



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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

IN REPLY REFER TO:

4160.3  
(NV-241.3)

August 25, 1994

Dear Interested Party:

Please find enclosed the Final Multiple Use Decision for the Bullhead Allotment. I've also included a 1992 use pattern map and the 1992 actual use by livestock. These enclosures were inadvertently left out while issuing the proposed multiple use decision.

The Bureau of Land Management received and considered protests from the permittee, Commission For The Preservation of Wild Horses, Wild Horse Organized Assistance, and the Nevada Division of Wildlife prior to issuing the Final Multiple Use Decision.

Sincerely yours,

*Michael J. Zidlich*  
*Atty*  
Area Manager  
Paradise-Denio Resource Area

Enclosures: Final Multiple Use Decision  
Letter of points of protest  
1992 Use Pattern Map  
1992 Livestock Actual Use





# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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

IN REPLY REFER TO:

4130, 4160.3  
(NV-241.3)

August 25, 1994

CERTIFIED MAIL NO. Z773765579  
RETURN RECEIPT REQUESTED

Nevada First Corporation  
P.O. Box 490  
Winnemucca, NV 89446

### FINAL MULTIPLE USE DECISION BULLHEAD ALLOTMENT

Dear Mr. Bengochea:

The record of Decision of the Paradise-Denio Environmental Impact Statement was issued on 09/18/81. The Paradise-Denio Management Framework Plan was issued on 07/09/82. These documents guide the management of public lands within the Paradise-Denio Resource Area and more specifically within the Bullhead Allotment. Monitoring data has been collected on this allotment and in accordance with Bureau policy and regulations, this data has been evaluated in order to determine progress in meeting management objectives for the Bullhead Allotment and to determine if management adjustments may be necessary to meet the management objectives.

The following are the multiple use management objectives under which grazing on the Bullhead Allotment will be monitored and evaluated.

1. Short Term
  - a. The objective for utilization of key plant species (CAREX, JUNCUS, POA, ASPEN) in wetland riparian habitats is 50%. Utilization data will be collected at the mid point and at the end of the grazing period.
  - b. The objective for utilization of key streambank riparian plant species (CAREX, JUNCUS, POA, SALIX, ASPEN, ROWO) on South Fork, Pole, First, Snowstorm, Winters Creek and Kelly Creek is 30%. Utilization data will be collected at the mid point and at the end of the grazing period.
  - c. The objective for utilization of key upland plant species will be 50% for ORHY, AGSP, ELCI, CREPIS, AGCR, SENEC, TRIFO, PONE3, 40% for SIHY, STTH2, FEID, SYOR, POTR5 and 30% for ARSP5. Utilization data will be collected at the end of the grazing period.



- d. Utilization of key upland browse species (snowberry, serviceberry, currant) is 50%. Utilization data will be collected at the end of the grazing period.

## 2. Long Term

- a. Manage, maintain and improve public rangeland conditions to provide forage on a sustained yield basis for livestock, with an initial stocking level of 4,594 AUMs.
- b. Manage, maintain and improve public rangeland conditions to provide forage on a sustained yield basis for big game, with an initial forage demand of 1,029 AUMs for mule deer, 101 AUMs for pronghorn, and 190 AUMs for bighorn sheep.
  1. Improve to and maintain 25,268 acres in Snowstorms DY-23, 35,359 acres in Snowstorms Dy-23 (Elko Co.), 8,256 acres in DY-23 (Crucial, Elko Co.), 1,130 acres in Snowstorms DS-2 and 6,522 acres in Snowstorms DS-2 (Elko Co.) in good to excellent mule deer habitat condition.
  2. Improve to and maintain 50,137 acres in Snowstorms PY-10 (Elko Co.) 24,242 acres in Hot Springs PY-11 and 18,171 acres in Snowstorms PY-10 in fair or good pronghorn habitat condition.
  3. Improve to and maintain 12,023 acres in Snowstorms BY-11 and 48,403 acres in Snowstorms BY-11 (Elko Co.) in good to excellent bighorn sheep habitat condition.
- c. Improve or maintain suitable sage grouse strutting, nesting, brood rearing, and/or wintering habitat in good condition with the following conditions.

### Strutting Habitat

1. Low sagebrush or brush free areas for strutting, and nearby areas of sagebrush having 20-50% canopy cover for loafing.

### Nesting Habitat

1. Areas within 2 miles of strutting grounds
2. Sagebrush between 7 and 31 inches of height (optimum = 16 inches)
3. Sagebrush canopy coverage 20-30% (optimum = 27%)
4. Understory cover allows for concealment of the nest



### Brood Rearing Habitat

1. Sagebrush canopy cover 10-21% (optimum =14%)
2. High composition of forb species
3. Vigorous available meadow vegetation in late summer and fall

### Winter Habitat

1. Greater than 20% sagebrush cover
  2. Areas do not maintain high winter snow depth as a function of elevation or topography
- d. Maintain and improve the free roaming behavior of wild horses by protecting and enhancing their home ranges.
1. Manage, maintain and improve public rangeland conditions to provide an initial level 1680 AUMs of forage on a sustained yield basis.
  2. Maintain and improve wild horse habitat by assuring free access to public water sources.
- e. Improve to and maintain 245 acres of aspen habitat types to ensure good reproduction and maximize recruitment within the stand.
- f. Improve to and maintain 544 acres of riparian and meadow habitat types to ensure species diversity and quality, and maximize reproduction and recruitment of woody riparian species.
- g. Improve or maintain snowberry, serviceberry, and currant with good reproduction and maximize recruitment within the stand.
- h. Improve to or maintain the following stream habitat conditions on South Fork Little Humboldt River, Pole, First, Snowstorm, Winters, Kelly, and Kinney Creeks from 59% on South Fork Little Humboldt, 56% on Pole Creek, 33% on First Creek, unknown % on Snowstorm, unknown % on Winters Creek, 57% on Kelly Creek and unknown % on Kinney Creek to an overall optimum of 60% or above.
1. Streambank cover 60% or above.
  2. Streambank stability 60% or above,
- i. Improve to or maintain the water quality of the South Fork of the Little Humboldt River to Class A Water Quality Standards and the following beneficial uses: livestock drinking water, cold water aquatic life, wading (water contact recreation) and wildlife propagation.



Improve to and maintain the water quality of Pole, First, Snowstorm, Winters, and Kelly Creeks to the state criteria set for the following beneficial uses: Livestock drinking water, cold water aquatic life, wading (water contact recreation) and wildlife propagation. Kinney Creek's water quality should meet state criteria for livestock drinking water and wildlife propagation.

On December 18, 1992, a draft copy of an allotment evaluation was sent to you and other interested parties for review and comment. On September 14, 1993, a revised conclusion and technical recommendation section was sent to you and other interested parties for review and comment.

On May 23, 1994, a Proposed Multiple Use Decision was issued. I have received protests to the Proposed Multiple Use Decision from you, the Commission for the Preservation of Wild Horses, Wild Horse Organized Assistance and the Nevada Division of Wildlife.

On June 29, 1994, a letter was sent to you stating that I'm considering your appeal of the Wild Horse Portion of the Proposed Multiple Use Decision a protest.

On June 30, 1994, a meeting was held to discuss your points of protest.

#### CARRYING CAPACITY

The carrying capacity for livestock and wild horses is 7,670 AUMs. Of this total, 5,590 AUMs are designated for livestock, and 1,680 AUMs are designated for wild horses. The 45% reduction in active preference will be phased in over a five year period. Monitoring data will be evaluated before implementing the third and fifth year adjustments to determine if the scheduled adjustments are necessary and/or if any additional modifications in grazing use is warranted.

Rationale: This carrying capacity was calculated using monitoring data collected on the allotment from 1983-1991. Analysis of the monitoring data indicates there are areas of slight, light, moderate, heavy, and severe use throughout the allotment. In areas of heavy and severe use, the vegetative utilization objectives are not being met. Therefore, an adjustment is needed in the authorized use by livestock and wild horse population to achieve a thriving natural ecological balance within the Bullhead Allotment.

#### WILDLIFE MANAGEMENT DECISION

I have reconsidered my proposed decision in light of protests received from you and other interested parties. Based upon the evaluation of monitoring data for the Bullhead Allotment, consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act, consultation with the permittee and other affected interests and recommendations from my staff, it is my final decision for wildlife to continue with the reasonable numbers as outlined in the Land Use Plan.



RATIONALE:

The analysis of monitoring data indicates that the multiple-use objectives for the Bullhead Allotment are not being met. The analysis of utilization and use pattern mapping determined that livestock were the primary factor in the non-achievement of the multiple-use objectives in the summer pastures and that livestock and wild horses were the primary factors inhibiting achievement of the multiple-use objectives in the spring pastures. Analysis of the existing management of wildlife indicates that wildlife populations in the Bullhead Allotment are not contributing to the failure in meeting the multiple-use objectives. Therefore, a change in the existing wildlife populations or the existing wildlife management within the Bullhead Allotment is not warranted. Reasonable numbers for wildlife will remain as follows:

Mule Deer  
1029 AUMs

Pronghorn Antelope  
101 AUMs

Bighorn Sheep  
190 AUMs

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. Please provide a copy of your appeal and Statement of Reasons to the Area Manager, Paradise-Denio Resource Area at 705 East Fourth Street, Winnemucca, NV 89445. 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.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay (suspension) of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to the:

Interior Board of Land Appeals  
Office of Hearings and Appeals  
4015 Wilson Boulevard  
Arlington, VA 22203

and to the appropriate Office of the Solicitor:

Office of the Regional Solicitor  
Department of Interior  
2800 Cottage Way, Room 2753  
Sacramento, CA 95825

at the same time the original documents are filed with this office.



If you request a stay, you have the burden of proof to demonstrate that a stay should be granted 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.

