

3/14/94

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United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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

IN REPLY REFER TO:

4160 (NV-047)

MAR 14 1994

CERTIFIED MAIL NO. P 313 269 919
RETURN RECEIPT REQUESTED

Dan Russell
c/o Tom Van Horne
2991 B Gold Canal Drive
Rancho Cordova, CA 95670

NOTICE OF FULL FORCE AND EFFECT FINAL MULTIPLE USE DECISION FOR THE WARM SPRINGS 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 Warm Springs 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 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. 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 1981 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 Warm Springs Allotment. Input was received from the Commission for the Preservation of Wild Horses and Burros, Wild Horse Organized Assistance, the Nevada Division of

Wildlife, U.S. Fish and Wildlife Service, and the N-4 Grazing Board, via a range consulting firm. 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 Warm Springs Allotment.

A Proposed Multiple Use Decision for the Warm Springs Allotment was issued on February 9, 1994. The Proposed Decision was protested by Daniel H. Russell, Metropolitan Life, The Commission for the Preservation of Wild Horses, and Wild Horse Organized Assistance. The protest points presented by Dan H. Russell and Metropolitan Life were numerous; however, the majority dealt with the fact that they felt the amount and type of data was inadequate to base the Final Multiple Use Decision upon, they disagreed with the Appropriate Management Level (AML) for wild horses and they felt the policy regarding management of wild horses was in error. The protest points from the Commission for the Preservation of Wild Horses and Wild Horse Organized Assistance were basically identical to one another and objected primarily with reductions from preference for livestock and not from actual use. All protest points were considered; however, no new pertinent information was presented to alter the Final Decision. Therefore, the Final Decision will be unchanged from the Proposed Decision.

BASED ON THE EVALUATION OF MONITORING DATA FOR THE WARM SPRINGS 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 the multiple use objectives for the Warm Springs Allotment are not being met, and in fact, significant resource deterioration is taking place throughout portions of the allotment, exemplified by irreparable damage to the ecological status of major plant communities. Data analysis shows that combined use by livestock and wild horses is the main cause of the resource deterioration. This analysis also shows that the existing management of wildlife does not contribute to the failure in meeting these multiple use objectives. Therefore, this decision proposes changes in livestock and wild horse use and not to wildlife use. This decision also establishes the appropriate management level (AML) for that portion of the Buck and Bald Herd Management Area (HMA) within the Warm Springs Allotment.

Due to the severity of the resource deterioration, to the point of irreparable damage to portions of the area's natural ecological balance, this decision is placed in full force and effect in accordance with 43 CFR 4160.3(c).

LIVESTOCK MANAGEMENT DECISION

In accordance with 43 CFR 4110.3, 4110.3-2(b) and (c), 4130.6-1(a), the authorized livestock active use shall be 7,744 AUMs with 16,799 AUMs placed in suspended non-use. This adjustment is implemented under Title 43 CFR 4160.3(c). The authorized active use shall be effective immediately upon receipt of this decision.

From (Existing permits):
Dan Russell: Warm Springs (0606)

Number	Kind	Period of Use	%PL	AUMs	
				Active	Susp
2000	Cattle	03/01 - 02/28	100	23995	0

To:
Dan Russell: Warm Springs (0606)

Cattle preference (AUMs):

Use Area	Period of Use	AUMs	
		Active	Sus.
Buck and Bald	04/01 - 08/01	2269	7377
Newark Valley	08/01 - 04/15	357	867
Diamond Mountain	04/15 - 10/15	264	0
Ruby Valley	04/15 - 10/15 or 10/15 - 04/15	840	0
Long Valley	10/15 - 04/15	3088	7723
Long Valley Wash	10/15 - 04/15	378	832
Julian Seeding	04/15 - 10/31	227	0
West Bald Seeding	04/15 - 10/31	321	0
Total		7744	16,799

A. Livestock use will be authorized by use area and will be in accordance with the period of use and active preference for each of the eight use areas. (Refer to Map 3, Livestock Use Areas, in the Warm Springs allotment evaluation)

B. Livestock use in the Ruby Valley Use Area will be either spring/summer/fall (4/15 - 10/15) or winter (10/15 - 4/15) but not both in the same growing season.

