



United States Department of the Interior

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



IN REPLY REFER TO:

4160
Olson, Kevin
Grazing Case File
(NV-055.10)

CERTIFIED MAIL NUMBER # P998558383
RETURN RECEIPT REQUESTED

10/24/93
24 1993

FULL FORCE & EFFECT DECISION

Kevin Olson
P. O. Box 97
Panaca, NV 89042

Dear Mr. Olson:

On October 15, 1993 I signed a Full Force & Effect Decision which modified your existing Federal Grazing Permit dated 2/19/92. The changes made to your permit by this Final Decision were: 1) inclusion of Terms and Conditions specific to the management of livestock - excluding them from the burn area within the Henrie Complex allotment, and 2) a temporary reduction in the active preference of the Henrie Complex allotment due to the loss of vegetation from the Meadow and Pass fires. I had considered information from the Meadow and Pass Fires Rehabilitation Plan Environmental Assessment (EA) to reach my final decision. The sequence of events resulting in that decision were:

The Meadow and Pass wildland fires burned a total of 27,186 acres of public land in the Meadow Valley Mountains and adjacent areas between July 28 and August 7, 1993. Of the total acres burned, 20,760 acres of public land were burned within the Henrie Complex allotment.

On September 3, 1993 my staff and I met with you to discuss implications of these wildland fires and what livestock management options were available to assure natural revegetation of the burned areas in the Henrie Complex allotment. Consideration was given all reasonable options and discussed in EA #NV-055-93-29.

The Meadow and Pass Fire Closure Notice was signed October 5, 1993 by the Las Vegas District Manager and mailed to you on October 7, 1993. This closure notice, issued as a Final Decision in Full Force and Effect pursuant to Title 43, Code of Federal Regulations (CFR), Sections 4110.3-3 (c) and 4160.3 (c), closed the entire burn area to all livestock grazing for a minimum of two years and/or until natural rehabilitation objectives have been met. The purpose of the closure was to protect soil resources and allow rehabilitation of vegetative resources within the burn area.

The Caliente Resource Area initiated a Fire Rehabilitation team immediately following containment of the Meadow fire. The team developed management recommendations for the protection of the natural resources and analyzed the impacts of these recommendations in EA NV-055-93-29). I signed, on September 29, 1993, a *Finding of No Significant Impact and Record of Decision* to implement Alternative #1 - Natural Revegetation with Controlled Livestock Grazing.

A portion of the burn closure area (20,742 acres) occurs within the Meadow Valley Herd Management Area (HMA). Environmental Assessment (#NV-055-93-31) and a Emergency Gather Plan for the Meadow Valley Mountain HMA analyzed the impacts of these two fires on the Meadow Valley Mountain wild horse herds' habitat. These documents were signed by the "Acting" District Manager on September 28, 1993. A Full Force and Effect decision authorizing the Meadow Valley HMA Emergency Removal was also signed on September 27, 1993.

Consequently, further review and discussion of this information and the alternatives discussed in EA #NV-055-93-29 has occurred. Therefore, based upon the previously identified information, meeting with you, reconsideration of alternatives and desire to implement impartial management consistent for both livestock and wild horses within that portion of the Henrie Complex allotment and Meadow Valley Mountain HMA where these two fires occurred, my Final Decision is to rescind the October 15, 1993 decision, cancel your existing permit dated 2/19/92 and issue you a new Federal Grazing Permit with the Terms and Conditions listed below, effective November 24, 1993 and expiring on 02/28/2002. The term of the new Federal Grazing Permit corresponds to the expiration date of your current Federal Grazing Permit dated 2/19/92. This Final Decision is to be placed in Full Force and Effect and will take effect immediately on November 24, 1993 to prevent any resource deterioration within the burn closure area of the Henrie Complex allotment.

Your new Federal Grazing Permit for the Henrie Complex allotment will be issued as follows:

FROM:

EXISTING FEDERAL GRAZING PERMIT

03/01/92 - 02/28/2002

ALLOTMENT NAME	NUMBER OF LIVESTOCK	KIND OF LIVESTOCK	SEASON OF USE		PERCENT FEDERAL LAND	ACTIVE PREFERENCE
			BEGIN DATE	END DATE		
HENRIE COMPLEX	313	CATTLE	03/01	02/28	85	3185

TO:

NEW FEDERAL GRAZING PERMIT

11/24/93 - 02/28/2002

ALLOTMENT NAME	NUMBER OF LIVESTOCK	KIND OF LIVESTOCK	SEASON OF USE		PERCENT FEDERAL LAND	ACTIVE PREFERENCE	TEMPORARY SUSPENDED PREFERENCE
			BEGIN DATE	END DATE			
HENRIE COMPLEX	82	CATTLE	03/01	02/28	85	975	-
HENRIE COMPLEX	-	CATTLE	03/01	02/28	85	-	2210

GENERAL TERMS AND CONDITIONS

The specific Terms and Conditions of your Federal Permit dated 02/19/92 remain unchanged (Attachment 1).

Specific Terms and Conditions relating to the closure of the Meadow and Pass fire burn areas to livestock grazing within the Henrie Complex allotment are as follows:

**SPECIFIC TERMS AND CONDITIONS
FOR THE MEADOW AND PASS FIRE CLOSURE AREA**

1. These specific Terms and Conditions shall remain in effect for a minimum of two years, beginning November 24, 1993 and continuing until monitoring indicates resource objectives for the burn area have been attained.
2. 2210 AUMs shall be held in temporary suspended preference for the duration of the closure period.
3. Livestock use will only be authorized to the east of the Union Pacific Railroad in the Henrie Complex allotment (Attachment 2), if you can show evidence the railroad right-of-way fence has been repaired and maintained by January 1, 1994 . Should this right-of-way fence not be maintained and repaired than the entire Henrie Complex allotment will be closed to livestock grazing.
4. Should continued maintenance and repair of the right-of-way fence after January 1, 1994 fail to keep livestock from the burn closure area, livestock shall be removed from the allotment immediately. The total closure of the Henrie Complex allotment to grazing, in order to insure protection of the burn area, will be implemented by the Bureau of Land Management under the authority of this decision.
5. Monitoring data (i.e. frequency, utilization, plant cover, density and or Community Structure information) will be collected to determine if the closure resource objectives have been met. Attachment 3 explains the methodologies to be employed in collecting the respective monitoring data.
6. Resource objectives established for the burn area in the Henrie Complex allotment for Key Areas 1 and 2 are identified below:

The frequency of occurrence of key perennial species shall fall within the range of values identified in Table 1. The ranges identified in Table 1 are based on a statistical analysis of the frequency data collected at the two Key Areas. The age class of key perennial species sampled shall be mature plants, 2 years or older, in order to insure plant establishment and improved rehabilitative conditions.

