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In Reply Refer To:
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Case Files of Jenson, Cox
Lee & Andrus
(NV-045.01)

NOTICE OF FINAL MULTIPLE USE DECISION
FOR THE
RABBIT SPRING, SHEEP SPRING, UVADA AND OAK WELLS ALLOTMENTS

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MILLER
FLAT
HMA

↓
MILLER FLAT

PERMITTEE

CERTIFIED MAIL NOS

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Return Receipts Requested

BACKGROUND INFORMATION:

The Mojave-Southern Great Basin Resource Advisory Council (RAC) Standards and Guidelines were approved February 12, 1997 (Appendix I). These Standards and Guidelines reflect the stated goals of improving rangeland health while providing for the viability of the livestock industry.

The Management Framework Plan (MFP) for the Caliente Field Station (formerly the Caliente Resource Area) was issued in February, 1982. The Caliente Rangeland Program Summary (RPS) was issued in June, 1985. The Caliente Grazing Environmental Impact Statement (EIS) was issued in September, 1979. These documents guide the management of public lands within the Rabbit Spring, Sheep Spring, Uvada and Oak Wells Allotments which are contained within the Miller Flat wild horse herd management area (HMA) (Map #1 - Appendix VI). The Caliente MFP, dated February 1982, states in pertinent part:

"Determine proper stocking rates of domestic livestock on perennial and ephemeral-perennial allotments through a range monitoring system and the Coordinated Resource Management and Planning process (CRMP). Where it becomes necessary to take immediate action to effectively implement management, appropriate survey, utilization, actual use, etc., data can be obtained to initiate a beginning point in the number of animals on the public lands . . ." (MFP, Range Management 1.2).

"Establish periods-of-use on all perennial and ephemeral-perennial allotments through CRMP and subsequent development of allotment management plans or in conjunction with development of grazing systems" (MFP, Range Management 1.1 and 1.7).

The Caliente Grazing EIS states:

"The proposed action includes an evaluation and monitoring system to determine the effectiveness of current management and proposed management . . . if evaluation procedures determine that the specific management objectives are not being achieved, modification of the proposed action would occur. Such modifications could include changes in the grazing system, management intensity, livestock numbers, period-of-use, or any combination of revisions in order to attain management objectives."

Monitoring studies were initially established in 1981 on the Oak Wells Allotment and in 1982 on the remaining three allotments and data has been collected for this allotment periodically since that time. In accordance with Bureau policy and regulations, this data has been analyzed and evaluated in order to determine progress in meeting Standards and Guides for grazing administration (Appendix I) and management objectives for the Rabbit Spring, Sheep Spring, Uvada and Oak Wells Allotments. Allotment specific input was received from permittees, Nevada Division of Wildlife (NDOW), Commission for the Preservation of Wild Horses, Lincoln County Commissioners and the Nevada Department of Environmental Protection (NDEP) (Appendix V). See Appendix II and III for the allotment specific objectives covering

livestock, wild horses, and wildlife. These objectives are in conformance with and formulated to accomplish the Caliente MFP multiple use objectives as they relate to all grazing use on the four aforementioned Allotments.

BASED UPON THE EVALUATION OF MONITORING DATA FOR THE RABBIT SPRING, SHEEP SPRING, UVADA AND OAK WELLS ALLOTMENTS, RECOMMENDATIONS FROM DISTRICT STAFF, AND INPUT RECEIVED THROUGH CONSULTATION, COORDINATION, AND COOPERATION FROM THE PERMITTEES AND PUBLIC INTEREST GROUPS, THE FINAL DECISION IS AS FOLLOWS:

The analysis of monitoring data has revealed that the multiple use objectives for Rabbit Spring and Sheep Spring Allotments are not being met, because of use by wild horses (livestock have not grazed the Rabbit and Sheep Spring Allotments since 1984 and 1974, respectively). Furthermore, the multiple use objectives for the Oak Wells Allotment are not being met with the existing use by livestock and wild horses. However, multiple use objectives are being met within the Uvada Allotment.

This analysis also shows that the existing management of wildlife does not contribute to the failure in meeting these multiple use objectives. Therefore, this decision proposes changes in the management practices for livestock and wild horses and not to wildlife use. This decision also establishes the appropriate management levels for wild horses for those portions of the Miller Flat HMA occurring within the aforementioned allotments.

LIVESTOCK MANAGEMENT DECISION

A. Rabbit Spring Allotment

The permittee supports the following changes.

Rabbit Spring Allotment will have no adjustments to the permitted use. Change will be made to the period of use and to the kind of livestock. Kind of livestock will be changed from cattle only to cattle and sheep.

In accordance with 43 CFR §4110.3 and §4130.3-1 permitted use for the Rabbit Spring Allotment, effective March 1, 2001, will be as follows:

Cattle/Sheep (dual use)

From:

Livestock Number	Kind	Period of Use	Permitted Use (AUMs)	Historically Suspended Use	Total Use	% Public Land
148	Cattle	10/16 - 4/15	884	1,115	1,999	100

To:
Kimner Jenson

Livestock Number	Kind	Period of Use	Permitted Use (AUMs)	Historically Suspended Use	Total Use	% Public Land
148	Cattle	6/1 - 3/15	884	1,115	1,999	100
4,420	Sheep	6/1 - 3/15	884	1,115	1,999	100

In accordance with 43 CFR §4130.3 and §4130.3-2 the following terms and conditions shall be included in the term grazing permit for the Rabbit Spring Allotment:

1. Where either cattle or sheep are grazed, during a grazing year, the permitted use will not exceed 884 AUMs. If cattle and sheep are grazing simultaneously, the combined total may not exceed 884 AUMs, during the grazing year, for the allotment.
2. Improve livestock distribution through placement of salt and/or mineral block a minimum of one-half mile from water and by herding of livestock (Guideline 3.3).
3. Additional waters will be made available within the allotment. Water location sites will be coordinated with and approved by the authorized officer.
4. Grazing use will be accordance with the Mojave-Southern Great Basin Area Standards and Guidelines for grazing administration as developed by the Mojave-Southern Great Basin Advisory Council and approved by the Secretary of the Interior on February 12, 1997. Grazing use will also be in accordance with 43 CFR §4180 - Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.
5. Pursuant to 43 CFR 10.4 (g) the holder of this authorization must notify the authorized officer by telephone, with written confirmation, immediately upon discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 CFR 10.2). Further, pursuant to 43 CFR 10.4 (c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

Rationale:

Maintaining Permitted Use.