#### WILD HORSE MANAGEMENT DECISION

I have reconsidered my proposed decision in light of protests received from you and other interested parties. Based upon the evaluation of the monitoring data for the Bullhead Allotment, consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act, consultation with the permittee and affected interests and recommendations of my staff, my final decision for wild horses is:

To establish an Appropriate Management Level (AML) for the Snowstorm Herd Management Area of 140 adult wild horses. The AML will be managed within the range of 90 to 140 adult wild horses.

To schedule a gather for the fall of 1994 to reduce the population of horses to the Appropriate Management Level if funding is available for such gather.

#### RATIONALE:

A distribution flight conducted with a fixed wing aircraft on October 7, 1993 counted 311 horses (255 adults 56 foals). Since this number was well above the numbers counted in 1992, a confirmation flight using a helicopter was made November 5, 1993. This flight counted 297 total horses (238/59). This analysis will use the figures from the 11/5/93 flight. The reasons for the difference with 1992 at this point is unknown; however it is unlikely that significant numbers of horses are migrating back and forth from Elko District to skew the figures. The only other possibility for migration is via Rodear Flat, but that has not been observed. Therefore the 1992 horse numbers are not 161 but something else. The 1992 numbers are estimated at 267, as follows:

$238 \text{ adult horses (1993)} \div .893 \text{ (avg. survival rate)} = 267.$   
Of this, 19.8% are assumed to be foals (1993 foal crop, 59/297). So then,  
 $267 \times 0.198 = 214 \text{ adults (1992).}$



The next step is to take the average number of horses in each pasture for the 4 distribution flights in 1992. The assumption is that although the numbers may be off, the proportion was reasonably accurate. The figures are:

	<u>3/92</u>	<u>5/92</u>	<u>7/92</u>	<u>9/92</u>	<u>Ave.</u>	<u>% of ave.</u>
First Creek	75	105	71	14	66	40.5%
Castle Rdg	9	8	10	78	26	15.9
Dry Hills	47	29	32	35	36	22.1
Kinney	51	23	0	15	22	13.5
Snowstorm Flt	<u>3</u>	<u>4</u>	<u>26</u>	<u>17</u>	<u>13</u>	<u>8.0</u>
Total	185	169	139	159	163	100.0

Multiplying the percentage in each pasture by the assumed number of adults in 1992, i.e. 214:

First Creek	.405 x 214 = 87
Castle Ridge	.159 x 214 = 34
Dry Hills	.221 x 214 = 47
Kinney	.135 x 214 = 29
Snowstorm Flat	.080 x 214 = 17

Use pattern mapping conducted November 13, 1992 showed areas of heavy use in eastern First Creek pasture. This was caused by horses and cattle, of which there were 966 in the pasture using 1185 AUMs (from actual use report). Horse use is computed using the average number of adults in the pasture and multiplying by 12:  $87 \times 12 = 1044$  AUMs.

Therefore the heavy use was caused by 1044 AUMs of horse use and 1185 AUMs of cattle use; total of 2229 AUMs. The desired stocking rate (from AE) is 1505 AUMs. The difference is therefore  $2229 - 1505 = 724$  AUMs. Of this, 46.8% was caused by horses ( $1044/2229$ ). Therefore horse AUMs above the DSR should be reduced  $724 \times .468 = 339$  AUMs. This will support  $339/12 = 28$  horses, which is the number to be removed from the pasture.

No horses need be removed from Castle Ridge and Dry Hills pastures, since there is no excessive utilization. All horses should be removed from Kinney and Snowstorm Flat since these are summer pastures, for which the recommendation is to try to keep horses out.

Therefore the AML calculation by pasture is:

First Creek	- 87-28 = 59 horses
Castle Ridge	= 34
Dry Hills	= <u>47</u>
Total	140

The AML range would be 90-140. This range should be attainable within one gather.



Due to the large amount of private land within the summer pastures, and the subsequent greater probability to find wild horses on such land, it is recommended that the first priority in gather operations is to remove horses from these pastures. These pastures will remain within the HMA to preclude the necessity for removal of horses outside of established gather schedules.

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..."

4770.3(c) "The authorized officer may place in full force and effect decisions to remove wild horses and burros from public and private lands if removal is required by applicable law or to preserve or maintain a thriving ecological balance and multiple use relationship. Full force and effect decisions shall take effect on the date specified, regardless of an appeal. Appeals and petitions for stay of decision shall be filed with the Interior Board of Land Appeals as specified in this part."

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. Please provide a copy of your appeal and Statement of Reasons to the Area Manager, Paradise-Denio Resource Area at 705 East Fourth Street, Winnemucca, NV 89445. 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.



If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay (suspension) of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to the:

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4015 Wilson Boulevard  
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and to the appropriate Office of the Solicitor:

Office of the Regional Solicitor  
Department of Interior  
2800 Cottage Way, Room 2753  
Sacramento, CA 95825

at the same time the original documents are filed with this office.

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted 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.

#### LIVESTOCK DECISION

I have reconsidered my proposed decision in light of protests received from you and other interested parties. Based upon the evaluation of monitoring data for the Bullhead Allotment, consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act, consultation with the permittee and other affected interests and recommendations from my staff, it is my final decision for livestock to change the management:

A. FROM (Description of existing use )

1. Grazing Preference (AUMs)

a.	Total Preference	19,283
b.	Suspended Preference	7,233
c.	Active Preference	12,050
d.	Initial stocking level	8,350
e.	Exchange of Use	1,051



2. Season of Use

Spring Use 04/01 to 06/30  
Summer Use 07/01 to 09/30  
Winter Use 10/01 to 12/15

3. Kind and Class of Livestock - Cattle, Cow/Calf

4. Percent Federal Range - 91%

5. Grazing System

Following was the interim grazing system (AMP) which was to be in affect until the essential projects were completed which at a minimum would make the system effective for the achievement of the outlined management objectives.

The interim grazing system divided the allotment into three use areas; spring, summer, and winter. The spring use areas were under a two pasture rest rotation grazing system while the summer use areas were under a three pasture rest rotation system. Winter use was to be in the Rabbit Pasture.

Spring Grazing

Treatment A 04/01 to 06/30  
Treatment B Rest

<u>Year</u>	<u>Dry Hills</u>	<u>First Creek</u>
1	B	A
2	A	B

Summer Grazing

Treatment A 07/01 to 08/15  
Treatment B 08/16 to 09/30  
Treatment C Rest

<u>Year</u>	<u>Kinney</u>	<u>Kelly</u>	<u>Snowstorm Flat</u>
1	B	C	A
2	C	A	B
3	A	B	C



Winter Grazing

Treatment A      10/01 to 12/15

Year                      Rabbit

1                              A  
2                              A

Deferred Grazing Schedule

Treatment A      10/01 to 12/15  
Treatment B      04/01 to 05/30

Year                      Seeding

1                              A  
2                              B

B.    TO:    GRAZING SYSTEM TO BE IMPLEMENTED

1.    Grazing Preference (AUMs)

a.    Total Preference	19,283
b.    Suspended Preference	14,687
c.    Active Preference	4,594
d.    Non Use	1396

2.    Season of Use

Early Spring Use	03/01 to 03/31
Spring Use	04/01 to 06/30
Summer Use	07/01 to 08/31
Winter Use	11/01 to 02/28

3.    Kind and Class of Livestock - Cattle Cow/Calf

4.    Percent Federal Range - 100%

5.    Grazing System

The 45% reduction in active preference will be phased in over a five year period. Monitoring data will be evaluated before implementing the third and fifth year adjustments to determine if the scheduled adjustments are necessary and/or if any additional modifications in grazing use is warranted.



The scheduled phase in is as follows:

<u>Grazing Year</u>	<u>Total</u>	<u>Suspended</u>	<u>Active</u>	<u>Non Use</u>
1995 & 1996	19,283	11,735	7548	
1997 & 1998	19,283	13,001	6282	
1999 & 2000	19,283	14,687	4594	1396

First phase of the scheduled reduction will be as follows:

<u>Year</u>	<u>Pasture</u>	<u>Livestock #</u>	<u>Period of Use</u>	<u>AUMs</u>
1995	Castle Ridge	880	03/01 to 03/31	898
	E. First Creek	540	04/01 to 06/30	1606
	N. Snowstorm	340	04/01 to 06/30	1021
	Lower Kelly	220	07/01 to 08/31	448
	Upper Kelly	220	07/01 to 08/31	448
	S. Snowstorm	220	07/01 to 08/31	448
	E. Kinney	220	07/01 to 08/31	448
	Dry Hills	300	11/01 to 02/28	1184
	Rabbit	265	11/01 to 02/28	1047
			7548	

<u>Year</u>	<u>Pasture</u>	<u>Livestock #</u>	<u>Period of Use</u>	<u>AUMs</u>
1996	Castle Ridge	880	03/01 to 03/31	898
	W. First Creek	540	04/01 to 06/30	1606
	W. Kinney	340	04/01 to 06/30	1021
	Lower Kelly	220	07/01 to 08/31	448
	Upper Kelly	220	07/01 to 08/31	448
	S. Snowstorm	220	07/01 to 08/31	448
	E. Kinney	220	07/01 to 08/31	448
	Dry Hills	300	11/01 to 02/28	1184
	Rabbit	265	11/01 to 02/28	1047
			7548	

Second phase of the scheduled reduction will be as follows:

<u>Year</u>	<u>Pasture</u>	<u>Livestock #</u>	<u>Period of Use</u>	<u>AUMs</u>
1997	Castle Ridge	670	03/01 to 03/31	683
	E. First Creek	432	04/01 to 06/30	1292
	N. Snowstorm	238	04/01 to 06/30	708
	Lower Kelly	168	07/01 to 08/31	342
	Upper Kelly	168	07/01 to 08/31	342
	S. Snowstorm	168	07/01 to 08/31	342
	E. Kinney	168	07/01 to 08/31	342
	Dry Hills	300	11/01 to 02/28	1184
	Rabbit	265	11/01 to 02/28	1047
			6282	



