



United States Department of the Interior

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

TAKE
PRIDE IN
AMERICA

IN REPLY REFER TO:

In Reply Refer To:
4700
(NV-055.07)

CERTIFIED MAIL # P 313 269 516
RETURN RECEIPT REQUESTED

NOTICE OF FINAL DECISION FULL FORCE AND EFFECT

DELAMAR MOUNTAINS HERD MANAGEMENT AREA (HMA) EMERGENCY REMOVAL

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

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

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

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

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

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

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

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

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

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

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

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

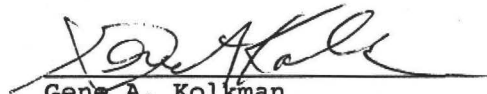
Concurrence:



Hal M. Bybee
ADM - Renewable Resources
Ely District

08/16/96
Date

Approval:



Gene A. Kolkman
District Manager
Ely District

8/16/96
Date

Enclosure:

1. Capture Plan

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

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

**Caliente Field Station
Ely District
August 1996**

I. Purpose and Need

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

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

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

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

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

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

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

Capture Method: Helicopter trapping and/or roping

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

Age Criterion: All horses

II. Area of Concern

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

III. Time Frame

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

IV. Gather Methods

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

V. Administration of the Contract

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

VI. Disposal of Removed Animals

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

VII. Branded and Claimed Animals

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

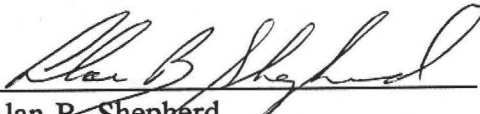
VIII. Destruction of Injured or Sick Animals

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

IX. Responsibility

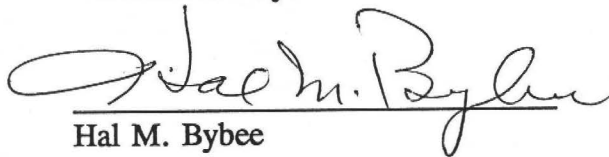
The Ely District Manager is responsible for maintaining and protecting the health and welfare of wild horses. To ensure the contractor's compliance with contract stipulations, a COR from the Ely District will be on site at all times during the emergency gather. The health and welfare of the animals will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

Prepared By:


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


8/15/96
Date

Concurrence By:


Hal M. Bybee
ADM - Renewable Resources
Ely District

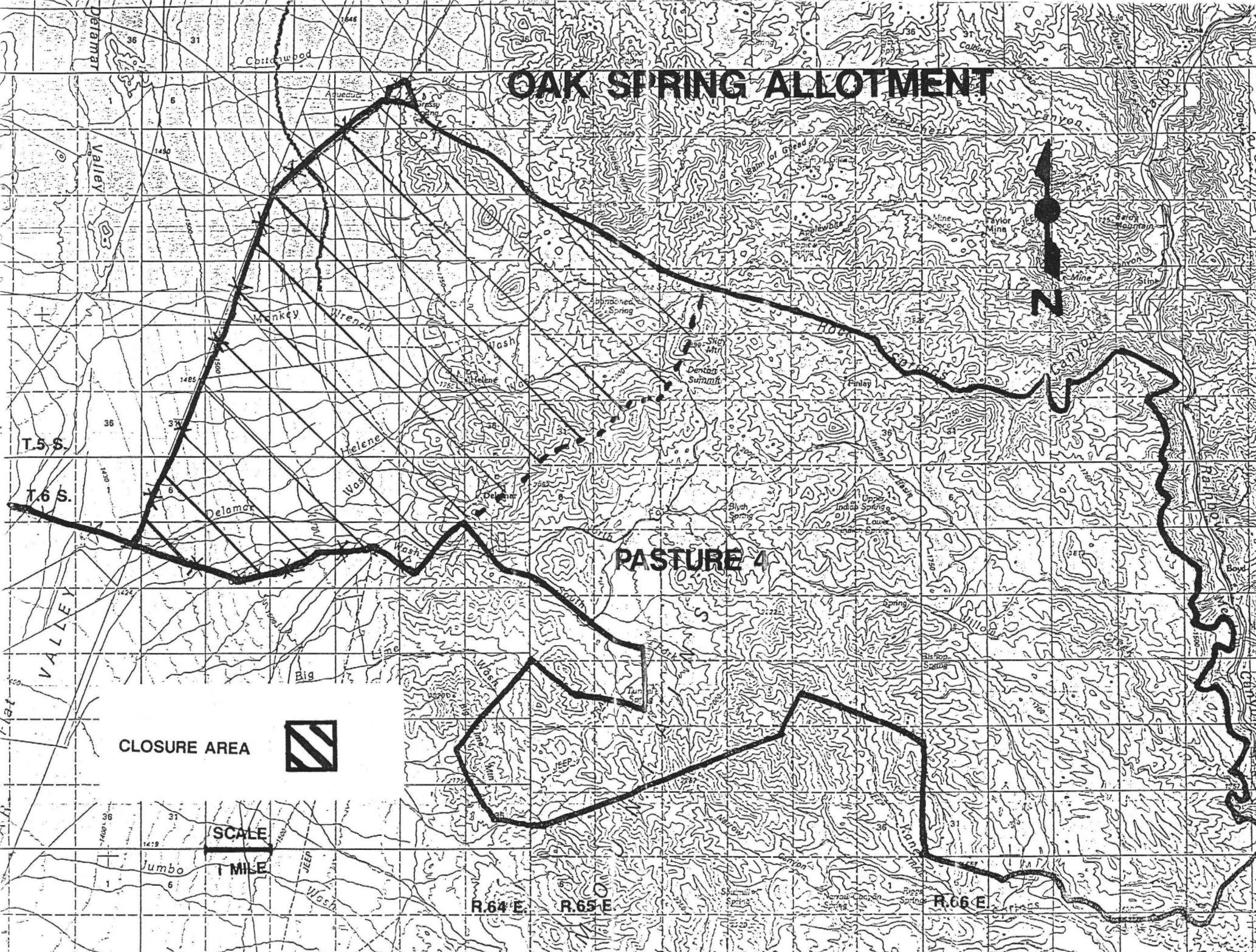
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Date

Approved By:


Gene A. Kolkman
District Manager
Ely District

8/16/96
Date

OAK SPRING ALLOTMENT



PASTURE 4

CLOSURE AREA



SCALE

1 MILE

R.64 E.

R.65 E.

R.66 E.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Ely District Office
HC 33 Box 33500
Ely, NV 89301-9408

In Reply Refer To:
4110.3 (NV-043)

Notice of Closure

To Whom It May Concern:

Severe drought conditions exist within the Sheep Flat and Oak Springs Allotments. These allotments are administered out of the Caliente Field Station, Ely District located in Caliente, Nevada. These allotments were recently visited to evaluate drought conditions. Field observations indicate that available forage and/or water availability are extremely limited and that severe drought conditions exist. Precipitation for the current year is 50% of normal. The below normal precipitation has resulted in forage vigor and current year's growth being far below normal, while some locations have no current year's growth. As a result, utilization of the previous year's growth averages heavy to severe over portions of both allotments. Water availability is extremely limited in Sheep Flat Allotment pastures 1,2 and 3. Fife Flat Reservoir in pasture 1 is dry, while Sheep Flat Reservoir in pasture 2 may provide water for another one to two weeks.

Therefore, for the protection of the vegetation and watershed due to severe drought conditions, Pastures 1, 2, and 3 of the Sheep Flat allotment and the western 1/3 of Pasture 4 of the Oak Springs allotment are hereby temporarily closed to livestock grazing. The affected permittees have agreed to remove livestock from these areas and to not allow livestock to return to the area until forage has been reestablished.

Authorized grazing use for the Sheep Flat Allotment for the remainder of the grazing year (8/15/96 - 9/30/96) will be as follows;

<u>Permittee</u>	<u>Active Use *</u>	<u>Temporary Suspension</u>
Lavar Wade and Francis Lytle	86 AUMs	164 AUMs
Ken Newby	150 AUMs	709 AUMs

* Active use will occur in pastures 4, 5 and 6.

