



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Ely District Office
HC33 Box 150
Ely, Nevada 89301-9408



IN REPLY REFER TO:

4130 (NV-047)

FEB 3 1992

30 DAYS

CERTIFIED MAIL NO P 776 533 430
Return Receipt Requested

Bertrand Paris and Sons
SR 1 Box 26
Ely, NV 89301

NOTICE OF FINAL MULTIPLE USE DECISION
FOR THE MEDICINE BUTTE ALLOTMENT (0501)

BACKGROUND INFORMATION:

The Resource Management Plan/Environmental Impact Statement and Record of Decision for the Egan Resource Area were issued in September, 1984 and February, 1987, respectively. The Egan Rangeland Program Summary was issued in May of 1988. These documents guide the management of public lands within the Medicine Butte Allotment. The Egan Resource Area Record of Decision, dated February 1987, states in part:

"Monitoring studies will be used to determine if adjustments in livestock numbers are necessary...All vegetation will be managed for those successional stages which would best meet the objective of this proposed plan..." (short term objectives). "Future adjustments in livestock use will be based on data provided through the rangeland monitoring program" (long term objective).

"Implementation [of the range management program] will take place through coordination, consultation, and cooperation. Coordinated resource management and planning is an advisory process that brings together all interests concerned with the management of resources in a given local area (landowners, land management agencies, wildlife groups, wild horse groups, and conservation organizations) and is the recommended public process through which consultation and coordination will take place. Grazing adjustments, if required, will be based upon a combination of reliable vegetation monitoring studies, consultation and coordination, and inventory."

"Range management actions for livestock use and wild horse numbers will be based upon data obtained through the monitoring program and will consider recommendations made through the coordinated resource management and planning process. Actions could include, but will not be limited to, change in seasons-of-use, change in livestock numbers, correction of livestock distribution problems, alteration of the number of wild horses, development of range improvements, and taking site-specific measures to achieve improvements in wildlife habitat."

Monitoring studies were initially established in 1983 and have been conducted periodically since that time. In accordance with Bureau policy and regulations, this data has been analyzed and evaluated in order to determine progress in meeting management objectives for the Medicine Butte Allotment. Input was received from the permittee. See Appendix I for the land use plan objectives covering livestock, wild horses, and wildlife. These objectives are in conformance with and formulated to accomplish the Egan Resource Management Plan multiple use objectives as they relate to all grazing use on the Medicine Butte Allotment.

A letter of protest was received from the Commission For The Preservation of Wild Horses concerning the setting of the appropriate management level (AML) by allotment rather than by herd area. However, BLM policy requires monitoring evaluations be conducted on an allotment basis, as this is how the monitoring data is collected, and not by herd management areas (HMAs). The AML for herd areas will be determined by totaling the AMLs for all allotments within the herd management area boundaries.

The Animal Protection Institute of America also responded to the proposed decision. However, no new pertinent information was presented to alter the final decision. API was contacted and the evaluation process explained.

Bert Paris, permittee, had a concern about the elimination of the domestic horse permit. Bert wanted to retain a portion of the permit for saddle horses needed in normal ranch operations. It was agreed that the domestic horse permit would be reduced by 50% to 180 AUMs and use would be restricted to the fenced Snow Creek Seedings, since they are totally fenced and not areas inhabited by wild horses. Any use made by domestic horses would reduce the use allocated to livestock within the three Snow Creek Seeding pastures.

A letter from Resource Concepts Inc. on behalf of the N-4 Grazing Board dated 12/11/91 was received December 13, 1991, well after the 15 day protest period. It presented no new pertinent information to require alteration of the final decision.

BASED UPON THE EVALUATION OF MONITORING DATA FOR THE MEDICINE BUTTE ALLOTMENT, RECOMMENDATIONS FROM DISTRICT STAFF, AND INPUT RECEIVED THROUGH CONSULTATION, COORDINATION, AND COOPERATION FROM THE PERMITTEE AND PUBLIC INTEREST GROUPS, THE FINAL DECISION IS AS FOLLOWS:

The analysis of monitoring data has revealed that six of the fourteen land use plan objectives for the Medicine Butte Allotment are not being met with current management practices due to existing grazing use by livestock and wild horses. This analysis also shows that the existing management of wildlife does not contribute to the failure in meeting these multiple use objectives. Therefore, this decision proposes changes in livestock and wild horse use and not in wildlife use. This decision also establishes the appropriate management level for wild horses for those portions of the Butte, Buck and Bald, and the Cherry Creek Herd Management Areas within the Medicine Butte Allotment.

