



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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

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IN REPLY REFER TO:

4400.5 (NV-047)

NOV 9 1995

Dear Interested Publics:

We appreciate your participation in the evaluation process for the Railroad Pass Allotment. Enclosed for your information is a copy of the Final Multiple Use Decision (FMUD) for the Railroad Pass Allotment. The FMUD is the final step in the evaluation process.

If you have any questions or concerns please contact Wendy Fuell, Rangeland Management Specialist, of my staff at (702) 289-1865.

Sincerely,

Gene L. Drais, Manager
Egan Resource Area

1 Enclosure

1. Railroad Pass Final Multiple Use Decision



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BUREAU OF LAND MANAGEMENT

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



IN REPLY REFER TO:

4400.5 (NV-047)

NOV 9 1985

Rother Farms, Inc.
Cheyenne Wells, CO 80810

CERTIFIED MAIL NO. P 313 269 776
RETURN RECEIPT REQUESTED

Pete Paris, Jr.
HCR 30 Box 320
Elko, NV 89316

CERTIFIED MAIL NO. P 313 269 777
RETURN RECEIPT REQUESTED

Peter and Julian Goicoechea
P.O. Box 97
Eureka, NV 89801

CERTIFIED MAIL NO. P 313 269 778
RETURN RECEIPT REQUESTED

NOTICE OF FINAL MULTIPLE USE DECISION FOR THE RAILROAD PASS ALLOTMENT

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 Railroad Pass Allotment. The Egan Resource Area Record of Decision, dated February 1987, states in pertinent 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 objectives 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. 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."

Monitoring studies were initially established in 1977 and have been conducted 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 management objectives for the Railroad Pass Allotment. Input was received from the Commission for the Preservation of Wild Horses, Nevada Division of Wildlife, and Pete Goicoechea. See Appendix 1 for the land use plan objectives covering livestock, wild horses, and wildlife. 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 Railroad Pass Allotment.

BASED ON THE EVALUATION OF MONITORING DATA FOR THE RAILROAD PASS 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 the monitoring data has revealed that the multiple use objectives for the Railroad Pass Allotment are not being met due to the existing grazing use by cattle and wild horses. This analysis also shows that the existing use of wildlife does not contribute to the failure in meeting these multiple use objectives. Therefore, this decision proposes changes in cattle and wild horse use and not to wildlife use. This decision also establishes the appropriate management level for wild horses for the Diamond Hills South Herd Management Area (HMA).

LIVESTOCK MANAGEMENT DECISION

In accordance with 43 CFR 4110.3, 4110.3-2(b), and 4130.3-1(a) and (b), the permitted cattle use shall be changed to 1,364 AUMs.

From (Existing permits):*

Peter & Julian Goicoechea: Railroad Pass (00601)

Number	Kind	Period of Use	AUMs		Suspended
			%PL	Active	
102	Cattle	5/1 - 9/30	100	513	0

Harold Rother Farms Inc.: Railroad Pass (00601)

Number	Kind	Period of Use	AUMs		Suspended
			%PL	Active	
300	Cattle	4/15 - 10/15	100	1815	0

* Permit schedules were not exact. Total active preference (existing permit) for Peter & Julian Goicoechea is 511 AUMs and for Harold Rother Farms, Inc., is 1800 AUMs.

To:

<u>Permittee</u>	<u>No.</u>	<u>Kind</u>	<u>Period of Use</u>	<u>%PL</u>	<u>Permitted Use</u>	<u>Voluntary* Non-Use</u>
Peter & Julian Goicoechea	75	Cattle	6/1 - 9/30	100	300	211
Harold Rother Inc.	265	Cattle	6/1 - 9/30	100	1064	736

*Voluntary non-use will be for a period of five years beginning March 1, 1996. At the end of the fifth year the Railroad Pass Allotment will be reevaluated and a decision will be issued by the BLM in consultation with permittees and interested publics.

Paris Livestock

In accordance with 43 CFR 4110.3, 4110.3-2(b) and 4130.3-1(a) and (b), permitted use for sheep will be set at 691 AUMs on the native portion of the Railroad Pass Allotment with an additional 540 AUMs (sheep/cattle) adjudicated exclusively for the Corta Seeding.