Authorized grazing use for the Oak Springs Allotment for the remainder of the 1996 grazing year (8/15/96 to 2/28/97) will be in accordance with the Allotment Management Plan as follows;

<u>Permittee</u>	<u>Active Use *</u>	<u>Temporary Suspension</u>
H&H Land & Livestock Co.	6,723 AUMs	209 AUMs

This Notice of Closure is effective immediately. The closure will be in effect until the following criteria have been met:

1. Vegetative growth begins and can support livestock grazing; *and*
2. The key forage species all show good vigor.

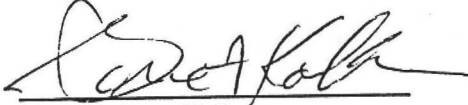
Upon determination that the perennial vegetation has been reestablished, authorized grazing use will resume. We will ask for your participation when evaluating forage conditions and water availability associated with lifting this

closure. If drought conditions continue into the 1997 grazing year, forage conditions and water availability will be evaluated prior to authorizing grazing use for the 1997 grazing year.

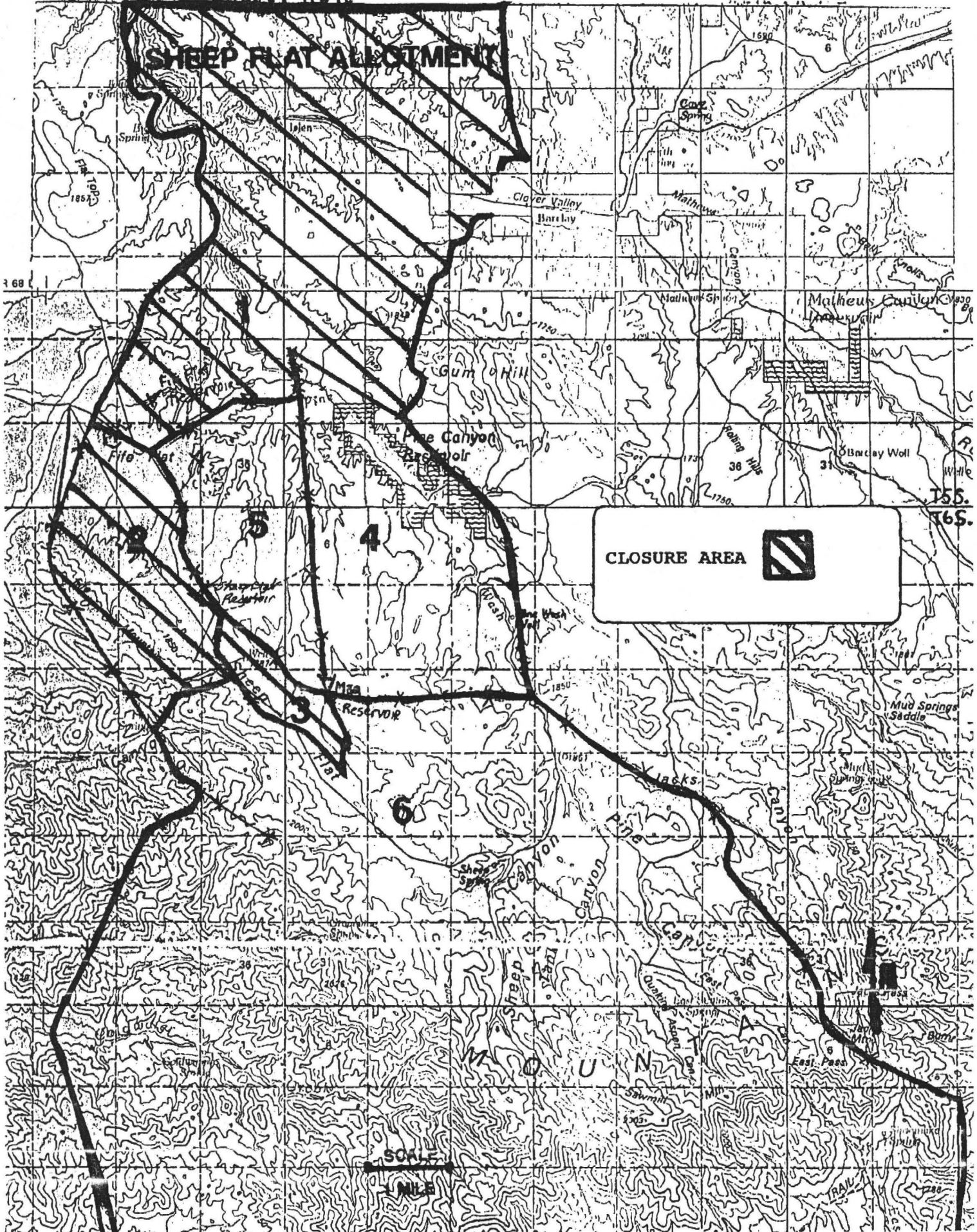
This closure is issued as an agreement pursuant to Title 43 Code of Federal Regulations, Section 4110.3-3 (b). Detailed maps of the closure areas are available at the Caliente Field Station, Ely District, Caliente, Nevada.