Table 1. Percent Frequency Value Ranges.

Key Area Number	Key Perennial Species	Frequency Value Ranges
1	HIRI	21%-37%
2	ARPU9	45%-69%

The authority for this decision is contained in Title 43 of the Code of Federal Regulations (CFR), which states in pertinent parts:

4110.3-2 (a): "Active use may be suspended in whole or part on a temporary basis due to drought, fire, other natural causes, or to facilitate installation, maintenance, or modification of range improvements.

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."

Authority for this full force and effect decision is also contained in Title 43 CFR, which states in pertinent parts:

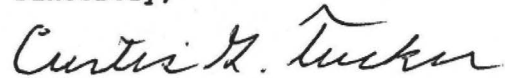
4110.3-3 (c) "When the authorized officer determines that the soil, vegetation, or other resources on the public lands require temporary protection because of conditions such as drought, fire, flood, or insect infestation, after consultation with affected permittees or lessees and other affected interests,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

4160.3 (c): "The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration. Full force and effect decisions shall take effect on the date specified, regardless of an appeal".

If you wish to appeal this decision for the purpose of a hearing before a Administrative Law Judge, in accordance with 43 CFR 4160.3 (c), 4160.4, and 4.470, you are allowed thirty (30) days from receipt of this notice within which to file an appeal with the Caliente Resource Area Manager at the following address: Caliente Resource Area, Attn. Area Manager, P. O. Box 237, Caliente, NV 89008.

The appeal shall state the reasons, clearly and concisely, as to why you think this Final Decision is in error.

Sincerely,



Curtis G. Tucker
Area Manager

Attachments:

- #1 - Specific Terms and Conditions identified in decision dated January 31, 1992 (5 pp)
- #2 - Authorized livestock use area (1 pp)
- #3 - Methodologies to be employed in collecting the respective monitoring data (10 pp)

cc:

Resource Concepts, Inc.
Commission for the Preservation of Wild Horses
Wild Horse Organized Assistance, Inc.
Animal Protection Institute of America
Natural Resources Defense Council
Sierra Club
The Wilderness Society
U.S. Fish and Wildlife Service
N-5 Board
Desert Tortoise Council
Nevada Department of Wildlife
Silver State Pleasure Riders
National Wildhorse Association
Las Vegas District Grazing Advisory Board
International Society for the Protection of
Mustangs and Burros
Charlie Watson, Nevada Outdoor Recr. Assoc.
Paul Clifford, Cleveland Museum of
Natural History

Certified Mail Number P998558384
Certified Mail Number P998558385
Certified Mail Number P998558386
Certified Mail Number P998558387
Certified Mail Number P998558388
Certified Mail Number P998558389
Certified Mail Number P998558390
Certified Mail Number P998558391
Certified Mail Number P998558392
Certified Mail Number P998558393
Certified Mail Number P998558394
Certified Mail Number P998558395
Certified Mail Number P998558396
Certified Mail Number P998558397

Certified Mail Number P998558398
Certified Mail Number P998558400

Certified Mail Number P998558401

ATTACHMENT 1

SPECIFIC TERMS AND CONDITIONS FOR THE NEW FEDERAL GRAZING PERMIT

Henrie Complex Allotment

1. Grazing will be permitted in accordance with grazing Prescriptions 1 and 2 identified in the Opinion as amended.
2. Grazing prescription areas within your allotment are delineated on Attachment 2, titled Henrie Complex Allotment Map.
3. Livestock grazing use shall be authorized in the Henrie Complex allotment 06/15 through 02/28 in Prescription 1 and 03/01 through 02/28 in the Prescription 2 area and Non-Prescription area as identified in the following table and Attachment 2.

SPECIFIC USE AREAS AND
IDENTIFIED PERIODS OF USE

PRESCRIPTION AREAS ^{1/}	SEASON OF USE	
	BEGIN DATE	END DATE
Prescription 1 ^{2/}	06/15	02/28
Prescription 2 ^{2/}	03/01	02/28
Non-Prescription	03/01	02/28

^{1/} Refer to Attachment 2.

^{2/} Prescription 1, Tortoise Habitat Categories I, II, and Intensive III.

^{3/} Prescription 2, Tortoise Habitat Category III non-intensive.

4. All vehicle use in desert tortoise habitat within the Henrie Complex allotment shall be restricted to existing roads and trails.
5. Trash and garbage shall be removed from each camp site that is associated with livestock grazing operations (branding, sheep herding, roundup, etc.) and disposed of off site in a designated facility. No trash or garbage shall be buried at camp sites.
6. Use of hay or grains as a feeding supplemental shall be prohibited in desert tortoise habitat to avoid the introduction of non-native plant species. Mineral, protein and salt blocks are authorized subject to 43 CFR section 4130.6-2(c).
7. The allotment shall include at a minimum the following key species for monitoring purposes where appropriate based upon density and availability: galleta grass (*Hilaria jamesii*) and (*H. rigida*), bush muhly (*Muhlenbergia porteri*), sand dropseed (*Sporobolus cryptandrus*), Indian ricegrass (*Oryzopsis hymenoides*), black grama (*Bouteloua eriopoda*), desert needlegrass (*Stipa speciosa*), range ratany (*Krameria parvifolia*),

ephedra (*Ephedra spp.*), white burrobrush (*Hymenoclea salsola*) and winterfat (*Eurotia lanata*).