From (Existing Permits):

Paris Livestock: Railroad Pass (00601)

<u>Permittee</u>	<u>No.</u>	<u>Kind</u>	<u>Period of Use</u>	<u>%PL</u>	<u>Active</u>
Paris Livestock	1645	Sheep	4/5 - 5/15	100	444
	2500	Sheep	11/1 - 11/15	100	247

To:

<u>Permittee</u>	<u>No.</u>	<u>Kind</u>	<u>Period of Use</u>	<u>%PL</u>	<u>Permitted Use</u>
Paris Livestock	467	Sheep	4/5 - 11/15	100	691
	*365	Sheep	4/5 - 11/15	100	540

There will be no sheep use in the native area, including the burns (seeded) identified on Map 1 (attached) from June 1, through October 31.

* The 540 AUMs identified above to be used in the Corta Seeding exclusively may be either sheep or cattle AUMs.

In accordance with 43 CFR 4130.3-2, the following terms and conditions will be included in the respective grazing permits for the Railroad Pass Allotment:

1. A rest rotation system will be established for cattle grazing on the Railroad Pass Allotment as outlined below:

<u>Pasture</u>	<u>Year 1 Schedule</u>	<u>Year 2 Schedule</u>
North of Drift Fence	6/1 - 9/30	No Use
South of Drift Fence	No Use	6/1 - 9/30

2. Livestock grazing capacity for the Corta Seeding is established at 540 AUMs, to be used exclusively within the seeding.

3. There will be no sheep use from June 1 through October 31 in the native area, including the burns (seeded) , shown on Map 1.

4. There will be no fall sheep use in the burn areas. (Map 2)

5. Salt will be placed a minimum of 1/2 mile from water sources.

6. Voluntary non-use will be for five years beginning March 1, 1996.

RATIONALE:

The analysis and evaluation of available monitoring data indicates that current stocking rates and management practices must be modified to meet the multiple use management objectives for the Railroad Pass Allotment. The data for the allotment as a whole indicates that the livestock carrying capacity for the native portion of the allotment is 2,055 AUMs with 1,364 cattle AUMs and 691 sheep AUMs. An additional 540 AUMs will be permitted within the Corta Seeding.

AUTHORITY:

The authority for this decision is contained in Title 43 of the Code of Federal Regulations, 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 grazing 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. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer."

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."

4110.3-3(a): "After consultation, cooperation and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer..."

4120.3-1(c): "The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under Sec. 4130.6-2 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 to 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 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:

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final livestock grazing portion of this decision may file an appeal and petition for stay of the decision pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, Gene L. Drais, Egan Resource Area Manager, HC 33 Box 33500, Ely, Nevada 89301-9408, within 30 days following receipt of the final decision.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

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.

As noted above, the petition for stay must be filed in the office of the authorized officer.

WILD HORSE AND BURRO MANAGEMENT DECISION

It has been determined through monitoring that a thriving natural ecological balance will be obtained by maintaining wild horse use at 260 AUMs or 22 wild horses yearlong \pm 15%. Therefore, in accordance with 43 CFR 4700.0-6(a), wild horse use on the Railroad Pass Allotment shall be managed at 22 animals yearlong \pm 15%, which establishes a wild horse management range of 19 to 25 wild horses yearlong.

In accordance with 43 CFR 4720.1, in the future, all wild horses in excess of the appropriate management level of 22 animals \pm 15% will be removed.

Adjustments in wild horse numbers will be made by future Diamond Hills South HMA gathers based on continued monitoring, in order to achieve and maintain the established AML.

RATIONALE: The analysis and evaluation of available monitoring data indicates that reduction in wild horse numbers in the Diamond Hills South HMA is necessary to establish and maintain a thriving natural ecological balance and to limit the animals' distribution to existing herd areas.

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, 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 the 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 of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.4. 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 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. Copies of your appeal and the 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 appealed from is in error.

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



Gene L. Drais, Manager
Egan Resource Area

CERTIFIED MAIL #

cc:	Rother Farms, Inc.	P 313 269 776
	Pete Paris, Jr.	P 313 269 777
	Peter and Julian Goicoechea	P 313 269 778
	John McLain, Resource Concepts, Inc.	P 313 269 779
	Rose Strickland, Sierra Club	P 313 269 780
	The Wilderness Society	P 313 269 781
	Kurt Baughman, Nevada Division of Wildlife, Ely, NV	P 313 269 782
	Nevada Division of Wildlife, Region II, Elko, NV	P 313 269 783
	Commission for the Preserv. of Wild Horses & Burros	P 313 269 784
	International Society for the Preservation of Wild Horses & Burros	P 313 269 785
	N-4 Grazing Board, Region II	P 313 269 786
	U.S. Fish and Wildlife Service, Ruby Valley, NV	P 313 269 787
	U.S. Fish and Wildlife Service, Reno, NV	P 313 269 788
	Nevada Farm Bureau	P 313 269 789
	Animal Protection Institute	P 313 269 790
	Wild Horse Organized Assistance	P 026 274 935