<u>Year</u>	<u>Pasture</u>	<u>Livestock #</u>	<u>Period of Use</u>	<u>AUMs</u>
1998	Castle Ridge	670	03/01 to 03/31	683
	W. First Creek	432	04/01 to 06/30	1292
	W. Kinney	238	04/01 to 06/30	708
	Lower Kelly	168	07/01 to 08/31	342
	Upper Kelly	168	07/01 to 08/31	342
	S. Snowstorm	168	07/01 to 08/31	342
	E. Kinney	168	07/01 to 08/31	342
	Dry Hills	300	11/01 to 02/28	1184
	Rabbit	265	11/01 to 02/28	<u>1047</u>
			6282	

Third phase of the scheduled reduction will be as follows:

1999	Castle Ridge	460	03/01 to 03/31	469
	E. First Creek	328	04/01 to 06/30	980
	N. Snowstorm	132	04/01 to 06/30	395
	Lower Kelly	115	07/01 to 08/31	234
	Upper Kelly	115	07/01 to 08/31	234
	S. Snowstorm	115	07/01 to 08/31	234
	E. Kinney	115	07/01 to 08/31	234
	Dry Hills	194	11/01 to 02/28	767
	Rabbit	265	11/01 to 02/28	<u>1047</u>
			4594	
2000	Castle Ridge	460	03/01 to 03/31	469
	W. First Creek	328	04/01 to 06/30	980
	W. Kinney	136	04/01 to 06/30	406
	Lower Kelly	115	07/01 to 08/31	234
	Upper Kelly	115	07/01 to 08/31	234
	S. Snowstorm	115	07/01 to 08/31	234
	E. Kinney	115	07/01 to 08/31	234
	Dry Hills	194	11/01 to 02/28	767
	Rabbit	265	11/01 to 02/28	<u>1047</u>
			4594	

**Terms and Conditions:**

Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of springs, streams, meadows, riparian habitats or aspen stands.

You are required to perform normal maintenance on the range improvements as per your signed cooperative agreements and section 4 permits prior to livestock turn out.

Any livestock owned or controlled by the permittee must be eartagged. The permittee must supply the BLM with a list of private eartags and numbers for the livestock that the permittee owns or controls. This list must be submitted prior to turnout along with copies of livestock use agreements.



Your certified actual use report by pasture is due 15 days after the end of the authorized grazing period.

Allowable use levels of 30% for streambank riparian on Pole Creek and 50% for wetland/riparian habitats will be enforced for all summer pastures. These allowable use levels will dictate livestock removals. To determine removal dates from the summer pastures, mid-point utilization studies will be conducted by BLM specialists. Additional studies may be required before and after the mid-point inspection. When streambank riparian utilization levels on Pole Creek reach 25% or wetland/riparian utilization levels reach 45%, the livestock operator will be given a seven (7) day notice in which to remove livestock from the pasture and/or allotment. If the use levels reach 25% or 45%, the livestock may be moved to another pasture if the use levels are less than 20% on wetland/riparian habitats in the summer pasture that the livestock are to be moved to. If the use exceeds 20%, livestock will be removed from the allotment. No grazing will be authorized after 08/31 in the summer pastures. Utilization data will be collected at the end of the grazing period in the spring and winter pastures.

The grazing authorization with the schedule of use outlined in the Final Decision will be the only approved use and all other schedules, flexibilities and terms and conditions addressed in the 1982 Coordinated Resource Management Plan and the 1985 Allotment Management Plan are suspended until the plans are revised.

#### C. Structural Projects

The following projects are scheduled to be evaluated through the project planning process. Construction of projects is dependent upon funding and project priorities:

1. Approximately 1.5 miles of enclosure fence along Pole Creek are recommended to inhibit livestock use.
2. Enclosures around selected springs and associated meadows are recommended to eliminate use of those areas by livestock and wild horses. The sites to be fenced, would be selected in consultation, coordination and cooperation with all interested parties.

#### Rationale:

It has been determined through monitoring that heavy and severe use has occurred on wetland/riparian and streambank riparian habitats. By continuing with present management, these sensitive areas will continue to be degraded.

Due to the lack of adequate stock water on the uplands in the Castle Ridge Pasture, the present AMP spring grazing system has never been followed. Consistent patterns of rest-rotation and periods of use in other pastures has not been applied to the Bullhead Allotment throughout the evaluation period.



The spring pastures have been utilized from 04/01 to 06/30 in a two pasture rest-rotation. While rest was incorporated into this system, the patterns of rest have been irregular.

The summer pastures, which contain the majority of the riparian areas, have been utilized from 07/01 to 09/30. While Kinney and Snowstorm Flat Pastures have been consistently rested every third year, at a minimum, Kelly Burn Pasture has been grazed every year except one during the evaluation period.

Under the present system, utilization and distribution patterns are showing heavy use around wetland/riparian and streambank riparian habitats within the spring and summer pastures.

The selected management actions will reduce the active preference of livestock and also reduce wild horse numbers to a level that is compatible with meeting allotment specific objectives. Along with the reduction of livestock and wild horses, the summer season of use will be shortened by one month and Pole Creek will be fenced.

The management action will eliminate the present two pasture spring rest rotation system. Early spring use (03/01 to 03/31) will be made in the Castle Ridge Pasture every year. This pasture is short of late spring and summer water. Using this pasture in early spring will allow for better distribution of livestock on the uplands during the cool part of the year. Use in this pasture every year will not have an adverse impact on the vegetative resource because the vegetation has the complete growing season for regrowth which will allow the plants to store food reserves in their root system for the next growing season.

Spring use (04/01 to 06/30) will be made in the First Creek, North Snowstorm and West Kinney Pastures. In the Snowstorm Pasture, Winter's Creek Gorge splits the pasture. The northern portion is more suited for spring use. Using the northern part of this pasture during the spring will allow for better distribution of cattle on the uplands. Drift fences may have to be constructed along portions of Winter's Creek to ensure complete effectiveness in separating north and south. The livestock removal date of 06/30 will be beneficial to the streambank riparian habitats of First and Snowstorm Creeks because of the regrowth potential, which in turn will improve the water quality and fisheries of these habitats.

In the year that the North Snowstorm Pasture is being utilized, the West Kinney Pasture will be rested. This rest will allow for an increase in plant vigor and seedling establishment plus give the riparian areas a recovery period. The "rim" in Kinney Pasture splits the pasture. Small areas and gaps between rims may have to be fenced for complete effectiveness in separating east and west Kinney. The West Kinney Pasture is dominated by cheatgrass and livestock will maximize the use on the green, palatable vegetation at this time of year (04/01 to 06/30).



First Creek Pasture will continue to be used every year as a spring pasture. In the years that North Snowstorm Pasture is scheduled for use, the eastern half of First Creek Pasture will be used and in the years that West Kinney will be used, the western half of First Creek Pasture will be used. Riding of First Creek Pasture is essential to maintain the integrity of this system. This will require commitment by the livestock operator to ensure that the livestock are in the authorized areas.

The selected management action will also change the grazing system from the current AMP three pasture rest-rotation system on the summer pasture, to a four pasture grazing system. Under this system each pasture will be used every year from 07/01 to 08/31. Livestock numbers in each pasture will vary based on the Desired Stocking Rates per pasture. Allowable use levels of 30% for streambank riparian on Pole Creek and 50% for wetland/riparian habitats will be enforced for all summer pastures. These allowable use levels will dictate livestock removals. To determine removal dates from the summer pastures, mid-point utilization studies will be conducted by BLM specialists. Additional studies may be required before and after the mid-point inspection. When streambank riparian utilization levels on Pole Creek reach 25% or wetland/riparian utilization levels reach 45%, the livestock operator will be given a seven (7) day notice in which to remove livestock from the pasture and/or the allotment. If the use levels reach 25% or 45%, the livestock may be moved to another pasture if the use levels are less than 20% on wetland/riparian habitats in the summer pasture that the livestock are to be moved to. If the use exceeds 20%, livestock will be removed from the allotment. No grazing will be authorized in the summer pastures after 08/31.

Allowable use levels on streambank riparian habitats for First, Snowstorm, and Winter's Creek will not be enforced because the public reaches of these habitats are inaccessible to livestock due to topography and/or dense stands of woody riparian vegetation. Although allowable use levels will not be enforced, these habitats will be monitored.

Winter use will be taken from 11/01 to 02/28 in the Dry Hills and Rabbit Pastures. The utilization will be taken when plants are dormant, thus the vegetative resource will not be adversely effected. The 02/28 removal date from these pastures will allow for growth of the vegetative resource during the spring and summer growing season.

Due to the impacts of mining, the Bullhead Seeding will be used as a holding facility to facilitate livestock movements to and from winter and spring use areas.

Authority: The authority of this decision is contained in Title 43 of the Code of Federal Regulations, which states in pertinent parts:

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 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, unless the authorized officer determines a change in management practices would achieve the management objectives".

4110.3-2(c) " Where active use is reduced it shall be held in suspension or nonuse for conservation/protection purposes, until the authorized officer determines that active use may resume".

§4110.3-3(a) "Changes in active use in excess of 10 percent shall be implemented over a five year period, unless after consultation with the affected permittees or lessees and other affected interests, an agreement is reached to implement the increase or decrease in less than 5 years".

§4110.3-3(b) "After consultation, coordination and cooperation, suspensions of preference shall be implemented through a documented agreement or by 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, except as provided in paragraph (a) of this section. If data acceptable to the authorized officer to support an initial reduction are not available, additional data will be collected through monitoring. Adjustments based on the additional data shall be implemented by agreement or decision that will initiate the 5 year implementation period".

