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NOTICE OF FINAL MULTIPLE USE DECISION
FOR THE SOUTH BUTTE ALLOTMENT (0504)

BACKGROUND INFORMATION:

The Resource Management Plan/Environmental Impact Statement and Record of Decision for the Egan Resource Area were issued in September, 1984 and February, 1987, respectively. The Egan Rangeland Program Summary was issued in May of 1988. These documents guide the management of public lands within the South Butte Allotment. The Egan Resource Area Record of Decision, dated February 1987, states in part:

"Monitoring studies will be used to determine if adjustments in livestock numbers are necessary...All vegetation will be managed for those successional stages which would best meet the objective of this proposed plan..." (short term objectives). "Future adjustments in livestock use will be based on data provided through the rangeland monitoring program" (long term objective).

"Implementation [of the range management program] will take place through coordination, consultation, and cooperation. Coordinated resource management and planning is an advisory process that brings together all interests concerned with the management of resources in a given local area (landowners, land management agencies, wildlife groups, wild horse groups, and conservation organizations) and is the recommended public process through which consultation and coordination will take place. Grazing adjustments, if required, will be based upon a combination of reliable vegetation monitoring studies, consultation and coordination, and inventory."

"Range management actions for livestock use and wild horse numbers will be based upon data obtained through the monitoring program and will consider recommendations made through the coordinated resource management and planning process. Actions could include, but will not be limited to, change in seasons-of-use, change in livestock numbers, correction of livestock distribution problems, alteration of the number of wild horses, development of range improvements, and taking site-specific measures to achieve improvements in wildlife habitat."

In accordance with Bureau policy and regulations, monitoring data has been analyzed and evaluated in order to determine progress in meeting management objectives for the South Butte Allotment. Input was received from the permittee, Nevada Department of Wildlife, U.S. Fish and Wildlife Service, Resource Concepts, Inc. on behalf of the N-4 State Grazing Board and the Sierra Club. A proposed multiple use decision was issued on October 14, 1992. A protest was received from Resource Concepts, Inc. on November 5, 1992 concerning the utilization of forage by sheep while trailing through the allotment and the use of the Sneva Crop Yield Index in the stocking rate calculations. After consultation with all the permittees affected by sheep trailing through the South Butte Allotment an agreement was reached to reduce the impact by rerouting some trails outside the allotment and designating specific trail routes and bedgrounds within the allotment. Duration of sheep trailing was also specified and will be incorporated as stipulations to the permits of those affected. The Sneva Crop Yield Index model has been chosen by the Ely District as the most appropriate for this region to account for the affect of yearly climatic variations on annual forage yield. The data provided by the National Oceanic and Atmospheric Administration weather station located at the Ely airport was used due to its proximity to the South Butte Allotment as well as the long term and scientific nature of the precipitation data collected. No other long term source of precipitation data exists that is in closer proximity to the South Butte Allotment that could be substituted for the NOAA station at Ely and statistically determine the long term average crop year precipitation which could be used in calculating the yield index. See Appendix I for the land use plan objectives covering livestock, wildlife and wild horses. These objectives are in conformance with and formulated to accomplish the Egan Resource Management Plan multiple use objectives as they relate to all grazing use on the South Butte Allotment.

BASED UPON THE EVALUATION OF MONITORING DATA FOR THE SOUTH BUTTE ALLOTMENT, RECOMMENDATIONS FROM DISTRICT STAFF, AND INPUT RECEIVED THROUGH CONSULTATION, COORDINATION, AND COOPERATION FROM THE PERMITTEE AND PUBLIC INTEREST GROUPS, THE FINAL DECISION IS AS FOLLOWS:

The analysis of monitoring data has revealed that seven of the eleven land use plan objectives for the South Butte Allotment are not being met for existing grazing use by livestock and wild horses under current management practices. Therefore, this decision proposes a reduction in active preference for livestock from 508 Aums to 340 Aums, establishes season-of-use from April 15 to February 28 and fencing the Willow Spring riparian site. This decision also establishes the appropriate management level (AML) for wild horses for the portion of the Butte Herd Management Area (HMA) within the South Butte Allotment.

LIVESTOCK MANAGEMENT DECISION

In accordance with 43 CFR 4110.3, 4110.3-2(b) and 4130.6-1(a), the existing authorized livestock active use shall be changed to 340 AUMs with 168 AUMs to be held in suspended non-use. The active preference is allocated as follows:

From:

KIND	USE PERIOD	% F.R.	T TOTAL AUMS	ACTIVE AUMS	SUSP. AUMS
CATTLE	3/1 TO 2/28	67%	508	508	0

To:

KIND	USE PERIOD	% F.R.	TOTAL AUMS	ACTIVE AUMS	SUSP. AUMS
CATTLE	4/15 TO 2/28	67%	508	340	168

In accordance with 43 CFR 4110.3-3(a), changes in livestock preference greater than 10% shall be phased in over a five year period. Adjustments will be implemented in years 1, 3 and 5. In accordance with 43 CFR 4110.3-2(c), reductions in active preference AUMs over this phase in period will be held in suspended nonuse. Prior to implementing adjustments scheduled for the third and fifth years, existing and future monitoring data will be evaluated to determine if the indicated adjustments are necessary and/or if any additional modifications in existing management will be necessary. The following table indicates total preference, active preference and suspended non-use over the five year phase in period. Year 1 is the 1993 grazing year.