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APPENDIX: 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 - Wild horses will be managed at a total of 36 animals within the Diamond Hills HMA. (Egan ROD, p. 6)*

- Future adjustments in wild horse numbers will be based on data provided through the rangeland monitoring program. (Egan ROD, p. 6)*

* The 36 horses yearlong identified in the ROD is no longer a valid Appropriate Management Level (AML). The Interior Board of Land Appeals (IBLA) 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. The IBLA further ruled that AML must be established through monitoring "in terms of the optimum number which results in a thriving natural ecological balance and avoids 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)

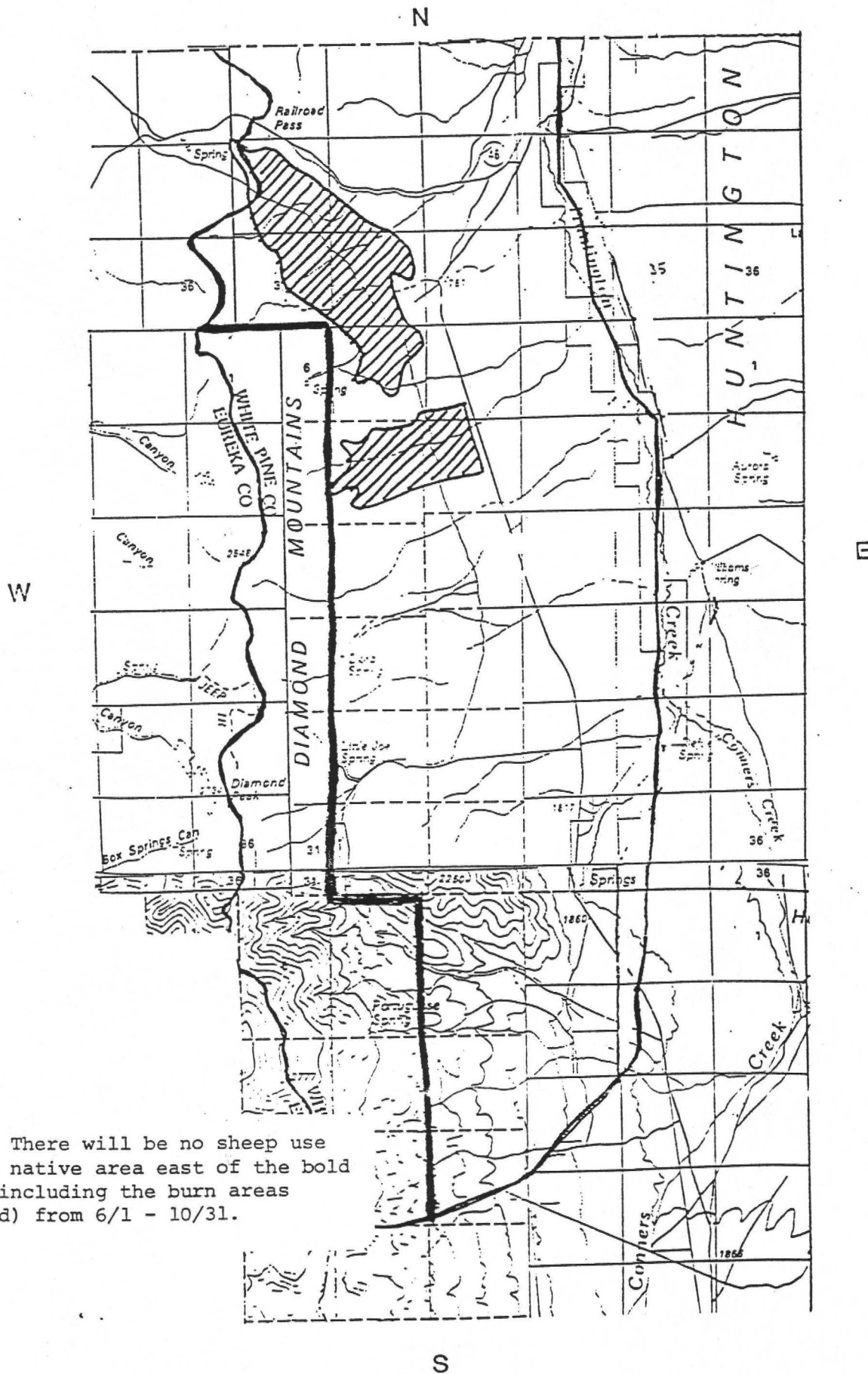
- "Forage will be provided for "reasonable numbers" of big game as determined by the Nevada Department of Wildlife." (Egan ROD, p. 8)