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 4110.3-1 and 4110.3-2."

4130.6-2 "The authorized officer may specify in grazing permits and 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) "A period of 30 days after receipt of the final decision is provided for filing an appeal. Decisions that are appealed shall be suspended pending final action except as otherwise provided in this section. Except where grazing use the preceding year was authorized on a temporary basis under 4110.3-1(a) of this title, an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal. 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."

4160.4 "Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge under 4.470 of this title by filing his notice of appeal in the office of the authorized officer within 30 days after the receipt of the decision."

If you wish to appeal this decision for the purpose of a hearing before an Administrative Law Judge, in accordance with 43 CFR 4160.4 and 4.470, you are allowed 30 days from receipt of this notice within which to file such appeal with the Paradise-Denio Resource Area Manager, Bureau of Land Management, 705 East Fourth Street, Winnemucca, NV 89445. An appeal shall state the reasons, clearly and concisely, as to why you think the decision is in error.



FUTURE MONITORING AND GRAZING ADJUSTMENTS

The Paradise-Denio Resource Area will continue to monitor the Bullhead Allotment. The monitoring data will continue to be collected in the future to provide the necessary information for subsequent evaluations. These evaluations are necessary to determine if the allotment specific objectives are being met under the new grazing management strategy. In addition, these subsequent evaluations will determine if adjustments are required to meet the established allotment specific objectives.

The Bullhead Allotment is scheduled to be re-evaluated in FY 1996.

Sincerely yours,

*Michael J. Zilinski*  
*Acting* Area Manager  
Paradise-Denio Resource Area

certified cc:

Natural Resources Defense Council 2773765580  
Sierra Club-Toiyabe Chapter 2773765581  
Mr. Craig C. Downer 2773765582  
The Wilderness Society 2773765583  
NDOW - Fallon 2773765584  
Mr. John Marvel 2773765585  
Nevada Land Action Assoc. 2773765586  
Nevada Farm Bureau Federation 2773765587  
Mr. James Shepherd 2773765588  
USFWS 2773765589  
Claudia J. Richards 2773765590  
Wild Horse Organ. Assist. 2773765591  
Animal Protection Institute of America 2773765592  
Commission for the Preservation  
of Wild Horses 2773765593  
International Society for the Protection  
of Mustangs and Burros 2773765594  
American Horse Protection Assn. 2773765595  
U.S. Humane Society 2773765596  
Humboldt County Commissioners 2773765597  
NDOW - Winnemucca 2773765598  
NDOW - Elko 2773765599  
Mr. Charley Amos 2773765600  
Mr. James Bonavia 2773765601  
Terry Dailey, Area Manager, Elko Resource Area 2773765602  
Mr. Dave Cassinelli 2773765603  
Intermountain Range Consultants 2773765604



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.  
  
Area Manager, Paradise-Denio R.A.  
Bureau of Land Management  
Winnemucca District Office  
705 East 4th Street  
Winnemucca, NV 89445
2. WHERE TO FILE  
NOTICE OF APPEAL . . . .  
  
SOLICITOR  
ALSO COPY TO . . . . Regional Solicitor  
Pacific Southwest Region  
U.S. Dept. of the Interior  
2800 Cottage Way  
Sacramento, CA 95825
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 . . . . Regional Solicitor  
Pacific Southwest Region  
U.S. Dept. of the Interior  
2800 Cottage Way  
Sacramento, CA 95825
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)).





# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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

IN REPLY REFER TO:

4160  
(NV-241.3)

CERTIFIED MAIL NO. Z773765593  
RETURN RECEIPT REQUESTED

Ms. Cathy Barcomb  
Commission for the Preservation  
of Wild Horses  
255 West Moana Suite 207A  
Reno, NV 89509

Dear Ms. Barcomb:

On May 19, 1994, the Proposed Multiple Use Decision for Bullhead Allotment was issued. On May 27, 1994, I received separate, but identical written protests of that decision from the State of Nevada Commission for the Preservation of Wild Horses and Wild Horse Organized Assistance. On June 2, 1994, I received written protest of that decision from the Nevada Division of Wildlife. On June 8, 1994, I received written protests of that decision from the permittee.

I have considered the protest points. My responses to those points follows:

PROTEST BY WILD HORSE ORGANIZED ASSISTANCE AND THE STATE OF NEVADA COMMISSION FOR THE PRESERVATION OF WILD HORSES

Protest Point 1:

"Wild horse survey data collected in 1992 clearly illustrates seasonal use of the First Creek Pasture by the Snowstorm herd. During May 1992 the Bureau observed 105 adults and during September 1992 the Bureau observed 14 adults on the First Creek Pasture. These data cannot support the Wild Horse Management Decision that 40.5 percent of the Snowstorm Herd occupy the First Creek Pasture for 12 months. The appropriate management level for the Snowstorm Herd was determined upon 1992 actual use data for wild horses and livestock. Wild horse actual use estimates are in error based upon the Bureau of Land Management's assumption that there is no season use or migration of the herd."

Response to protest point 1

The Bureau does not assume no seasonal movement or migration of horses. The 1992 data clearly shows seasonal use of the First Creek Pasture, with the bulk of the herd moving between First Creek and Castle Ridge pastures. A few horses may also be moving into and out of Snowstorm Flat pasture from First Creek. The 1992 flights showed one-point-in-time horse locations-- had the survey been taken on a different day or at a different time of day, the observed horse locations may have been different. Therefore, an average of the observed numbers was taken to give the best estimate of the yearlong use for computation purposes. At times the use in First Creek was more than 40.5%, at



other times it was less. (The seasonal percentages as indicated in the PMUD are 40.5, 62.1, 51.1 and 8.8 percent for March, May, July and September respectively).

#### Protest Point 2:

"The appropriate management level for the Snowstorm Herd was determined by use of 1992 Use Pattern Mapping data. These data are not found in the Bullhead Allotment - Final Allotment Evaluation summary. In fact, the only use pattern mapping data presented are for 1985, 1987, 1988 and 1990. During those years, wild horse numbers were estimated to be only two head for 1987, 1988 and 1989. For those years of rangeland monitoring, the Bureau of Land Management could only find heavy and severe utilization of forage that was directly accountable to livestock actual use of the First Creek Pasture."

#### Response to protest point 2

The 1992 UPM data upon which the wild horse management decision was based represents the most recent and best available data, which is why it was used. This information will be incorporated into the Final Bullhead AE via an addendum. The 2 horses in the First Creek pasture in 1987 and 1988 represent an extrapolation from the results of the helicopter census in 1989, which in fact observed only 2 horses in First Creek, with the majority of the herd in Castle Ridge. It should be noted however that unlike 1992, when four seasonal distribution flights were conducted, in 1989 only one flight was made, in July. Had flights been flown at other seasons, the distribution pattern would have been different, and more than 2 horses would have been observed in that pasture. Had seasonal distribution flights been flown in 1989, and an average number of horses observed per pasture been calculated, the figure for First Creek would most likely have been considerably higher than 2. This would have affected the Castle Ridge figures also, as well as the extrapolations into 1988 and 1987.

#### Protest point 3:

"The appropriate management level for the Snowstorm Wild Horse Herd must be a fair proportion of the carrying capacity of the Bullhead Allotment."

#### Response to protest point 3

What is "fair" can only be determined subjectively, and each affected interest will undoubtedly have a different conception of fairness. The AML was determined based on proportional use of forage by horses and cattle.



Protest point 4:

(summary): The AML must be determined from monitoring and actual use data collected during the period of the allotment evaluation. Allocation of forage must be proportional to each user. For First Creek pasture, the actual use for 1985-89 broke down to 94% cattle, 6% horses, based on 2 horses using the pasture for 6 months (12 AUMs) during 1987-89. The reduction in active use should be proportional to the amount of damage caused by each user. Any reduction of wild horses should be limited to 6% of the necessary adjustment, unless all monitoring data is available for analysis.

Response to protest point 4

As noted above in previous responses, the AML is based upon the best available data, and also the figure of only two horses in 1987-89 is not realistic. The AML was in fact derived using a proportional reduction in excess AUM use by cattle and horses (46.8% of the damage was caused by horses).

Protest point 5::

"In addition, you've made reference to the CRMP agreement as the starting base for the Land Use Plan numbers on wild horses. The 1989 IBLA decision in reference to wild horses, negated those original numbers. Please correct the reference in your final document."

Response to protest point 5

The CRMP agreement was in fact the starting point for LUP wild horse numbers. The IBLA decision required the AML to be based upon monitoring data, and it is, but this in no way negates the fact that the CRMP numbers were originally used.

PROTEST BY NEVADA DIVISION OF WILDLIFE

Protest point 1:

Actual use data should include livestock data collected in 1991 and 1992 to be consistent with the PMUD.

Response to protest 1

This information was inadvertently omitted, but will be included as an addendum when the Final Multiple Use Decision is issued.

Protest point 2:

The Paradise-Denio Resource Area land use plan objectives measure condition by "percent of habitat optimum". Stream parameters measured by the federal protocol of General Aquatic Wildlife Survey can be used to determine percent of habitat optimum. For comparison purposes, we suggest that the Bureau make computations from GAWS.



Response to protest point 2

While some of the General Aquatic Wildlife Survey (GAWS) parameters are rated differently from the Bureau's stream survey methodology, other parameters are measured nearly the same. If computations are to be made to percent of habitat optimum, documentation will be made acknowledging this conversion. If more than one stream survey was conducted on the same system utilizing GAWS methodology, this data will be used for trend analysis as well.

Protest point 3:

Actual use data for livestock and wild horses indicate the absence of wild horses on many pastures. Conclusions make reference to wild horse damage on pastures without actual use data. Use pattern mapping data found heavy and severe use of wetland meadow and stream bank riparian habitat. Conclusions for Snowstorm Flat, Kinney, Upper Kelly, Lower Kelly and Rabbit pastures are not supported by the data.

