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File Title: APPEAL - N2-94-13 - COMMISSION FOR THE PRESERVATION OF W/H - SG WH Capture Plans

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Cross-References and Remarks:

SOLDIER MEADOWS

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2-22-94
176-22-2

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TABLE OF CONTENTS
Appeal No. N2-94-13

Winter 1994 Wild Horse Removal Plan

1. Response to Appeal Points
2. April 11, 1994. Letter containing appeal points for the Winter 1994 Wild Horse Removal Plan and Environmental Assessment
3. March 15, 1994. Letter to the Interior Board of Land Appeals from the Commission for the Preservation of Wild Horses
4. February 16, 1994. Appeal of the Winter 1994 Wild Horse Removal Plan and Environmental Assessment
5. January 24, 1994. Approved Winter 1994 Wild Horse Removal Plan and Environmental Assessment
6. January 13, 1994. Protest of the draft Winter 1994 Wild Horse Removal Plan and preliminary environmental assessment
7. January 13, 1994. Memorandum outlining the rationale for placing the Winter 1994 Wild Horse Removal Plan in full force and effect
8. December 13, 1993. Draft Winter 1994 Wild Horse Removal Plan and preliminary environmental assessment
9. December 9, 1993. Instruction Memorandum No. NV-94-032, Issuance of Wild Horse and Burro Decisions under Full Force and Effect
10. November 24, 1993. Conversation record with the Commission for the Preservation of Wild Horses to solicit their input for the preparation of a draft capture plan and preliminary environmental assessment

Soldier Meadows Allotment

1. April 11, 1994. Letter containing appeal points for the Notice of Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment
2. March 15, 1994. Letter to the Interior Board of Land Appeals from Wild Horse Organized Assistance
3. February 16, 1994. Appeal of the Notice of Final Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment
4. January 26, 1994. Certificate of Service for Notice of Final Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment

N2 94 13

5. January 24, 1994. Notice of Final Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment
6. December 20, 1993. Protest of the Notice of Proposed Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment
7. December 14, 1993. Certificate of Service for Notice of Proposed Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment, and the final Soldier Meadows Allotment Re-evaluation
8. December 10, 1993. Notice of Proposed Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment, and the final Soldier Meadows Allotment Re-evaluation

Leadville Allotment

1. April 11, 1994. Letter containing appeal points for the Notice of Full Force and Effect Multiple Use Decision - Leadville Allotment
2. March 15, 1994. Letter to the Interior Board of Land Appeals from the Commission for the Preservation of Wild Horses
3. February 16, 1994. Appeal of the Notice of Final Full Force and Effect Multiple Use Decision - Leadville Allotment
4. January 26, 1994. Certificate of Service for Notice of Final Full Force and Effect Multiple Use Decision - Leadville Allotment
5. January 19, 1994. Notice of Final Full Force and Effect Multiple Use Decision - Leadville Allotment
6. December 20, 1993. Protest of the Notice of Proposed Full Force and Effect Multiple Use Decision - Leadville Allotment
7. December 7, 1993. Certificate of Service for Notice of Proposed Full Force and Effect Multiple Use Decision - Leadville Allotment, and the final Leadville Allotment Re-evaluation
8. December 6, 1993. Notice of Proposed Full Force and Effect Multiple Use Decision - Leadville Allotment, and the final Leadville Allotment Re-evaluation

Buffalo Hills Allotment

1. March 9, 1993. Appeal of the Notice of Final Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment
2. February 11, 1993. Certificate of Service for Notice of Final Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment
3. February 9, 1993. Notice of Final Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment

N2 94 13

4. January 15, 1993. Certificate of Service for Notice of Proposed Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment, and the final Buffalo Hills Allotment Re-evaluation
5. January 1993. Notice of Proposed Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment, and the final Buffalo Hills Allotment Re-evaluation

N2 94 13

CHRONOLOGY
Appeal No. N2-94-13

Buffalo Hills Allotment

1. January 1993. Notice of Proposed Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment, and the final Buffalo Hills Allotment Re-evaluation were issued. These documents outlined the proposed carrying capacity for livestock and wild horses within the allotment. The allotment contains 36 % of the Calico Mountains HMA.
2. January 15, 1993. Certificate of Service for Notice of Proposed Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment, and the final Buffalo Hills Allotment Re-evaluation signed by Nevada Commission for the Preservation of Wild Horses.
3. February 9, 1993. Notice of Final Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment was issued. The final decision included a response to protest points received from members of the interested public.
4. February 11, 1993. Certificate of Service for Notice of Final Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment was signed by Nevada Commission for the Preservation of Wild Horses.
5. March 9, 1993. Commission for the Preservation of Wild Horses appeals the Notice of Final Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment (Appeal No. N2-93-17).