d. 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

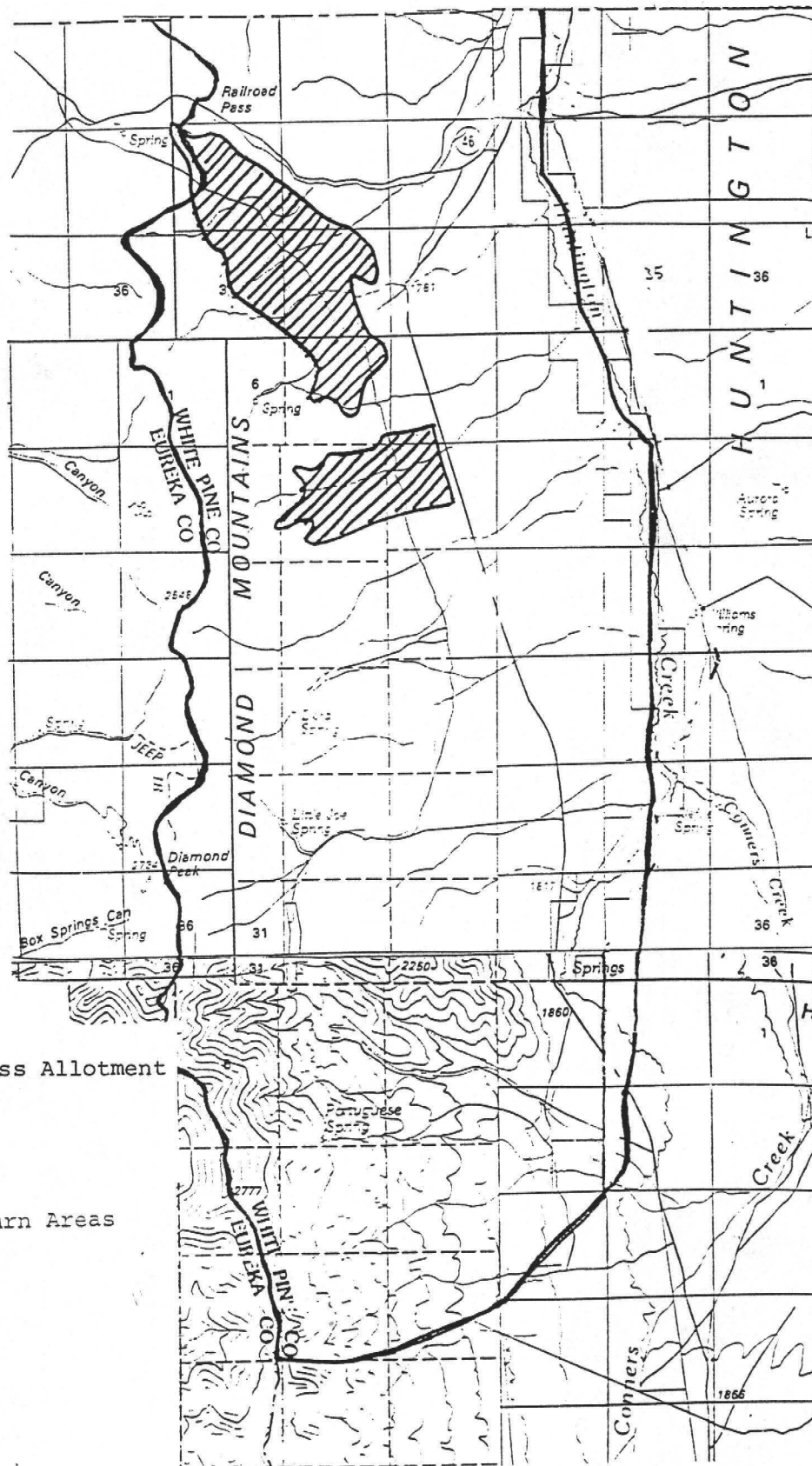
- a. "Provide for up to 943 AUMs of livestock use."
- b. "Maintain the Corta and Burn Seedings in good or better condition."
- c. "Improve ecological condition of low productivity/high potential big sagebrush dominated vegetation types on approximately 1/3 of the allotment."
- d. Maintain or improve current ecological condition on the remainder of the native range, with utilization levels not to exceed Nevada Rangeland Monitoring Handbook (NRMH) recommended allowable use levels which for perennial grass species is 50%.
- e. "Manage rangeland habitat and forage condition to support reasonable numbers of wildlife, as follows: deer 682 AUMs."
- f. "Maintain habitat condition of meadows and riparian areas in good or better condition for mule deer and upland game."
- g. Protect sage grouse breeding complexes by maintaining the big sagebrush sites within two miles of active strutting grounds for mid-late seral stage with a minimum of 30% shrub component by weight.
- h. Protect ferruginous hawk nest sites by limiting utilization to 50% on winterfat flats within two miles of nest sites.
- i. "Maintain .25 miles of stream riparian in good or better condition."
- j. "Provide habitat and forage for approximately 38 horses (453 AUMs) within the Diamond Hills South HMA. (See note on page 3, B.b(1))"