YEAR	TOTAL AUMS	ACTIVE AUMS	SUSP. AUMS
1	508	452	56
3	508	396	112
5	508	340	168

In accordance with 43 CFR 4130.6-2, the following terms and conditions will be included in the grazing permit for the South Butte Allotment:

1. Establish season of use from 4/15 to 2/28. The total number of AUMs that can be licensed from 4/15 to 6/15 would be 10% of active preference to prevent over-utilization of key forage species during the critical growth period. Due to the private land incorporated into this allotment, license at 67% public land rate.

Rationale:

Monitoring studies and other existing information supports the conclusion that overutilization of key forage species by livestock and wild horses, due to excessive numbers and poor distribution, has led to a decrease in carrying capacity and a deterioration of the range resource.

AUTHORITY: The authority for this decision is contained in Title 43 of the Code of Federal Regulations, which states in 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 grazing preference specified in a grazing permit or grazing lease and may make changes in the grazing preference status. These changes shall be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either specified in an applicable land use plan or necessary to manage, maintain or improve rangeland productivity."

4110.3-2(b): "When monitoring shows active use is causing an unacceptable level or pattern of 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..."

4110.3-2(c): "Where active use is reduced it shall be held in suspension..."

4110.3-3(a): "Changes in active use in excess of 10 percent shall be implemented over a 5-year period..."

4110.3-3(b): "After consultation, coordination and cooperation, suspensions of preference shall be implemented through a documented agreement or decision. If data acceptable to the authorized officer are available, an initial reduction shall be taken on the effective date of the agreement or decision and the balance taken in the third and fifth years following the effective date..."

4120.3-1: "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."

4130.6: "Livestock grazing permits and leases shall contain terms and conditions necessary to achieve the management objectives for the public lands and other lands under Bureau of Land Management administration."

4130.6-1(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 as determined through monitoring and adjusted as necessary under 4110.3, 4110.3-1 and 4110.3-2."

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..."

APPEAL:

If you wish to appeal this final decision for the purpose of a hearing before an Administrative Law Judge, in accordance with 43 CFR 4.470, you are allowed thirty (30) days from receipt of this notice within which to file an appeal with the Egan Area Manager, BLM, Ely District Office, HC 33, Box 33500, Ely, Nevada 89301-9408. The appeal should state the reasons, clearly and concisely, why you think the final decision is in error.

WILD HORSE AND BURRO MANAGEMENT DECISION

It has been determined through monitoring studies that a thriving natural ecological balance can be maintained by setting the wild horse AML at 60 AUMS (7 horses for 9 months) on that portion of the Butte Herd Management Area which occurs within the South Butte Allotment. The setting of wild horse numbers by allotment will eventually provide for an overall herd management area wild horse AML, and gathers within allotments will not allow wild horse numbers to fall below total HMA wild horse AMLs.

In accordance with 43 CFR 4700.0-6(a), wild horse use on the South Butte Allotment shall be managed at 60 AUMS (7 horses for 9 months).

In accordance with 43 CFR 4720.1, all wild horses in excess of the appropriate management level of 7 horses for 9 months (60 AUMS) will be removed.

Adjustments in wild horse numbers will be made by future Butte Herd Management Area gathers based on continued monitoring, in order to achieve and maintain the established AML.

RATIONALE: The analysis and evaluation of monitoring data indicates that management actions for wild horses must be modified to meet multiple use management objectives on the South Butte Allotment as identified in Appendix I. The data indicate that there are 60 AUMs available for wild horse use. The removal of excess wild horses is necessary to establish and maintain a thriving natural ecological balance and prevent a deterioration of the rangeland resources.

AUTHORITY: The authority for this decision is contained in Sec.3(a) and (b) of the Wild and Free-Roaming Horse and Burro Act (P.L. 92-195) as amended and in Title 43 of the Code of Federal Regulations, 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 of this decision, you have the right to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.400. 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 Statement of Reasons to the Board of Land Appeals and a copy to the Regional Solicitor's office listed in Item 3 on the form. In addition, please provide this office with a copy of your Statement of Reasons. The appellant has the burden of showing that the decision appealed from is in error.

