

HIGHLAND PEAK

G

8/26/96



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Caliente Resource Area  
P.O. Box 237  
Caliente, Nevada 89008

IN REPLY REFER TO:

In Reply Refer To:  
4700  
(NV-055.07)

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

## NOTICE OF FINAL DECISION FULL FORCE AND EFFECT

### HIGHLAND PEAK HERD MANAGEMENT AREA (HMA) EMERGENCY REMOVAL

Severe drought conditions exist within the Highland Peak HMA and adjacent areas. Forage production is extremely limited. Forage utilization in the Klondike, Black Canyon, Bennett Springs (western one-half), and Highland Peak (eastern one-half) allotments of the Highland Peak HMA is currently in a severe use category. From field observations of available forage and water as well as a review of monitoring data, it has been determined the wild horses and their habitat are being adversely impacted.

Approximately 150 wild horses must be gathered from within the HMA as well as approximately 25 horses from outside the HMA within the Ely Springs Cattle Allotment (10 horses) and from private property around Castleton, NV (15 horses). All wild horses gathered will be placed into the adoption program. The gather operation will be conducted by helicopter trapping and/or roping.

The allotments contained within the Highland Peak HMA are grazed annually during the winter months (Dec-Mar) by domestic sheep.

Due to the emergency nature of these conditions, it is necessary to implement this immediately, through a Full Force and Effect Decision. This decision will be implemented on or about September 27, 1996 and will continue until the action is completed. The rationale for placing this decision in Full Force and Effect are as follows:

1. Drought conditions have critically limited forage production and water availability for wild horses. The western one-half of the Bennett Springs allotment, eastern one-half of the Highland Peak allotment, and all of the Klondike and Black Canyon allotments is receiving severe use, has received 50% of its normal precipitation, and is not expected to produce enough forage to sustain the animals currently occupying the area.
2. Water availability for the horses' consumption is limited to a water source (Bennett Springs) which is located on private property. The remaining spring sources supply only marginal amounts of water for the horses.

**AUTHORITY:** The authority for this decision is contained in Sec.3(a) and (b) and Sec.4 of the Wild Free-Roaming Horse and Burro Act (P.L. 92-195) as amended and Title 43 of the Code of Federal Regulations. The authority for the Full Force and Effect decision can be found at 43 CFR 4770.3(c) which states:

"(c) Notwithstanding the provisions of paragraph (a) of 4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision."

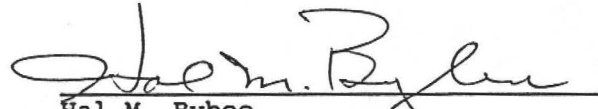
**APPEALS:** Within 30 days of receipt of this decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c). Within 30 days after filing a Notice of Appeal, you are required to provide a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file an appeal and petition for a stay, the petition for a stay must accompany your notice of appeal and be in accordance with 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(c). Copies of the Notice of Appeal and Petition for a Stay must be submitted to (1) the Interior Board of Land Appeals, Office of Hearing and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, (2) the Regional Solicitor's Office, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890, and (3) Ely District Office, HC 33 Box 33500, Ely, NV 89301-9408. The original documents should be filed with this office.

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay of decision pending appeals shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

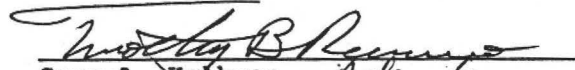
**ADDITIONAL INFORMATION:** Contact Alan B. Shepherd of my staff, at (702) 726-8100 or write at the above address.

Concurrence:

  
Hal M. Bybee  
ADM - Renewable Resources  
Ely District

8-26-96  
Date

Approval:

  
Gene A. Kolkman *Acting for*  
District Manager  
Ely District

8/26/96  
Date

Enclosure:

1. Capture Plan

**HIGHLAND PEAK HERD MANAGEMENT AREA  
EMERGENCY GATHER PLAN**

**PREPARED BY  
Alan B. Shepherd  
Wild Horse and Burro Specialist**

**Caliente Field Station  
Ely District  
August 1996**

## I. Purpose and Need

Resource conditions and animal health are currently being adversely affected by severe drought conditions in the southern portion of the Ely District, in Lincoln County, Nevada. The drought conditions prevent the Herd Management Area (HMA) from producing adequate forage to sustain those animals currently occupying the area. To prevent resource degradation and animal stress, an emergency gather will be initiated.

The Ely District Manager has determined that a Full Force and Effect Decision is necessary to accomplish an emergency gather to prevent resource degradation. Field observations of forage and water availability have indicated that wild horses and their habitat are being negatively impacted. The following conditions exist in the Highland Peak HMA and adjacent areas:

**Forage Condition:** Current year's growth is extremely limited. Growth on native grasses (Indian ricegrass, small galleta) averaged less than 3 inches.

**Forage Utilization:** Severe utilization on herbaceous forage documented throughout the emergency gather area.

**Precipitation:** Precipitation for the past 12 months has averaged 50% of normal.

**Water Availability:** Water is limited to Bennett Springs, which is located on private property. All other spring sources within the emergency area supply only marginal water for the horses. All reservoirs within the emergency gather area are dry.

**Animal Condition:** Lact./mares = condition classes 2-4  
Studs = condition class 4

**Capture Method:** Helicopter trapping and/or roping

**Number of Animals:** Horses: capture 200, remove 150 within the HMA  
capture 25, remove 25 outside the HMA

**Age Criterion:** All horses

## II. Area of Concern

The proposed emergency gather area is located on public lands administered by the Bureau of Land Management's (BLM) Ely District, in Lincoln County, Nevada. The areas of concern are the western one-half of the Bennett Springs allotment, eastern one-half of the Highland Peak allotment, Klondike allotment, and Black Canyon allotment within the Highland Peak HMA, Pasture #1 of the Ely Springs Allotment (non-HMA), and private property around Castleton, NV approximately 25 miles north of Caliente, Nevada (refer to Map 1 & 2).



III. Time Frame

The animals will be removed from the HMA beginning approximately September 27, 1996 and continuing until the emergency gather is completed.

IV. Gather Methods

The animals will be gathered through the use of helicopter trapping and/or roping. The gather operation will adhere to the "Nevada Wild Horse and Burro Gather Contract" Number 1422-N660-C96-3004.

V. Administration of the Contract

The BLM will be responsible, through the above-cited contract (1422-N660-C96-3004), for all capture, care, and temporary holding of animals until release. The Contracting Officers Representative (COR) will be the Wild Horse and Burro Specialist from the Caliente Field Station, who will be directly responsible for conducting the emergency gather.

VI. Disposal of Removed Animals

All wild horses gathered will be sent to the Palomino Valley Center to be prepared for adoption.

VII. Branded and Claimed Animals

A notice of intent to impound to gather wild horses will be issued concurrently by BLM, prior to any gathering operations in this area. The Nevada Department of Agriculture and the District Brand Inspector will receive copies of these notices, as well as the Notice of Public Sale, if issued. The COR or Project Inspector (PI) will contact the District Brand Inspector and arrange dates and times if brand inspections are needed. Impounded privately owned animals will be handled in accordance with BLM, Nevada State Office Instruction Memoranda NV-84-116 and NV-85-416.

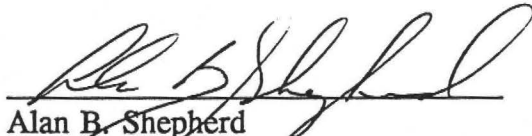
VIII. Destruction of Injured or Sick Animals

Any severely injured or seriously sick animals will be destroyed in accordance with 43 CFR 4730.1. Animals will be destroyed only when a definite act of mercy is needed to alleviate pain and suffering. The COR will make this determination; the advice of a veterinarian will be sought if the COR is uncertain about the severity or the injury or illness. Destruction will be done in the most humane method available.