LIVESTOCK MANAGEMENT DECISION

In accordance with 43 CFR 4110.3, 4110.3-2(b), and 4130.6-1(a), the existing permitted livestock active use shall be changed to 7232 AUMs, with 3557 AUMs for cattle and 3675 AUMs for sheep. 7942 AUMs will be held in suspended non-use. The preference is allocated by pasture as follows:

From (Existing permit):

Medicine Butte (0501)

Number	Kind	Period of Use	%PL	Active(AUMs)
6300	Sheep	04/23 - 08/24	100	5136
6200	Sheep	04/28 - 04/30	100	122
6200	Sheep	05/01 - 07/04	100	2650
5100	Sheep	07/05 - 08/25	100	1744
6000	Sheep	10/12 - 11/01	100	829
4900	Sheep	11/01 - 11/15	100	483
4900	Sheep	11/16 - 11/17	100	65
500	Cattle	04/16 - 09/30	100	2762
510	Cattle	11/01 - 12/31	100	1023
30	Horses	03/01 - 02/28	100	360

To:

Medicine Butte (0501)

Active Preference (AUMs)

<u>Use Area</u>	<u>Year 1</u>		<u>Year 3</u>		<u>Year 5</u>	
	<u>Cattle</u>	<u>Sheep</u>	<u>Cattle</u>	<u>Sheep</u>	<u>Cattle</u>	<u>Sheep</u>
Hunter Point	721	1037	597	859	473	681
Telegraph	0	2117	0	1723	0	1330
Pony Mt.	0	2459	0	1682	0	906
North Snow Crk.*	666	74	533	59	401	44
South Snow Crk.*	512	21	494	21	476	20
West Snow Crk.*	237	0	247	0	257	0
Butte Valley	2095	1231	1457	856	820	481
Slough	1130	0	1130	0	1130	0
Black Mt./Canyon	0	283	0	248	0	213
Total	5361	7222	4458	5448	3557	3675

* A domestic horse preference of 180 AUMs can be substituted for an equal amount of sheep and/or cattle AUMs in all the Snow Creek Seedings combined. Any use made by domestic horses would reduce the use allocated to livestock within the three Snow Creek Seeding pastures.

BLM regulations prohibit grazing under permit or lease by domestic horses and burros on all public lands inhabited by wild horses and burros. Therefore, the domestic horse permit will be eliminated on the unfenced native range and the 360 AUMs adjusted to 180 AUMs and assigned to domestic livestock use (i.e. horses, cattle and sheep). The domestic horse permit can only be used on the Snow Creek Seedings since they are fenced from the HMAs and are uninhabited by wild horses.

In accordance with 43 CFR 4130.6-2, the following terms and conditions will be included in the grazing permit for the Medicine Butte Allotment:

1. Saltblocks will be placed at least 3/4 mile from water sources to enhance proper distribution and utilization.
2. Sheep will not be trailed or bedded in winterfat bottoms.
3. Sheep camps will be placed a minimum of 1/2 mile from winterfat bottoms.
4. Full use of sheep AUMs will be dependent on water hauling and/or availability of snow.

5. Season of use in the Hunter Point Use Area is April 15 to November 15 for sheep and November 1 to February 28 for cattle.
6. Season of use in the Telegraph Use Area is April 15 to November 15 for sheep.
7. Season of use in the Pony Mountain Use Area (including Paris Seeding) is April 15 to November 15 for sheep.
8. Season of use in the Snow Creek Seedings is April 15 to November 15 for sheep and April 15 to February 28 for cattle and/or domestic horses. However, no use is authorized to be made in the seedings until range readiness as determined by the BLM.
9. A domestic horse preference of 180 AUMs can be substituted for an equal amount of sheep and/or cattle AUMs in all the Snow Creek Seedings combined
10. Season of use in the Butte Valley Use Area is April 15 to November 15 for sheep and March 1 to February 28 for cattle.
11. Season of use in the Slough Use Area is May 1 to February 28 for cattle.
12. Season of use in the Black Mt./Canyon Use Area is April 15 to November 15 for sheep.