8. The following table identifies key areas, species and the maximum allowable use levels for specified periods of livestock grazing use, which shall be used at a minimum for monitoring purposes within Prescription 1 and 2 areas in the Henrie Complex allotment. As additional key species and or key areas are determined necessary for monitoring purposes, maximum allowable use levels will be established based upon the conditions as set forth in the Opinion for Prescription 1 and/or 2 areas.

EXISTING KEY AREAS, SPECIES AND ALLOWABLE USE LEVELS

KEY AREA & LEGAL DESCRIPTION	KEY SPECIES	PRESCRIPTION 2	
		10/15 TO 02/28	03/01 TO 10/14
1 T.10S., R.66E., Sec.6 (M-W)	Big galleta grass Nevada ephedra	≤50% ≤45%	≤40% ≤40%

9. The following table identifies the maximum allowable use levels for specified periods of livestock grazing use, which shall be used at a minimum for monitoring purposes within Prescription 1 and/or 2 areas.

ALLOTMENT NAME	PRESCRIPTION	ALLOWABLE USE LEVELS AND USE PERIODS PER GRAZING PRESCRIPTION		
		06/15 - 10/14	10/15 - 02/28	03/01 - 06/14
HENRIE COMPLEX	PRESCRIPTION 1	All Perennial Species - ≤40%	Key Perennial Grasses - ≤50% Key Perennial Shrubs and Forbs - <40%	No livestock use will be allowed during this period.
		06/15 - 10/14	10/15 - 02/28	03/01 - 06/14
	PRESCRIPTION 2	All Perennial Species - ≤40%	Key perennial grasses - < 50% Key perennial shrubs & forbs - < 45%	All Perennial Species - ≤40%
		06/15 - 10/14	10/15 - 02/28	03/01 - 06/14

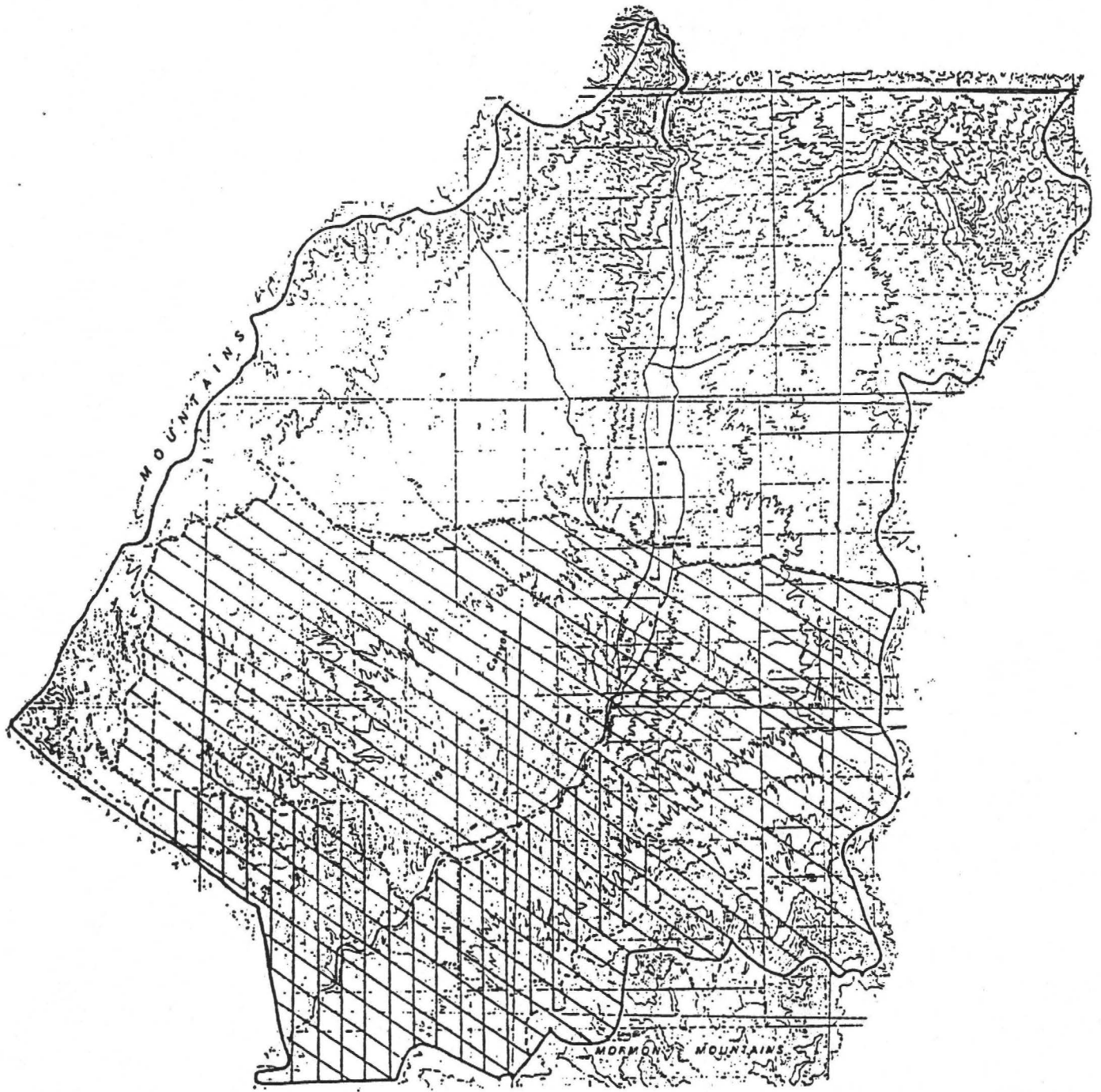
10. When the allowable use levels are reached for the Prescription 1 and/or 2 areas, the livestock must be removed from the allotment unless other management alternatives are authorized by the Caliente Resource Area Manager that are consistent with the Opinion and this decision.
11. Adequate livestock control must be provided by existing range improvements within the Henrie Complex allotment to prevent livestock from continually migrating into the Prescription 1 area during the period 03/01 through 06/14. If livestock continually migrate into the Prescription 1 area, the entire allotment will be required to be managed under Prescription 1 until range improvements become available to stop such action.