Available records indicate that livestock have not been grazed in the Rabbit Spring Allotment since 1984. After cattle grazing resumes, monitoring will be conducted to determine if grazing management practices and stocking levels are appropriate. Maintain permitted use of 884 AUMs within the Rabbit Spring Allotment.

Changing Season of Use.

The current term grazing permit allows for a grazing period of 10/16 - 4/15. This grazing period was designed for sheep winter use, prior to the livestock conversion from sheep to cattle/sheep in the early 1980s. The proposed grazing period, 6/1 - 3/15, is based on the spring growth requirements of perennial grasses. It allows a subsequent resting period for grasses to recover from grazing influences, especially with regard to carbohydrate reserves and its influence on spring growth and subsequent seed and seedling establishment.

B. Sheep Spring Allotment

Sheep Spring Allotment will have only an adjustment to the season of use.

In accordance with 43 CFR §4130.3-1 permitted use for the Sheep Spring Allotment, effective March 1, 2001, will be as follows:

From:

Livestock Number	Kind	Period of Use	Permitted Use (AUMs)	Historically Suspended Use	Total Use	% Public Land
35	Cattle	Yearlong	409	2,231	2,640	100

To:

H. Bruce and Marvyn K. Cox

Livestock Number	Kind	Period of Use	Permitted Use (AUMs)	Historically Suspended Use	Total Use	% Public Land
44	Cattle	6/1 - 3/15	409	2,231	2,640	100

In accordance with §4130.3 and §4130.3-2 the following terms and conditions shall be included in the term grazing permit for Sheep Spring Allotment.

1. Improve livestock distribution through placement of salt and/or mineral block a minimum of one-half mile from water and by herding of livestock (Guideline 3.3).
2. Additional waters will be made available within the allotment. Water location sites will be coordinated with and approved by the authorized officer.
3. Grazing use will be accordance with the Mojave-Southern Great Basin Area Standards and Guidelines for grazing administration as developed by the Mojave-Southern Great Basin Advisory Council and approved by the Secretary of the Interior on February 12, 1997. Grazing use will also be in accordance with 43 CFR §4180 - Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

4. Pursuant to 43 CFR 10.4 (g) the holder of this authorization must notify the authorized officer by telephone, with written confirmation, immediately upon discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 CFR 10.2). Further, pursuant to 43 CFR 10.4 (c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

Rationale:

The proposed grazing period, 6/1 - 3/15, is based on the spring growth requirements of perennial grasses. It allows a subsequent resting period for grasses to recover from grazing influences, especially with regard to carbohydrate reserves and its influence on spring growth and subsequent seed and seedling establishment.

C. Uvada Allotment

The permittee supports the following changes.

Uvada Allotment will receive an adjustment in permitted use (AUMs) and period of use. A rotational grazing system will be introduced.

In accordance with 43 CFR §4110.3, §4110.3-1 and §4130.3-1 (a) permitted use, effective March 1, 2001, will be as follows:

From:

Livestock Number	Kind	Period of Use	Permitted Use (AUMs)	Historically Suspended Use	Total Use	% Public Land
30	Cattle	Yearlong	355	1,425	1,780	100

To:

Kenneth D. Lee

Livestock Number	Kind	Period of Use	Permitted Use (AUMs)	Historically Suspended Use	Total Use	% Public Land
74	Cattle	5/1 - 10/31	463	1,425	1,780	100

In accordance with §4130.3 and §4130.3-2 the following terms and conditions shall be included in the term grazing permit for the Uvada Allotment:

1. During "Year 1" cattle will graze in the north pasture until crested wheatgrass in the south pasture has reached seed drop stage. In "Year 2" cattle will graze in the south pasture until crested wheatgrass in the north pasture has reached seed drop stage. "Year 3" will repeat "Year 1". This rotational system will be perpetuated.

2. Grazing use will be accordance with the Mojave-Southern Great Basin Area Standards and Guidelines for grazing administration as developed by the Mojave-Southern Great Basin Advisory Council and approved by the Secretary of the Interior on February 12, 1997. Grazing use will also be in accordance with 43 CFR §4180 - Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.
3. Pursuant to 43 CFR 10.4 (g) the holder of this authorization must notify the authorized officer by telephone, with written confirmation, immediately upon discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 CFR 10.2). Further, pursuant to 43 CFR 10.4 (c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

Rationale:

Increase in permitted use.

For each of the years (1985, 1987, 1989, 1995 and 1997) included in the stocking rate calculations for Uvada Allotment (Appendix IV), temporary non-renewable (TNR) use was issued without exceeding the desired utilization level (50%). Using the current permitted use of 355 AUMs plus the average temporary non-renewable use from 1985-1997, which equals 108 AUMs, yields a total of 463 AUMs as a desired stocking rate for the Uvada Allotment.

Changing Season of Use.

The current permittee has always grazed his cattle between May 1 and October 31, therefore, the proposed change will not affect his current operation. The proposed grazing period for cattle is based on the spring growth requirements for crested wheatgrass. Establish this grazing period in combination with a rotational grazing system.

Establishment of a rotational grazing system.

The allotment is essentially divided into a north and south pasture by the UPRR line and has fencing and gates to control movement of cattle between the two areas. The current permittee is presently managing the allotment in a manner similar to this proposed system. This system would ensure that one seeding would be rested each year, until after seed set, on a rotational basis.

D. Oak Wells Allotment

Oak Wells Allotment will have neither adjustment to the permitted use (AUMs) nor changes in period of use. In accordance with 43 CFR §4130.3 permitted use will be as follows:

George I. Andrus

Livestock Number	Kind	Period of Use	Permitted Use (AUMs)	Historically Suspended Use	Total Use	% Public Land
43	Cattle	Yearlong	511	2,862	3,373	100

In accordance with §4130.3 and §4130.3-2 the following terms and conditions shall be included in the grazing permit for Oak Wells Allotment:

1. Improve livestock distribution through placement of salt and/or mineral block a minimum of one-half mile from water and by herding of livestock (Guideline 3.3).
2. Additional waters will be made available within the allotment. Water location sites will be coordinated with and approved by the authorized officer.
3. Grazing use will be accordance with the Mojave-Southern Great Basin Area Standards and Guidelines for grazing administration as developed by the Mojave-Southern Great Basin Advisory Council and approved by the Secretary of the Interior on February 12, 1997. Grazing use will also be in accordance with 43 CFR §4180 - Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.
4. Pursuant to 43 CFR 10.4 (g) the holder of this authorization must notify the authorized officer by telephone, with written confirmation, immediately upon discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 CFR 10.2). Further, pursuant to 43 CFR 10.4 (c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

Standards and Guidelines

Standards and Guidelines for Grazing Administration will be implemented through the terms and conditions of the grazing permit. A term permit will be issued to the permittees at the end of the 30 day appeal period to the Final Multiple Use Decision (FMUD), at which time the FMUD becomes final.