Leadville Allotment

1. December 6, 1993. Notice of Proposed Full Force and Effect Multiple Use Decision - Leadville Allotment, and the final Leadville Allotment Re-evaluation were issued. These documents outlined the proposed carrying capacity for livestock and wild horses within the allotment. The allotment makes up 34 % of the Calico Mountains HMA.
2. December 7, 1993. Certificate of Service for Notice of Proposed Full Force and Effect Multiple Use Decision - Leadville Allotment, and the final Leadville Allotment Re-evaluation signed by Nevada Commission for the Preservation of Wild Horses.
3. December 20, 1993. Commission for the Preservation of Wild Horses protests the Notice of Proposed Full Force and Effect Multiple Use Decision - Leadville Allotment.
4. January 19, 1994. Notice of Final Full Force and Effect Multiple Use Decision - Leadville Allotment was issued. The final decision included a response to protest points received from members of the interested public.
5. January 26, 1994. Certificate of Service for Notice of Final Full Force and Effect Multiple Use Decision - Leadville Allotment was signed by Nevada Commission for the Preservation of Wild Horses.
6. February 16, 1994. Commission for the Preservation of Wild Horses appeals the Notice of Final Full Force and Effect Multiple Use Decision - Leadville Allotment (Appeal No. N2-94-6). The appeal states, "our appeal points will be filed with IBLA, the Solicitor, and your District within 30 days of this notice."

N2 94 13

7. March 15, 1994. Commission for the Preservation of Wild Horses sends a letter to the Interior Board of Land Appeals which states, "I have enclosed a copy of the letter sent to the District and the Regional Solicitor on the Leadville Allotment. Within the 30 days allowed us I am informing you of our intent to file an appeal with you on this decision. Within 30 days from this notice I will be forwarding a copy of our reasons directly to you". The letter goes on to indicate that the Commission is in the process of negotiating this appeal as well as others with the Nevada State Director. A meeting was scheduled for March 31, 1994 however, it was the Bureau's understanding that the purpose of the meeting was to discuss the overall concerns regarding allotment evaluations, not to negotiate specific appeals. The District was not aware of this letter until April 7, 1994.
8. April 11, 1994. Letter containing Commission for the Preservation of Wild Horses appeal points for the Notice of Full Force and Effect Multiple Use Decision - Leadville Allotment. The letter indicates that they failed to reach agreement during negotiations with the Nevada State Director which resulted in the filing of their appeal points. Appeal points were not filed within the 30 day appeal period.

Soldier Meadows Allotment

1. December 10, 1993. Notice of Proposed Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment, and the final Soldier Meadows Allotment Re-evaluation were issued. These documents outlined the proposed carrying capacity for livestock and wild horses within the allotment. The allotment contains 30 % of the Calico Mountains HMA, and the entire Warm Springs Canyon and Black Rock Range - West HMA's.
2. December 14, 1993. Certificate of Service for Notice of Proposed Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment, and the final Soldier Meadows Allotment Re-evaluation signed by Nevada Commission for the Preservation of Wild Horses.
3. December 20, 1993. Commission for the Preservation of Wild Horses protests the Notice of Proposed Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment.
4. January 24, 1994. Notice of Final Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment was issued. The final decision included a response to protest points received from members of the interested public.
5. January 26, 1994. Certificate of Service for Notice of Final Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment was signed by Nevada Commission for the Preservation of Wild Horses.
6. February 16, 1994. Commission for the Preservation of Wild Horses appeals the Notice of Final Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment (Appeal No. N2-94-12). The appeal states, "our appeal points will be filed with IBLA, the Solicitor, and your District within 30 days of this notice.
7. March 15, 1994. Commission for the Preservation of Wild Horses sends a letter to the Interior Board of Land Appeals which states, "I have enclosed a copy of the letter sent to the District and the Regional Solicitor on the Leadville Allotment. Within the 30 days allowed us I am informing you of our intent to file an appeal with you on this decision. Within 30 days from this notice I will be

N2 94 13

forwarding a copy of our reasons directly to you". The letter goes on to indicate that the Commission is in the process of negotiating this appeal as well as others with the Nevada State Director. A meeting was scheduled for March 31, 1994 however, it was the Bureau's understanding that the purpose of the meeting was to discuss the overall concerns regarding allotment evaluations, not to negotiate specific appeals. The District was not aware of this letter until April 7, 1994.