12. By March 1, 1993 all cattle (six months of age or older at turn out) will be required to be ear tagged by you with BLM issued ear tags. Additionally, you are required to submit a list of ear tag numbered cattle turned out/authorized on the Henrie Complex allotment. The list must be submitted to the Caliente Resource Area office within seven (7) days of turn out. At the end of the authorized grazing period, any ear tag numbers not accounted for, shall be reported to the Caliente Resource Area office within 15 days.
 - a. Since your operation is of a year round nature and it would be difficult to ear tag all cattle prior to the March 1, 1992 date, I have extended the date to ear tag all your cattle to March 1, 1993. In order to assure adequate cattle control is provided to prevent cattle from continually migrating into the Prescription 1 area, all cattle found in the Prescription 1 area during the period 03/01/92 through 06/14/92 shall be ear tagged by you with a BLM ear tag. Terms and Conditions number 15 and 16 will then be followed.
13. You are required to remove and return to the Caliente Resource Area office all BLM issued ear tags of cattle shipped/sold. This must be done prior to being issued replacement tags.
14. Replacement tags for brush loss, unfound death loss, or other unexplained losses will be issued on a case by case basis at the determination of the Caliente Resource Area Manager.
15. Any livestock found in the Prescription 1 area during the period of 03/01 through 06/14 shall be relocated to the Prescription 2 and/or Non-Prescription area within 72 hours. The ear tag numbers of any cattle found in the Prescription 1 area during the period 03/01 through 06/14 shall be recorded and submitted in writing to the Caliente Resource Area office within five (5) days of being observed.
16. Any livestock found in the Prescription 1 area during the period of 03/01 through 06/14 and which were previously recorded and relocated to the Prescription 2 and/or Non-Prescription area shall be removed from the Henrie Complex allotment within 72 hours of being observed.
17. Applications for changes in grazing use must be in written form and be received by the Caliente Resource Area office no later than 15 days prior to the desired date of change.
18. Applications for changes in grazing use filed after a billing notice has been issued, and which require the issuance of a replacement bill or supplemental bill shall be subject to a ten (10) dollar service charge.
19. Grazing Applications will be issued on a yearly basis showing all grazing use as active by Prescription 1, 2 and/or Non-Prescription areas. If you desire to take all or partial non-use for the grazing year, you must indicate this in writing on your Grazing Application, along with your reason(s).

20. A statement of Actual Grazing Use made on the Henrie Complex allotment by grazing Prescription area, 1, 2 and/or Non-Prescription areas must be received in the Caliente Resource Area office no later than 15 days after the last day of authorized grazing use. In the case of year round grazing, this Actual Grazing Use statement must be received in the Caliente Resource Area office no later than March 15th of each year.

ATTACHMENT 2

HENRIE COMPLEX ALLOTMENT



LEGEND

Prescription 1
(Shading 02/10-02/01)



Prescription 2
(Shading 02/01-02/01)



Non-Prescription
(Shading 02/01-02/01)