RATIONALE:

Utilization data and use pattern mapping support the conclusion that a reduction is needed in the adjudicated livestock preference in order to meet the Land Use Plan and Rangeland Program Summary objectives. Monitoring studies indicate over-utilization on native range, winterfat bottoms, and crested wheatgrass seedings used by livestock and wild horses. These problems will be corrected by reducing the active livestock preference to 7232 AUMs (3557 AUMs for cattle and 3675 AUMs for sheep). These figures include the 180 AUMs for domestic horses should the permittee choose to use them instead of cattle or sheep.

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

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."

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..."

4110.3-2(c): "Where active use is reduced it shall be held in suspension..."

4110.3-3(a): "Changes in active use in excess of 10 percent shall be implemented over a 5-year period..."

4110.3-3(b): "After consultation, coordination and cooperation, suspensions of preference shall be implemented through a documented agreement or 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 the effective date..."

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 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 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..."

4710.5(b): "All public lands inhabited by wild horses or burros shall be closed to grazing under permit or lease by domestic horses and burros."

APPEAL:

If you wish to appeal the livestock portion of this final decision for the purpose of a hearing before an Administrative Law Judge, in accordance with 43 CFR 4.470, you are allowed thirty (30) days from receipt of this notice within which to file an appeal with the Egan Area Manager, BLM, Ely District Office, HC 33, Box 33500, Ely, Nevada 89301-9408. The appeal should state the reasons, clearly and concisely, why you think the final decision is in error.

WILD HORSE AND BURRO MANAGEMENT DECISION

It has been determined through monitoring studies that a thriving natural ecological balance can be maintained by setting the wild horse AML at 80 horses yearlong (956 AUMs) on that portion of the Butte, Buck and Bald, and Cherry Creek Herd Management Areas which occur within the Medicine Butte Allotment. The Butte HMA will have an AML of 69 horses (822 AUMs) while the Buck and Bald HMA will have an AML of 11 horses (134 AUMs) within the Medicine Butte allotment. Although the Cherry Creek HMA touches the mountainous northeastern portion of the allotment, and since this allotment has historically received no wild horse use within the Cherry Creek HMA, this decision will establish the AML for wild horses for that portion of the Cherry Creek HMA within the Medicine Butte Allotment at zero.

In accordance with 43 CFR 4700.0-6(a), wild horse use on the Medicine Butte Allotment shall be managed at 80 horses yearlong (956 AUMs). The appropriate wild horse AUMs by use area as established by monitoring are as follows:

Hunter Point Use Area

- 1) Establish wild horse appropriate management level at 273 AUMs as indicated by monitoring studies.

Telegraph Use Area

- 1) Establish wild horse appropriate management level at 139 AUMs as indicated by monitoring studies.

Pony Mountain Use Area (includes Paris Seeding)

1) Establish wild horse appropriate management level at 134 AUMs as indicated by monitoring studies.

Butte Valley Use Area

1) Establish wild horse appropriate management level at 173 AUMs as indicated by monitoring studies.

Slough Meadows Use Area

1) Establish wild horse appropriate management level at 181 AUMs as indicated by monitoring studies.

Black Mt./Canyon Use Area

1) Establish wild horse appropriate management level at 56 AUMs as indicated by monitoring studies.

Snow Creek Seedings

1) Establish wild horse appropriate management level at 0 AUMs since seedings were fenced prior to 1971 for livestock use and are uninhabited by wild horses.

In accordance with 43 CFR 4720.1, all wild horses in excess of the appropriate management level of 80 animals (69 horses in the Butte HMA and 11 horses in the Buck and Bald HMA) will be removed.

Adjustments in wild horse numbers will be made by future Butte, Buck and Bald, and Cherry Creek Herd Management Area gathers based on continued monitoring in order to achieve and maintain the established AMLs.