8. April 11, 1994. Letter containing Commission for the Preservation of Wild Horses appeal points for the Notice of Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment. The letter indicates that they failed to reach agreement during negotiations with the Nevada State Director which resulted in the filing of their appeal points. Appeal points were not filed within the 30 day appeal period.

Winter 1994 Wild Horse Removal Plan

1. November 24, 1993. The district called the Commission for the Preservation of Wild Horses to solicit their input for the preparation of a draft capture plan and preliminary environmental assessment.
2. December 9, 1993. Instruction Memorandum No. NV-94-032, Issuance of Wild Horse and Burro Decisions under Full Force and Effect, was issued.
3. December 13, 1993. The draft Winter 1994 Wild Horse Removal Plan and preliminary environmental assessment were issued for public comment. The cover letter notified affected interest that it was anticipated that the final removal plan would be issued full force and effect to protect wildlife habitat (i.e. Lahontan cutthroat trout, desert dace) as well as to protect the wild horse population from a potential loss due to winter weather conditions.
4. January 13, 1994. A memorandum outlining the rationale for placing the Winter 1994 Wild Horse Removal Plan in full force and effect was signed by the Winnemucca District Manager and forwarded to the Nevada State Director for concurrence. The acting State Director concurred with the Districts rationale on January 14, 1994.
5. January 13, 1994. Letter from the Commission for the Preservation of Wild Horses which states, "It is our finding that the Notice of Proposed Full Force and Effect Multiple Use Decision for Soldier Meadows Allotment did not have supportive data and rationales for the Black Rock, Calico's and Warm Springs HMA's. Since the draft gather plan and EA is implementing the draft Multiple Use Decision which we protested we therefore protest the gather plan for the same reasons". There were no comments specific to the draft removal plan or preliminary environmental assessment.
6. January 24, 1994. A cover letter with the approved Winter 1994 Wild Horse Removal and Environmental Assessment for the Black Rock Range; East and West, Calico Mountains and Warm Springs Canyon HMA's were issued.
7. February 16, 1994. Commission for the Preservation of Wild Horses appeals the Winter 1994 Wild Horse Removal Plan and Environmental Assessment for the Black Rock Range; East and West, Calico Mountains and Warm Springs Canyon HMA's. The appeal states, "our appeal points will be filed with IBLA, the Solicitor, and your District within 30 days of this notice.

N2 94 13

8. March 15, 1994. Commission for the Preservation of Wild Horses sends a letter to the Interior Board of Land Appeals which states, "I have enclosed a copy of the letter sent to the District and the Regional Solicitor on the Leadville Allotment. Within the 30 days allowed us I am informing you of our intent to file an appeal with you on this decision. Within 30 days from this notice I will be forwarding a copy of our reasons directly to you". The letter goes on to indicate that the Commission is in the process of negotiating this appeal as well as others with the Nevada State Director. A meeting was scheduled for March 31, 1994 however, it was the Bureau's understanding that the purpose of the meeting was to discuss the overall concerns regarding allotment evaluations, not to negotiate specific appeals. The District was not aware of this letter until April 7, 1994.
9. April 11, 1994. Letter containing Commission for the Preservation of Wild Horses appeal points for the Winter 1994 Wild Horse Removal Plan and Environmental Assessment for the Black Rock Range; East and West, Calico Mountains and Warm Springs Canyon HMA's. The letter indicates that they failed to reach agreement during negotiations with the Nevada State Director which resulted in the filing of their appeal points. Appeal points were not filed within the 30 day appeal period.

COMMISSION FOR THE PRESERVATION
OF WILD HORSES APPEAL POINTS

1. Use of Full Force and Effect violates Federal Regulations and prevents interests the right for a petition for stay of action.

Consistent with the Sonoma-Gerlach Management Framework Plan, the Resource Manager issued "Agreement for Implementation and Changes in Available Livestock Forage and Livestock Grazing Use Adjustments for Leadville Allotment" on December 6, 1989. This document set the objectives and schedule for adjustments to livestock and wild horses with the permittee. According to this livestock agreement, an allotment evaluation and manager's decision were scheduled for 1993.

The Final Decision was issued January 19, 1994 at the time when the Winnemucca District had issued contracts and actively gathering wild horses within the Leadville Allotment. The Nevada State Director issued an Instruction Memorandum, November 1993, stating that Full Force and Effect Decisions must allow affected interests the 30 day comment period allowed by law to comment on documents prior to an action taking place unless an emergency situation is established. This would allow for a request for a stay of the action or if necessary an injunction to be filed. The actions taken by the District is a violation of the Directors instructions as well as 43 CFR 4.21 (58 CFR 4939, January 19, 1993) for stay (suspension) of this decision.