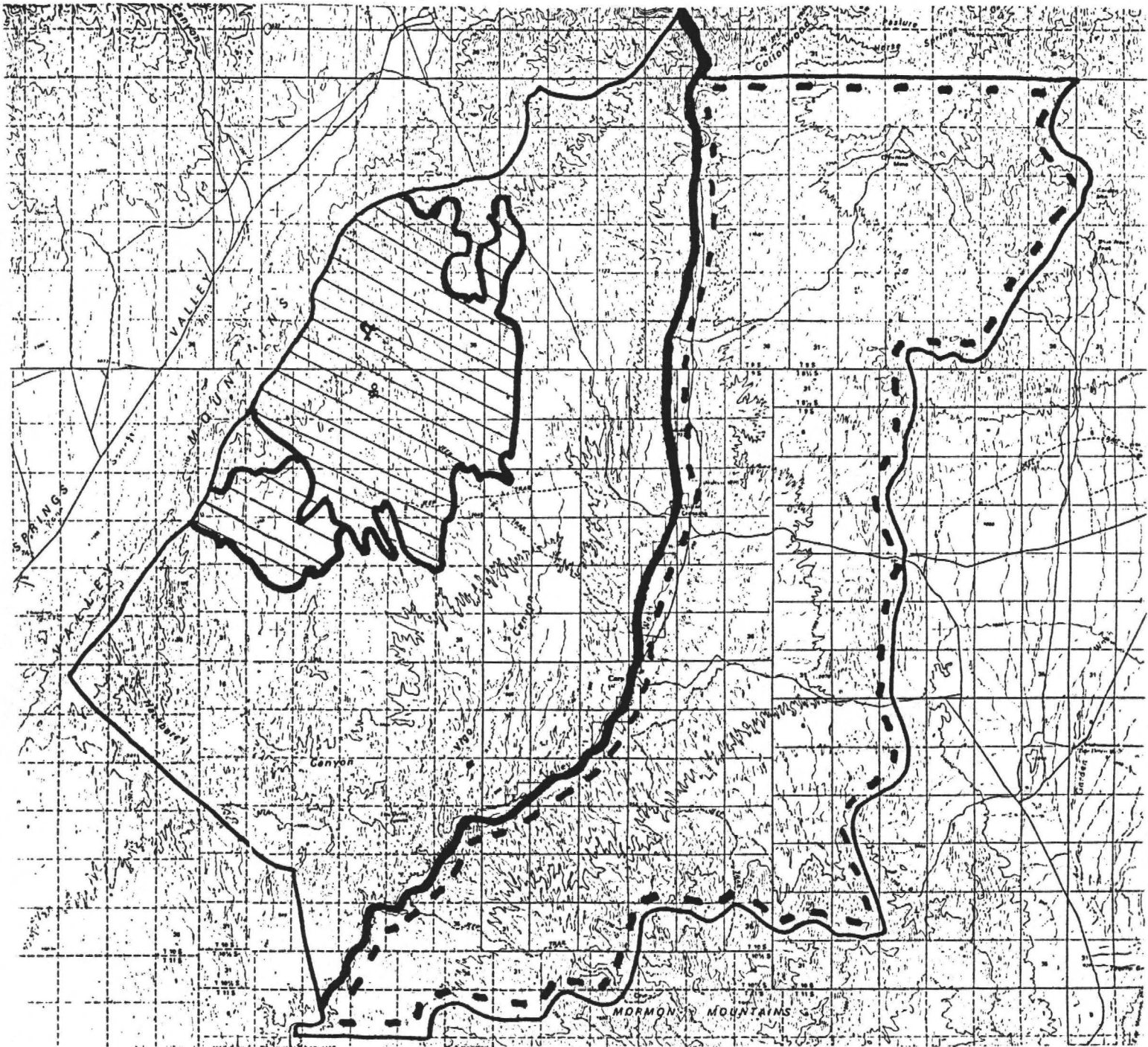
Prescription
Boundary








Allotment
Boundary



ATTACHMENT #2
Henrie Complex Allotment
Authorized Livestock Use Area



LEGEND	
Authorized Use Area:	
Meadow and Pass Burns:	
Allotment Boundary:	
Reservoir:	
Spring:	

11-24-93

NOV 24 1993



UNITED STATES DEPARTMENT of the INTERIOR
BUREAU OF LAND MANAGEMENT



Caliente Resource Area Office
P.O. Box 237
Caliente, Nevada 89008

Meadow Valley Mtn. HMA File
Meadow Valley Mtn HMA Emergency Gather File
4720
(NV-055.07)

Catherine Barcomb, Executive Director
Commission for the Preservation of Wild Horses
50 Freeport Boulevard, No. 2
Sparks, NV 89431

Dear Cathy,

This letter is in response to your telephone call to me on November 22, 1993. There was a misunderstanding of your first request when dealing with "actual data supplying recruitment rate". In our response to your request, we supplied you with census data for the Meadow Valley Mountain Herd Management Area (HMA) and those animals outside the HMA boundaries. This is the information generally used in figuring annual recruitment rate.

The following tables display the information you requested in our telephone conversation.

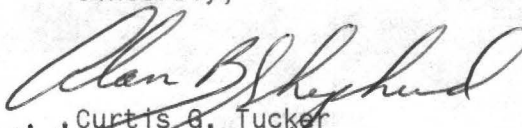
Meadow Valley Mountain HMA Area		
Type of animal	Sex and age group	Number of animals
Horse	Yng mares <9 yrs	27
Horse	Yng studs <9 yrs	30
Horse	Old mares >9 yrs	12
Horse	Old studs >9 yrs	18
Horse	Mixed Foals <1 yr	12
Horse	Death loss	2
	Total	101

Breedlove and Rox-Tule Allotments (Non-HMA Area)		
Type of animal	Sex and age group	Number of animals
Horse	Yng mares <9 yrs	30
Horse	Yng studs <9 yrs	21
Horse	Old mares >9 yrs	21
Horse	Old studs >9 yrs	19
Horse	Mixed Foals <1 yr	27
Horse	Death loss	8
Burro	Mixed age burros	63
Mules	Mixed age mules (all >9)	20
Mules	Death loss	2
	Total	211

Alan Shepherd, CRA Wild Horse and Burro Specialist, is currently compiling the information you requested through a telephone conversation on October 25, 1993. This information will be provided as soon as it is compiled.

For further explanation of the information provided, please contact Alan Shepherd at the Caliente BLM office.

Sincerely,


 "Acting" Curtis G. Tucker
 Area Manager

BOB MILLER
Governor

STATE OF NEVADA

11-23-93
NV-050-94-05

CATHERINE BARCOMB
Executive Director



COMMISSION FOR THE
PRESERVATION OF WILD HORSES

50 Freeport Boulevard, No. 2

Sparks, Nevada 89431

(702) 359-8768

COMMISSIONERS

Paula S. Askew, Chairperson
Carson City, Nevada

Steven Fulstone, Vice Chairman
Smith Valley, Nevada

Michael Jackson
Las Vegas, Nevada

Dan Keiserman
Las Vegas, Nevada

Dawn Lappin
Reno, Nevada

FILED

November 23, 1993

NOV 23 1993

Curtis G. Tucker, Area Manager
BLM-Caliente Resource Area
P.O. Box 237
Caliente, Nevada 89008

CALIENTE RESOURCE AREA
BLM
OFFICE

- RE: 1) FORMAL APPEAL OF THE MEADOW VALLEY MOUNTAIN HERD MANAGEMENT EMERGENCY REMOVAL PLAN, RECORD OF DECISION, & EA
2) FORMAL APPEAL OF THE GRAZING DECISION ON THE HENRIE COMPLEX ALLOTMENT

Dear Mr. Tucker,

We are in receipt of your Meadow Valley Mountain Herd Management Wild Horse Emergency Removal Plan, Record of Decision and Environmental Assessment which was provided "for our information." Subsequent to this horse plan we received copies of your Full Force and Effect Grazing Decisions affecting the wild horse herd management area in question. We formally appeal the horse documents and the livestock grazing decision for the Henrie Complex Allotment and Meadow Valley herd area for the following reasons:

The documents and decisions are arbitrary and biased against wild horses.

In the decision on wild horses you are quoting that wild horses must be removed because 21% of their herd area was burned out and in addition at least 50% of the remaining acreage in the HMA is in severe condition. For this reason you have reduced the wild horses from 269 to 15. However, in your livestock decisions you are only reducing livestock with the criteria that 21% of the allotment is burned, not even considering the 50% severe condition on the remainder of the allotment. You are claiming to have the data to support the horse decision but that does not apply to livestock on the same area. The severity of the conditions of the allotment was serious enough to protect from wild horses but not from livestock that share the same boundaries.

