



COMMISSION FOR THE
PRESERVATION OF WILD HORSES

Stewart Facility
Capitol Complex
Carson City, Nevada 89710
(702) 687-5589

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July 24, 1992

Mr. Scott Billing, Manager
Paradise-Denio Resource Area
Bureau of Land Management
705 East Fourth Street
Winnemucca, Nevada 89445

RE: Formal Appeal of Paiute Meadows Grazing Permit

Dear Mr. Billing,

The Nevada Commission for the Preservation of Wild Horses formally appeals the issuance of the 1992 Grazing Permit for the Paiute Meadows Allotment. This permit authorizes 4350 AUMs of livestock use from May 1, 1992 through November 22, 1992.

The Commission sent a Freedom of Information Act (FOIA) request to your District dated June 16, 1992, requesting "a copy of any decision document authorizing current livestock use on the Paiute Meadows Allotment." Your return reply dated June 24, 1992 and received by us on June 26, 1992, included;

- 1992 grazing license for Paiute Meadows Ranch/Dan Russell
- 1992 grazing year application submitted by Dan Russell
- April 25, 1990, letter to Thomas Van Horne re: transfer of grazing preference and grazing permit for the Paiute Meadows Allotment to Dan Russell (certified copies sent to affected interests).

The return of these documents to our FOIA request for "decision documents that authorize livestock use" clearly shows these documents to be recognized by the BLM-Paradise-Denio Resource Area as "decision documents." We received these documents on June 26, 1992 and are thereby appealing this action within the required 30 day limitation.

On November 22, 1991, the BLM Paradise-Denio Resource Area issued a Full Force and Effect Multiple Use Decision which was formally appealed by the Nevada Commission for the Preservation of Wild Horses among other interested parties. Our appeal focused on the numerous violation of NEPA, FLPMA, BLM Regulations, and BLM Policy. Among those violations, the decision issued by the BLM

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violated our rights to participate as "affected interests." FLPMA, the 1971 Wild Free Roaming Horse and Burro Act, NEPA, and BLM grazing regulations grant the State of Nevada the right to participate in the making of decisions about the management of the public's rangelands including those denominated "multiple use decisions" by the Bureau.

Initially the Draft Allotment Evaluation recommended a stocking level of both wild horses and livestock to be 4,597 AUMs. However, the use of this stocking level would have reduced the wild horses to 33 animals. With no explanation the final decision increases stocking level to 4,950 AUMs to accommodate an increase of 27 wild horses. According to the draft AE 4,597 is the carrying capacity for the allotment. By giving the permittee his 4,350 authorized active preference in addition to the minimum necessary AUMs for wild horses you are exceeding your previously stated carrying capacity for the allotment.

Heavy and severe grazing by wild horses south of Paiute Creek was instrumental in the Bureau's decision to reauthorize livestock grazing north of Paiute Creek. According to the Final AE, Use Pattern Mapping conducted for four years established that prior to introduction of livestock north of Paiute Creek, there was slight to light utilization of stream bank riparian vegetation. Severe grazing use covered less than 1% of the north area. After the 1990 introduction of livestock, heavy grazing use covered approximately 49% of the north area. Your own monitoring data indicated that the introduction of livestock has taken this allotment from a 1% rate to a 49% rate of heavy use in the north area.

According to a February 7, 1992, agreement signed by the Nevada State Director with interested parties, the appeals for the gather of wild horses on the Paiute Meadows Allotment would be vacated in order to facilitate the gather of wild horses not below 200 horses on the Paiute Meadows Allotment. This temporarily authorized 2,400 AUMs of forage for wild horse use for wild horses by the State Director. We were later made aware of an agreement (conversation dated 1/16/92, written confirmation of that conversation dated 1/20/92), between the BLM State Director and Mr. Thomas S. Van Horne, the attorney for Mr. Dan Russell, that the State Director assured Mr. Van Horne that he could and would guarantee 4,350 AUMs of livestock use on the Paiute Meadows allotment irrelevant of the AUMs necessary for wild horse use.

By authorizing 4,350 AUMs of livestock use in addition to authorizing 2,400 AUMs of wild horse use the Bureau has deliberately overallocated the resource. By the Bureau's own data you have identified 4,950 AUMs of available forage. The Bureau, in this case, has knowingly authorized 6,750 AUMs of use, that is a deliberate overallocation of the resource by 1,800 AUMs. This in addition to six years of a drought is setting up the Allotment to be further degraded past the capacity for animals to survive during the winter of 1992/93.