IX. Responsibility

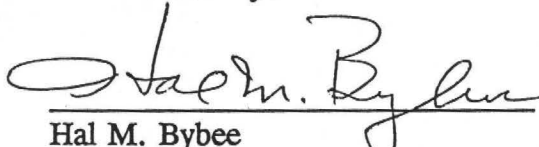
The Ely District Manager is responsible for maintaining and protecting the health and welfare of wild horses. To ensure the contractor's compliance with contract stipulations, a COR from the Ely District will be on site at all times during the emergency gather. The health and welfare of the animals will be the overriding concern of the District Manager, Field Station Manager, COR and PI.

Prepared By:

  
Alan B. Shepherd  
Wild Horse and Burro Specialist  
Caliente Field Station  
Ely District

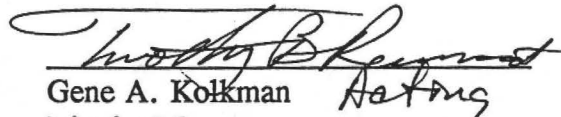
8/20/96  
Date

Concurrence By:

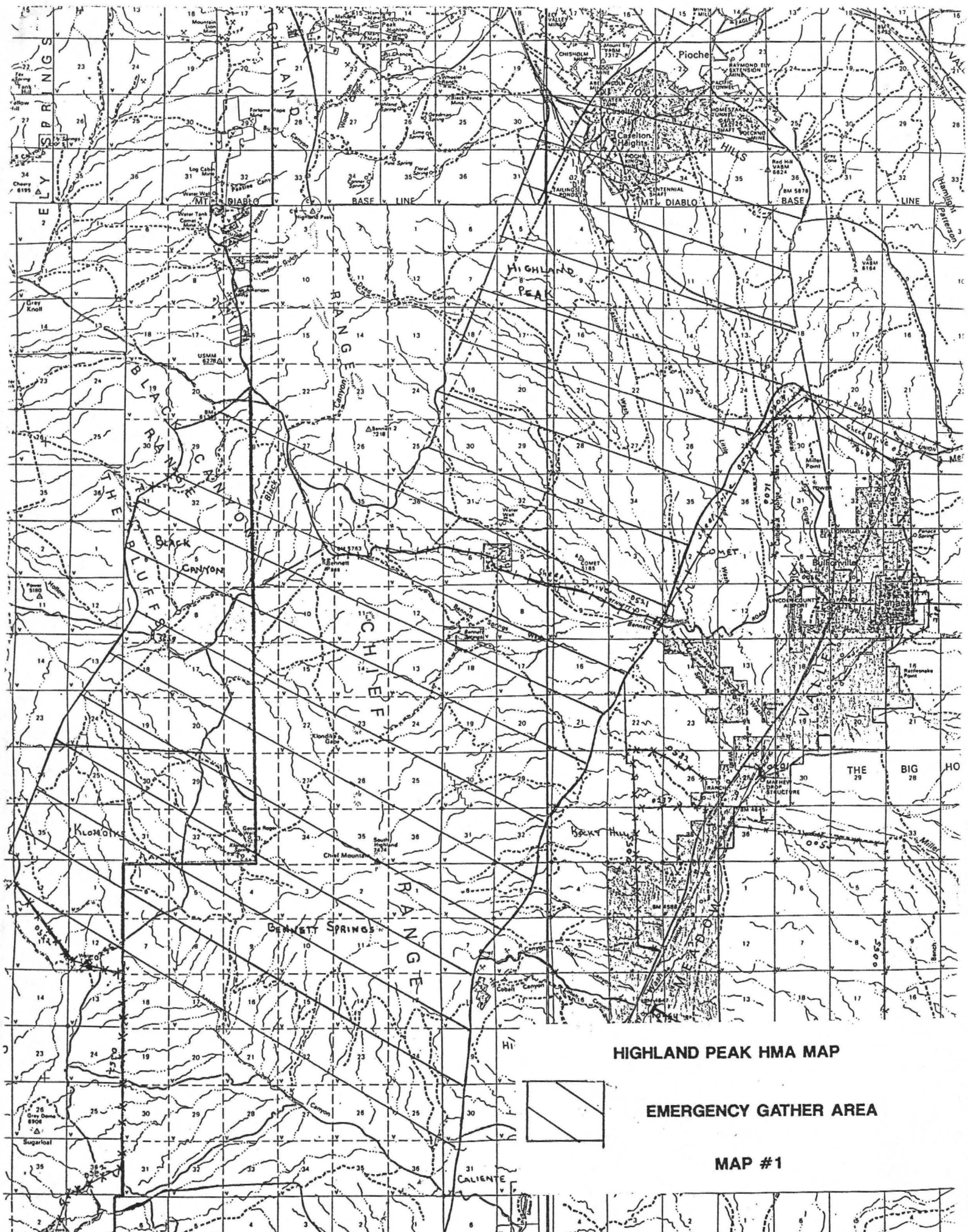
  
Hal M. Bybee  
ADM - Renewable Resources  
Ely District

8-26-96  
Date

Approved By:

  
Gene A. Kolkman *Acting*  
District Manager  
Ely District

8/26/96  
Date



**HIGHLAND PEAK HMA MAP**

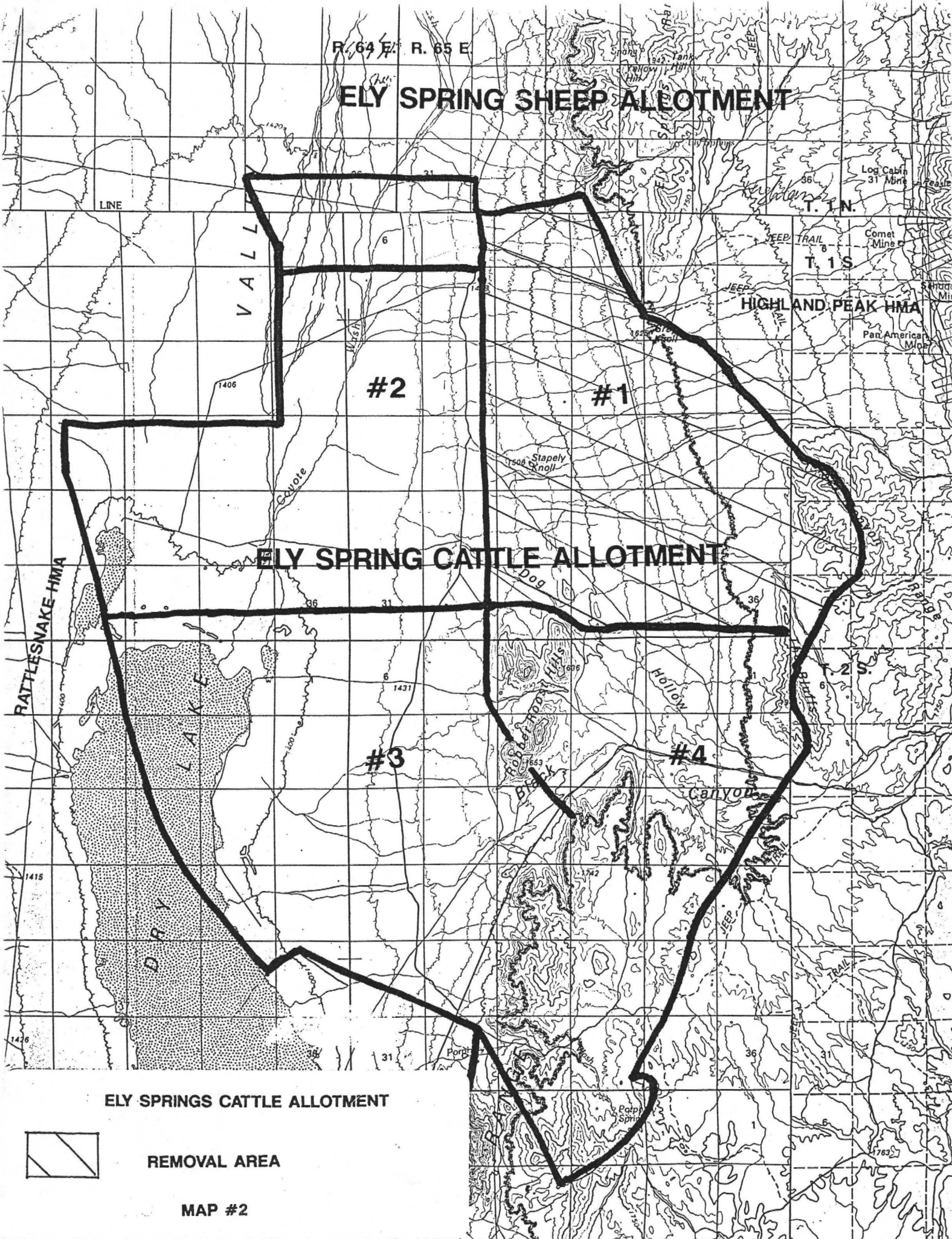
**EMERGENCY GATHER AREA**

**MAP #1**



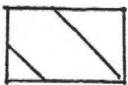
R. 64 E. R. 65 E.

# ELY SPRING SHEEP ALLOTMENT



# ELY SPRING CATTLE ALLOTMENT

ELY SPRINGS CATTLE ALLOTMENT



REMOVAL AREA

MAP #2



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Caliente Resource Area  
P.O. Box 237  
Caliente, Nevada 89008



IN REPLY REFER TO:

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## NOTICE OF FINAL DECISION FULL FORCE AND EFFECT

### MILLER FLAT HERD MANAGEMENT AREA (HMA) EMERGENCY REMOVAL

Severe drought conditions exist within the Miller Flat HMA and forage production is extremely limited. Forage utilization in the western two-thirds of the Sheep Springs Allotment and over 75% of the Rabbit Springs Allotment is currently in a severe use category. From field observations of available forage and water as well as a review of monitoring data, it has been determined the wild horses and their habitat are being adversely impacted.

Approximately 100 wild horses must be gathered from within the HMA. All wild horses gathered will be placed into the adoption program. No other portions of the Miller Flat HMA will be gathered in conjunction with this emergency gather operation. The gather operation will be conducted by helicopter trapping and/or roping.

The Rabbit Springs and Sheep Springs allotments have not been grazed by domestic livestock (cattle and/or sheep) for approximately twenty (20) years due to large numbers of wild horses and limited forage.

Due to the emergency nature of these conditions, it is necessary to implement this immediately, through a Full Force and Effect Decision. This decision will be implemented on or about October 2, 1996 and will continue until the action is completed. The rationale for placing this decision in Full Force and Effect are as follows:

1. Drought conditions have critically limited forage production and water availability for wild horses. The western two-thirds of the Sheep Springs allotment and over 75% of the Rabbit Springs allotment is receiving severe use, has received 50% of its normal precipitation, and is not expected to produce enough forage to sustain the animals currently occupying the area.
2. Water availability for the horses' consumption is limited to a water source (Rabbit Spring) which is located on private property. The remaining spring sources supply only marginal amounts of water for the horses.

**AUTHORITY:** The authority for this decision is contained in Sec.3(a) and (b) and Sec.4 of the Wild Free-Roaming Horse and Burro Act (P.L. 92-195) as amended and Title 43 of the Code of Federal Regulations. The authority for the Full Force and Effect decision can be found at 43 CFR 4770.3(c) which states:

"(c) Notwithstanding the provisions of paragraph (a) of 4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision."

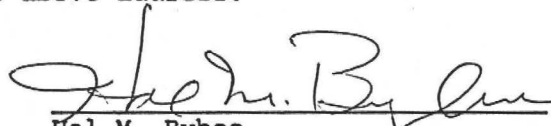
**APPEALS:** Within 30 days of receipt of this decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c). Within 30 days after filing a Notice of Appeal, you are required to provide a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file an appeal and petition for a stay, the petition for a stay must accompany your notice of appeal and be in accordance with 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(c). Copies of the Notice of Appeal and Petition for a Stay must be submitted to (1) the Interior Board of Land Appeals, Office of Hearing and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, (2) the Regional Solicitor's Office, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890, and (3) Ely District Office, HC 33 Box 33500, Ely, NV 89301-9408. The original documents should be filed with this office.

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay of decision pending appeals shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.


**ADDITIONAL INFORMATION:** Contact Alan B. Shepherd of my staff, at (702) 726-8100 or write at the above address.

Concurrence:

  
Hal M. Bybee  
ADM - Renewable Resources  
Ely District

8-26-96  
Date

Approval:

  
Gene A. Kolkman Acting for  
District Manager  
Ely District

8/26/96  
Date

Enclosure:

1. Capture Plan



**MILLER FLAT HERD MANAGEMENT AREA  
EMERGENCY GATHER PLAN**

**PREPARED BY  
Alan B. Shepherd  
Wild Horse and Burro Specialist**

**Caliente Field Station  
Ely District  
August 1996**

## I. Purpose and Need

Resource conditions and animal health are currently being adversely affected by severe drought conditions in the southern portion of the Ely District, in Lincoln County, Nevada. The drought conditions prevent the Herd Management Area (HMA) from producing adequate forage to sustain those animals currently occupying the area. To prevent resource degradation and animal stress, an emergency gather will be initiated.

The Ely District Manager has determined that a Full Force and Effect Decision is necessary to accomplish an emergency gather to prevent resource degradation. Field observations of forage and water availability have indicated that wild horses and their habitat are being negatively impacted. The following conditions exist in the Miller Flat HMA:

**Forage Condition:** Current year's growth is extremely limited. Growth on native grasses (Indian ricegrass, small galleta) averaged less than 3 inches.

**Forage Utilization:** Severe utilization on herbaceous forage documented throughout the emergency gather area.

**Precipitation:** Precipitation for the past 12 months has averaged 50% of normal.

**Water Availability:** Water is limited to Rabbit Spring, which is located on private property. All other spring sources supply marginal water to the wild horses. All reservoirs within the emergency gather area are dry.

**Animal Condition:** Lact./mares = condition classes 2-4  
Studs = condition class 4

**Capture Method:** Helicopter trapping and/or roping

**Number of Animals:** Horses: capture 150, remove 100

**Age Criterion:** All horses

## II. Area of Concern

The proposed emergency gather area is located on public lands administered by the Bureau of Land Management's (BLM) Ely District, in Lincoln County, Nevada. The areas of concern are the western two-thirds of the Sheep Springs Allotment and all of the Rabbit Springs Allotment within the Miller Flat HMA, approximately 20 miles northeast of Caliente, Nevada (refer to Map 1). No other portions of the Miller Flat HMA will be gathered in conjunction with this emergency gather.

### III. Time Frame

The animals will be removed from the HMA beginning approximately October 2, 1996 and continuing until the emergency gather is completed.

