

2-4-92



# 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 4 1992**

Carter Cattle Co.  
Lund, NV 89317

CERTIFIED MAIL NO. P 776 533 436  
Return Receipt Requested

## NOTICE OF FINAL MULTIPLE USE DECISION FOR THE NORTH COVE ALLOTMENT

### 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 North Cove Allotment. The Egan Resource Area Record of Decision, dated February 1987, states in pertinent 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 North Cove Allotment. Input was received from the permittee, the state wildlife agency, and the grazing board, via a range consulting firm. 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 North Cove Allotment.

A Proposed Multiple Use Decision for the North Cove Allotment was issued on October 15, 1991. This Proposed Decision was protested by the Nevada Commission for the Preservation of Wild Horses on October 29, 1991. On November 8, 1991, we discussed the protest letter with the Nevada Commission and apparently alleviated their concerns with setting an AML of 0 within the North Cove Allotment. In addition, a protest letter was received from the permittee Phil Carter on November 4, 1991 and from the N-4 State Grazing Board, via Resource Concepts, Inc. (RCI), on November 12, 1991. Subsequent communications occurred with Don Henderson of RCI via a phone call on December 3, 1991 and in a meeting with the permittee, RCI, N-4 Grazing Board, and the BLM on December 10, 1991. During the meeting the protest points were discussed. The BLM agreed to changes from the proposed decision to this final decision as follows: 1) add RCI's 1987 monitoring data to the stocking rate calculation, as it is consistent with BLM's data 2) allow the water hauling locations to be flexible and agreed to on a year to year basis. (Note: a drift fence was proposed in conjunction with water hauling in the west portion of the west pasture. When and if the fence is constructed, distribution would change. Future monitoring would be required to observe if use levels are appropriate in relation to the proposed stocking rate allocations); 3) trend will be re-read as scheduled in the Egan Resource Area monitoring plan.

BASED UPON THE EVALUATION OF MONITORING DATA FOR THE NORTH COVE 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 the multiple use objectives for the North Cove Allotment are being met with the existing grazing use by livestock and wildlife. In addition, there is more available forage than is currently adjudicated. This analysis also shows that wild horses do not make use of the allotment due to fences constructed prior to 1971. Therefore, this decision proposes an increase in livestock use but no change in wildlife use. This decision also establishes the appropriate management level for wild horses.

LIVESTOCK MANAGEMENT DECISION

In accordance with 43 CFR 4110.3, 4110.3-2(b), and 4130.6-1(a), the existing authorized livestock active use on the allotment shall be changed, over 5 years, to 1177 AUMs cattle use, with 583 AUMs placed in suspended non-use. Year 1 will be the 1992 grazing year.

From:

Number*	Kind	Period of Use*	%Federal	AUMs	
				Active	Susp
134	Cattle	12/01 - 05/15	100	732	1028

To:

Year	Number*	Kind	Period of use*	AUMs	
				Active	Susp
1	161	Cattle	12/01 - 05/15	879	881
3	184	Cattle	12/01 - 05/15	1,004	756
5	216	Cattle	12/01 - 05/15	1,177	583

\*Flexibility in cattle numbers will be allowed up to a maximum of 650 head from 12/01 to 02/28, not to exceed the maximum preference. Use from 03/01 to 05/15 will not exceed the numbers shown in the table above.

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

- 1) Up to 282 AUMs of the increased active preference may be licensed, with water hauling, in the underutilized western portion of the allotment. (see Appendix 1 for allotment map indicating the approximate location of the western portion) Water hauling locations are flexible and would be included in the terms and conditions of the yearly grazing authorization.
- 2) The remaining 895 AUMs are allocated in conjunction with the historical use around Carter Well and DLE Well.

RATIONALE:

Monitoring studies and other existing information support the conclusion that, as currently permitted, livestock do not exceed proper use levels in the allotment. In fact, large areas of accessible, underutilized forage exist. In addition, existing wildlife populations are at levels consistent with attainment of resource objectives.

Future re-evaluations in the third and fifth years will consider existing and future monitoring data to determine if adjustments or additional modifications in management will be necessary.

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

4110.3-1(b): Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in satisfaction of grazing preferences to the permittee or lessee is authorized to graze in the allotment in which the forage is available.

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

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..."