The grazing management practices identified in the terms and conditions are designed to ensure significant progress towards fulfillment of the Mojave-Southern Great Basin Standards and toward conformance with the guidelines. The management actions implement the guidelines to meet the multiple use objectives and standards. The BLM and the permittee will work in coordination to develop and implement range improvements as presented in the Long Term Recommendations of the Management Action Selection Report (MASR). Permittees are encouraged to make grazing use on the Rabbit and Sheep Spring Allotments.

Grazing use will be accordance with the Mojave-Southern Great Basin Area standards and

guidelines for grazing administration as developed by the Mojave-Southern Great Basin Resource Advisory Council (RAC) and approved by the Secretary of the Interior on February 12, 1997. Grazing use will also be in accordance with 43 CFR Subpart 4180- Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

Grazing Permits

The federal grazing permits will be issued at the end of the final multiple use decision 30 day appeal period, at which time the decision becomes final. This decision will serve as the consultation with the interested publics for grazing permit issuance. Prior to issuance of the federal grazing permits, the process for documentation of compliance with the National Environmental Policy Act (NEPA 1969) will be conducted.

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

§4100.0-8: "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b)."

§4110.3: "The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer."

§4110.3-1: "Additional forage may be apportioned to qualified applicants for livestock grazing use consistent with multiple-use management objectives."

§4110.3-2 (b): "When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices."

§4120.3-1: (a) "Range improvements shall be installed, used, maintained, and/or modified

on the public lands, or removed from these lands, in a manner consistent with multiple-use management.”

- (b) “Prior to installing, using, maintaining , and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.”
- (c) "The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under §4130.3-2 of this title."

§4130.3: "Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and ensure conformance with the provisions of subpart 4180 of this part."

§4130.3-1 (a): "The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment."

§4130.3-2: "The authorized officer may specify in grazing permits and leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands."

§4140.1 (a) (2): “Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse, conservation use, or use temporarily suspended by the authorized officer.”

§ 4180.1: “The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.

- (a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.
- (b) Ecological processes, including the hydrologic cycle, nutrient cycle, and

energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

- (c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.
- (d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.”

APPEAL

Under 43 CFR §4160.4, for the livestock portion of this final multiple use decision, any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision, may file an appeal and petition for stay of the decision pending final determination on appeal. The appeal must be filed in the office of James M. Perkins, Assistant Field Manager - Renewable Resources, Ely Field Office, Bureau of Land Management, HC 33 Box 33500, Ely, Nevada 89301-9408 within 30 days after receipt of the final decision. The appeal shall state the reasons, clearly and concisely, as to why the final decision is in error.

If you decide to submit a petition for stay of the decision, a copy of the notice of appeal, statement of reasons and petition for stay should be simultaneously filed with the Office of the Field Solicitor, Suite 6201, Federal Building, 125 South State Street, Salt Lake City, Utah, 84138.

Should you wish to file a motion for stay, the appellant 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.

WILD HORSE MANAGEMENT DECISION

Short Term Management Actions:

- A. Establish the overall Appropriate Management Level (AML) for the HMA at the level of horses of 30 wild horses based on the potential stocking rate calculations (Appendix IV). The AML for the Sheep Flat and Clover Creek Allotments' portions of the HMA will be formally set within the Clover Creek and Clover Mountain HMA Evaluation, which is currently being developed.

Rationale

Available records indicate that livestock have not been grazed in the Rabbit Spring and Sheep Spring Allotments since 1984 and 1974, respectively, leaving wild horses as the primary forage consumer within these allotments.

Under existing management practices the Standards for Rangeland Health have not been achieved and Land Use Plan Objectives have not been met, on the above allotments, due to horse use. Therefore, implementation of management actions and/or adjustments to livestock and wild horse numbers are necessary to meet these objectives.

Use pattern mapping indicates that Rabbit Spring Allotment received moderate use throughout most of the allotment in 1991. However, utilization data and use pattern mapping show that AULs on grasses were exceeded and showing extensive heavy and severe use on annual plant-growth by 1995. Drought occurred during 1996 which resulted in a lack of significant plant growth. As a result, grazing use on the plant growth which occurred during the 1995 growing season continued to take place during 1996 and resulted in the severe and heavy use categories becoming more extensive within the Rabbit Spring Allotment. Correspondingly, this severe use extended southward into the northwest section of Sheep Spring Allotment during 1995 and, subsequently, also became more extensive during 1996. Therefore, documented wild horse use levels were not achieving the identified multiple use objectives. However, as a result of the severe drought situation and corresponding lack of annual forage growth during 1996 a horse gather was conducted in the fall of that year. This resulted in slight use throughout Sheep Spring and nearly all of Rabbit Spring Allotments during 1997 as identified by the 1997 use pattern mapping results.

Based on intensive monitoring within the HMA over the last several years, a supportable AML for the Miller Flat HMA is managing for 30 wild horses. Prior to the 1996 drought gathers, in which 101 horses were removed from the Miller Flat and Little Mountain HMAs, utilization objectives were being exceeded on an annual basis over the majority of Rabbit Spring Allotment and on portions of Sheep Spring Allotment due to wild horse use. Because these are allotments that have not been grazed by livestock since 1984 and

1974, respectively, no action will be taken towards the Active Use. These use levels occurred during years of above and below normal precipitation.

As identified in portions of the Final Allotment Evaluation (issued in August 1999), water availability on public lands is extremely limited. The larger spring sources (Rabbit Spring, Sheep Spring, Oak Wells Spring, and Miller Spring) are located on private property. Maintaining wild horse numbers based on these sources is not possible due to the potential of losing access to these sources if the private lands are fenced. Based on the estimated flows of the small spring sources found on public lands, these sources should support the identified AML during below average flow years.

The management of the Miller Flat HMA for 30 horses will also aid in the relief of wild horse use along Highway 319. This stretch of highway has long history of vehicle and horse accidents and near misses. On the average, at least two accidents per year are reported due to vehicles striking wild horses on the highway.