This decision does not alter present HMA boundaries and allows for future reevaluations should wild horse use occur in the Cherry Creek HMA portion of the allotment. The setting of wild horse numbers by allotment will eventually provide for an overall herd management area wild horse AML, and gathers within allotments will not allow wild horse numbers to fall below total HMA wild horse AMLs.

RATIONALE:

The analysis and evaluation of monitoring data indicates that management actions for wild horses must be modified to meet multiple use management objectives on the Medicine Butte Allotment as identified in Appendix I. The data indicate that there are 956 AUMs available for wild horse use. The removal of excess wild horses is necessary to establish and maintain a thriving natural ecological balance and prevent a deterioration of the rangeland resources.

AUTHORITY: The authority for this decision is contained in Sec. 3 (a) and (b) of the Wild-Free-Roaming Horse and Burro Act (P.L. 92-195) as amended and in Title 43 of the Code of Federal Regulations, which states in pertinent parts:

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 productive capacity of their habitat."

4710.4: "Management of wild horses and burros shall be undertaken with the objective of limiting the animals distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans."

4720.1: "Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately..."

APPEAL:

Within 30 days of receipt of this decision, you have the right to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.400. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842-1, Information on Taking Appeals to the Board of Land Appeals. Within 30 days after you appeal, you are required to provide a Statement of Reasons to the Board of Land Appeals and a copy to the Regional Solicitor's office listed in Item 3 on the form. In addition, please provide this office with a copy of your Statement of Reasons. The appellant has the burden of showing that the decision appealed from is in error.



Gene L. Drais, Manager
Egan Resource Area

	(Certified Mail #)
cc: Nevada Department of Wildlife (Region II)	(#P 776 533 413)
N-4 Grazing Board	(#P 776 533 414)
Resource Concepts Inc.	(#P 776 533 415)
U.S. Fish and Wildlife Service	(#P 776 533 416)
Natural Resources Defense Council	(#P 776 533 417)
The Wilderness Society	(#P 776 533 418)
International Society for the Protection of Mustangs and Burros	(#P 776 533 419)
Commission for the Preservation of Wild Horses and Burros	(#P 776 533 420)
Nevada Farm Bureau	(#P 776 533 421)
Animal Protection Institute of America	(#P 776 533 427)

APPENDIX I: Land Use Plan/Rangeland Program Summary Objectives

1. Land Use Plan (RMP) Objectives

- a. Rangeland Management- "All vegetation will be managed for those successional stages which would best meet the objective of this proposed plan." (Egan Resource Area Record of Decision (ROD), p.3).
- b. Wild Horse and Burros- "Wild horses will be managed at a total of 700 animals in the Buck and Bald Herd Use Area, 60 in the Butte Herd Use Area and 11 in the Cherry Creek Herd Use Area." (Egan ROD, p.6). Actual wild horse numbers will be determined by this evaluation in conjunction with monitoring data to maintain a thriving natural ecological balance and prevent deterioration of the rangeland.
- c. Wildlife- "Habitat will be managed for "reasonable numbers" of wildlife species as determined by the Nevada Department of Wildlife." (Egan ROD, p.6).

-"Reintroductions of big game species will be accomplished in cooperation with the Nevada Department of Wildlife, where such reintroductions would not conflict with existing uses and if sufficient forage is available."
(Egan ROD, p.6).

-"Forage will be provided for "reasonable numbers" of big game as determined by the Nevada Department of Wildlife."
(Egan ROD, p. 8).
- d. Riparian- "Where management objectives are not being obtained through application of management practices, fencing will be considered." (Egan ROD, p.13).
- e. Watershed- "Establish utilization limits to maintain watershed cover, plant vigor and soil fertility in consideration of plant phenology, physiology, terrain, water availability, wildlife needs, grazing system and aesthetic values." (Egan ROD, p.44).

2. Rangeland Program Summary Objectives

Range

- a. "Provide forage for up to 12,915 AUM's of livestock use. (Preference is actually 15,174 AUM's). Improve ecological condition of the spring range in Butte Valley. Maintain or improve current ecological condition of remainder of native range. Maintain the Snow Creek Seedings and Paris Seeding in good or better condition. Maintain or enhance native vegetation with utilization levels not to exceed NRMH levels on key species." Maximum utilization on native key species is 50% with utilization on crested wheatgrass 60%.