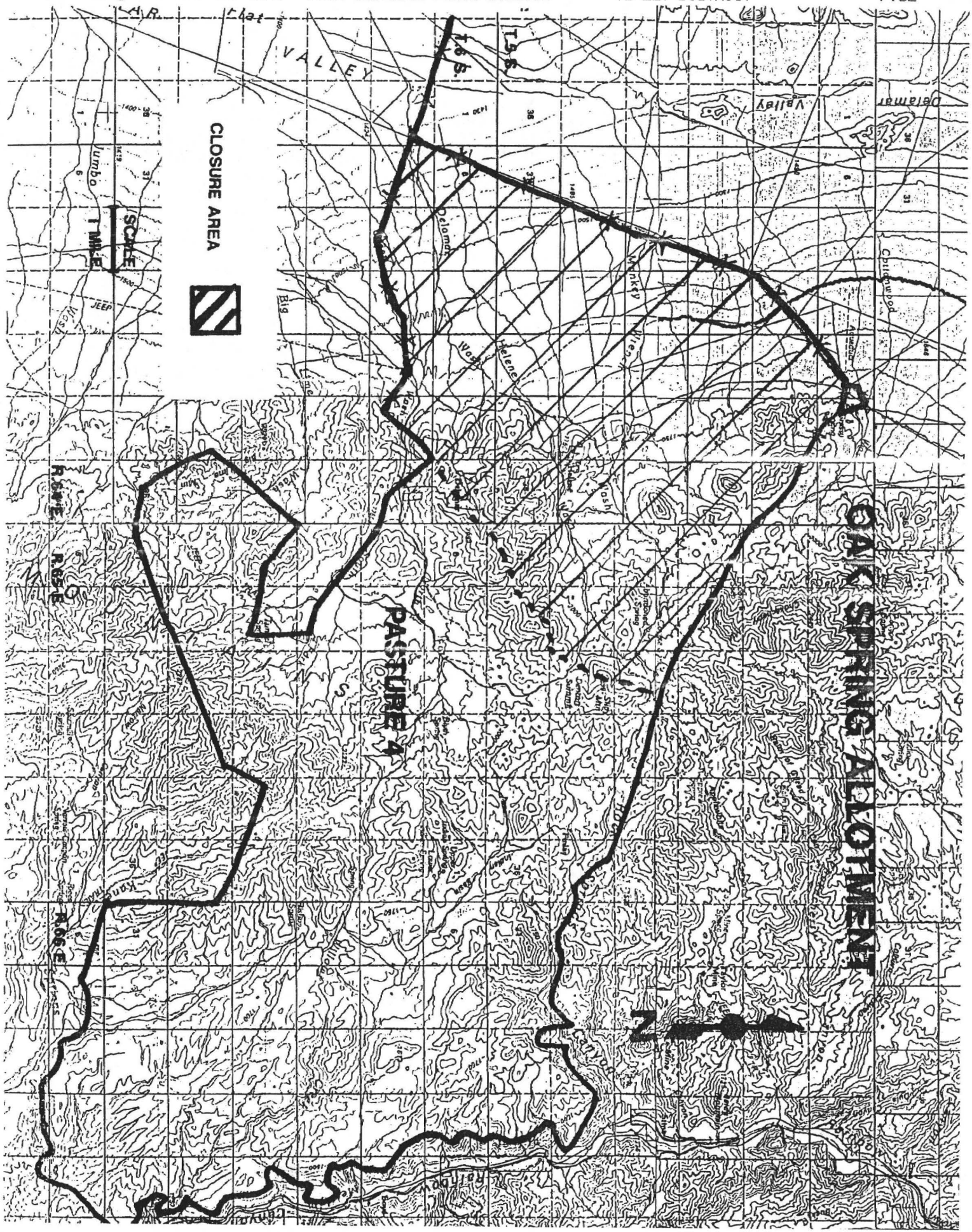
This Notice is to inform you that any unauthorized livestock grazing upon public lands within pastures 1, 2 and 3 of the Sheep Flat (T. 4, 5, 6 & 7 S., R. 68 & 69 E.) and the western 1/3 of pasture 4 of the Oak Springs Allotment (T. 5 & 6 S., R. 64 & 65 E.) under Bureau of Land Management's control will be in violation of 43 CFR 4140.1 (b) (1) and may be impounded. The unauthorized livestock may be impounded at any time after five (5) days from delivery of this notice or after five (5) days from the publishing and posting of this notice. This notice is issued in accordance with 43 CFR 4150.4; any impoundment of unauthorized livestock in connection with this notice will be done in accordance with 43 CFR 4150.4-2.