B. Miller Flat and Little Mountain HMAs

1. Combine both HMAs into one HMA.

Rationale

The horse population existing within the Little Mountain HMA is composed primarily of the same horses that are using the Miller Flat HMA. Only a small population (<25) reside entirely within Little Mountain HMA. Horses are routinely observed along the boundary separating the HMAs. The movement is a daily occurrence due to extremely limited water availability within the Little Mountain HMA. The horses have home ranges that cover both HMAs, but have to travel into the Miller Flat to find a reliable water supply. A noticeable movement occurs during the late fall and early winter when accumulating snowfall at higher elevations forces the horses to move to the open sagebrush associated with the Little Mountain HMA in the lower elevations to the west. However, during the warmer months the reverse occurs when the horses move to take advantage of the available water and trees for shade associated with Miller Flat HMA. This relative ease of movement, between the two areas, identifies the need to manage this area as one HMA instead of two HMAs.

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

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

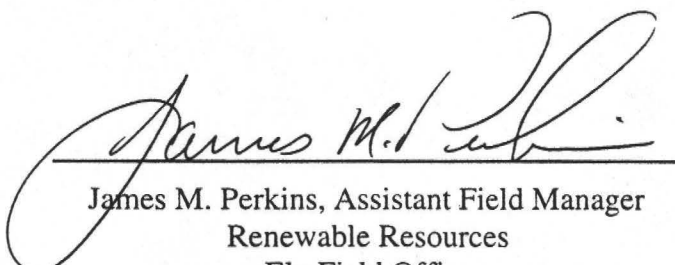
§4710.4: "Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans."


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

APPEAL:

Within 30 days of receipt, you have the right of appeal to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations in 43 CFR Part 4. If an appeal is taken, you must follow the procedures outlined in the enclosed form 1842-1, "Information on taking Appeals to the Board of Land Appeals". Within 30 days after you appeal, you are required to provide a copy to the Regional Solicitors Office listed on Item 3 of said form. In addition, please provide this office with a copy of your Statement of Reasons at the following address: James M. Perkins, Assistant Field Manager - Renewable Resources, Ely Field Office, Bureau of Land Management, HC 33 Box 33500, Ely, Nevada 89301-9408. Copies of your appeal and Statement of Reasons must also be served upon any parties adversely affected by this decision. The appellant has the burden of showing that the decision being appealed is in error.

In addition, within 30 days of receipt of this decision you have the right to file a petition for stay (suspension) of the decision together with your appeal, in accordance with the regulations of 43 CFR 4.21. The petition must be served upon parties specified above. The appellant has the burden of proof to demonstrate that a stay should be granted.


James M. Perkins, Assistant Field Manager
Renewable Resources
Ely Field Office


Date

cc:

Interested Publics

Certified Receipt Number

Nevada State Clearinghouse

7099 3400 0004 7939 0039

Commission for the Preservation of Wild Horses

7099 3400 0004 7939 0060

Mike Scott

7099 3400 0004 7939 0091

Nevada Division Of Wildlife: Region 3

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Nevada Cattlemen's Assoc

7099 3400 0004 7939 0152

Lincoln Co. Commission

7099 3400 0004 7939 0183

Mr. John McLain: Resource Concepts, Inc.

7099 3400 0004 7939 0213

Mr. Don Holloway

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Reno Fish & Wildlife Office

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Laurel Etchegaray

7099 3400 0004 7939 0305

Mr. Craig C. Downer

7099 3400 0004 7939 0336

Nevada Natural Heritage Program

7099 3400 0004 7939 0367

Attn: James D. Morefield

Nevada Division of Water Resources

7099 3400 0004 7939 0398

Attn: Tim Wilson

APPENDIX I

STANDARDS AND GUIDELINES

MOJAVE-SOUTHERN GREAT BASIN AREA RESOURCE ADVISORY COUNCIL (RAC)

STANDARDS:

STANDARD 1. SOILS:

Watershed soils and stream banks should have adequate stability to resist accelerated erosion, maintain soil productivity, and sustain the hydrologic cycle.

Soil indicators:

- Ground cover (vegetation, litter, rock, bare ground);
- Surfaces (e.g., biological crusts, pavement); and
- Compaction/infiltration.

Riparian soil indicators:

- Stream bank stability.

All of the above indicators are appropriate to the potential of the ecological site.

GUIDELINES:

- 1.1 Upland management practices should maintain or promote adequate vegetative ground cover to achieve the standard.
- 1.2 Riparian-wetland management practices should maintain or promote sufficient residual vegetation to maintain, improve, or restore functions such as stream flow energy dissipation, sediment capture, groundwater recharge, and streambank stability.
- 1.3 When proper grazing practices alone are not likely to restore areas, land management practices may be designed and implemented where appropriate.
- 1.4 Rangeland management practices should address improvement beyond this standard, significant progress toward achieving standards, time necessary for recovery, and time necessary for predicting trends.

STANDARD 2. ECOSYSTEM COMPONENTS;

Watersheds should possess the necessary ecological components to achieve state water quality criteria, maintain ecological processes, and sustain appropriate uses.

Riparian and wetlands vegetation should have structural and species diversity characteristic of the stage of stream channel succession in order to provide forage and cover, capture sediment, and capture, retain, and safely release water (watershed function).

Upland indicators:

- Canopy and ground cover, including litter, live vegetation, biological crust, and rock appropriate to the potential of the ecological site.
- Ecological processes are adequate for the vegetative communities.

Riparian indicators:

- Stream side riparian area are functioning properly when adequate vegetation, large woody debris, or rock is present to dissipate stream energy associated with high water flows.
- Elements indicating proper functioning condition such as avoiding acceleration erosion, capturing sediment, and providing for groundwater recharge and release are determined by the following measurements as appropriate to the site characteristics:

Width/Depth ratio;

Channel roughness;

Sinuosity of stream channel;

Bank stability;

Vegetative cover (amount, spacing, life form); and

Other cover (large woody debris, rock).

- Natural springs, seeps, and marsh areas are functioning properly when adequate vegetation is present to facilitate water retention, filtering, and release as indicated by plant species and cover appropriate to the site characteristics.

Water quality indicators:

- Chemical, physical and biological constituents do not exceed the stat water quality standards.

The above indicators shall be applied to the potential of the ecological site.

