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Memorandum

To: Office of Hearings and Appeals, Salt Lake City, Utah
From: State Director, Nevada
Subject: Transmittal of Appeals to the Area Manager's October 15, 1993, Full Force and Effect Decision Modifying Existing Grazing Permits for the Inclusion of Terms and Conditions Specific to the Management of the Burn Areas Within the Henrie Complex Allotment; and Motion to Dismiss

Attached are the appeals to the livestock portion of the subject Decision. The specific appellants and their assigned appeal numbers are as follows:

- Wild Horse Organized Assistance (WHOA) appeal number NV-050-94-04;
- Commission for the Preservation of Wild Horses (CPWH), appeal number NV-050-94-05;
- Humane Society of the United States (HSUS), appeal number NV-050-94-06

Since the appeal points of this Decision are identical, we have combined the appeals into one transmission memorandum which includes the following documents:

1. Grazing Appeal Transmittal dated January 20, 1994.
2. WHOA's Notice of Appeal dated November 23, 1993, received in the Caliente Resource Area Office on November 29, 1993, and the appeal dated October 26, 1993, received on November 1, 1993.
3. CPWH's Notice of Appeal dated November 23, 1993, received in the Caliente Resource Area Office on November 29, 1993, and the appeal dated October 26, 1993, received on November 1, 1993.
4. HSUS's Notice of Appeal dated November 15, 1993, received in the Caliente Resource Area Office on November 18, 1993.
5. Notice of Full Force and Effect Decision-Henrie Complex Allotment, dated October 15, 1993, to Mr. Olsen and Mr. Lewis.

Subsequent to the issuance of the October 15, 1993, Decision, the area manager issued a "Full Force and Effect Decision" to the livestock permittees on the Henrie Complex allotment. This Decision was dated November 24, 1993 (Attachment 6). This Decision stated in part:

"... further review and discussion of this information and the alternatives discussed in EA#NV-055-93-29 has occurred.

Therefore,... my Final Decision is to rescind the October 15, 1993 Decision... 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. This Final Decision is to be placed in Full Force and Effect and will take effect immediately... to prevent any resource deterioration within the burn closure area of the Henrie Complex allotment."

This November 24, 1993, Decision was served on WHOA, CPWH, and HSUS by certified mail return receipt requested (Attachment 7, WHOA #P-998-558-386, CPWH #P-998-558-385, HSUS #P-998-558-402). Two of the appellants responded via letters commenting on this Decision. See the following attachments:

8. Comment letter dated December 28, 1993, by WHOA.
9. Comment letter dated December 28, 1993, by CPWH.

Each of these letters provide comments to the November 24, 1993, Decision; however, in our opinion, they do not constitute an appeal to the livestock portion of this Decision.

The HSUS did not file an appeal nor did the Bureau of Land Management (BLM) receive any response to the November 24, 1993, Decision from them.

We contend that the Livestock grazing portion of the subject appeals to the October 15, 1993, Decision were rendered moot by the issuance of the November 24, 1993, Decision, and that all three appellants were served copies of the November 24, 1993, Decision and furthermore, none of the three appellants filed a "timely" appeal.

Therefore, consistent with 43 CFR 4.470(d), we request that these appeals be dismissed "... for the reason that it is frivolous..." and in fact the Decision of October 15, 1993, in regard to the livestock grazing portion, was made moot and rescinded by the issuance of the November 24, 1993, Decision from which there was no appeal.

The district manager has requested that these appeals to the livestock portions of this Decision be consolidated as the appeal points of each are similar, and we concur.

These same appellants have appealed the wildhorse portion of this Decision as well as the "Emergency Removal Plan and Record of Decision and Environmental Assessment" of the removal plan. These appeals have been transmitted to the Interior Board of Land Appeals by a separate memorandum.

S/Ron Wenker

Acting

Attachment
As Listed Above

cc: Regional Solicitor, Sacramento (w/o attach)
District Manager, Las Vegas (w/o attach)
WHOA Cert Mail #75824 (w/attach)
CPWH Cert Mail #75825 (w/attach)
HSUS Cert Mail #75826 (w/attach)
BHines:rd:05/12/94:N594456A.ALJ