C. The new livestock preference on the Warm Springs Allotment is as follows:

Total Preference.....24,543 AUMs
Active Preference.....7,744 AUMs
Suspended Preference...16,799 AUMs

As part of the decision the allotment has been divided into eight separate use areas, including the Julian and West Bald Seedings which were adjudicated during the decision process. The Julian and West Bald Seedings have been adjudicated at 227 AUMs and 321 AUMs respectively; this adds a total of 548 AUMs to the total original preference of 23,995 which gives a new total preference of 24,543.

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

1. No salt or supplements will be allowed within 1/2 mile of water sources or in winterfat vegetation.
2. In order to maintain animal distribution in the Long Valley Use Area all functioning wells will be pumped on a regular basis throughout the winter. Cattle moved into the valley will be split up and distributed as equally as possible to various water sources rather than pushed over Buck Pass and allowed to drift.
3. Livestock use in the Long Valley Wash Use Area will be contingent on the availability of adequate stockwater.
4. The Julian and West Bald Seedings will be used and licensed separately for spring/summer/fall cattle use (4/15 - 10/31). If spring use is made prior to 6/1 it will be alternated between the two seedings from year to year.

RATIONALE:

The analysis and evaluation of available monitoring data indicates that the current stocking rate and management practices must be modified to meet the multiple use management objectives for the Warm Springs Allotment as identified in Appendix I. The data indicates that 7,744 AUMs are available for livestock, with 16,799 AUMs in suspended non-use. Because of the severity of the resource damage throughout portions of the allotment, the full final reduction will be implemented. This reduction and increased intensity of management will provide needed rest during critical spring growth, increase productivity, and result in the attainment of the multiple use objectives. These actions are required to prevent further deterioration of the rangeland and to avoid further irreparable damage to the natural ecological balance of the area's vegetative resource.

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 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..."

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 4130.6-2 of this title."

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..."

4160.3(c): "...The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration. Full force and effect decisions shall take effect on the date specified, regardless of an appeal.

APPEAL:

If you wish to appeal the livestock management portion of this 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, 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 that a thriving natural ecological balance will be obtained by maintaining wild horse use at the following levels:

<u>Use Area</u>	<u>Herd Mgt Area</u>	<u>AUMs</u>
Buck & Bald	Buck & Bald	883
Newark Valley	Buck & Bald	317
Long Valley	Buck & Bald	382
Long Valley Wash	Buck & Bald	<u>150</u>
		1732

Wild horse AMLs for the Warm Springs Allotment by use area are summarized as follows:

<u>Wild Horse</u> <u>Use Area*</u>	<u># Animals</u>
Newark/W. Buck	35
E. Buck/Long Valley	76
Long Valley Wash	30
Bald Mountain	<u>29</u>
Total	170**

* Refer to Map 5 (Wild Horse Use Areas) in the Warm Springs allotment evaluation.

** The 1732 AUMs identified for horses is less than 170 animals for 12 months, because a portion of these animals spend some time outside the allotment boundary.

The setting of wild horse numbers by allotment will eventually provide for an overall Herd Management Area (HMA) wild horse AML. Removals will occur on an HMA basis and numbers will be maintained at or near the total AML. Numbers within use areas and/or allotments may be higher or lower than the numbers identified above because of seasonal movements but the total AML for the HMA will be maintained.

In accordance with 43 CFR 4700.0-6(a), wild horse use on the Warm Springs Allotment shall be managed at 1732 AUMs.

In accordance with 43 CFR 4720.1, in the future, all wild horses in excess of the appropriate management level of 170 animals will be removed.

In accordance with 43 CFR 4710.4, all wild horses will be removed from the Diamond Mountains horse-free area.

Adjustments in wild horse numbers will be made by future Buck and Bald 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 Buck and Bald HMA, and the removal of wild horses from the Diamond horse-free area is necessary to establish and maintain a thriving natural ecological balance and to limit the animals' distribution to existing herd areas. These actions are required to prevent further deterioration of the rangeland and to avoid further irreparable damage to the natural ecological balance of the area's vegetative resource.

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:

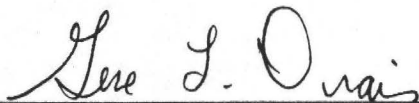
4700.0-6(a): "Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat."

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 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..."

4160.3(c): "The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration. Full force and effect decisions shall take effect on the date specified, regardless of an appeal."

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 Part 4, subpart E. 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.