GUIDELINES:

- 2.1 Management practices should maintain or promote appropriate stream channel morphology and structure consistent with the watershed.
- 2.2 Watershed management practices should maintain, restore or enhance water quality and flow rate to support desired ecological conditions.
- 2.3 Management practices should maintain or promote the physical and biological conditions necessary for achieving surface characteristics and desired natural plant community.
- 2.4 Grazing management practices will consider both the economic and physical environment, and will address all multiple uses including, but not limited to, (I) recreation, (ii) minerals, (iii) cultural resources and values, and (iv) designated wilderness and wilderness study areas.
- 2.5 New livestock facilities will be located away from riparian and wetland areas if they conflict with achieving or maintaining riparian and wetland functions. Existing facilities will be used in a way that does not conflict with achieving or maintaining riparian and wetland functions, or they will be relocated or modified when necessary to mitigate adverse impacts on riparian and wetland functions. The location, relocation, design and use of livestock facilities will consider economic feasibility and benefits to be gained for management of lands outside the riparian area along with the effects on riparian functions.
- 2.6 Subject to all valid existing rights, the design of spring and seep developments shall include provisions to protect ecological functions and processes.
- 2.7 When proper grazing practices alone are not likely to restore areas of low infiltration or permeability, land management practices may be designed and implemented where appropriate. Grazing on designated ephemeral rangeland watersheds should be allowed only if (I) reliable estimates of production have been made, (ii) an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and (iii) adverse effects on perennial species and ecosystem processes are avoided.
- 2.8 Rangeland management practices should address improvement beyond these standards, significant progress toward achieving standards, time necessary for recovery, and time necessary for predicting trends.

STANDARD 3. HABITAT AND BIOTA:

Habitats and watersheds should sustain a level of biodiversity appropriate for the area and conducive to appropriate uses. Habitats of special status species should be able to sustain viable populations of those species.

Habitat indicators:

- Vegetation composition (relative abundance of species);
- Vegetation structure (life forms, cover, height, and age classes);
- Vegetation distribution (patchiness, corridors);
- Vegetation productivity; and
- Vegetation nutritional value.

Wildlife indicators:

- Escape terrain;
- Relative abundance;
- Composition;
- Distribution;
- Nutritional value; and
- Edge-patch snags.

The above indicators shall be applied to the potential of the ecological site.
Mojave-Southern RAC Guidelines:

GUIDELINES:

- 3.1 Mosaics of plant and animal communities that foster diverse and productive ecosystems should be maintained or achieved.
- 3.2 Management practices should emphasized native species except when others would serve better, for attaining desired communities.
- 3.3 Intensity, frequency, season of use and distribution of grazing use should provide for growth, reproduction, and, when environmental conditions permit, seeding establishment of those plant species needed to reach long-term land use plan objectives. Measurements of ecological condition, trend, and utilization will be in accordance with techniques identified in the Nevada Rangeland Handbook.
- 3.4 Grazing management practices should be planned and implemented to provide for integrated use by domestic livestock and wildlife, as well as wild horses and burros inside Herd Management Areas.

- 3.5 Management practices will promote the conservation, restoration and maintenance of habitat for special status species.
- 3.6 Livestock grazing practices will be designed to protect fragile ecosystems of limited distribution and size that support unique sensitive/endemic species or communities. Where these practices are not successful, grazing will be excluded from these areas.
- 3.7 Where grazing practices alone are not likely to achieve habitat objectives, land management practices may be designed and implemented as appropriate.
- 3.8 Vegetation manipulation treatments may be implemented to improve native plant communities, consistent with appropriate land use plans, in areas where identified Standards cannot be achieved through proper grazing management practices alone. Fire is the preferred vegetation manipulation practice on areas historically adapted to fire; treatment of native vegetation with herbicides or through mechanical means will be used only when other management techniques are not effective.
- 3.9 Rangeland management practices should address improvement beyond this standard, significant progress toward achieving standards, time necessary for recovery, and time necessary for predicting trends.