APPEAL:

If you wish to appeal the livestock portion of this 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, 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

The Egan Resource Area Rangeland Program Summary set a minimal level of 2 horses (27 AUMs) as the appropriate management level for this allotment. However, since this allotment is fenced (constructed prior to 1971) from wild horses and does not receive wild horse use, this decision will establish the appropriate management level for wild horses for that portion of the White River Herd Management Area within the North Cove Allotment at zero.

This decision does not alter present HMA boundaries and allows for future reevaluations should wild horse use occur in the allotment. 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 wild horse numbers to fall below total HMA wild horse AML.

In accordance with 43 CFR 4700.0-6(a), wild horse use on the North Cove Allotment shall be managed at zero animals.

Adjustments in wild horse numbers will be made by future White River Herd Area gathers based on continued monitoring in order to achieve and maintain the established AML.

RATIONALE:

This allotment is fenced from the remainder of the White River Herd Management Area by the allotment boundary fence (constructed prior to 1971). Based on White River HMA census and field observations, the North Cove Allotment has not received wild horse use, past or present.

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:

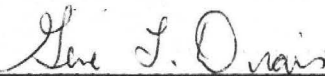
4700.0-6(a): "Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat."

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 776 533 405)
Nevada Department of Wildlife, Region III	(#P 776 533 406)
U.S. Fish and Wildlife Service	(#P 776 533 407)
N-4 Grazing Board	(#P 776 533 408)
Resource Concepts Inc.	(#P 776 533 409)
International Society for the Protection of Mustangs and Burros	(#P 776 533 410)
Commission for the Preservation of Wild Horses	(#P 776 533 411)
Animal Protection Institute	(#P 776 533 502)
Natural Resources Defense Council	(#P 776 533 503)
Wilderness Society	(#P 776 533 504)

## 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, p. 3)
- (b) Wild Horses - Wild horses will be managed at 20 animals within the White River HMA. (Egan ROD, p. 6)
  - Future adjustments in wild horse numbers will be based on data provided through the rangeland monitoring program. (Egan ROD, p. 8)
- (c) Wildlife - Habitat will be managed for "reasonable numbers" of wildlife species as determined by NDOW. (Egan ROD, p. 6)
  - Forage will be provided for "reasonable numbers" of big game as determined by NDOW. (Egan ROD, p. 8)
- (d) 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

- (a) "Provide forage for up to 732 AUMs of livestock forage. Maintain the seeding in good or better condition. Improve livestock distribution on the allotment. Maintain or enhance native vegetation with utilization not to exceed Nevada Rangeland Monitoring Handbook (NRMH) levels on key species. Maintain or improve current ecological condition of native range." Utilization will not exceed 50% on native key species and 60% on crested wheatgrass seedings.
- (b) "Maintain or improve mule deer spring habitat and antelope yearlong habitat in good or better condition. Manage rangeland habitat and forage condition to support reasonable numbers of wildlife, as follows: 232 AUMs for mule deer, and 5 AUMs for antelope." This is accomplished by not exceeding utilization levels on native species as recommended in the Nevada Rangeland Monitoring Handbook (NRMH).

- (c) "Initially, manage rangeland habitat to support an Appropriate Management Level (AML) of 2 horses in the North Cove Allotment as part of the White River HMA. Provide for up to 27 AUMs of wild horse use." (Note: The 27 AUMs (2 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.")



Nevada Department of Wildlife  
Region II  
1375 Mountain City Highway  
Elko, NV 89801

Nevada Department of Wildlife  
Region III  
State Mailroom Complex  
Las Vegas, NV 89158

U.S. Fish & Wildlife Service  
Reno Field Station  
4600 Kietzke Lane., Bldg. C-125  
Reno, NV 89502

N-4 Grazing Board  
P. O. Box 1077  
McGill, NV 89318

Resource Concepts, Inc.  
340 N. Minnesota St.  
Carson City, NV 89703

International Society for the Protection  
of Mustangs & Burros  
6212 E. Sweetwater Ave.  
Scottsdale, AZ 85254