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According to the 1971 Wild Free Roaming Horse and Burro Act the Bureau is to manage wild horses for a thriving ecological balance. In conclusion we appeal the issuance of the 1992 grazing license to Mr. Dan Russell for the Paiute Meadows Allotment as a violation of:

1) 1971 Act (P.L. 92-195) 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;"

2) CFR 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);"

3) 4110.3-2(b) "When monitoring shows use is causing an unacceptable level or pattern or 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, unless the authorized officer determines a change in management practices would achieve the management objectives;"

4) 4110.3-3(c) "When the authorized officer determines that the soil, vegetation, or other resources on the public lands require temporary protection because of conditions such as drought, fire, flood, or insect infestation, after consultation with affected permittees or lessees and other affected interests, action shall be taken to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use. Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions which are placed in full force and effect under 4160.3(c) of this title."

Conclusively, the 1992 stocking rates and seasons of use for livestock will exceed livestock carrying capacities and cause resource damage seriously endangering the welfare and survival of the wild horse herds and their habitat.

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Sincerely,

Catherine Barcomb

CATHERINE BARCOMB
Executive Director

cc: Billy Templeton, Nevada State Director
Burt Stanley, Esq.
Wild Horse Commissioners
Catherine Thayer, Deputy Attorney General

Original paper copy to follow via certified, first class mail.

8-25-92



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Winnemucca District Office
705 East 4th Street
Winnemucca, Nevada 89445



IN REPLY REFER TO:

August 25, 1992

4160
(NV-240)

CERTIFIED MAIL NO. P477565865
RETURN RECEIPT REQUESTED

Ms. Cathy Barcomb
Commission for the Preservation
of Wild Horses and Burros
Stewart Facility
Capitol Complex
Carson City, NV 89710

Dear Ms. Barcomb:

This letter is in response to a letter I received from you dated July 24, 1992 in which you indicated that you were formally appealing the issuance of the 1992 Grazing Permit for the Paiute Meadows allotment. You are viewing the issuance of this grazing permit as a final decision because the Multiple Use Decision dated November 22, 1991 was vacated.

Your interpretation of this action is not correct. The yearly license is not an appealable action and was issued based on the transfer of 4350 AUMs of active use to Mr. Dan Russell in April of 1990 when he offered proof of control for the base properties at Paiute Meadows.

As you are aware, you agreed to drop your appeal of the gathering of wild horses on the Black Rock East HMA if the Bureau would vacate the Full Force and Effect decision for the Paiute Meadows allotment that was issued on November 22, 1991. Once that decision was vacated, then the permittee is allowed to use 4350 AUMs (the amount allowed in the transfer process) until another decision is issued to adjust that amount.

The stipulated agreement with you and other wild horse interest groups states that a new Proposed Multiple Use Decision will be issued in consultation with the interested parties and in coordination with the Paiute Meadows evaluation.

The consultation process leading to another decision can be lengthy. In addition to the meetings that you attended in Reno on January 7 and January 14, the Resource Area held a consultation meeting on March 10, 1992 to discuss the issues surrounding Paiute Meadows. Representatives from the Nevada Department of Wildlife were present at that meeting, but representatives from other interested parties were not in attendance. Part of the discussion centered around the action that would be taken if a new decision was not completed and issued prior to the 1992 grazing season.

My staff is currently working to develop alternatives for management on the allotment that address the concerns you identified in your appeal dated

December 17, 1991 as well as the concerns of the Nevada Department of Wildlife, other wild horse interest groups, NRDC and the Sierra Club. A copy of the alternatives will be sent to all interested parties for their review and comment. Once my staff and I have reviewed the comments, a determination will be made if another consultation meeting is necessary before the management action is developed.

In closing, I want to reiterate that your interpretation of the yearly grazing permit being a final decision is not correct. Therefore, I view your letter dated July 24, 1992 as a protest as described in 43 CFR 4.450-2 and not as an appeal.

If you wish to appeal this final decision in accordance with 43 CFR Part 4, you are allowed thirty (30) days from receipt of this notice within to file such appeal with the Area Manager, Paradise-Denio Resource Area, Bureau of Land Management, 705 East Fourth Street, Winnemucca, Nevada 89445. The appeal should state clearly and concisely why you think the decision is in error.

If you have any other questions, please give me a call.

Sincerely yours,


Area Manager
Paradise-Denio Resource Area

cc: Mr. Richard Heap
Mr. Thomas Van Horne
NRDC
Sierra Club
Humane Society of the United States
American Horse Protection Association
Animal Protection Institute
Mr. William Cummings
Mr. Andy Johas
Mr. Dan Russell