APPENDIX II

Livestock and Wild Horse Objectives

				PRESENT SITUATION		LONG TERM OBJECTIVES			SHORT TERM OBJECTIVES			
Allotment & Study Area	Key Area Location	3/ Ecological Site No.	Key Species	Key Species & Total Comp. By Weight	Seral Stage (% of PNC)	Maintain or Improve	Key Species % Comp. By Weight	4/ Seral Stage (% of PNC)	5/ Allowable Use Levels	Season of Use (Cattle/Wildlife/Horses)	Met or Not Met	Rationale
RABBIT SPRING R-1C	MDBM, T.2 S., R.69 E., sec. 21	029XY006NV (Loamy 8-10" P.Z.)	STCO4, ORHY, HIJA	STCO4 - T ORHY - 1% HIJA - 1% Grasses - 5% Forbs - 2% Shrubs - 91% Trees - 2%	1/ Mid (55%)	Improve	STCO4 - 1-3 ORHY - 3-5 HIJA - 1-3 Grass > 5 Forbs > 2 Shrubs < 91	> 55	Grasses - 50% Forbs - 50% Shrubs - 50%	10/16 - 04/15	Met	Utilization data indicates AULs were not exceeded in 1991, but were exceeded in 1995 and 1996 by Wild Horses (Severe Use Both Years). AULs were not exceeded in 1997*.
SHEEP SPRING S-1	MDBM, T.3 S., R.70 E., sec. 23, SW¼ SW¼ NE¼	029XY029NV (Loamy 10-12" P.Z.)	STCO4, ORHY	STCO4 - 2% ORHY - 2% Grasses - 18% Forbs - 30% Shrubs - 52%	Mid (42%)	Improve	STCO4 - 3-5 ORHY - 3-5 Grasses > 18% Forbs < 30% Shrubs < 52%	> 42	Grasses - 50% Forbs - 50% Shrubs - 50%	03/01 - 02/28	Met	Utilization data indicates that AULs were not exceeded in 1982, 1985, 1988, 1995, 1996 and 1997* at key area, but were exceeded away from key area in 1995 & 1996.
UVADA U-1	MDBM, T.3 S., R.71 E., sec. 5, NW¼	AGCR seeding	AGCR	AGCR - 36%	7/ Fair Cond. (36%)	Improve	AGCR > 36%	> 36%	6/ Spg/Summer Fall/Winter AGCR 50% 60%	03/01 - 02/28	Met	Utilization data indicates that AULs were not exceeded in 1985, 1989, 1990 (no UPM) & 1995 at key area or in 1987 in south pasture (only south pasture grazed that year). AULs were exceeded during 1997, in both north & south pastures, according to Final Decision (6/), and away from key area in 1989.
UVADA U-2	MDBM, T.3 S., R.70 E., sec. 12, NE¼	029XY065NV (Woodland Site)	STCO4, SIHY, ORHY	STCO4 - 2% ORHY - 6% SIHY - T Grasses - 9% Forbs - 24% Shrubs - 67%	-----	Maintain or Improve	STCO4 - 2-5 ORHY - 6-9 SIHY - 1-3 Grass > 9% Forbs < 24% Shrubs < 67%	-----	6/ Spg/Summer Fall/Winter Grasses 50% 60% Forbs 50% 60% Shrubs 50% 60%	03/01 - 02/28	Met	Utilization data indicates that AULs were not exceeded in 1985, 1989 1990 & 1997.
UVADA U-3	MDBM, T.3 S., R.71 E., sec. 7, SE¼	029XY065NV (Woodland Site)	KOCR, POFE, SIHY, COMES	KOCR - 3% POFE - 7% SIHY - 2% Grasses - 22% Forbs - 17% Shrubs - 61%	-----	Maintain or Improve	KOCR - 3-5 POFE - 7-10 SIHY - 2-5 Grass > 22 Forbs < 17 Shrubs < 61	-----	6/ Spg/Summer Fall/Winter Grasses 50% 60% Forbs 50% 60% Shrubs 50% 60%	03/01 - 02/28	Met	Utilization data indicates that AULs were not exceeded in 1985, 1989 1990 & 1997.
2/ OAK WELLS OW-1	MDBM, T.4 S., R.70 E., sec.5, SE¼NW¼ SE¼	029XY029NV (Loamy 10-12" P.Z.)	ORHY, SIHY, STCO4	ORHY - T SIHY - T STCO4 - 1% Grasses - 2% Forbs - 2% Shrubs - 76% Trees - 20%	Mid (33%)	-----	ORHY - 1-3 SIHY - 1-3 STCO4 - 2-4 Grass > 2% Forbs > 2% Shrubs < 76%	-----	Grasses - 50% Forbs - 50% Shrubs - 50%	03/01 - 02/28	Not Met	Note: NO CATTLE GRAZING OCCURRED IN ALLOTMENT from 1982-1985 and 1989-1993 with Only 304 AUMs authorized in 1994. Utilization data indicates that AULs were exceeded in 1989 (horse use only), 1996 & 1997, but were met in 1986 (after four years of non use), 1987 (south pasture grazed only) & 1995. --See text --

- 1/ Seral stage is based not only on the ecological numerical rating (percentage of PNC), but also on plant community composition. This key area lacks the forage species required to equal the numerical rating, so the seral stage is lower than the numerical rating indicates.
- 2/ This key area was newly established during the time this allotment evaluation was being conducted, therefore the seral stage was ocularly estimated.
- 3/ Ecological Sites listed here may be found in the Major Land Resource Area (MLRA) range site descriptions published by the Soil Conservation Service.
- 4/ This is the seral stage that would have the greatest value for all resource users (livestock, horses & wildlife).
- 5/ Allowable use levels for utilization are the objectives established to meet the long term composition objectives.
- 6/ Per Final Decision Dated April 30, 1996.
- 7/ This rating is not base on seral stage, but on condition classes of Excellent, Good, Fair, and Poor.

* Horse gather occurred in late 1996.

APPENDIX III

Wildlife Objectives

Allotment & Study Area	Key Area Location	Ecological Site No. <u>1/</u>	PRESENT SITUATION		LONG TERM OBJECTIVES		SHORT TERM OBJECTIVES			
			Key Species	Habitat Condition Rating <u>2/</u>	Maintain or Improve	Habitat Condition Rating <u>2/</u>	Allowable Use Levels <u>3/</u>	Season of Use	Met or Not Met	Rationale
RABBIT SPRING R-2	MDBM, T.2 S., R.69 E., sec.34, SE¼ SW¼	029XY006NV (Loamy 8-10" P.Z.)	COMES	62%	Maintain	≥ 60%	45%	Yearlong	Met	Utilization data indicates that AULs were not exceeded.
SHEEP SPRING S-2	MDBM, T.3 S., R.69 E., sec. 10, SW¼ SW¼	029XY065NV (Woodland Site)	COMES PUTR2	72%	Maintain	≥ 60%	45%	Yearlong	Met	Utilization data indicates that AULs were not exceeded.

1/ Ecological Sites listed here may be found in the Major Land Resource Area (MLRA) range site descriptions published by the Soil Conservation Service.

2/ For mule deer, habitat condition is based on browse vigor rating and forage quality rating.

3/ Allowable use levels for utilization are the objectives established to meet the long term composition objectives.

APPENDIX IV

STOCKING RATE CALCULATIONS

1. The desired stocking level for each allotment was determined using the following formula (BLM Technical Reference 4400-7, Appendix 2, pages 54-56)

$$\frac{\text{Actual Use (AUMs)}}{\% \text{ Utilization}} = \frac{\text{Desired Actual Use (AUMs)}}{\text{Desired \% Utilization}}$$

Actual Use data for livestock and wild horses was used in the desired stocking rate equation. Wild horse use was estimated from aerial census data and field observations. A desired stocking rate was calculated for each year that had both use pattern mapping data and corresponding key area readings. The desired stocking rates (Desired AUMs) for each year for a given allotment were then averaged to come up with the desired stocking level for the allotment.

Rabbit Spring Allotment

Grazing Year	Cattle AUMs	^{1/} Horse AUMs	Total AUMs	Desired Util.	Actual Util. %	Desired AUMs
1990	0	^{2/} 624	624	.50	.50	624
1995	0	^{3/} 336	336	.50	.88	191
1997	0	144	144	.50	.07	1,029
Average						615

- ^{1/} Horse AUMs are calculated using the determined population number multiplied by 12 months.
- ^{2/} The 1990 total horse population estimate was calculated using the 1988 actual horse census and applying a national standard of an 18% annual population increase and does not account for death loss.
- ^{3/} The 1995 total horse population estimate was calculated using the 1994 actual horse census and applying a national standard of an 18% annual population increase and does not account for death loss.