Violations of BLM Policy, Regulations, NEPA, and FLPMA

This decision on wild horses was issued approximately 2 weeks after the gather was done! The document is dated October 12, 1993, and you gathered the horses two weeks prior to that on September 29, 1993! You may issue a gather plan full force and effect for

Attach 3-1

Curtis Tucker, Area Manager
November 23, 1993
Page 2

emergency reasons prior to gathering, even with only one days notice, you knew for 2 months that you would be gathering these horses because of the burn. However, you cannot justify the removal of horses for the rest of the HMA without supporting data as well as for horses outside of a HMA without the requirement of issuing a draft and final gather plan! No EA's were prepared analyzing the impacts of this gather, impacts to the herds and the viability of the herds were not analyzed, policy and procedures were not followed. Your documents were NEPA insufficient.

You violated CFR 4110-3-3(c) in that actions must be taken after consultation with affected permittees or lessees, and other affected interests, either to close allotments to grazing by all or a particular kind of livestock or to modify authorized grazing use. Your decisions show that you met with the permittees on September 7th and 8th, 1993. Your letter to the affected interests does not request a meeting or any input and was issued after the fact eliminating any input that we are allowed by law. As a result the livestock operators take little or no reduction in use while wild horses take a 95% reduction.

Wild Horse Distribution and Habitat

Reduction of the Meadow Valley wild horse herd did not consider the biological needs of the herd. The EA didn't analyze the jeopardy you have arbitrarily placed on the herd, viability, gene pool, seasonal use, distribution, social needs, and longevity. By reducing the herd from 269 to approximately 15 older horses you have sentenced the Meadow Valley herd into a very probable extinction.

You have made these decisions without considering the seasonal use or distribution of the herd. For example, if winter range in the limiting factor of grazing animals with the herd area, then distribution and population data should have been analyzed to determine the "initial herd". You have arbitrarily set a herd size at 15 without considering percentages of summer or winter ranges necessary for any herd size.

Restructuring of the Wild Horse Herd

The 1993 wild horse gather and future gathers are governed by the Strategic Plan for Management of Wild Horses and Burros on Public Lands. Plan Assumption E. states: "Only adoptable animals will be removed from public lands." This assumption is being implemented in Nevada in gathers to release all horses in excess of their carrying capacities and restructuring the herds to older age classes. These two issues were not assessed in the environmental assessment for this gather.

No consideration for the Social or Economic Impacts

The Strategic Plan for the Management of Wild Horses and Burros was finalized without public input stating that input could

Curtis Tucker, Area Manager
 November 23, 1993
 Page 3

be provided in documents or actions implementing the plan. In this removal plan and associated EA there was not consideration for the social structure, biological diversity, age and sex classification, or the long term impacts to the herds by implementation of this action. In addition no alternative social or economic avenues were explored.

Carrying Capacities were not established, the Decision was Arbitrary

The removal plan did not establish a carrying capacity to justify the initial herd or establish livestock use. Carrying capacity computations must consider all land use plan objectives. Riparian habitat was not considered in the environmental assessment and must be considered.

As an example, the following computation which is equitable to both users should have been applied to determine carrying capacity and appropriate management level:

$$\frac{\text{wild horse and livestock aums}}{\text{percent utilization}} = \frac{\text{carrying capacity}}{55\% \text{ desired utilization}}$$

Allocation of the carrying capacity or desired stocking rate could be proportional to the composition of existing animals. Further adjustments in wild horses could be proportional to percentage of loss in habitat necessary to support the remaining herd. Livestock adjustments would be made to meet a natural ecological balance.

Livestock stocking rates were not established under the same criteria as the removal decision for wild horses. It would appear that the above carrying capacity computation (TR 4400-7 BLM Manual), could be applied based upon existing monitoring data to set a livestock carrying capacity and appropriate management level for wild horses in a multiple use decision.

The gather plan executes a process to eliminate the Meadow Valley wild horse herd.

The removal plan adjusts the existing population from 269 to an arbitrary number of 15 for an interim period. Implementation of the Strategic Plan for the Management of Wild Horses and Burros dictated that only older age class animals in excess of ten years of age. These combined actions reduced the Meadow Valley herd below its biological threshold and has jeopardized the herd in the short and long term.

Grazing decision issued above carrying capacity of the range.

You state supporting data in your horse decision that in addition to the 21% burn you have the remaining wild horse habitat in 50% severe condition. That criteria has not been applied to your livestock grazing decision for the protection of the habitat.

Curtis Tucker, Area Manager
November 23, 1993
Page 4

The terms and conditions that you have established with these adjusted grazing decisions are violations of:

1) CFR 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);"

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

We are filing this appeal with the Solicitor and IBLA. We request that you file this appeal with IBLA as well. If you have any questions, please feel free to call.

Sincerely,



CATHERINE BARCOMB
Executive Director

14-201-93
4/5/96

1 DAVID NAWI
Regional Solicitor
2 Pacific Southwest Region
JOHN R. PAYNE
3 Assistant Regional Solicitor
Office of the Regional Solicitor
4 U. S. Department of the Interior
2400 Cottage Way, Rm. E-2753
5 Sacramento, CA 95825
Telephone: (916) 979-2157
6 Attorney for the Bureau of Land Management

7
8 UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
9 HEARINGS DIVISION

10 Commission for the) NV-050-94-05
Preservation of Wild Horses)
(CPWH),) Appeal from the Area Manager's
11) Full Force and Effect Decision
Appellant) dated November 24, 1993,
12) Caliente Resource Area, Las
v.) Vegas District, Nevada
13)
Bureau of Land Management,)
14)
Respondent)

15
16 RESPONDENT'S REPLY TO APPELLANT'S OPPOSITION TO
MOTION TO REMAND

17 Respondent Bureau of Land Management (BLM) makes the
18 following reply to the Appellant Commission for the Preservation
19 of Wild Horses' (CPWH) opposition to the motion to remand
20 (Opposition). This reply is timely filed in accordance with the
21 Order dated March 27, 1996.