Wild Horses

- b. "Initially manage rangeland habitat to support Appropriate Management Level (AML) of 105 horses in the Medicine Butte Allotment as part of the Butte HMA (38 horses), Cherry Creek HMA (4 horses), and Buck and Bald HMA (63 horses). Provide forage for up to 1,260 AUM's of wild horse use (453 AUM's-Butte HMA; 44 AUM's -Cherry Creek HMA; 755 AUM's-Buck and Bald HMA)." Actual wild horse numbers will be determined by this evaluation in conjunction with monitoring data to maintain a thriving natural ecological balance and prevent deterioration of the rangeland. (Note: The 1260 AUM's (105 horses yearlong) identified in the RPS is no longer a valid AML. The Interior Board of Land Appeals June 7, 1989 decision (IBLA 88-591, 88-638, 88-648, 88-679) ruled in part, "an AML established purely for administrative reasons because it was the level of wild horse use at a particular point in time cannot be justified under the statute" (Dahl vs. Clark, Supra at 595). The IBLA further ruled that the AML must be established through monitoring "in terms of the optimum number which results in a thriving natural ecological balance and avoids a deterioration of the range.")

Wildlife/Riparian

- c. "Manage rangeland habitat and forage condition to support reasonable numbers of wildlife as follows: mule deer 417 AUM's, antelope 81 AUM's." Utilization of key species will not exceed the levels listed in 2 a. above.
- d. "Maintain or improve mule deer yearlong habitat in good or better condition." This is also accomplished by limiting utilization to the levels listed in 2 a. above.

- e. "Maintain habitat condition of meadows and riparian areas in good or better condition for pronghorn antelope, mule deer, sage and blue grouse. Utilization levels will not exceed 55% on the perennial grasses and the grass-like species and 45% on shrubs along stream riparian areas and mesic meadows."
- f. "Protect sage grouse breeding complexes." This is accomplished by maintaining the big sagebrush sites within two miles of active strutting grounds in mid to late seral stage with a minimum of 30% shrub composition by weight.
- g. "Protect Ferruginous hawk nest sites."
- h. "Manage stands of aspen in early or mid seral stage and white fir in a late seral stage desired for blue grouse."
- i. "Maintain/improve 5.0 miles of stream riparian habitat condition to good or better."



COMMISSION FOR THE
PRESERVATION OF WILD HORSES

Stewart Facility
Capitol Complex
Carson City, Nevada 89710
(702) 687-5589

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Dawn Lappin
Reno, Nevada

February 24, 1992

Gene L. Drais, Manager
Egan Resource Area
BLM-Ely District Office
HC33 Box 150
Ely, Nevada 89301-9408

Dear Mr. Drais,

Thank you for the opportunity to review and comment on the Newark, Horse Haven, Cold Creek, Medicine Butte, and North Cove Allotments.

On all of your documents we recognize and appreciate the addition of the wording "The setting of wild horse numbers by allotment will eventually provide for an overall Herd Management Area (HMA) wild horse AML, and gathers within allotments will not allow total wild horse numbers to fall below the total HMA appropriate management level."

We have been assured by your District personnel as well as the Nevada State Office that wild horses will not be removed on an allotment basis without determining the total HMA population. We will assume that by the above statements that if a few wild horses migrate within their HMA that the permittee will not be led to believe that the incidental use implies removal.

We request on all of the allotments to be notified of any changes in season of use, distribution, or adjustments to levels of livestock use with ample time to comment on those documents before they are implemented.

NEWARK:

You have established an estimated AML of 72 wild horses. There is information I would like to request be included in the final. Please provide the following:

- 1) What is the total census of wild horses in the Newark Allotment and when was the census last taken.
- 2) What formula did you use to establish the AML.
- 3) Maps on wild horse use areas and distribution.
- 4) Have you evaluated the cumulative impacts of this decision, if so, please provide that information.

Gene L. Drais, Manager
February 24, 1992
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Again, thank you for the opportunity to review and comment on the allotment proposed and final decisions. If you have any questions, please feel free to call.

Sincerely,

CATHERINE BARCOMB
Executive Director