Sheep Spring Allotment

Grazing Year	Cattle AUMs	^{1/} Horse AUMs	Total AUMs	Desired Util.	Actual Util. %	Desired AUMs
1995	0	^{2/} 300	300	.50	.19	789
1996	0	^{3/} 360	360	.50	.58	310
1997	0	336	336	.50	.12	1,400
Average						833

- ^{1/} Horse AUMs are calculated using the determined population number multiplied by 12 months.
- ^{2/} The 1995 total horse population estimate was calculated using the 1994 actual horse census and applying a national standard of an 18% annual population increase and does not account for death loss.
- ^{3/} The 1996 total horse population estimate was calculated using the 1994 actual horse census and applying a national standard of an 18% annual population increase and does not account for death loss.

Uvada Allotment

Grazing Year	Cattle AUMs	^{1/} Horse AUMs	Total AUMs	Desired Util.	Actual Util. %	Desired AUMs
1985	509	24	533	.50	.48	555
1987	507	0	507	.50	^{4/} .50	507
1989	355	^{2/} 0	355	.50	.42	423
1995	466	^{3/} 24	481	.50	.15	1,603
1997	436	0	436	.50	.72	303
Average						678

- ^{1/} Horse AUMs are calculated using the determined population number multiplied by 12 months.
- ^{2/} There were no horses counted within the Uvada Allotment during the 1988 census, thereby yielding no number with which to project an estimate for 1989.
- ^{3/} The 1995 total horse population estimate, within the allotment, was calculated using the 1994 actual horse census data and applying a national standard of an 18% annual population increase and does not account for death loss.
- ^{4/} Total precipitation during 1987, equaling 12.08 inches, was 26% above the 30 year average with 4.65 inches falling within the four month period of February - May (Table 4 and Appendix XII). It is speculated that this resulted in above average forage production (particularly within the seeding) giving little reason for cattle to traverse the rocky hills (uplands) between drainages, but rather to spend a majority of their time within the seeding and drainages where forage was more than ample. Because the key area is located in the uplands between drainages, very little use at the key area occurred, thereby skewing utilization data and misrepresenting use within the south pasture. This can be noted on the use pattern map (Map #12) which indicates moderate use occurring throughout the seeding and within the drainages. Therefore, it was determined that using utilization data at the key area would be a misrepresentation of grazing use and was not used in determining stocking levels. Therefore, using an actual utilization percentage of 50% (that which occurred within the seeding and drainages) along with the data from 1985, 1989, 1995 and 1997, then, produced a Desired Stocking Level of 678 AUMs.

Oak Wells Allotment

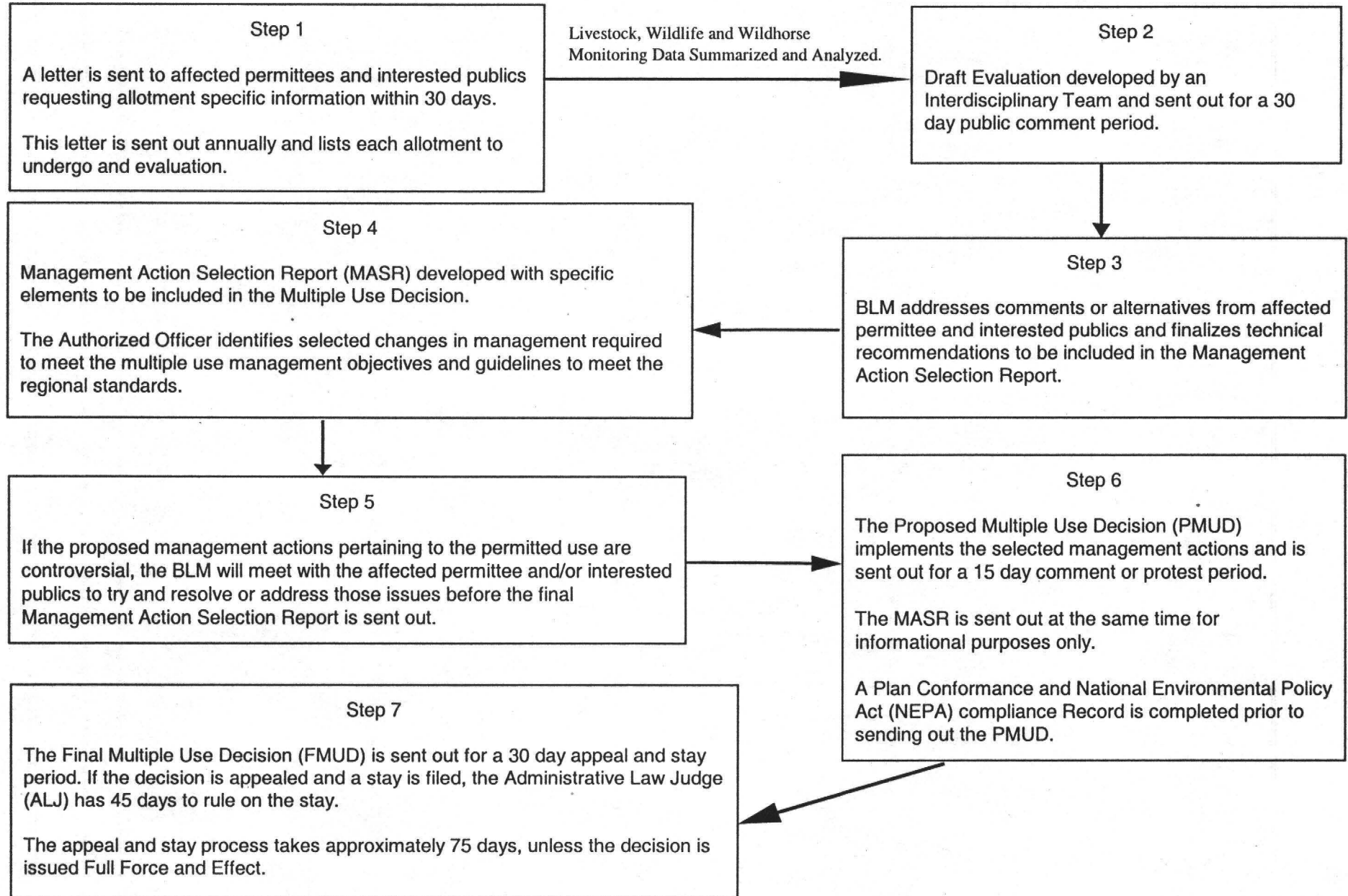
Grazing Year	Cattle AUMs	^{1/} Horse AUMs	Total AUMs	Desired Util.	^{2/} Actual Util. %	Desired AUMs
1989	172	^{3/} 0	172	.50	.70	123
1995	534	^{4/} 192	726	.50	.30	1210
1996	516	^{5/} 228	744	.50	.90	413
1997	516	72	588	.50	.90	327
Average						518