Response to protest point 3

Actual use data for wild horses does indicate the absence of wild horses on many pastures. However, in 1986, 41 horses were observed in the Snowstorm Flat Pasture and 21 horses were observed in the Kinney Pasture. Utilization monitoring for this year, indicated that the objective for wetland riparian habitats was not met due to livestock and wild horse use. Conclusions of the monitoring data for Upper Kelly and Lower Kelly are supported by the monitoring data. The monitoring data indicated that the objective for wetland riparian and stream bank riparian habitats was not being met.

Protest point 4:

The PMUD based the determination of carrying capacity on data collected from 1983 to 1991. However, the Wild Horse Decision was based upon actual use and use pattern mapping data collected in 1992. It would be appropriate to include these data in computations.

Response to protest point 4

This information was inadvertently omitted, but will be included as an addendum when the Final Multiple Use Decision is issued.

Protest point 5:

We suggest the decision be placed in Full Force And Effect to insure that natural resources will be protected.

Response to protest point 5

43 CFR §4160.3 states in part: "The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration." While it is the Bureau's position that the short term utilization levels are necessary to maintain and improve riparian conditions,



available data does not indicate that emergency conditions exist. For that reason, the decision will not be implemented full force and effect.

PROTEST BY NEVADA FIRST CORPORATION -LIVESTOCK MANAGEMENT DECISION

Protest point 1:

The decision errs in designating degrees of utilization as objectives of management, contrary to regulations of the Bureau of Land Management.

Response to protest point 1

The utilization objectives are in conformance with the land use plan and regulations. In similar cases, (Fred Buckingham vs. BLM N2-90-23 and NJ Ranches vs. BLM N2-91-6, Decision dated (03/17/93) the administrative law judge determined that "The New Allotment Specific Objectives Conform to the Land Use Plan" and each decision was "permitted by and conforms with the land use plan and is therefore valid."

The objectives were developed through the informal CRMP process, including the evaluation process.

Protest point 2:

The utilization restrictions arbitrarily applied to unidentified "wetland riparian habitats" destabilizes the livestock operation of Nevada First Corporation. Under the guise of this "objective" the utilization of isolated springs, overflow areas from developed livestock watering troughs, water gaps along the fenced portions of stream, and around man made reservoirs developed specifically for the purpose of livestock watering may be used to remove livestock prematurely and unnecessarily from the allotment. The objective therefore exposes our permit to jeopardy, and our livelihood to termination. The utilization restriction is furthermore arbitrarily and capriciously selected by the Bureau and is unrelated to the attainment of the long term allotment objectives.

Response to protest point 2

The utilization objective for "wetland riparian habitats" was established to manage natural wetland riparian areas. The reference to isolated springs is immaterial to the objective, as the Bureau does not allow for the institution of sacrifice areas. All natural wetland riparian areas are given equal standing under this objective. The areas around man made reservoirs also are not intended to apply under this objective, unless the reservoir is established in existing perennial water sources or upland meadows. In cases when reservoirs were established in these types of areas, recognition will be given that there is an established Bureau authorized reservoir, and it should be expected that recommendations will be made to relocate or modify these projects to eliminate the conflict with utilization.



Protest point 3:

The utilization restriction of 30% applied to the South Fork of the Little Humboldt will mean that the BLM is applying such restriction to watergap areas, which is arbitrary and capricious and will effectively eliminate use of pastures which depend upon this water source. This restriction is arbitrarily and capriciously applied to First, Snowstorm, and Winters Creek, since they are inaccessible to livestock grazing on the public lands. The restriction is arbitrary and capricious as applied to Kelly and Pole Creek because it is unrelated to the long term productivity of these areas, because the proposed management is to alternately rest these areas, and because the public portion of Pole Creek is proposed for exclusion from livestock. The restriction is therefore meaningless to livestock management on the public portions of these creeks.

Response to protest point 3

The 30% utilization objective will not include watergap areas. If this restriction is applied to areas inaccessible to livestock, then the short term utilization objective will be annually met. This restriction will remain due to the chance that livestock could possibly access these areas.

Utilization data will be collected on Pole Creek prior to construction of the riparian fence at "non watergap areas. Monitoring dates and locations will be conducted in coordination with the permittee and the U.S. Fish and Wildlife Service.

Protest point 4:

The utilization restrictions cited for the listed upland species are arbitrary and capricious because they are unrelated to the long term productivity of the individual species and they are unrelated to the long term objectives for the allotment.

Response to protest point 4

The objective of grazing management is to maintain or improve the plant community for protection of soil and water resources and to maintain or increase production of renewable resources through proper grazing use. The utilization levels for upland habitats will maintain the integrity and value of these habitats and watersheds by reducing soil erosion, compaction and maintain canopy and litter cover. Maintaining litter and vegetative cover reduces the impacts of water events such as heavy rains and runoffs during the dormant season and early spring by allowing for better water infiltration into soil and dispersing water flow energy associated with such events. Utilization levels above 50% in upland habitats during the growing season may contribute toward a downward trend within these habitats over time and will reduce plant vigor and production.



Protest point 5:

The conditioning of utilization data being collected at the time of the "end of the grazing period" is non-specific and fails to identify what the "end of the grazing period" is. Such non-specificity places our permit in jeopardy from the collection of data which does not accurately reflect the total growth of the species being monitored; therefore overestimating true utilization; and therefore subjecting our permit to unwarranted reduction.

Response to protest point 5

The end of the grazing period by pasture, is cited in the Proposed Multiple Use Decision on pages 10 and 11.

Utilization will be measured at the end of the grazing period. TR 4400-3, Rangeland Monitoring, Utilization Studies, provides guidance on the timing of studies:

Utilization studies are generally conducted at the end of each period of use within pastures or allotments. They may also be conducted at any time during the period of use.

Where regrowth may occur, utilization studies should be conducted as soon as possible following the end of the period of use.

The Nevada Rangeland Monitoring Handbook states: "The standard time for use mapping and utilization measurements should be at the end of the growing season or at the end of the grazing season, whichever occurs later." This represents the minimum standards in which the Bureau shall collect utilization data. The Handbook also states that utilization studies are done after the grazing and growing period, unless monitoring or management plans call for different timing.

Protest point 6:

The criteria for determining utilization are nebulous and undefined. The decision is unclear as to where utilization will be determined: for instance creek long vs. at a watergap. Such non-determination exposes our permit to jeopardy at the whim of the authorized officer.

Response to protest point 6

It has never been the Bureau's policy to monitor utilization of watergaps. The monitoring of the vegetative resource will take place on the public portions of the upland, wetland riparian, and streambank riparian habitats.



Protest point 7:

The long term objective to reduce the active preference on the allotment is erroneously derived, is arbitrary and capricious in elevating the status of wild horses above that of livestock, is in direct violation of the land use plan, and violates the intent of the Taylor Grazing Act in destabilizing our livestock operation.

Response to protest point 7

It was been determined through monitoring that heavy and severe use has occurred on wetland riparian and streambank riparian habitats. By continuing with present management, these sensitive areas will continue to be degraded. Therefore, an adjustment is needed in the authorized use by livestock and wild horse population to achieve a thriving natural ecological balance within the Bullhead Allotment. The range survey of 1978, set the carrying capacity for livestock and future adjustments in grazing use would be based on monitoring data. The 1978 survey did not allocate forage for wild horses. Thus, the BLM is currently allocating forage for all herbivores on allotments and establishing appropriate management levels (AML) for wild horses. The BLM is mandated by law (Wild Horse and Burro Act of 1971) to provide forage for Wild Horses and Burros and until and AML is achieved, the forage will be allocated to wild horses and the remaining forage will be allocated to livestock.

Protest point 8:

The long term objectives regarding wildlife habitat are non-specific as to the location of such habitats, which non-specificity renders our permits in jeopardy at the whim of the authorized officer. Furthermore, no data is presented in the decision or in the evaluation upon which the decision depends which correlates the use of the Bullhead Allotment by permitted livestock to any condition of wildlife habitat within the allotment.

Response to protest point 8

The information that you are referring to is contained in the Paradise-Denio Grazing Environmental Impact Statement. More specific locations of wildlife habitats is available upon request. The correlation between livestock use and wildlife habitat condition, has been established by numerous authors studying the effects of livestock use on wildlife habitat.

Protest point 9:

The provisions of the decision for sage grouse are beyond the scope of the Land Use Plan, have not been selected in cooperation, coordination, and consultation with the permittee. They are nebulous, not stated in objective terms, and are in some cases mission statements rather than objectives which are measurable. No data exists which supports a conclusion that livestock grazing on this allotment is correlated to sage grouse habitat on the allotment.



Response to protest point 9

The Paradise-Denio Rangeland Program Summary objective for sage grouse in the Bullhead Allotment states: "Protect sage grouse strutting areas and associated brooding complexes." The objective stated in the Proposed Multiple Use Decision is in fact within the scope of the objective for sage grouse on the Bullhead Allotment. The allotment evaluation process is the Bureau's means of achieving cooperation, coordination and consultation with all affected interests.

Abundant evidence has been presented in current literature showing a correlation between livestock grazing and sage grouse habitat. This information is contained in many professional publications, and is available upon request.

Protest point 10:

The decision to increase horse use by 1080 AUMs over the Land Use Plan level arbitrarily elevates the status of horses over that of livestock, and reduces livestock use by such arbitrary level.

Response to protest point 10

The Land Use Plan numbers, based upon CRMP recommendations, were the initial starting point to begin monitoring, not the once and for all AML. Monitoring data showed that a change was necessary, as shown in the Bullhead Allotment Evaluation and Proposed Multiple Use Decision.