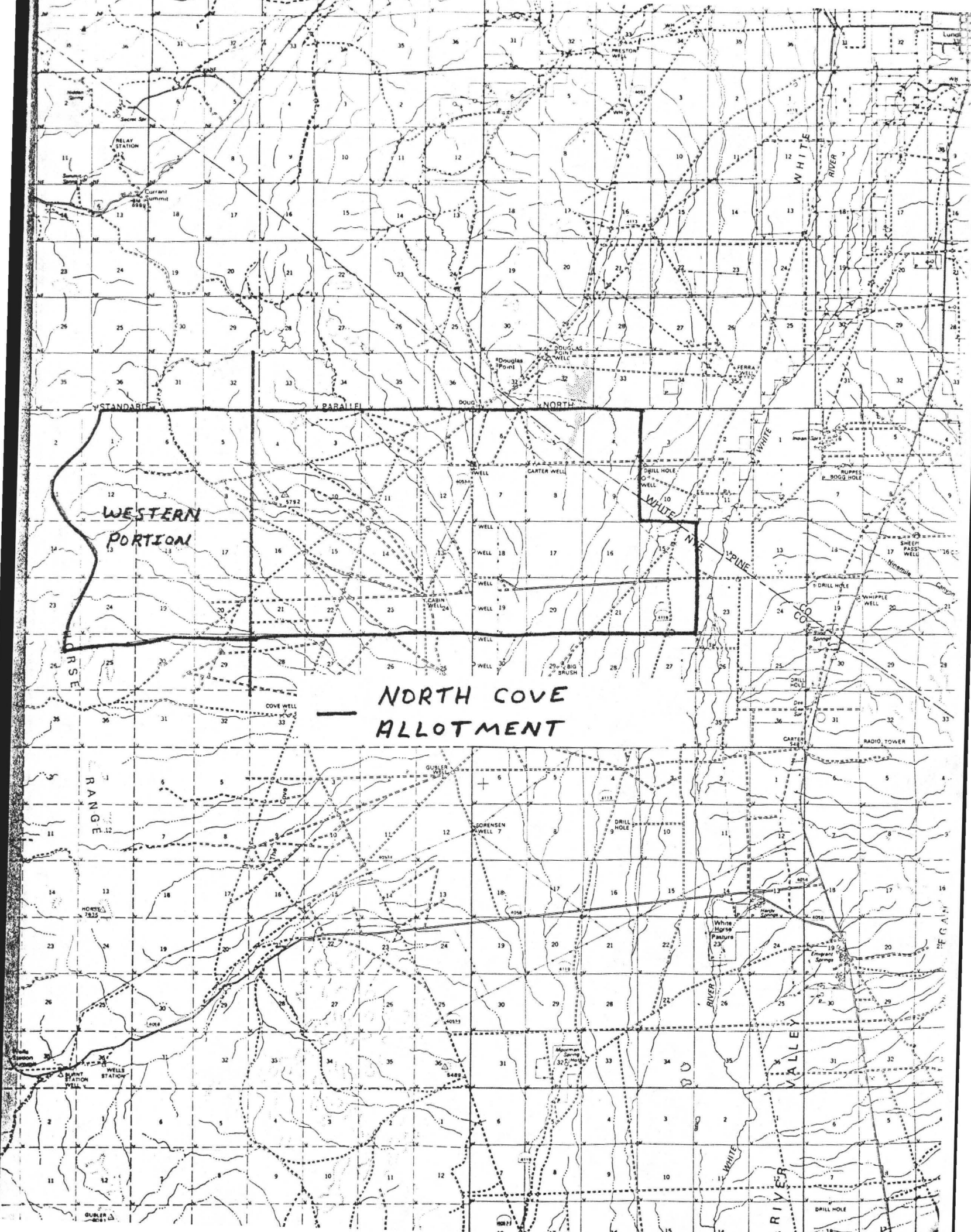
Commission for the Preservation of  
Wild Horses  
Stewart Facility  
Capitol Complex  
Carson City, NV 89710

Animal Protection Institute  
P. O. Box 22505  
Sacramento, CA 95822

Natural Resources Defense Council  
90 New Montgomery  
San Francisco, CA 94105

Wilderness Society  
116 New Montgomery, Suite 526  
San Francisco, CA 94105

APPENDIX 1



WESTERN PORTION

NORTH COVE ALLOTMENT

HORSE RANGE

WHITE RIVER VALLEY



**COMMISSION FOR THE  
PRESERVATION OF WILD HORSES**

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

**COMMISSIONERS**

Dan Keiserman,  
Las Vegas, Nevada  
Michael Kirk, D.V.M.,  
Reno, Nevada *Chairman*  
Paula S. Askew  
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Steven Fulstone  
Smith Valley, Nevada  
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  
Page 2

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