RAILROAD PASS BURN AREAS




Map 1. There will be no sheep use in the native area east of the bold line, including the burn areas (seeded) from 6/1 - 10/31.

RAILROAD PASS BURN AREAS .



Map 2. Railroad Pass Allotment Burn Areas

 Rehabilitated Burn Areas



**COMMISSION FOR THE
PRESERVATION OF WILD HORSES**

255 W. Moana Lane

Suite 207A

Reno, Nevada 89509

(702) 688-2626

November 21, 1995

Mr. Gene Drais
Eagan Resource Area Manager
Bureau of Land Management
HC Box 33500
Ely, Nevada 89301-9408

Subject: Appeal - Wild Horse and Burro Management Decision/Notice
of Final Multiple Use Decision for Railroad Pass Allotment

Dear Mr. Drais:

The Nevada Commission for the Preservation of Wild Horses has an interest and the statutory authority to ensure the welfare and viability of the Diamond Hills South Herd. Specific comments and issues provided to the Proposed Decision were not addressed in the Final Decision or other documents. Errors in the determination of the appropriate management level for the wild horse herd were presented in comments to the draft allotment evaluation, management action selection report and proposed decision. As provided for under 43 CFR 4.4160.4, the Commission re-submits errors in the determination of the Final Decision:

Carrying Capacity Computations are flawed.

Actual Use Data

Wild horse actual use was determined by counting foals as an animal unit month. Regulations require equivalent animal unit months to one cow and calf. The Bureau of Land Management has determined one adult horse as an animal unit month.

Domestic sheep were included in the estimated actual use summary and computation. The Final Decision declared that domestic sheep did not contribute to overgrazing or resource damage. Actual use by domestic sheep must be excluded from carrying capacity computations in order to determine the appropriate management level.

Mr. Gene Drais
November 21, 1995
Page 2

The result of these errors have inflated the allotment carrying capacity and allocation of forage affecting the appropriate management level for wild horses and stocking rates for livestock.

Weight Averaging Use Pattern Mapping Data

Procedures provided in Bureau of Land Management Technical Manual 4400-77 do not allow weight averaging use pattern mapping data when production and utilization are not uniform on the allotment. Procedures chosen by the Final Decision compromises the overgrazing occurring on the allotment.

Yield Index Utilization Data

Procedures used to yield index utilization data compromises overgrazing data collected on the allotment. Adjustment to Raw Utilization data is contrary to the conclusions found in the allotment evaluation. Conclusions found that utilization objectives or allowable use levels were not met. Carrying capacity computations show that adjusted utilization levels are near desired utilization levels and stocking levels exceed levels known to cause overgrazing on the allotment.

Allocation of Forage

Initial stocking rates of the land use plans were to initiate monitoring studies. Proportional uses were not established in the land use plan. Monitoring data can quantify wild horse and livestock actual use for allocation of forage.

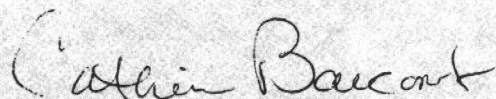
Adjustment of actual livestock and wild horse use is a management alternative to achieve a thriving natural ecological balance on the Railroad Pass Allotment. Computations using "active livestock preference" rather than "actual use" creates "paper cow" animal unit months to be taken from existing wild horses.

Mr. Gene Drais
November 21, 1995
Page 3

Remedial Relief

Issues of this appeal have been submitted and debated with the District over the course of the allotment evaluation and decision making processes. The Commission's submittal of a selective management alternative did not receive consideration or rebuttal. We encourage the District to seriously re-consider the Commission's detailed input and specific concerns for the Diamond Hills South Herd.

Sincerely,



CATHERINE BARCOMB
Executive Director

cc. Terri Rodefer, NSCH, SAI# 96300080
Duane Erickson, Region II

TYPE-ERASE
52% COTTON FIBER USA