### IV. Gather Methods

The animals will be gathered through the use of helicopter trapping and/or roping. The gather operation will adhere to the "Nevada Wild Horse and Burro Gather Contract" Number 1422-N660-C96-3004.

### V. Administration of the Contract

The BLM will be responsible, through the above-cited contract (1422-N660-C96-3004), for all capture, care, and temporary holding of animals until release. The Contracting Officers Representative (COR) will be the Wild Horse and Burro Specialist from the Caliente Field Station, who will be directly responsible for conducting the emergency gather.

### VI. Disposal of Removed Animals

All wild horses gathered will be sent to the Palomino Valley Center to be prepared for adoption.

### VII. Branded and Claimed Animals

A notice of intent to impound to gather wild horses will be issued concurrently by BLM, prior to any gathering operations in this area. The Nevada Department of Agriculture and the District Brand Inspector will receive copies of these notices, as well as the Notice of Public Sale, if issued. The COR or Project Inspector (PI) will contact the District Brand Inspector and arrange dates and times if brand inspections are needed. Impounded privately owned animals will be handled in accordance with BLM, Nevada State Office Instruction Memoranda NV-84-116 and NV-85-416.


### VIII. Destruction of Injured or Sick Animals

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IX. Responsibility

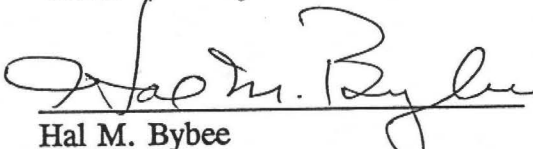
The Ely District Manager is responsible for maintaining and protecting the health and welfare of wild horses. To ensure the contractor's compliance with contract stipulations, a COR from the Ely District will be on site at all times during the emergency gather. The health and welfare of the animals will be the overriding concern of the District Manager, Field Station Manager, COR and PI.

Prepared By:

  
Alan B. Shepherd  
Wild Horse and Burro Specialist  
Caliente Field Station  
Ely District


8/20/96  
Date

Concurrence By:

  
Hal M. Bybee  
ADM - Renewable Resources  
Ely District

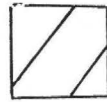
8-26-96  
Date

Approved By:

  
Gene A. Kolkman  
District Manager  
Ely District

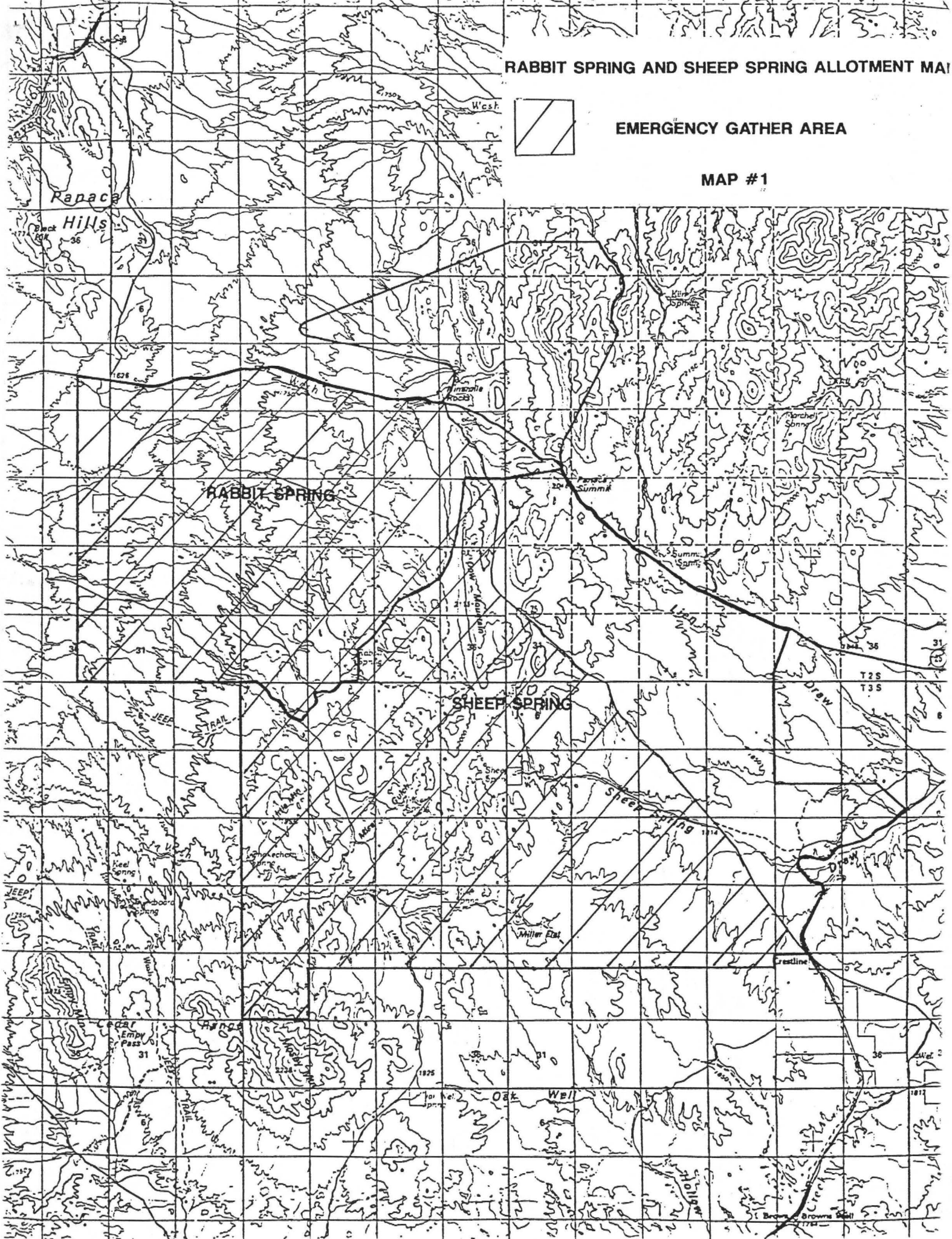
8/26/96  
Date

RABBIT SPRING AND SHEEP SPRING ALLOTMENT MAP



EMERGENCY GATHER AREA

MAP #1







# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Caliente Resource Area

P.O. Box 237

Caliente, Nevada 89008



IN REPLY REFER TO:

In Reply Refer To:

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## NOTICE OF FINAL DECISION FULL FORCE AND EFFECT

### MEADOW VALLEY MOUNTAINS HERD MANAGEMENT AREA (HMA) EMERGENCY REMOVAL

Severe drought conditions exist within the Meadow Valley Mountains HMA and adjacent areas. Forage production is extremely limited. Forage utilization in the primary use area (southern half of the HMA) is currently in a severe use category. From field observations of available forage and water as well as a review of monitoring data, it has been determined the wild horses and their habitat are being adversely impacted.

Approximately 50 wild horses must be gathered from the Meadow Valley Mountains HMA as well as approximately 40 wild horses and burros within the Breedlove Allotment (non-HMA area). All wild horses gathered will be placed into the adoption program. The gather operation will be conducted by helicopter trapping and/or roping. No wild horses will be retained within the Meadow Valley Mountains HMA following this gather operation.

The west half of the Henrie Complex Allotment is currently closed to domestic livestock grazing (per Full Force and Effect Decision issued 11/24/93).

