (5 year) objectives should be realistic. Duane stated that Don's views were a long ways apart from his. Don said the area should be managed as an upland area and riparian problems should be prioritized. Don asked of the multiple uses, what is the priority for riparian values. Duane said he was disturbed by Don's comments. Duane stated that Nevada has lost fisheries in dozens and dozens of streams; he said fish aren't allowed to exist but other uses are allowed. Duane said the culprit is livestock in the majority of cases. Jim E. said that maybe Vinini Creek was a fishery at one time, but that livestock are a benefit to Eureka. Jim Linebaugh said riparian problems need to be prioritized.

The tour moved on to just above the Poison pasture fence along Vinini Creek. Jim Etcheverry said the area has improved dramatically since the Poison pasture fence was installed 20 years ago. Jim E. said the entire pasture has improved. He said they don't turn in to the pasture until August 1. Jim E. said the willows have improved in the lower part of the pasture. Jim Linebaugh commented that the erosion is not as active. Filbert said larkspur is the poison problem. Jim E. said he was hauling water to 70 head of cattle on Henderson Creek to keep them off Vinini Creek.

The tour proceeded through Summer Camp where lunch was held and on up the ridge to the west of Roberts Creek to a spot with a good view of the Atlas Satellite project. Atlas has offered to install a tank near the northernmost pit if Etcheverry's furnish a pipeline. Jim Etcheverry inquired about the process to get the temporary pipeline approved.

The tour continued up the ridge and over the top into the 3 Bars allotment and moved on down Cottonwood Canyon to a spot where rock gabions were installed on the creek. Jim Linebaugh said he disagrees with Bob Sherwood's shrub utilization readings. Jim Etcheverry said they need to have their sheep rotate through the pastures with the cattle. Duane said that is his complaint as well--when a pasture is rested, it needs total rest. Jim E. said they will go to 3 Bars with 1 less band or move the sheep faster. Jim E. also commented that the creek has improved since the installation of the gabions.

The next stop was along the lower part of Cottonwood Creek. Jim Linebaugh said this area looks real good to him. Jim Etcheverry said he wants to develop water in this part of the pasture. He said 3-Bars is in better shape than Roberts Mountain. Duane said the country shows a lot of potential; he said a management plan with sheep use anywhere is not rest. Don said sheep can be moved ^{with} cattle.

The tour moved on to the Three Bars ranch house. Don said horse censuses are fine, but use patterns are more important. Jim Etcheverry said wild horses in Kobeh Valley are okay. Jim E. asked if a fence outside the HMA along the pinõn-juniper line would be feasible. Jim E. stated that they don't graze their cattle in the Coils pasture much anyway; they do move their sheep across it though. Don Henderson said a fence is needed on the HMA boundary. Jim E. said they need something in exchange for giving up cattle use in Kobeh Valley. He also asked how the AUM reductions caused by the mine will affect the decision. Don said Eureka Livestock is losing AUMS in Coils pasture because of horses. He asked if the decision implements a livestock cut, will the mining AUM reductions be included or not. Filbert said early use in the Coils pasture is okay for sheep. He added that the country looked terrible in the 1940's. Jim Linebaugh asked why

does NDOW get special treatment. Bob Sherwood stated that NDOW feels the ranchers have received special treatment for years. Don said more meetings are needed for a plan. Jim L. said a decision to plan an AMP is needed; he said there is plenty of carrying capacity on the allotments, all that is needed are season and distribution changes. Jim L. said he agrees with NDOW that a livestock cut won't solve problems. Jim L. added that planning options shouldn't be removed. Don said there needs to be a section in the final evaluation concerning the mining history; he said Larry Nunez's AUM mining reduction figures need to be looked at again. Jim L. agreed with Don and said cuts in draft evaluation are too large and need to be mitigated by mine cut. Don said monitoring data should reflect presence of the mine. Jim E. said he was opposed to the mining cuts only for cattle. Jim E. said Larry had told him cuts would be for cattle and sheep. He said a seeding would mitigate the mining impact in the three bars allotment. Don said Etcheverry's favor an AMP, pasture rotation of sheep with the cattle in 3 Bars, more cows in the Coils pasture, sheep use in Coils, pasture fences in Roberts, a seeding, and protecting sage grouse leks. Jim L. stated there is little competition between wild horses and sheep. Don inquired again about the fence along the HMA boundary and added that the Land Use Plan can change herd boundaries. Jim L. stated the Etcheverry's are committed to staying and are willing to work with other interests but won't stand for large cuts. Jim E. said things are improving on both allotments. Jim L. declared the area is improving and can be better. Filbert said the range should be looked at in June and July--90% of the feed is gone now. Don said he doesn't like BLM's black box approach.