Protest point 11:

The decision errs in demanding free access to water by horses. The decision requires as a condition of our grazing use of the allotment that we allow horses to use our private land and private waters. While use by horses has not to date been impeded by us, we will not submit to such condition. We believe it violates our property rights under the U.S. constitution, states rights in determination of beneficial uses, and the pertinent regulations regarding livestock grazing upon the public lands.

Response to protest point 11

It was never the Bureau's intent to require you to allow horses to use your private lands or water on this private land. This will be clarified in the Final Multiple Use Decision.

Protest point 12:

The long term objectives regarding aspen, riparian and meadow habitat types, woody riparian species, snowberry, serviceberry, and currant are nebulous and arbitrarily subjective. No definition exists in the decision which defines "good" reproduction, "maximized" recruitment, "species diversity and quality" or "maximized" reproduction. Such terms are subjective rather than objective, and are not properly defined objectives because they are unrelated to the long



term land use plan objectives, are unnecessarily vague, are unmeasurable, and subjects our permit to jeopardy at the whim of the authorized officer.

Response to protest point 12

Good reproduction and maximum recruitment is attained with good land management which allows the species to reproduce and renew itself over time. A general measure of this is if reproduction and replacement in the community is progressing at a rate which maintains the stand at its historic dimension. Species diversity and quality is measured through comparisons of normal species associations (both density and diversity), with existing conditions.

The objectives you reference are re-quantifications of the general objectives set forth in the Land Use Plan, and are logical, more specific expressions of the broad Land Use Plan objectives. The subjective nature of these objectives, makes them more measurable by providing specific components of the habitat that are of concern.

Protest point 13:

The carrying capacity determined in the decision is erroneously derived, and is derived by the simultaneous imposition of utilization restrictions which are not correlated to the long term productivity of the resource and which are not the subject of any Land Use Plan, agreement, or previous decision, and the exclusion of portions of the allotment on a yearly basis, and despite evidence of improving range and riparian conditions without the imposition of such restrictions.

Response to protest point 13

The carrying capacity was not erroneously derived. The carrying capacity was arrived by actual use data by livestock and wild horses along with utilization monitoring. The monitoring data revealed that the objectives for wetland riparian and streambank riparian habitats are not being met and in order to achieve a thriving natural ecological balance, an adjustment is needed in the authorized use by livestock and wild horse population.

Protest point 14:

The livestock carrying capacity is arbitrarily reduced by the elevation of the status of wild horses over that of livestock.

Response to protest point 14

See response to #7.

Protest point 15:

The rationale that areas of heavy and severe utilization are not achieving the vegetative objectives established for the allotment is in gross error.



Response to protest point 15

With the heavy and severe utilization levels, the vegetative utilization objectives are not being met. The utilization objective for wetland riparian areas is 50% and the streambank riparian utilization objective is 30%

Protest point 16:

The decision illegally reduces our total preference, in violation of the Taylor Grazing Act and pertinent regulations.

Response to protest point 16

The Final Multiple Use Decision will read:

Total Preference	-	19,283 AUMs
Suspended	-	13,293 AUMs
Active	-	5,990 AUMs

There are other objectives of the Taylor Grazing Act besides stabilizing the livestock industry. The objectives are to "stop injury to the public grazing lands by preventing overgrazing and soil deterioration; to provide for their orderly use, improvement, and development; to stabilize the livestock industry dependent upon the public range; and for other purposes."

43 CFR §4110.3-2 (b) states "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, unless the authorized officer determines a change in management practices would achieve the management objectives."

Protest point 17:

The data and science do not support the conclusion to reduce the seasons of use of the allotment, nor the overall period of use of the allotment.

Response to protest point 17

The data does support the reduction in the summer season of use. The majority of the wetland riparian and streambank riparian habitats are located in the summer pastures and throughout the evaluation period, these pastures have been consistently used during the "hot season". The use levels observed on these habitats have not been achieved, so a reduction of one month in the summer season of use is warranted.

Protest point 18:

The data and science do not support the conclusion to reduce the livestock active preference within the allotment. Forage permanently available exists within the allotment sufficient to more than account for and support the active preference of 12,050 AUMs.



Response to protest point 18:

See response #7.

Protest point 19:

The decision errs in its computation of percent Federal Range. The percent Federal Range within the allotment remains at 91%. No private lands have been removed from within the boundaries of the allotment. This change arbitrarily reduces the amount of livestock grazing permitted within the allotment.

Response to protest point 19

The Bullhead Allotment contains 91% public land. However, since no exchange of use agreement exists for the private land, the livestock permittee is being licensed at 100% public land.

Protest point 20:

The decision does not allow for a balanced livestock operation. To the contrary, it requires fluctuations in numbers of livestock, restrictions of seasons of use, and non-continuity of movement that are virtually impossible to maintain in a normal cow/calf operation.

Response to protest point 20

A Desired Stocking Rate (DSR) by pasture has been calculated. Thus, each pasture has a differing carrying capacity and livestock number. In order to keep a constant herd size, the limiting DSR could be used.

Protest point 21:

The decision rationale errs in concluding that riparian areas "continue to be degraded." The riparian areas under the jurisdiction of the BLM are mostly inaccessible to livestock grazing on account of fencing, topography, and density of growth of riparian woody vegetation.

Response to protest point 21

Upland riparian areas throughout the headwater areas of the Bullhead Allotment and other public wetland riparian habitats are accessible to livestock grazing and have experienced degraded conditions.

Protest point 22:

Other alternatives than the one selected by this decision are available and feasible which will not result in the reduction of livestock grazing to the extent prescribed by the decision. The decision is arbitrary and capricious in assigning an alternative which results in harm to the livestock operation when other alternatives exist which will accomplish the same or enhanced results and which will not result in harm to the livestock operation.



Response to protest point 22

In the Final Allotment Evaluation dated 12/09/92, four alternatives were presented including the permittees. In the revised conclusion and technical recommendation section dated 09/13/93, these alternatives were presented again. The alternative chosen will strive for a thriving natural ecological balance on the Bullhead Allotment.

Protest point 23:

The decision errs in assigning a "regrowth" goal, when such regrowth is neither a land use plan objective nor an allotment specific objective. If such "regrowth" is to be a consideration in the management of the stated pastures, then no rationale exists for a utilization objective of 30% which requires the immediate removal of livestock prior to the assigned date. Finally, "regrowth" continues far beyond the end of June each year, and no data or science supports the arbitrary date.

Response to protest point 23

No where in the decision does it assign a regrowth goal. Regrowth will occur if water or moisture is available and if water is not available, regrowth is minimal. The livestock removal date of 06/30 in the spring pastures will allow for regrowth. However, in the summer pastures, water may not be available at the wetland riparian or streambank riparian habitats later in the summer season of use, and regrowth will be minimal. The allowable use level of 30% on Pole Creek (summer pasture) is necessary to ensure that some regrowth will occur.

Protest point 24:

The data and science do not support the simultaneous restriction of utilization to the stated levels and the exclusion of portions of the allotment from use by livestock.

Response to protest point 24

See response #4. Livestock are being excluded from portions of pastures because of range readiness and water availability.

Protest point 25:

The requirement to remove livestock prior to utilization objectives (whether valid or not) being reached, is arbitrary and capricious, and in fact implements utilization restrictions more severe and more unwarranted than the stated restriction.

Response to protest point 25

See response to #27



Protest point 26:

The prohibition of movement of livestock into pastures which have not achieved the utilization objectives, if such objectives are justified by the science, is arbitrary and capricious and in fact implements utilization restrictions more severe and more unwarranted than the stated restrictions.

Response to protest point 26

See response to #25.

Protest point 27:

The requirement to remove livestock with 7 days of achievement of arbitrary utilization restrictions is a violation of the provisions of the Taylor Grazing Act in requiring the BLM to manage to achieve livestock stability. Such provision in fact destabilizes the livestock operation within this allotment to the point of destruction

Response to protest point 27

One of terms and conditions of the Bullhead grazing permit is to remove livestock within 7 days if use levels on Pole Creek reach 25% or wetland riparian habitats reach 45% utilization. This is warranted so that the short term utilization objectives for these habitats can be met. Riparian wetland habitats, represent some of the most biologically and economically valuable areas the Bureau is entrusted to manage. One of the goals for the Riparian-Wetland Initiative for the 1990's is to restore and maintain riparian-wetland areas so that 75% of more are in proper functioning condition by 1997.

Protest point 28:

The decision errs in the arbitrary assignment for termination of grazing on the summer pastures of August 31.

Response to protest point 28

See response #17.

Protest point 29:

The decision violates the provisions of the regulations regarding implementation of changes in active use.

Response to protest point 29

The Final Multiple Use Decision will implement the five year phase in period in accordance with 43 CFR §4110.3-3.



Protest Point 30:

The decision implements an "interim" grazing system which is infeasible and impossible to operate under, and which destroys the viability of the livestock operation.

Response to protest point 30

The Final Multiple Use Decision will not implement an interim grazing system.

PROTEST BY NEVADA FIRST CORPORATION-WILDLIFE MANAGEMENT DECISION

Protest point 1:

Wildlife numbers exceed the levels listed in the Land Use Plan. The decision properly recognizes the LUP numbers, but fails to require movement or removal of wildlife in excess of the Land Use Plan levels, to the detriment of our livestock operation.

Response to protest point 1

Section IV.B.1.b. page 16, does not indicate wildlife numbers are "exceeding" LUP numbers except for pronghorn, which are 12 AUMs over the established reasonable numbers. This is approximately equivalent to five animals over for the year (5 pronghorn = 1 AUM). It would be unreasonable to recommend the Nevada Division of Wildlife to institute a special depredation hunt to remove five animals. Over the period 1983 to 1991, mule deer numbers averaged 620 AUMs or 40% less than reasonable numbers.