Due to the emergency nature of these conditions, it is necessary to implement this immediately through a Full Force and Effect Decision. This decision will be implemented on or about August 17, 1996 and will continue until the action is completed. The rationale for placing this decision in Full Force and Effect are as follows:

1. Drought conditions have critically limited forage production and water availability for wild horses. The Meadow Valley Mountains HMA is receiving severe use, has received 50% of its normal precipitation, and is not expected to produce enough forage to sustain the animals currently occupying the area.
2. Water availability for the horses' consumption is limited to two water sources located within Hackberry Canyon on the southern boundary of the HMA. All reservoirs within the HMA are dry.

**AUTHORITY:** The authority for this decision is contained in Sec.3(a) and (b) and Sec.4 of the Wild Free-Roaming Horse and Burro Act (P.L. 92-195) as amended and Title 43 of the Code of Federal Regulations. The authority for the Full Force and Effect decision can be found at 43 CFR 4770.3(c) which states:

"Notwithstanding the provisions of paragraph (a) of 4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision."



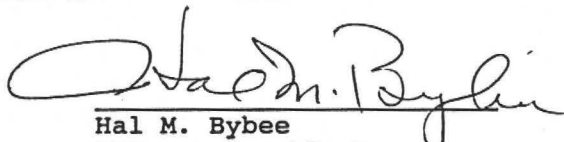
APPEALS: Within 30 days of receipt of this decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c). Within 30 days after filing a Notice of Appeal, you are required to provide a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file an appeal and petition for a stay, the petition for a stay must accompany your notice of appeal and be in accordance with 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(c). Copies of the Notice of Appeal and Petition for a Stay must be submitted to (1) the Interior Board of Land Appeals, Office of Hearing and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, (2) the Regional Solicitor's Office, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890, and (3) Ely District Office, HC 33 Box 33500, Ely, NV 89301-9408. The original documents should be filed with this office.

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2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

ADDITIONAL INFORMATION: Contact Alan B. Shepherd of my staff, at (702) 726-8100 or write at the above address.

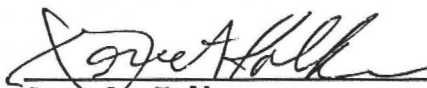
Concurrence:



Hal M. Bybee  
ADM - Renewable Resource  
Ely District

08/16/96  
Date

Approval:



Gene A. Kolkman  
District Manager  
Ely District

8/16/96  
Date

Enclosure:

1. Capture Plan

**MEADOW VALLEY MOUNTAINS HERD MANAGEMENT AREA  
EMERGENCY GATHER PLAN**

**PREPARED BY  
Alan B. Shepherd  
Wild Horse and Burro Specialist**

**Caliente Field Station  
Ely District  
August 1996**

## I. Purpose and Need

Resource conditions and animal health are currently being adversely affected by severe drought conditions in the southern portion of the Ely District, in Lincoln County, Nevada. The drought conditions prevent the Herd Management Area (HMA) from producing adequate forage to sustain those animals currently occupying the area. To prevent resource degradation and animal stress, an emergency gather will be initiated.

The Ely District Manager has determined that a Full Force and Effect Decision is necessary to accomplish an emergency gather to prevent resource degradation. Field observations of forage and water availability have indicated that wild horses and their habitat are being negatively impacted. The following conditions exist within the Meadow Valley Mountains HMA and adjacent areas:

- Forage Condition:** Current year's growth is extremely limited. Growth on native grasses (Indian ricegrass, small galleta) averaged less than 3 inches.
- Forage Utilization:** Severe utilization on herbaceous forage documented throughout the emergency gather area.
- Precipitation:** Precipitation for the past 12 months has averaged 50% of normal.
- Water Availability:** Water is limited to two water sources located within Hackberry Canyon along the southern boundary of the HMA. All reservoirs within the emergency gather area are dry.
- Animal Condition:** Lact./mares = condition classes 2-4  
Studs = condition class 4
- Capture Method:** Helicopter trapping and/or roping
- Number of Animals:** Meadow Valley Mountains HMA Horses: capture 50, remove 50  
Non-HMA area (Breedlove Allotment): capture 40, remove 40 (horses and burros)
- Age Criterion:** All horses and burros

## II. Area of Concern

The proposed emergency gather area is located on public lands administered by the Bureau of Land Management's (BLM) Ely District, in Lincoln County, Nevada. The areas of concern are the Meadow Valley Mountains HMA (western one-half of the Henrie Complex Allotment) and the Breedlove Allotment (non-HMA area), approximately 30 miles south of Caliente, Nevada (refer to Map 1&2).

### III. Numbers of Horses

Based on census data obtained in November 1994 and past gathers, approximately 50 wild horses exist within the Meadow Valley Mountains HMA and approximately 40 horses and burros within the Breedlove Allotment. No wild horses will be retained within the Meadow Valley Mountains HMA following the gather operation.

### IV. Time Frame

The animals will be removed from the HMA beginning approximately August 20, 1996 and continuing until the emergency gather is completed.

### V. Gather Methods

The animals will be gathered through the use of helicopter trapping and/or roping. The gather operation will adhere to the "Nevada Wild Horse and Burro Gather Contract" Number 1422-N660-C96-3004.

### VI. Administration of the Contract

The BLM will be responsible, through the above-cited contract (1422-N660-C96-3004), for all capture, care, and temporary holding of animals until release. The Contracting Officers Representative (COR) will be the Wild Horse and Burro Specialist from the Caliente Field Station, who will be directly responsible for conducting the emergency gather.

### VII. Desert Tortoise

1. The contractor and all employees will be informed about the desert tortoise (which will include information provided by the BLM on the life history of the desert tortoise, its protected status, protocols for dealing with tortoises if and when they are encountered, and the definition of "take" via informational handout provided by the BLM. Each shall be advised of the potential impacts to desert tortoises and potential penalties (up to \$50,000 in fines and one year in prison) for taking a Federally protected species.

The contractor shall ensure that all personnel associated with the gather shall acknowledge receipt of the tortoise information through the signing of the acknowledgement for which shall be returned to the BLM upon completion of circulation to all employees.

2. Trap sites and holding corral locations and helicopter staging areas will be selected with the input of a BLM biologist to ensure that impacts to tortoise habitat are avoided.

3. Trap sites, holding corral, and staging areas will be surveyed for desert tortoise and tortoise burrows before use by a BLM biologist. If an active tortoise burrow is located on the proposed site, a new site will be selected.
4. To the extent possible, all traps, holding corrals, and staging areas will be located in previously disturbed areas, which are devoid of perennial vegetation and will be located adjacent to existing roads and trails.
5. To the extent possible, vehicular travel will be restricted to existing roads, trails, and washes. If off-road vehicular travel is necessary, the route will be surveyed for the presence of desert tortoise before use.
6. Garbage and similar items will be placed in appropriate containers and not allowed to accumulate in order to discourage the attraction of ravens to the area.
7. If a desert tortoise should wander onto the trap, holding corral or staging area, all activities with the potential to harm the desert tortoise will cease until the tortoise moves out of harms way under its own volition.
8. The discharge of firearms will be prohibited at all trap and holding sites except in the case of euthanasia of a captured animal (wild horse, mule, or burro) by a authorized BLM employee.

#### VIII. Disposal of Removed Animals

All wild horses gathered will be sent to the Palomino Valley Center to be prepared for adoption.

#### IX. Branded and Claimed Animals

A notice of intent to impound to gather wild horses and burros will be issued concurrently by BLM, prior to any gathering operations in this area. The Nevada Department of Agriculture and the District Brand Inspector will receive copies of these notices, as well as the Notice of Public Sale, if issued. The COR or Project Inspector (PI) will contact the District Brand Inspector and arrange dates and times if brand inspections are needed. Impounded privately owned animals will be handled in accordance with BLM, Nevada State Office Instruction Memoranda NV-84-116 and NV-85-416.

