Ely Dist Buck & Bald Hill Maverick Springs Allot. 6/24/85

WHOA!

WILD HORSE ORGANIZED ASSISTANCE
INC.
A Foundation for the Welfare of
Wild Free-Roaming Horses and Burros

P. O. Box 555
Reno, Nevada 89504

June 24, 1985

Mr. Merrill L. DeSpain, District Manager
Bureau of Land Management
Star Route 5, Box 1
Ely, Nevada 89301

Dear Mr. DeSpain:

Enclosed is a copy of the IBLA, Judge Morehouse decision on the Cook fence. I would appreciate being advised of its' statis. Has the fence been constructed? Was there an environmental assessment of the impact to wild horses? What mitigation measures were taken, if affirmative?

I would appreciate copies of all documents concerning this subject, and the implementation schedule if not all ready done.

Most sincerely,

Dawn Y. Lappin

Dawn Y. Lappin (Mrs.)
Director

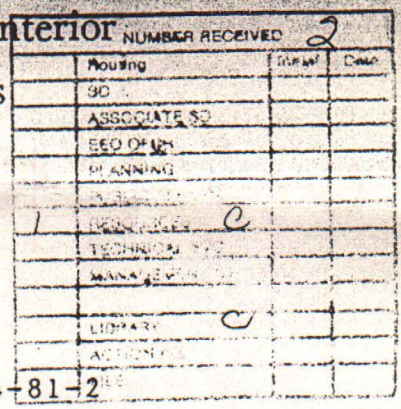
cc: Board of Trustees
David A. Hornbeck, Esq.

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Hearings Division
6432 Federal Building
Salt Lake City, Utah 84138
(Phone: 801-524-5344)

December 3, 1981



ARTHUR J. COOK,	:	NEVADA 4-81-2
	:	
Appellant	:	Appeal from District
	:	Manager's Decision dated
v.	:	March 27, 1981, Ely
	:	District.
BUREAU OF LAND MANAGEMENT,	:	
	:	
Respondent	:	
	:	
DANIEL RUSSELL,	:	
	:	
Intervenor	:	

DECISION

Appearances: Arthur J. Cook, pro se.;

Burton J. Stanley, Esq., Office of the Solicitor, Department of the Interior, Sacramento, California, for respondent;

Thomas S. Van Horne, Esq., Sacramento, California, for intervenor.

Before: Administrative Law Judge Morehouse.

This is a proceeding under the Taylor Grazing Act of 1934, as amended, 43 U.S.C. § 315, et seq., and the grazing regulations in 43 CFR subchapter D. The proceeding was initiated under 43 CFR 4.470 when an appeal was taken from the above decision. Hearing was held on August 11, 1981, at Ely, Nevada.

On March 27, 1981, the authorized officer, Bureau of Land Management (BLM), Ely District, issued a decision slightly changing the allotment line between the Warm Springs and Maverick Springs Allotments so that the line could be fenced. He stated his reasons:

> I find that the proposed Allotment line is as close to the original adjudicated line as can

be determined, allowing for minor adjustment to enable easier more cost efficient fencing. I further find that excessive livestock drift is occuring [sic] between the two allotments and that an equitable rangeline adjustment cannot be reached between you and the Warm Springs Allotment.

Title 43 CFR 4120.2-1(a) states "The authorized officer shall specify . . . the allotment(s) to be used," and I find that the orderly administration of the range will be much easier by fencing the allotment boundary as set forth in this decision.

Mr. Cook, whose ranch is located in the Maverick Springs Allotment and who is a licensee in Maverick Springs and Ruby Valley Allotments (see Ex. G-1), filed a timely appeal. Subsequently, Mr. Dan Russell, who is a licensee in the Warm Springs Allotment, moved to intervene which was allowed.

Mark J. Goeden, Acting Area Manager for BLM of the Egan Resource Area, which includes the area in controversy, testified that there has been a significant trespass problem between the three allotments over the years and after unsuccessful attempts to get some type of rangeline agreement between Cook and Russell, it was his recommendation that a fence be built as indicated on Exhibit G-1 which generally follows the old 1957 adjudicated line between the allotments. It is his understanding that Mr. Russell will pay for part of the construction costs and following resolution of this appeal BLM will conduct such environmental impact studies as required by the National Environmental Policy Act of 1969 (NEPA), prior to construction.

Mr. Cook testified that he has four main objections. He feels that he will lose some grazing in the southern tip of the Maverick Springs Allotment due to the particular configuration of the fence and the topography; the fence will necessitate cattle guards which can cause cattle to break legs when the guards become plugged with snow; the fence will interfere with wild horse and deer migration; and he might be assigned maintenance responsibility after construction. He conceded that cattle guards are used throughout Nevada and are generally recognized as being appropriate for cattle management. He concedes that he has complained about trespassing from the Warm Springs Allotment into Ruby Valley and that his cattle drift south from Ruby Valley into Warm Springs and west from Maverick Springs into Warm Springs. He stated that in 1974 he entered into a rangeline agreement with Russell's predecessor-in-interest which worked quite well. The agreement expired by its own terms after two years. He also acknowledged efforts by BLM to effect another rangeline agreement

between himself and Russell which Russell agreed to and he did not. He evidently felt that the agreement would give a forage advantage to Russell.

Ms. Dawn Lappin, Director of the Wild Horse Organized Assistance in Reno, Nevada, testified that in her opinion such a fence would cut off migration of the Back and Bald horses and the Maverick and Long Valley horses. In addition, it will cause inbreeding.

Mr. Clifton Gardner and Mr. Steve Wright, longtime residents in the area, also testified concerning the affect the fence might have on the wild horses.

On rebuttal, Mr. Goeden agreed that there will be some adjustment problems after the fence is constructed but he felt the fence is necessary to resolve severe cattle drift problems between the allotments.

Mr. Julian Goicoechea, foreman for Mr. Russell, testified he first came to the area in the 1930's and formerly owned the Warm Springs Ranch presently owned by Mr. Russell. In the past, he has served as a member of BLM grazing advisory boards in Ely, Battle Mountain and Lander Counties. He stated there is cattle drift both ways across the line but he feels the real difficulty is the drift from the south end of the Ruby Valley west into Warm Springs. He believes the only practical way to solve the problem is to construct the fence. He has not lost any cows to cattle guards in the past two years.

The only issue before me is whether, under the present circumstances, the decision of the District Manager is reasonable or whether it is arbitrary and capricious. United States v. Maher, 5 IBLA 209 (1972). The burden is on the appellant to show by a preponderance of the evidence that under the circumstances the decision complained of is arbitrary and unreasonable. This appellant has failed to do. In fact, the weight of the evidence shows that absent some type of rangeline agreement between the parties a fence is the only reasonable way to correct a serious trespass problem. It must be presumed that BLM wll comply with the requirements of NEPA with respect to any wild horse problem.

Accordingly, the decision of the District Manager is affirmed.

Michael L. Morehouse
Administrative Law Judge