22 CPWH misrepresents the Request for Remand when they
23 characterize it as "a belated request for reconsideration of the
24 hearing officer's original order, dated November 30, 1994,
25 denying BLM's motion to dismiss." (Opposition p 1). The Request
26 for Remand is not a request for reconsideration. If the BLM were
27 asking for reconsideration, it would be asking that the appeal be
28 dismissed and that the decision be upheld. BLM is not asking

1 that the decision be upheld, it is asking that the decision be
2 remanded so that BLM may vacate the decision and issue a new
3 decision. The reason for this request is that conditions on the
4 allotment have changed.

5 The grazing decision which CPWH is supposedly concerned
6 about suspended livestock use in the burn area. However, CPWH
7 does not argue that the grazing decision does not allow enough
8 livestock use. Nor does CPWH argue that the grazing decision is
9 unfair to the permittees because it suspends livestock use in the
10 burn area even though fifteen wild horses were left in the area
11 by the prior wild horse decision. Rather, CPWH alleges that the
12 prior horse decision removed wild horses in order to "sustain
13 livestock levels." CPWH ignores the fact that the grazing
14 decision which is the subject of this appeal did not "sustain
15 livestock levels." (See Decision attached to Request for Remand,
16 pp 2-3). Rather, the decision reduced livestock levels in the
17 allotment by 69% and suspended livestock use entirely on the part
18 of the allotment which is affected by the burn. Although the
19 decision allowed livestock to remain on the eastern portion of
20 the allotment, that part of the allotment is not part of the
21 Meadow Valley Mountains Herd Management Area. (See Declaration
22 of Shirley Christman, attached). Therefore, the livestock
23 decision which is the subject of this appeal did not benefit the
24 livestock permittee to the detriment of wild horses. It is not
25 as if the livestock decision increased or even maintained the
26 number of livestock in an area where wild horses had been
27 removed. CPWH's argument is illogical.

28 If CPWH wants a hearing on the wild horse issues which are

1 now before IBLA, they can request such a hearing. See 43 C.F.R.
 2 § 4.415 (1994). If CPWH is concerned that a new grazing decision
 3 will be unfair to wild horses, then they will have an opportunity
 4 to appeal that decision, and to apply for a stay of that decision
 5 if they so choose. CPWH's right of review is adequately
 6 protected, especially considering that the issues they are
 7 concerned about with regard to wild horses are before the IBLA
 8 (docketed as IBLA 94-448).

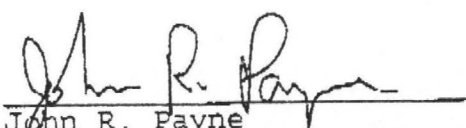
9 If CPWH is attempting to delay the issuance of a new grazing
 10 decision, simply because they feel wild horses were treated
 11 unfairly in a prior separate action, then they misuse the appeal
 12 process. That misuse should be rejected. The livestock
 13 permittee who might otherwise be allowed to graze now ought not
 14 be punished because appellants are angry about BLM's prior
 15 actions with regard to wild horses.

16 Conclusion

17 For the above reasons, BLM requests that the decision under
 18 appeal be remanded so that BLM may vacate the decision.

19 Respectfully submitted,

20 David Nawi
 21 Regional Solicitor

22 By: 
 23 John R. Payne
 24 Assistant Regional Solicitor

25
 26
 27
 28

DECLARATION OF SHIRLEY CHRISTMAN

I, Shirley Christman, declare:

1. I have personal knowledge of the following facts.
 2. I am a Rangeland Management Specialist for the Bureau of Land Management assigned to the Ely District, Caliente Field Station, Caliente, Nevada. I have been so employed continuously from April 19, 1993, to the present.
 3. As a Rangeland Management Specialist, I perform a wide range of administrative duties associated with BLM's rangeland management program. Those duties include grazing use authorizations, allotment use supervision checks, allotment monitoring, allotment evaluations and other such duties to promote proper grazing management of the public lands. I am responsible for grazing administration of rangeland management for public lands.
 4. I am familiar with the Meadow Valley Mountains Herd Management Area (HMA) for the Meadow Valley Mountain Wild Horse Herd.
 5. The Full Force and Effect Decision dated November 24, 1993, eliminated livestock grazing on a temporary basis, from an area which included the Meadow Valley Mountains HMA. Although the Decision allowed livestock grazing to remain on the portion of the Henrie Complex Allotment that rests east of the Union Pacific Railroad, the Meadow Valley Mountains HMA does not overlap that portion of the allotment. Even before the wild horse removal decision in September, 1993, the Meadow Valley Mountains Herd did not reside on the east side of the allotment where livestock were allowed to remain.
-

6. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of April, 1996, at Caliente, Nevada.

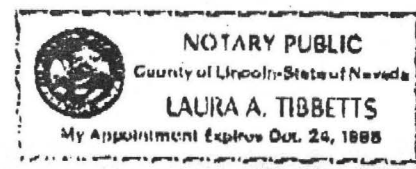
Shirley A. Christman
Shirley A. Christman

Laura A. Tibbetts

State of NEVADA
County of LINCOLN

This instrument was acknowledged before me on APRIL 5, 1996
by SHIRLEY CHRISTMAN

Laura A. Tibbetts



W H O A

WILD HORSE ORGANIZED ASSISTANCE
P.O. BOX 555
RENO, NEVADA 89504

HENRIE ALLOT 11-23-93
MEADOW VALLEY HMA



a note from

Dawn Y. Lappin

November 23, 1993

Curtis G. Tucker, Area Manager
BLM-Caliente Resource Area
P.O. Box 237
Caliente, Nevada 89008

- RE: 1) FORMAL APPEAL OF THE MEADOW VALLEY MOUNTAIN HERD MANAGEMENT EMERGENCY REMOVAL PLAN, RECORD OF DECISION, & EA
2) FORMAL APPEAL OF THE GRAZING DECISION ON THE HENRIE COMPLEX ALLOTMENT

Dear Mr. Tucker,

We are in receipt of your Meadow Valley Mountain Herd Management Wild Horse Emergency Removal Plan, Record of Decision and Environmental Assessment which was provided "for our information." Subsequent to this horse plan we received copies of your Full Force and Effect Grazing Decisions affecting the wild horse herd management area in question. We formally appeal the horse documents and the livestock grazing decision for the Henrie Complex Allotment and Meadow Valley herd area for the following reasons:

The documents and decisions are arbitrary and biased against wild horses.