8/12/96
Date


Gene Kolkman
Ely District Manager

SHEEP FLAT ALLOTMENT







COMMISSION FOR THE
PRESERVATION OF WILD HORSES

1105 Terminal Way

Suite 209

Reno, Nevada 89502

(702) 688-2626

September 3, 1996

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

Subject: Delamar HMA - Emergency Gather
Dear Mr. Kolkman:

Thank you for consulting the Commission for the Preservation of Wild Horse concerning the Emergency Removal - Delamar Mountains Herd Management Area. We appreciate the extensive efforts of the District to properly consult affected parties during these extreme drought conditions in southern Nevada.

We agree with your present position to gather all horses and not return older age class animals to degraded rangelands or imminent death.

It would be appropriate to provide the affected parties an after-the-fact environmental assessment.

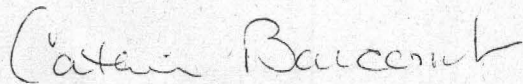
Please address the following issues:

1. Percentage of the herd management area affected by the decision.
2. Percentage of the herd affected by the decision.
3. Ownership of available water (Section 4 Agreements).
4. Age, sex and longevity data from the gather.
5. Range suitability (ephemeral classification).
6. Range criteria for livestock turnout.
7. Long term planning schedule.

Mr. Gene Kolkman
September 3, 1996
Page 2

Gene, due to the obvious lack of land use plan implementation, the Delamar Wild Horse Herd has not had adequate management. If this herd continues to suffer the severe bust and boom responses to cyclic climatic conditions of the Mojave Desert, then long term planning should be implemented to address the continuation of this herd management area. If in fact that the herd area or portions of the herd area do not have adequate and perennial waters, then herd management area boundaries may need to be adjusted. If in fact the herd survives on private lands and waters, the Bureau of Land Management must obtain necessary agreements or abandon the herd management area. However the long term solutions are determined, the Bureau of Land Management must make decisions to best manage our resources with available funding. Cyclic droughts cause undue suffering of wild horses requiring emergency decisions that are not scientifically based and expensive to strained budgets and work programs. I can only encourage you to seek long term solutions while dealing with the short term actions to save wild horses and protect their habitats.

Sincerely,



CATHERINE BARCOMB
Executive Director