Protest point 2:

The decision makes a de-facto designation of critical habitat for the Lahontan cutthroat trout, in violation of the BLM's authority to do so. The attempted designation of the South Fork of the Little Humboldt River and Pole Creek for the sole purpose of recovery of this species is properly a land use planning decision. The subject land use designation can only be made in the land use planning process, and this decision violates that process.

Response to protest point 2

The Proposed Multiple Use Decision for the Bullhead Allotment does not designate critical habitat for Lahontan cutthroat trout. Critical habitat has not been designated for this subspecies by the U.S. Fish and Wildlife Service. The South Fork Little Humboldt River and Pole Creek (as well as upstream tributaries to the South Fork) currently support populations of LCT. These existing populations will be maintained and enhanced by incorporating the proposed grazing system in combination with existing and proposed riparian protection fences.



Protest point 3:

The authorities cited in the decision for the above designation do not contain the authority to violate the land use planning process nor do they bestow the authority to make critical habitat designation upon the BLM. The decision errs in relying upon such authorities for making such determination.

Response to protest point 3

The authority for managing for the recovery of LCT is contained in Title 43 of the Code of Federal Regulations, which states in parts: management of public lands for fish and wildlife development and utilization involves the protection, regulated use, and development of habitat on public lands and waters to obtain a sustained yield of fish and wildlife and provision and maintenance of public access to fish and wildlife resources.

PROTEST BY NEVADA FIRST CORPORATION-WILDHORSE MANAGEMENT DECISION

Protest point 1

The "Appropriate Management Level" violates the numbers established by the Land Use Plan, violates the numbers agreed to in other planning activities, and illegally elevates the status of wild horses over livestock."

Response to protest point 1

The Land Use Plan numbers, based upon the CRMP recommendations, were the initial starting point to begin monitoring. Monitoring data showed that a change was necessary, as shown in the Bullhead Allotment Evaluation and Final Multiple Use Decision.

Protest point 2:

"The decision wrongly sets as a pre-condition to the removal of horses in excess of the AML a waiting period and an unspecified and unwarranted level of 'funding'. Such pre-conditions are not sanctioned by the regulations governing wild horse and burros."

Response to protest point 2

Funding has been requested and the gather is expected to take place as scheduled. Unforeseen events beyond the control of the Winnemucca District may force changes in the schedule. Practical considerations require that a certain amount of time elapse between the issuance of a final decision and the actual removal of the horses. In this case, should the gather proceed as scheduled, the time elapsed between decision and gather will be only 3 months.



Protest point 3:

"The decision errs in its determination that no horses need to be removed from Castle Ridge and Dry Hills pastures. The riparian condition in the Castle Ridge pasture has been demonstrated to be declining, and the only large herbivore using that pasture is the wild horse. The Dry Hills are checkerboard lands, which by BLM policy and directive shall have no wild horse use."

Response to protest point 3

Monitoring data show no evidence of excessive use of upland vegetation. Monitoring data show no evidence that "The riparian condition in the Castle Ridge pasture has been demonstrated to be declining". Furthermore, the riparian area in the Castle Ridge pasture (South Fork of the Little Humboldt River) is shared with First Creek pasture, where horses contribute to the use. Cattle also used the pasture during 1993. The Dry Hills pasture is not checkerboard land, except for a small portion in the southwestern corner next to the mine. It is the Rabbit pasture that is checkerboard land.

Protest point 4:

"The decision errs in its conclusion that horse gathers are unnecessary from the private lands of the summer pastures. Nevada First Corporation can tolerate no use of its private lands by wild horses in these pastures. Such use is virtually guaranteed to adversely affect livestock use of the allotment by adding to the utilization levels noted on both private and public lands. Furthermore, such use in the summer pastures is also guaranteed to add to the utilization of upland "riparian/wetland" areas, which will precipitate reduction of livestock use, but have no impact on wild horse use. This is an arbitrary and capricious action on the part of the bureau which will be set up by the inclusion of these areas within the HMA. The summer pastures should be kept out of the HMA."

Response to protest point 4

The decision does not state that horse gathers are "unnecessary" from the summer pastures. On the contrary, the decision states that horses will be removed first from the summer pastures, should any be found therein. The Bureau has the right and task to delineate those portions of wild horse herd areas which will be managed as herd management areas. The decision was made to include the summer pastures in the HMA to preclude the necessity for gathers outside regular gather schedules. It is expected that the numbers of horses using the summer pastures will be minimal.

Protest point 5:

"The decision errs in a partial citing of "43 CFR" in allowing a protest period for its wild horse decision. No such protest period is sanctioned by the regulations of "43 CFR" as concerns horse management decisions."



Response to protest point 5

43 CFR 4770.3(a) states "Any person who is adversely affected by a decision (emphasis added) of the authorized officer in the administration of these regulations may file an appeal. Appeals must be filed within 30 days of receipt of the decision in accordance with 43 CFR part 4, subpart E." The proposed decision is just that - proposed. It may be changed depending on points of protest raised by affected interests. It is not the final decision of the authorized officer. Therefore the "appeal" of NFC is being treated as a protest. A final decision will be issued which will have the opportunity for appeal in accordance with appropriate regulations.

Protest point 6:

"The decision violates the provisions of the pertinent regulations and statute in embracing a 'strategic plan' for the gathering of wild horses which has not been issued as a decision which can be appealed, yet which effectively alters the land use plan and which effectively violates the statute and regulation governing removal of excess wild horses."

Response to protest point 6

The Strategic Plan is a BLM approved document, signed by the Director, which the Winnemucca District is obligated to follow.

Sincerely yours,

*Michael J. Zielinski*  
*Acting*  
Area Manager  
Paradise-Denio Resource Area



1992 LIVESTOCK ACTUAL USE

<u>PASTURE</u>	<u>LIVESTOCK #</u>	<u>PERIOD OF USE</u>	<u>AUMs</u>
First Creek	966	04/20 to 05/30	1185
Kinney	966	06/01 to 06/30	867
Upper Kelly	966	07/01 to 07/15	434
	500	07/15 to 08/15	479
Snowstorm	466	07/15 to 09/01	683
Lower Kelly	500	08/15 to 09/01	269
Bullhead Seeding	202	04/06 to 06/23	477
		Total	4394



9-15-94

September 15, 1994

Mr. Michael Zielinski  
Paradise-Denio Resource Area  
Bureau of Land Management  
705 East Fourth Street  
Winnemucca, Nevada 89445

SUBJECT: FMUD - Bullhead Allotment

Dear Mr. Zielinski:

The Commission for the Preservation of Wild Horses has received and reviewed the Final Multiple Use Decision for the Bullhead Allotment. Issues of our protest to the Proposed Decision were considered, but did not influence the Final Decision. We wish to point out the errors in the Final Decision.

The Appropriate Management Level did not consider all data.

As pointed out in our appeal, the appropriate management level was established with 1992 data. These data were not in the Bullhead Allotment Evaluation. Your inclusion of these data in the Final Decision is meaningless, unless these data were used in the carrying capacity computations for the Desired Stocking Rates on pages 107 through 112 of the allotment evaluation. Simple stated, use the data to establish a carrying capacity as require by Bureau policy and procedure.

Allocation of Forage should be proportional to user.

Fair allocation of available forage does not have to be subjective. As found in the Bullhead Allotment Evaluation, an adjustment in the stocking rate is necessary to meet allotment objectives. The reduction should be proportional to the offending animal and not the arbitrary ratio of 1982 composition of livestock and wild horses found in the land use plan.



Mr. Mike Zielinski  
September 15, 1994  
Page 2

Use of Full Force and Effect is bias against Wild Horses.

To implement a necessary livestock reduction through five years will not protect natural resources. Arbitrarily and subjectively placing the Wild Horse Decision in Full Force and Effect without the Livestock Decision will allow a twenty nine cent appeal to stay any action to lessen the impact of livestock. Administratively, the use of Full Force and Effect will replace wild horses with livestock and make no change on the ground. BLM regulations require and allow the Bureau to place decisions in full force and effect to protect the haibitat and mandate that you manage the habitat within carrying capacity. How do you propose do stay within carrying capacity on this allotment with this decision? I would appreciate a written response to our concerns so we may better understand how you will protect the habitat in this allotment.

Sincerely,

CATHERINE BARCOMB  
Executive Director





# ANIMAL PROTECTION INSTITUTE

P.O. Box 22505, Sacramento, CA 95822 • 2831 Fruitridge Road, Sacramento, CA 95820  
1-800-348-PETS • (916) 731-5521 • FAX (916) 731-4467

September 15, 1994

Dawn Lappan  
WHOA  
15640 Sylvester  
Reno, NV 89511


Dear Dawn:

Enclosed is a copy of our response to the final decision on the Bullhead Allotment (Snowstorm HMA) plus the Boise Idaho IBLA ruling. We don't expect to appeal. We hope you intend to.

I'm looking into a case in Challis District Idaho in which a rancher (Terry Hone) has branded wild horses and cut their ears for identification. The BLM has impounded six that were captured during a roundup. Their law enforcement has built a case. The US Attorney General refuses to prosecute.

In case you want to look into it, their law enforcement officer is Dan Use (208-384-3023). The US Attorney General's Office in Washington's number is 202-292-4421. (No longer Jose Toro).

FOR THE ANIMAL PROTECTION INSTITUTE

  
Nancy Whitaker  
Director, Public Land Wildlife Division





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September 15, 1994

Area Manager  
Paradise-Denio Resource Area  
BLM  
705 East 4th Street  
Winnemucca, NV 89445

## BULLHEAD ALLOTMENT EVALUATION

Dear Area Manager:

We have received a copy of your final multiple use decision for the Bullhead Allotment dated August 25, 1994 and addressed to Mr. Bengochea of the Nevada First Corporation. Due to time and staff constraints API did not enter into the first rounds of the decision making process on this allotment. Had we done so we would have challenged your decision for wild horses. While we do not have standing for an appeal, we do want you to know that we agree with the points raised by WHOA and reject your answers. Our files show that API protested the 1989 decision for the Snowstorm HMA and have been involved in this area, including the Little Owyhee HMA, since the planning period in 1980-1982.