In the decision on wild horses you are quoting that wild horses must be removed because 21% of their herd area was burned out and in addition at least 50% of the remaining acreage in the HMA is in severe condition. For this reason you have reduced the wild horses from 269 to 15. However, in your livestock decisions you are only reducing livestock with the criteria that 21% of the allotment is burned, not even considering the 50% severe condition on the remainder of the allotment. You are claiming to have the data to support the horse decision but that does not apply to livestock on the same area. The severity of the conditions of the allotment was serious enough to protect from wild horses but not from livestock that share the same boundaries.

Violations of BLM Policy, Regulations, NEPA, and FLPMA

This decision on wild horses was issued approximately 2 weeks after the gather was done! The document is dated October 12, 1993, and you gathered the horses two weeks prior to that on September 29, 1993! You may issue a gather plan full force and effect for

Curtis Tucker, Area Manager
November 23, 1993
Page 2

emergency reasons prior to gathering, even with only one days notice, you knew for 2 months that you would be gathering these horses because of the burn. However, you cannot justify the removal of horses for the rest of the HMA without supporting data as well as for horses outside of a HMA without the requirement of issuing a draft and final gather plan! No EA's were prepared analyzing the impacts of this gather, impacts to the herds and the viability of the herds were not analyzed, policy and procedures were not followed. Your documents were NEPA insufficient.

You violated CFR 4110-3-3(c) in that actions must be taken after consultation with affected permittees or lessees, and other affected interests, either to close allotments to grazing by all or a particular kind of livestock or to modify authorized grazing use. Your decisions show that you met with the permittees on September 7th and 8th, 1993. Your letter to the affected interests does not request a meeting or any input and was issued after the fact eliminating any input that we are allowed by law. As a result the livestock operators take little or no reduction in use while wild horses take a 95% reduction.

Wild Horse Distribution and Habitat

Reduction of the Meadow Valley wild horse herd did not consider the biological needs of the herd. The EA didn't analyze the jeopardy you have arbitrarily placed on the herd, viability, gene pool, seasonal use, distribution, social needs, and longevity. By reducing the herd from 269 to approximately 15 older horses you have sentenced the Meadow Valley herd into a very probable extinction.

You have made these decisions without considering the seasonal use or distribution of the herd. For example, if winter range in the limiting factor of grazing animals with the herd area, then distribution and population data should have been analyzed to determine the "initial herd". You have arbitrarily set a herd size at 15 without considering percentages of summer or winter ranges necessary for any herd size.

Restructuring of the Wild Horse Herd

The 1993 wild horse gather and future gathers are governed by the Strategic Plan for Management of Wild Horses and Burros on Public Lands. Plan Assumption E. states: "Only adoptable animals will be removed from public lands." This assumption is being implemented in Nevada in gathers to release all horses in excess of their carrying capacities and restructuring the herds to older age classes. These two issues were not assessed in the environmental assessment for this gather.

No consideration for the Social or Economic Impacts

The Strategic Plan for the Management of Wild Horses and Burros was finalized without public input stating that input could

be provided in documents or actions implementing the plan. In this removal plan and associated EA there was not consideration for the social structure, biological diversity, age and sex classification, or the long term impacts to the herds by implementation of this action. In addition no alternative social or economic avenues were explored.

Carrying Capacities were not established, the Decision was Arbitrary

The removal plan did not establish a carrying capacity to justify the initial herd or establish livestock use. Carrying capacity computations must consider all land use plan objectives. Riparian habitat was not considered in the environmental assessment and must be considered.

As an example, the following computation which is equitable to both users should have been applied to determine carrying capacity and appropriate management level:

$$\frac{\text{wild horse and livestock aums}}{\text{percent utilization}} = \frac{\text{carrying capacity}}{55\% \text{ desired utilization}}$$

Allocation of the carrying capacity or desired stocking rate could be proportional to the composition of existing animals. Further adjustments in wild horses could be proportional to percentage of loss in habitat necessary to support the remaining herd. Livestock adjustments would be made to meet a natural ecological balance.

Livestock stocking rates were not established under the same criteria as the removal decision for wild horses. It would appear that the above carrying capacity computation (TR 4400-7 BLM Manual), could be applied based upon existing monitoring data to set a livestock carrying capacity and appropriate management level for wild horses in a multiple use decision.

The gather plan executes a process to eliminate the Meadow Valley wild horse herd.

The removal plan adjusts the existing population from 269 to an arbitrary number of 15 for an interim period. Implementation of the Strategic Plan for the Management of Wild Horses and Burros dictated that only older age class animals in excess of ten years of age. These combined actions reduced the Meadow Valley herd below its biological threshold and has jeopardized the herd in the short and long term.

Grazing decision issued above carrying capacity of the range.

You state supporting data in your horse decision that in addition to the 21% burn you have the remaining wild horse habitat in 50% severe condition. That criteria has not been applied to your livestock grazing decision for the protection of the habitat.

Curtis Tucker, Area Manager
November 23, 1993
Page 4

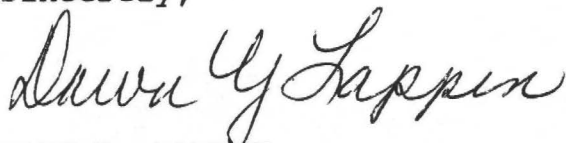
The terms and conditions that you have established with these adjusted grazing decisions are violations of:

1) CFR 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);"

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

We are filing this appeal with the Solicitor and IBLA. We request that you file this appeal with IBLA as well. If you have any questions, please feel free to call.

Sincerely,



DAWN Y. LAPPIN
Director