#### X. Destruction of Injured or Sick Animals

Any severely injured or seriously sick animals will be destroyed in accordance with 43 CFR 4730.1. Animals will be destroyed only when a definite act of mercy is needed to alleviate pain and suffering. The COR will make this determination; the advice of a veterinarian will be sought if the COR is uncertain about the severity or the injury or illness. Destruction will be done in the most humane method available.

XI. Responsibility

The Ely District Manager is responsible for maintaining and protecting the health and welfare of wild horses. To ensure the contractor's compliance with contract stipulations, a COR from the Ely District will be on site at all times during the emergency gather. The health and welfare of the animals will be the overriding concern of the District Manager, Field Station Manager, COR and PI.

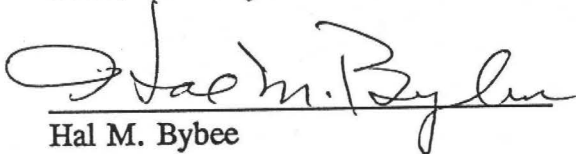
Prepared By:



Alan B. Shepherd  
Wild Horse and Burro Specialist  
Caliente Field Station  
Ely District

8/15/96  
Date

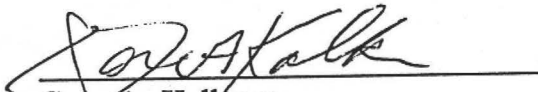
Concurrence By:



Hal M. Bybee  
ADM - Renewable Resources  
Ely District

08/16/96  
Date

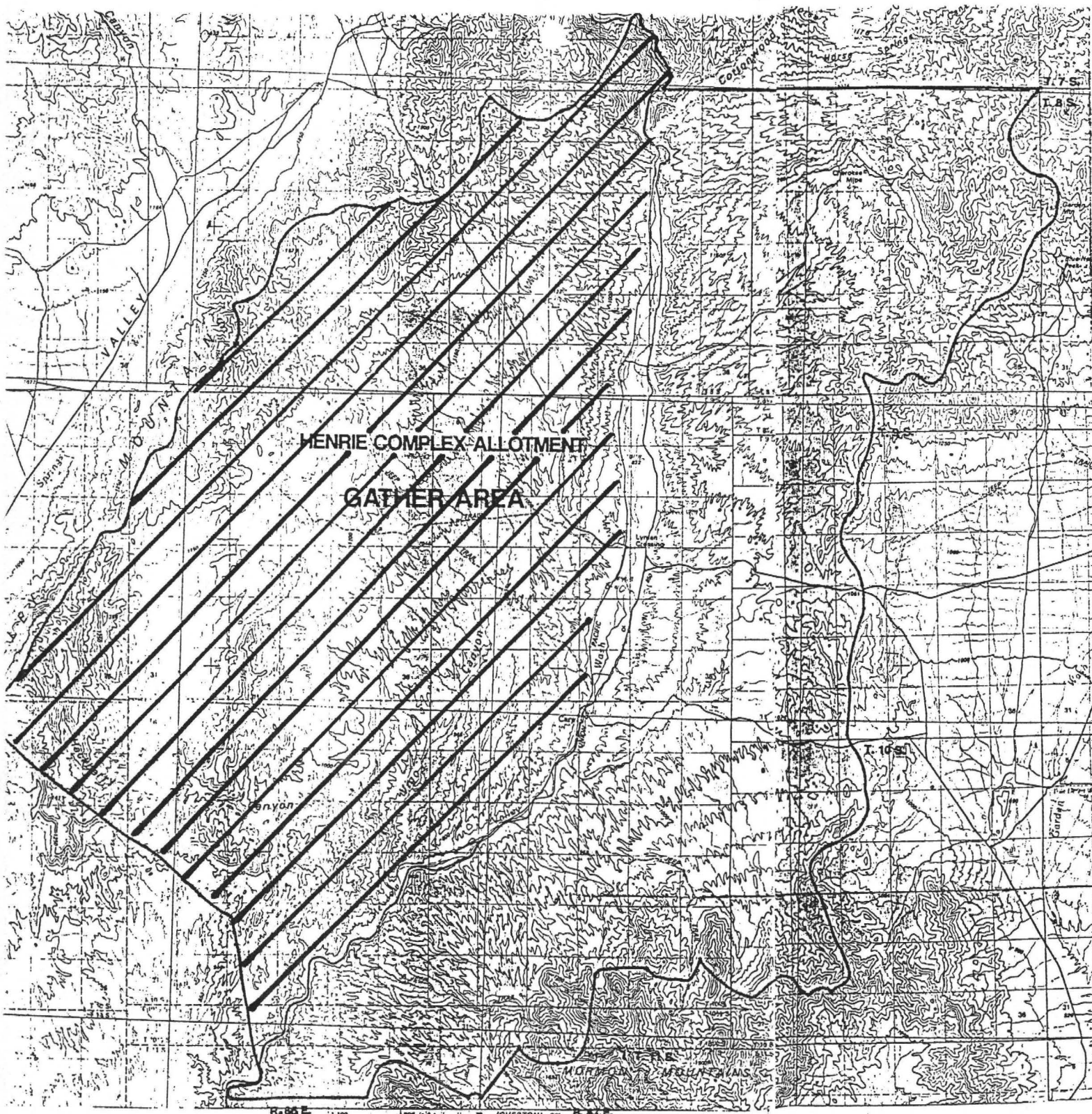
Approved By:



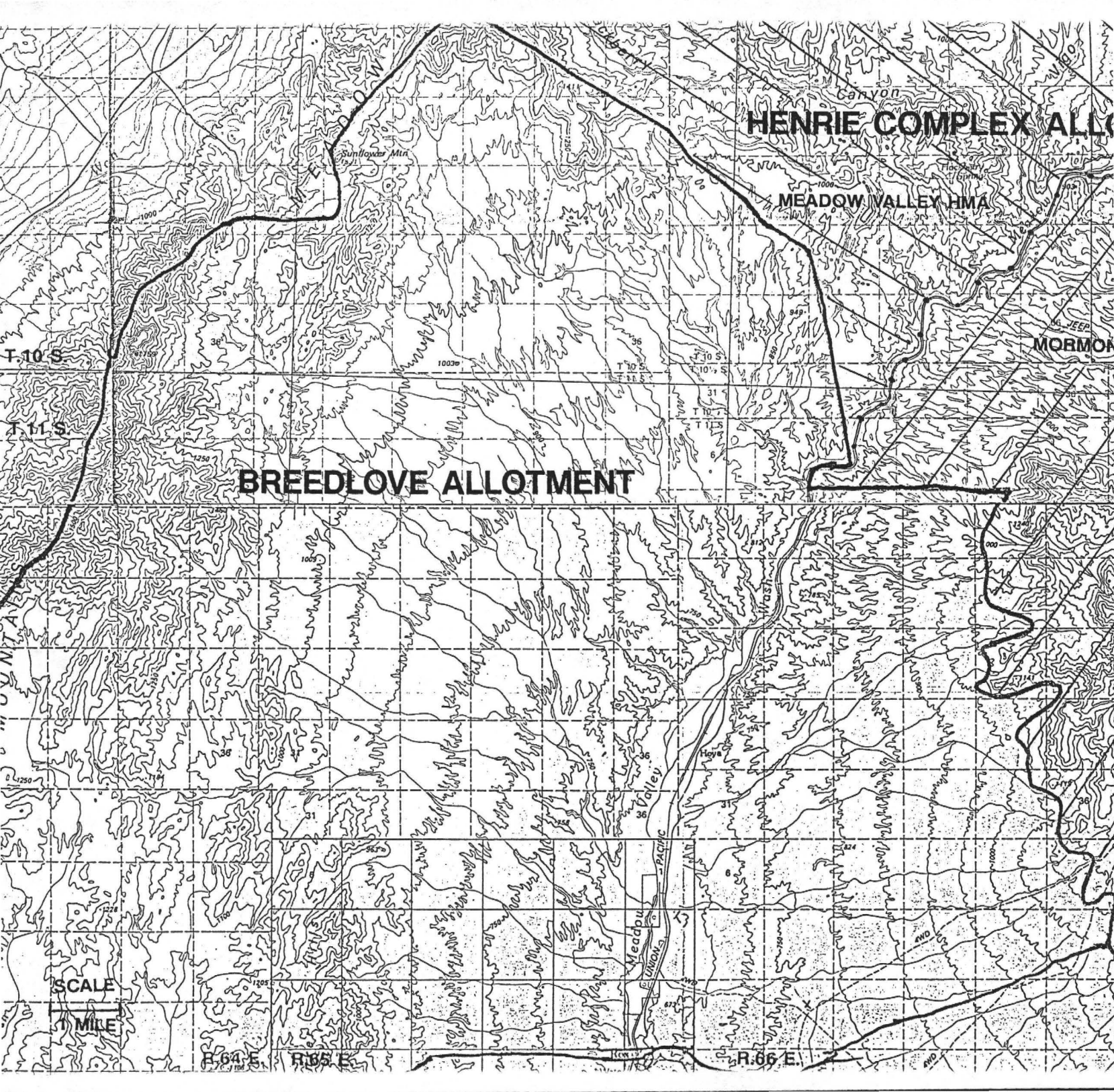
Gene A. Kolkman  
District Manager  
Ely District