Gene L. Drais

Gene L. Drais, Manager
Egan Resource Area

(Certified Mail #026 274 711)

cc: Nevada Department of Wildlife (Region II) (#026 274 712)
N-4 Grazing Board (#026 274 713)
Resource Concepts Inc. (#026 274 714)
Sierra Club, Toiyabe Chapter (#026 274 715)
U.S. Fish and Wildlife Service (#026 274 716)
Natural Resource Defence Council (#026 274 717)
Wilderness Society (#026 274 718)
International Society for the Protection
of Mustangs and Burros (#026 274 719)
Commission for the Preservation of Wild
Horses and Burros (#026 274 720)
Animal Protection Institute (#026 274 721)
Wild Horse Organized Assistance (#026 274 722)
Claudia J. Richards (#026 274 723)
Nevada Farm Bureau (#026 274 724)

APPENDIX I: Land Use Plan/Rangeland Program Summary Objectives

1. Land Use Plan Objectives

a. Rangeland Management- "All vegetation will be managed for those successional stages which would best meet the objective of this proposed plan." (Egan Resource Area Record of Decision (ROD), p.3).

b. Wild Horses and Burros- "Wild horses will be managed at a total of 60 animals in the Butte Herd Use Area." (Egan ROD, p.6). Actual wild horse numbers will be determined by this evaluation in conjunction with monitoring data to maintain a thriving natural ecological balance and prevent deterioration of the rangeland. (Note: The 60 animals identified above, as well as the 43 AUM's identified in the RPS is no longer a valid AML. The Interior Board of Land Appeals June 7, 1989 decision (IBLA 88-591, 88-638, 88-648, 88-679) ruled in part, "an AML established purely for administrative reasons because it was the level of wild horse use at a particular point in time cannot be justified under the statute" (Dahl vs. Clark, Supra at 595). The IBLA further ruled that the AML must be established through monitoring "in terms of the optimum number which results in a thriving natural ecological balance and avoids a deterioration of the range.")

c. Wildlife- "Habitat will be managed for "reasonable numbers" of wildlife species as determined by the Nevada Department of Wildlife." (Egan ROD, p.6).

- "Reintroductions of big game species will be accomplished in cooperation with the Nevada Department of Wildlife, where such reintroductions would not conflict with existing uses and if sufficient forage is available." (Egan ROD, p.6).

- "Forage will be provided for "reasonable numbers" of big game as determined by the Nevada Department of Wildlife." (Egan ROD, p. 8).

d. Riparian- "Where management objectives are not being obtained through application of management practices, fencing will be considered." (Egan ROD, p.13).

e. Watershed- "Establish utilization limits to maintain watershed cover, plant vigor and soil fertility in consideration of plant phenology, physiology, terrain, water availability, wildlife needs, grazing system and aesthetic values." (Egan ROD, p.44).

2. Rangeland Program Summary Objectives

Range

a. "Provide forage for up to 358 AUMs of livestock use. Maintain or enhance native vegetation with utilization not to exceed Nevada Rangeland Monitoring Handbook levels on key species. Maintain or improve current ecological condition of native range." Maximum utilization on native key species is 50%.

Wild Horses

b. "Initially manage rangeland habitat to support Appropriate Management Level (AML) of 4 horses in the South Butte Allotment as part of the Butte HMA. Provide forage for up to 43 AUMs of wild horse use." Actual wild horse numbers will be determined by this evaluation in conjunction with monitoring data to maintain a thriving natural ecological balance and prevent deterioration of the rangeland.

Wildlife/Riparian

c. "Manage rangeland habitat and forage condition to support reasonable numbers of wildlife as follows: mule deer 30 AUMs, antelope 20 AUMs." Utilization of key species will not exceed the levels listed in 2 a. above.

d. "Maintain or improve mule deer yearlong habitat in a good or better condition." This is also accomplished by limiting utilization to the levels listed in 2 a. above.

e. "Protect Ferruginous hawk nest sites." Utilization on white sage flats within two miles of ferruginous hawk nest sites will not exceed 55%."

f. "Protect sage grouse breeding complexes." This is accomplished by maintaining the big sagebrush sites within two miles of active strutting grounds in mid to late seral stage with a minimum of 30% shrub composition by weight.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.

2. WHERE TO FILE
NOTICE OF APPEAL GENE L. DRAIS, EGAN RESOURCE AREA MANAGER
BUREAU OF LAND MANAGEMENT
HC 33, BOX 33500
ELY, NV. 89301-9408

SOLICITOR
ALSO COPY TO OFFICE OF THE REGIONAL SOLICITOR
U.S. DEPARTMENT OF THE INTERIOR
2800 COTTAGE WAY, ROOM E-2753
SACRAMENTO, CA. 95825-1890

3. STATEMENT OF REASONS Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.

SOLICITOR
ALSO COPY TO OFFICE OF THE REGIONAL SOLICITOR
U.S. DEPARTMENT OF THE INTERIOR
2800 COTTAGE WAY, ROOM E-2753
SACRAMENTO, CA. 95825-1890

4. ADVERSE PARTIES Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).

5. PROOF OF SERVICE Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a))