- ^{1/} Horse AUMs are calculated using the determined population number multiplied by 12 months.
- ^{2/} Actual utilization at KA OW-1 prior to its installation in 1997 was determined by super-imposing the graphic location of KA OW-1 onto each use pattern map represented by each of the grazing years 1989, 1995 and 1996 and determining the midpoint of the grazing use category in which it fell.
- ^{3/} There were no horses counted within the Oak Wells Allotment during the 1988 census, thereby yielding no number with which to project an estimate for 1989.
- ^{4/} The 1995 total horse population estimate was calculated using the 1994 actual horse census and applying a national standard of an 18% annual population increase and does not account for death loss.
- ^{5/} The 1996 total horse population estimate was calculated using the 1994 actual horse census and applying a national standard of an 18% annual population increase and does not account for death loss.

Appropriate Management Level (AML) Calculations for Miller Flat Wild Horse Herd Management Area (by Allotment)

Appropriate Management Level (AML) Calculation based on Allotment Stocking Rate Calculations			
Allotment Name	Avg. Desired AUMs From Stocking Rate Calculations	AUMs Required for Allotment Active Preference	AUMs Remaining for Allocation to Wild Horses
Rabbit Spring	615	884	-269
Sheep Spring	833	409	424
Uvada	678	463	215
Oak Well	518	511	7
Total	2,644	2,267	377
377 AUMs / 12 = 31 horses yearlong			

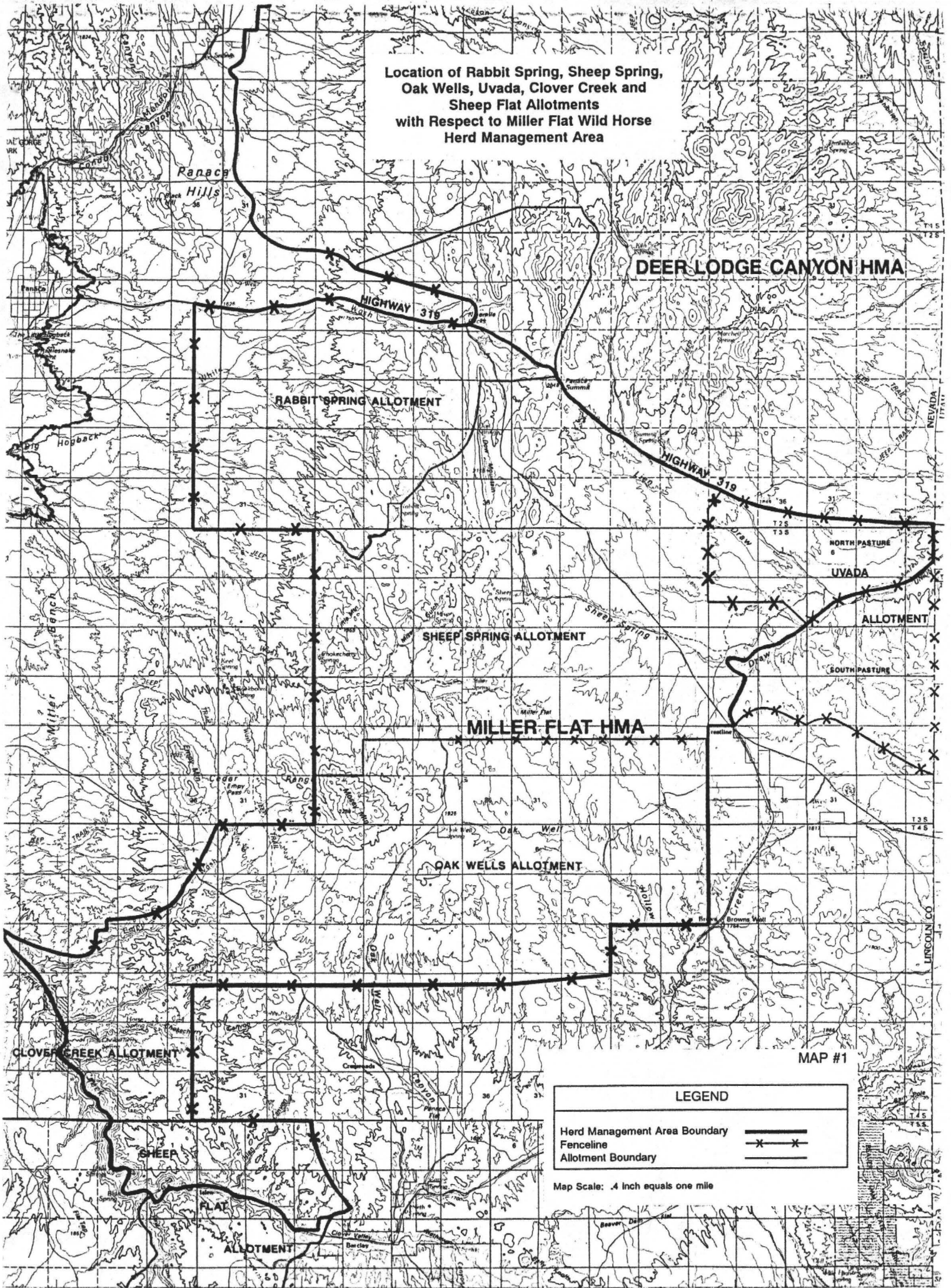
Public Consultation Process for Ely District Allotment Evaluations



APPENDIX VI

Map(s)

Location of Rabbit Spring, Sheep Spring, Oak Wells, Uvada, Clover Creek and Sheep Flat Allotments with Respect to Miller Flat Wild Horse Herd Management Area



DEER LODGE CANYON HMA

RABBIT SPRING ALLOTMENT

SHEEP SPRING ALLOTMENT

MILLER FLAT HMA

OAK WELLS ALLOTMENT

UVADA

ALLOTMENT

SOUTH PASTURE

CLOVER CREEK ALLOTMENT

SHEEP

FLAT

ALLOTMENT

MAP #1

LEGEND

- Herd Management Area Boundary
- Fenceline
- Allotment Boundary

Map Scale: .4 inch equals one mile