8/16/96  
Date





HENRIE COMPLEX ALLOTMENT  
GATHER AREA



HENRIE COMPLEX ALLOT

MEADOW VALLEY HMA

BREEDLOVE ALLOTMENT

SCALE  
1 MILE

R.64 E.

R.65 E.

R.66 E.





# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Caliente Resource Area  
P.O. Box 237  
Caliente, Nevada 89008



IN REPLY REFER TO:

In Reply Refer To:  
4700  
(NV-055.07)

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

## NOTICE OF FINAL DECISION FULL FORCE AND EFFECT

### DELAMAR MOUNTAINS HERD MANAGEMENT AREA (HMA) EMERGENCY REMOVAL

Severe drought conditions exist within the Delamar Mountains HMA and forage production is extremely limited. Forage utilization in the western one-third of Pasture #4 of the Oak Springs Allotment is currently in a severe use category. From field observations of available forage and water as well as a review of monitoring data, it has been determined the wild horses and their habitat are being adversely impacted.

Approximately 75 wild horses must be gathered from within the HMA and approximately 10 horses residing outside the HMA within Pasture #2 of the Oak Springs Allotment. All wild horses gathered will be placed into the adoption program. No other portions of the Delamar Mountains HMA will be gathered in conjunction with this emergency gather operation. The gather operation will be conducted by helicopter trapping and/or roping.

Under current drought management measures, domestic livestock are being removed from the western one-third of the Oak Springs Allotment, per signed livestock management agreement with the allotment permittee. A notice of closure agreement for livestock grazing is being issued in conjunction with this decision for those areas affected by the emergency gather operation.

Due to the emergency nature of these conditions, it is necessary to implement this immediately, through a Full Force and Effect Decision. This decision will be implemented on or about August 17, 1996 and will continue until the action is completed. The rationale for placing this decision in Full Force and Effect are as follows:

1. Drought conditions have critically limited forage production and water availability for wild horses. Pasture #4 of the Oak Springs Allotment portion of the Delamar Mountains HMA is receiving severe use, has received 50% of its normal precipitation, and is not expected to produce enough forage to sustain the animals currently occupying the area.
2. Water availability for the horses' consumption is limited to that water supplied by the livestock permittees and will no longer be available following the removal of the permittees' livestock.

**AUTHORITY:** The authority for this decision is contained in Sec.3(a) and (b) and Sec.4 of the Wild Free-Roaming Horse and Burro Act (P.L. 92-195) as amended and Title 43 of the Code of Federal Regulations. The authority for the Full Force and Effect decision can be found at 43 CFR 4770.3(c) which states:

"(c) Notwithstanding the provisions of paragraph (a) of 4.21 of this title, the authorized officer may provide that decisions to remove wild

horses or burros from public or private lands in situations where removal is required by applicable law or necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision."

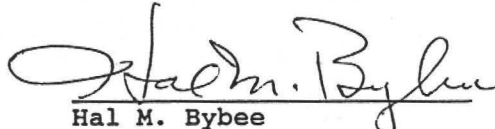
**APPEALS:** Within 30 days of receipt of this decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c). Within 30 days after filing a Notice of Appeal, you are required to provide a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file an appeal and petition for a stay, the petition for a stay must accompany your notice of appeal and be in accordance with 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(c). Copies of the Notice of Appeal and Petition for a Stay must be submitted to (1) the Interior Board of Land Appeals, Office of Hearing and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, (2) the Regional Solicitor's Office, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890, and (3) Ely District Office, HC 33 Box 33500, Ely, NV 89301-9408. The original documents should be filed with this office.

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay of decision pending appeals shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

**ADDITIONAL INFORMATION:** Contact Alan B. Shepherd of my staff, at (702) 726-8100 or write at the above address.

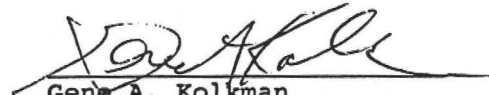
Concurrence:

  
Hal M. Bybee

ADM - Renewable Resources  
Ely District

08/16/96  
Date

Approval:



Gene A. Kolkman  
District Manager  
Ely District

8/16/96  
Date

Enclosure:

1. Capture Plan

**DELAMAR MOUNTAINS HERD MANAGEMENT AREA  
EMERGENCY GATHER PLAN**

**PREPARED BY  
Alan B. Shepherd  
Wild Horse and Burro Specialist**

**Caliente Field Station  
Ely District  
August 1996**

## I. Purpose and Need

Resource conditions and animal health are currently being adversely affected by severe drought conditions in the southern portion of the Ely District, in Lincoln County, Nevada. The drought conditions prevent the Herd Management Area (HMA) from producing adequate forage to sustain those animals currently occupying the area. To prevent resource degradation and animal stress, an emergency gather will be initiated.

The Ely District Manager has determined that a Full Force and Effect Decision is necessary to accomplish an emergency gather to prevent resource degradation. Field observations of forage and water availability have indicated that wild horses and their habitat are being negatively impacted. The following conditions exist in the Delamar Mountains HMA:

**Forage Condition:** Current year's growth is extremely limited. Growth on native grasses (Indian ricegrass, small galleta) averaged less than 3 inches.

**Forage Utilization:** Severe utilization on herbaceous forage documented throughout the emergency gather area.

**Precipitation:** Precipitation for the past 12 months has averaged 50% of normal.

**Water Availability:** Water is limited to troughs being filled by the livestock permittee. All reservoirs within the emergency gather area are dry. Following removal of the permittee's livestock, water will no longer be supplied to the troughs in the emergency area.