The use pattern map of the First Creek Basin, enclosed with your decision, shows twelve utilization reading stops. Of the twelve, only two show areas of overutilization. One of these is on the South Fork of the Humboldt in the Rodear Flats. Here the area of severe use is disclosed as extending less than a mile from the river. Beyond this is an area of heavy use extending out a full mile from the river. These were recorded as Stop No. 6. This is your typical bullseye grazing pattern for livestock showing damage within a mile of a water source. A second area of heavy use is shown as Stop No. 9. We're not able to discern exactly what the attraction is here. We guess it is a sage grouse area that has a special AUL to protect it. The other ten stops show moderate, light, and slight use. There is utilization occurring in these areas, but it is not overutilization. Thus, it is well within sustainable limits for a renewable resource. No damage is occurring. BLM has no statutory authority to remove wild horses unless you show wild horses and/or burros contribute substantially to damage caused by overgrazing. This is the argument put forth by BLM itself (Dahl v Clark).

Your estimated population calculations on page 6 are totally unacceptable. All of the planning documents refer to high levels of seasonal movement plus ingress/egress in this portion of the identified herd use area. But the fact is overpopulation is not numbers perse. It is numbers relative to the availability of resources to support that number. This is measured as too many animals in a given area when they over-utilize the forage. Regardless of what the number is



that are grazing in the area represented by ten of the twelve utilization sites, they are well within the AUL (allowable forage take-off level). It doesn't matter if it is 150 or 850 or 1,000 horses. Their impact on the land is at or below a thriving ecological balance. There is no statutory authority for removing wild horses except to achieve a thriving ecological balance where it is "unbalanced." The law authorizes removing ONLY THAT NUMBER NEEDED TO RESTORE THE THRIVING ECOLOGICAL BALANCE--no more and no less. The law is very clear about determining how many wild horses should be there. The question then is how do you determine how many livestock should be there without causing damage to the land. We believe the purpose of that clause in the law is to force BLM to pinpoint cause of damage and correct it.

When under Secretary Watt, BLM eliminated suitability criteria and substituted combining use to "make a forage pie," the intent of the law was changed. Combining utilization readings from the twelve utilization sites in order to calculate available AUMs for the entire area, and then divvy up this total between total horse use and total cow use does not correct overutilization in the two sites where overutilization is actually occurring. It is based on the false premise that cows are spread out border to border one cow every ten or twelve acres. It is as if cows were highly mobile grazers and grazed ten and fifteen miles from water as do horses. Combining use to calculate stocking levels is not based on the reality of what is actually going on. We're enclosing a copy of the October 1992 IBLA ruling which summarizes the series of rulings and refers specifically to their ruling on proportionate reductions.

It appears to us, that you are managing by "preference" and "AML," neither of which are valid management prescriptions. Both the federal court and the IBLA have ruled against setting a number in a land use plan and calling all that exceed it "excess." The pending rulemaking (43 CFR 4100s) changes the definition of "preference" back to its actual statutory meaning.

We wish to go on record as protesting this decision and supporting the points WHOA raises. We also wish to remain an interested and affected party to wildlife and wild horse decisions in the Paradise-Denio Resource Area.

FOR THE ANIMAL PROTECTION INSTITUTE

  
Nancy Whitaker  
Director, Public Land Wildlife Issues



12-6-94



# United States Department of the Interior

Bureau of Land Management  
Winnemucca District Office  
705 East Fourth Street  
Winnemucca, Nevada 89445

DEC 06 1994

In reply refer to:  
4700 (NV-240)

Ms. Cathy Barcomb  
Commission for the Preservation of Wild Horses  
255 W. Moana Lane  
Suite 207A  
Reno, NV 89509

Dear Ms. Barcomb:

This is in response to your letters of September 15, 1994, expressing concerns regarding the Final Multiple Use Decision for the Bullhead Allotment, and reproductive rates following selective removals. Please accept my apologies for the delay in answering. Our schedule has been full the past two months with modernization training, wild horse gathers, preparation for hearings, and the transition from an acting to a permanent area manager.

You expressed a concern that the Final Decision did not consider all data, specifically that the 1992 use pattern mapping data was not presented in the allotment evaluation. As was indicated in the protest point responses which you received with the FMUD, we used the best and most recent data, as required by Bureau policy and procedure, to establish the AML. It is not necessary for the data to be in the AE; it can be added later as an addendum.

Your concern that forage allocation be proportional to user is justified. This is precisely how the AML was set; reference pages 6-7 in the FMUD. The Land Use Plan/CRMP numbers were not used in determining AML.

Enclosed is the rationale for placing the Wild Horse Decision in Full Force and Effect (as well as the Jackson Mountains decision), which was sent to the State Director by the District Manager.

We can also provide you with reproductive data from those wild horse herds in the Paradise-Denio Resource Area which had undergone selective removals of the 0-5 year age class. These would be the Little Owyhee and Black Rock East herds.

The Little Owyhee HMA was partially gathered in August 1992, in the Lake Creek and northern Twin Valley Springs pastures. (In this gather animals up to 9 years old were removed.) The HMA was completely gathered in December 1993-January 1994. Distribution flights were flown on October 6, 1993 and August 31, 1994. These flights were for the purpose of counting animals and determining foal production. The 10/93 flight would give foal production following the 1992 gather, and the 8/94 flight would give production following the 1993-94 gather. The following table gives the results.



	<u>10/6/93</u>			<u>8/31/94</u>		
	Adults	Foals	Foals/100 adults	Adults	Foals	Foals/100 adults
TOTAL	<b>665</b>	<b>120</b>	<b>18</b>	<b>279</b>	<b>76</b>	<b>27</b>
Lake Creek	189	39	21	99	22	22
Twin Valley	218	32	15	91	30	33
Fairbanks	198	33	17	89	24	27
Outside HMA	60	16	27	-	-	-

The Black Rock East HMA was gathered in February 1992, when horses up to 9 years of age were removed, and again in February 1994. Distribution flights were flown September 23, 1992 to get foal production following the 1992 gather, and July 10, 1994 to determine production following the 1994 gather. Results are shown below.

	<u>9/23/92</u>			<u>7/10/94</u>		
	Adults	Foals	Foals/100 adults	Adults	Foals	Foals/100 adults
Black Rock East	306	58	19	259	70	27

Thus you can see that the two selective removals did not prevent the herds from maintaining a healthy reproductive rate. It is interesting to note however that according to the 1994 results in the Little Owyhee, the Lake Creek pasture, which had the highest percentage of older (10+) horses, had the lowest reproductive rate.

I hope this adequately addresses your concerns. If you have any questions feel free to contact me.

Sincerely yours,



Area Manager  
Paradise-Denio Resource Area

Enclosure



UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Winnemucca District Office  
705 East Fourth Street  
Winnemucca, Nevada 89445

In reply refer to:

4700 (NV-248)

Memorandum

To: State Director, Nevada

From: District Manager, Winnemucca

Subject: Rationale for placing the Jackson Mountains/Snowstorm Mountains  
Wild Horse Removal Plans in Full Force and Effect

If horses are not removed immediately from the Jackson Mountains and Snowstorm Mountains Herd Management Areas, the following impacts, as identified in the Jackson Mountains and Bullhead Allotment evaluations and Multiple Use Decisions, will occur.

- 1) The existing wild horse population in the Jackson Mountains Allotment is approximately 300% over AML as established in the Final MUD. The existing wild horse population in the Bullhead Allotment is approximately 225% above AML. The spring and summer of 1994 had below normal precipitation. This may result in decreased forage production and water availability which could lead to poorer body condition of horses within the HMAs, particularly going into the winter. If severe winter conditions occur this year, this could result in death loss, particularly in mares with foal.
- 2) The existing population of wild horses uses 55% of the combined carrying capacity of the Jackson Mountains Allotment, and 50% of the combined carrying capacity of the Bullhead Allotment. The Jackson Mountains and Bullhead MUDs allocate horse forage at 33% and 22% respectively of carrying capacity. If horses are not removed this fall, progress toward the attainment of a Thriving Natural Ecological Balance will be delayed.
- 3) Implementation of livestock management actions alone would not allow attainment of resource objectives in the allotments. Livestock grazing management (change in season of use, pasture level stocking, grazing system) cannot be effectively implemented within the allotments unless the wild horse population is at, or near, AML.
- 4) Cost of the gather can be expected to increase if horse removal is delayed.



- 5) We would not be able to implement the Reasonable and Prudent Measures along with the Terms and Conditions outlined in the Fish and Wildlife Service's Biological Opinion on the proposed Bullhead Allotment Livestock Grazing and Wild Horse Management Decision dated 3/31/94. This Biological Opinion is a response from formal consultation with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act, as amended. At issue are the potential adverse effects to Lahontan Cutthroat Trout habitats within the Bullhead Allotment by wild horses and livestock.
- 6) Portions of the Jackson Mountains and Bullhead Allotments are outside the boundaries established for the Jackson Mountains and Snowstorm Mountains Herd Management Areas. We are required to remove horses from areas outside designated wild horse management areas.

Based on the above rationale, I recommend that the Jackson Mountains and Snowstorm Mountains Wild Horse Removal Plans be issued Full Force and Effect.

\_\_\_\_\_ Date \_\_\_\_\_  
Area Manager, Paradise-Denio Resource Area

\_\_\_\_\_ Date \_\_\_\_\_  
District Manager, Winnemucca

I concur: \_\_\_\_\_ Date \_\_\_\_\_  
State Director, Nevada