Gene L. Drais, Manager
Egan Resource Area

CERTIFIED MAIL #

cc: Nevada Division of Wildlife, Reg. II	(P 313 269 920)
Nevada Division of Wildlife, Ely Office	(P 313 269 921)
U.S. Fish and Wildlife Service	(P 313 269 922)
(Ruby Marshes)	
U.S. Fish and Wildlife Service (Reno)	(P 313 269 923)
N-4 Grazing Board	(P 313 269 924)
Resource Concepts Inc.	(P 313 269 925)
International Society for the Protection of Wild Horses and Burros	(P 313 269 926)
Commission for the Preservation of Wild Horses and Burros	(P 313 269 927)
Animal Protection Institute of America	(P 313 269 928)
Sierra Club	(P 313 269 929)
Natural Resources Defense Council	(P 313 269 930)
Wilderness Society	(P 313 269 931)
Farm Bureau	(P 313 269 932)
Metropolitan Life	(P 313 269 933)
Nye County	(P 313 269 934)
Wild Horse Organized Assistance	(P 313 269 935)

APPENDIX 1: Land Use Plan/Rangeland Program Summary Objectives

B. Allotment Specific Objectives

1. Land Use Plan (RMP) 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, p. 3)
- (b) Wild Horses - Wild horses will be managed at a total of 700 animals within the Buck and Bald 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. 8)

* - The 700 horses yearlong identified in the ROD 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. 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 Nevada Department of Wildlife." (Egan ROD, p. 6)
- "Forage will be provided for "reasonable numbers" of big game as determined by 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 forage for up to 10,261 AUMs of livestock use."
- (b) "Maintain Julian and Bald Mtn. Seedings in good or better condition."
- (c) "Improve the condition of the winterfat/nuttal saltbush dominated vegetation types on the Long Valley winter range."
- (d) Maintain or improve ecological condition of native range with utilization levels not to exceed Nevada Rangeland Monitoring Handbook (NRMH) recommended allowable use levels. Allowable use levels for winterfat and perennial grass species is 50%.
- (e) Improve mule deer yearlong habitat to good or better condition by not exceeding utilization levels on native species as recommended in the NRMH. Manage rangeland habitat and forage condition to support 10,159 AUMs for mule deer.
- (f) Manage rangeland habitat and forage condition to support 125 AUMs for pronghorn antelope with potential augmentation/reintroduction.
- (g) Improve and maintain habitat condition of meadows and riparian areas from poor to good or better condition for mule deer and upland game. Utilization levels will not exceed 55% on perennial grasses and 45% on shrubs along stream riparian areas and mesic meadows.
- (h) Limit utilization of browse species in crucial deer winter range to a maximum of 45% of current annual growth.
- (i) Protect sage grouse breeding complexes by maintaining the big sagebrush sites within 2 miles of active strutting grounds for mid to late seral stage with a minimum of 30% shrub composition by weight.
- (j) Protect ferruginous hawk nest sites by limiting utilization to 50% on winterfat flats within 2 miles of nest sites.
- (k) "Improve 3.0 miles of stream riparian habitat condition from poor/fair to good or better." (Deadman and Old Deadman creeks)
- (l) Manage rangeland habitat to support wild horses as part of the Buck and Bald HMA by not exceeding allowable use levels on native species as recommended in the NRMH. Initially, provide for 280 horses in the Buck and Bald HMA (3,359 AUMs).*

* - The 280 horses yearlong 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." 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."

3. Buck, Bald, Maverick, and Diamond Mountains Habitat Management Plan (HMP) - specific objectives which apply to Warm Springs, paraphrased from the HMP.

- (a) Limit utilization of bitterbrush and other browse species to 25% of current year's growth by September 30, to ensure adequate forage availability for wintering mule deer, at the following key locations:

Overland Pass	T 25 N, R 57 E
Big Bald Mtn. West	T 24 N, R 57 E
Water Canyon/Bald Mtn.	T 24 N, R 57 E
Mahoney Canyon	T 24 N, R 58 E
Cherry Springs	T 24 N, R 58 E
Mooney Basin	T 23 N, R 58 E
Buck Pass	T 22 N, R 57 E
Orchard Canyon	T 22 N, R 56 E
Little Willow Springs	T 21 N, R 57 E
Willow Springs	T 21 N, R 57 E

- (b) Limit utilization levels to 55% of current annual growth on perennial grasses and grasslike species along stream riparian areas and mesic meadows by November 1 at the following key locations:

Cottonwood Cyn./Buck Mtn.	T 22 N, R 57 E, sec.30
Handy Spring	T 22 N, R 55 E, sec. 9
Water Canyon/Bald Mtn.	T 24 N, R 57 E, sec.20
Mud Spring	T 22 N, R 57 E, sec.32
Orchard Canyon	T 22 N, R 56 E, sec.36
Little Willow Spring	T 21 N, R 56 E, sec. 6
Old Deadman Creek	T 21 N, R 56 E, sec. 9
Deadman Creek	T 21 N, R 56 E, sec.16

- (c) Limit utilization to 45% of current year's growth on riparian shrub species, and 25% on riparian tree species by November 1 at the following locations:

Cottonwood Cyn./Buck Mtn.	T 22 N, R 57 E, sec.30
Orchard Canyon	T 22 N, R 56 E, sec.36
West Buck Mtn.	T 21 N, R 56 E, sec.27

(d) On Deadman Creek, (rated poor in 1989) limit utilization on streamside vegetation to 0-20%.

(e) Limit utilization of winterfat to 55% at the following locations, to protect ferruginous hawk prey-base habitat:

McBride's Sheep Well	T 21 N, R 58 E, sec.25
Shallow Well	T 21 N, R 57 E, sec. 8

(f) Manage the following key sage grouse areas for late mid seral stages, with at least 25% sagebrush cover.

Mouth of Bourne Canyon	T 23 N, R 56 E, sec.10
Long Valley Slough	T 23 N, R 58 E, sec.26

W H O A

WILD HORSE ORGANIZED ASSISTANCE
P.O. BOX 555
RENO, NEVADA 89504

4/5/94



... a note from

Dawn Y. Lappin

April 5, 1994

Gene L. Drais, Manager
Egan Resource Area
BLM-Ely District Office
HC 33 Box 33500
Ely, Nevada 89301-9408

Subject: Appeal of Notice of Full Force and Effect Final Multiple
Use Decision for the Warm Springs Allotment

Dear Mr. Drais,

Thank you for the opportunity to review and comment on the final decision for the Warm Springs Allotment.

W H O A has worked long and hard with the Ely District consistently providing comments over the past years regarding protection of the habitat. We fully support your decision to issue this as a full force and effect decision to enact immediate range protection. We are not objecting to the removal of wild horses to protect the habitat but it is the equitability of your decision regarding the removal of paper and actual cows versus the proportion to actual horses that is forcing us to appeal. As in our previous comments which have not been addressed, you are forcing us to appeal this decision for the following reasons.

We believe your decision is arbitrary and biased against wild horses. Using your data, of the actual damage done on the allotment wild horses are actually responsible for 31% and livestock are actually responsible for 69%. Therefore when reductions to AUM's are necessary the offending animals should be removed. This is supported by the 1989 IBLA decision that through monitoring you must determine that wild horses are causing the damage prior to any removal action. Your data shows that wild horses have caused 31% of the damage therefore should take 31% of the reduction of AUM's.

In addition, as we have previously stated in our comments from March 8, 1993, "the Egan RPS, dated 1988, page 7, under "Implementation of Grazing Use Adjustments", it states that reductions will be taken from "actual use as reported by permittees" and wild horse "current population estimates." This supports our appeal that in order to protect the habitat from

Gene Drais, Manager
April 4, 1994
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overuse and "significant resource deterioration is taking place throughout portions of the allotment, exemplified by irreparable damage to the ecological status of major plant communities," (page 2, of your decision), you must take reductions from actual cows and actual horses. Your RPS dictates that you reduce from actual cows not paper cows, therefore we respectfully appeal your decision to remove not totally from actual but from preference.

According to your data, we calculate that the new AML should be 2,882 AUM's for wild horses and 6,394 AUM's active use for livestock.

This letter is our formal notice of intent to appeal and that we will be supplying IBLA as well as yourself with our final comments within the following 30 days which is allowed us by law. We will be traveling extensively over the following few weeks but would like to discuss this appeal with you prior to filing with IBLA in hopes that we may be able to settle these points of disagreement. Please let us know if you might be in the Reno area on other business and when would be a good time to get together. Thank you in advance, if you have any questions, please feel free to call.

Sincerely,

DAWN Y. LAPPIN
Director