**Animal Condition:** Lact./mares = condition classes 2-4  
Studs = condition class 4

**Capture Method:** Helicopter trapping and/or roping

**Number of Animals:** Horses: capture 75, remove 75 within the HMA  
capture 10, remove 10 outside the HMA

**Age Criterion:** All horses

## II. Area of Concern

The proposed emergency gather area is located on public lands administered by the Bureau of Land Management's (BLM) Ely District, in Lincoln County, Nevada. The area of concern is Pasture #4 of the Oak Springs Allotment within the Delamar HMA and Pasture #2 of the Oak Springs Allotment (non-HMA), approximately 20 miles southwest of Caliente, Nevada (refer to Map 1). No other portions of the Delamar Mountains HMA will be gathered in conjunction with this emergency gather.



III. Time Frame

The animals will be removed from the HMA beginning approximately August 20, 1996 and continuing until the emergency gather is completed.

IV. Gather Methods

The animals will be gathered through the use of helicopter trapping and/or roping. The gather operation will adhere to the "Nevada Wild Horse and Burro Gather Contract" Number 1422-N660-C96-3004.

V. Administration of the Contract

The BLM will be responsible, through the above-cited contract (1422-N660-C96-3004), for all capture, care, and temporary holding of animals until release. The Contracting Officers Representative (COR) will be the Wild Horse and Burro Specialist from the Caliente Field Station, who will be directly responsible for conducting the emergency gather.

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IX. Responsibility

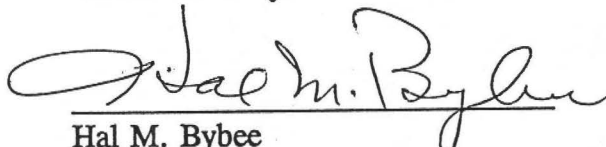
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Prepared By:

  
Alan B. Shepherd  
Wild Horse and Burro Specialist  
Caliente Field Station  
Ely District

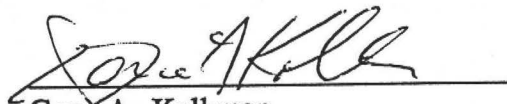
8/15/96  
Date

Concurrence By:

  
Hal M. Bybee  
ADM - Renewable Resources  
Ely District

08-16-96  
Date

Approved By:

  
Gene A. Kolkman  
District Manager  
Ely District

8/16/96  
Date

# OAK SPRING ALLOTMENT

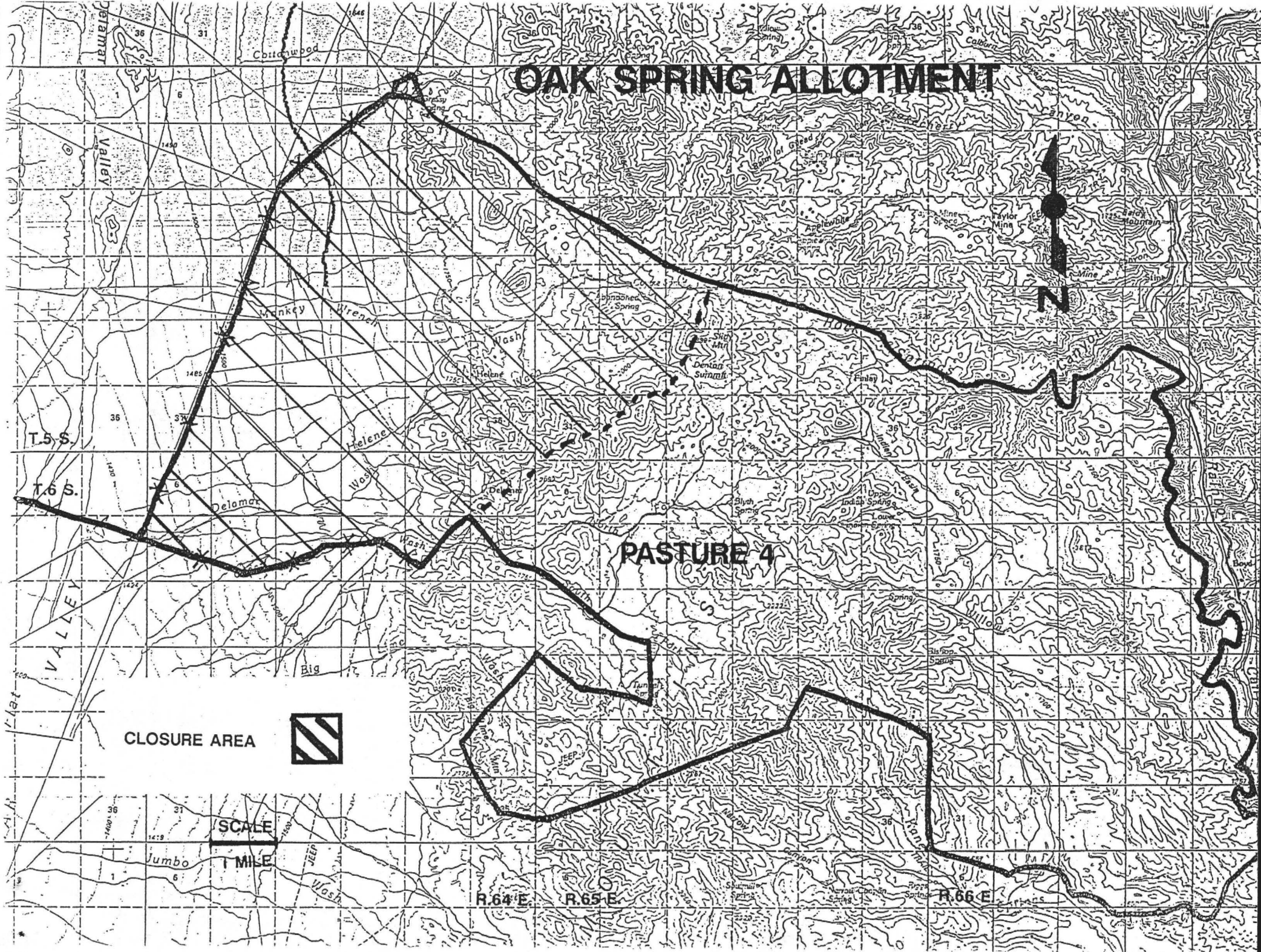
## PASTURE 4

CLOSURE AREA



SCALE

1 MILE





BOB MILLER  
Governor

STATE OF NEVADA

CATHERINE BARCOMB  
Executive Director



**COMMISSION FOR THE  
PRESERVATION OF WILD HORSES**

1105 Terminal Way  
Suite 209

Reno, Nevada 89502  
(702) 688-2626

September 11, 1996

Mr. Gene A. Kolkman  
Ely District  
Bureau of Land Management  
HC 33 Box 33500  
Ely, Nevada 89301-9408

Subject: Emergency Gather Plan/Decision - Highland HMA

Dear Mr. Kolkman:

Thank you for consulting the Nevada Commission for the Preservation of Wild Horses concerning the emergency gathers for Highland Peak Herd Management Area. Both these gathers are necessary to prevent wild horse death and range degradation.

It appears that animals are stressed to condition classes between two and four. In addition, wild horse dependency on private waters and lands should initiate a gather.

We request an after-the-fact assessment. It is important to know the results of the gather and post gather census in relationship to the Highland Wild Horse Herd. As found in our previous requests, we are interested in the status of the surviving herd and future management strategy to sustain a viable wild horse herd.

We appreciate your many efforts and encourage you forward with necessary gathers.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Barcomb".

CATHERINE BARCOMB  
Executive Director