Response:

Use of Full Force and Effect does not violate Federal Regulations and does not prevent affected interests the right for a petition for stay of action. Effective August 5, 1992, 43 CFR 4770.3 was amended to provide for placing wild horse and burro removal actions in full force and effect. Washington Office Instruction Memorandum No. 92-369 issued on September 29, 1992 established criteria for the use of full force and effect in removal decisions. Although a removal decision is issued full force and effect, a request for stay by affected interests may be filed under 43 CFR 4.21(b). The appellant is required to provide factual support for the request as outlined in 43 CFR 4.21(b)(1). The District did comply with federal regulations and Bureau policy applicable to removal plans as outlined below.

The draft Winter 1994 Wild Horse Removal Plan and preliminary Environmental Assessment were issued for public comment on December 13, 1993. The cover letter notified affected interests that it was anticipated that the final removal plan would be issued full force and effect to protect wildlife habitat (i.e. Lahontan cutthroat trout, desert dace) as well as to protect the wild horse population from a potential loss due to winter weather conditions. The cover letter also stated that the removal plan would not be implemented until a Final Multiple Use Decision had been issued and is in effect for the Leadville, and Soldier Meadows Allotments. Comments were to be provided to the District by January 13, 1994.

In conformance with Washington Office Instruction Memorandum No. 92-369 and Instruction Memorandum No. NV-94-011, a rationale for placing the Winter 1994 Wild Horse Removal in full force and effect was prepared. The District Manager approved the rationale on January 13, 1994, and the acting State Director concurred with the rationale on January 14, 1994.

N2 94 13

On January 14, 1994 the District received a letter from the COMMISSION FOR THE PRESERVATION OF WILD HORSES dated January 13, 1994. The letter stated that, "It is our finding that the Notice of Proposed Full Force and Effect Multiple Use Decision for Soldier Meadows Allotment did not have supportive data and rationales for the Black Rock, Calico's and Warm Springs HMA's. Since the draft gather plan and EA is implementing the draft Multiple Use Decision which we protested we therefore protest the gather plan for the same reasons". The letter goes on to list the Commission's protest points for the Notice of Proposed Full Force and Effect Decision for the Soldier Meadows Allotment, but does not provide any comments specific to the draft capture plan.

Instruction Memorandum NV-94-032, dated December 9, 1993, states that the following policy will apply to all Nevada wild horse and burro removal decisions implemented under full force and effect. All draft gather plans will be made available to affected interests for a 30 day comment period. Affected interests will be provided a period of time to review all final gather plans issued under full force and effect. The length of time afforded to affected interests will be commensurate on the conditions mandating issuance of the decision under full force and effect. The final removal decision/gather plan will provide for a full 30 day delay from the date of issuance when such a delay will not jeopardize the health of the animals or their habitat. This waiting period may range from the full 30 days to implementation on the date of issuance. When conditions do not allow the full 30 day delay in taking action, those affected interests which have provided comment on the draft plan will be contacted to inform them of the need to expedite the proposed action. In accordance with Instruction Memorandum NV-94-032, the District contacted the Commission for the Preservation of Wild Horses (un-documented phone conversation) to discuss the Winter 1994 Wild Horse Removal Plan prior to issuance of the final capture plan, however they declined to discuss the plan.

The Final Full Force and Effect Multiple Use Decisions for the Leadville and Soldier Meadows Allotments were issued January 19 and January 24, 1994, respectively. On January 24, 1994 the Winter 1994 Wild Horse Removal plan was approved, and a pre-work conference was held with the gather contractor. The removal of wild horses started January 25, 1994 in the Leadville Allotment. Based on the rationale for placing the capture plan in full force and effect, the District implemented the capture plan on the day following issuance.

The Agreement for Implementation and Changes in Available Livestock Forage and Livestock Grazing Use Adjustments for Leadville Allotment only addressed livestock and, did not set objectives or a schedule for adjustments to wild horses.

2. The Final Decision extends the current land use plan without amendment and violates Bureau of Land Management Policy.

The Final Decisions short and long term objectives for riparian habitat were extended beyond the five year schedule of the land use plan to the years 2002 and 2014, respectively.

The Sonoma-Gerlach Resource Area Management Framework Plan III was completed in 1982. Range Management Decision Objective RM - 1 clearly states:

"5. At the end of the third and fifth year of grazing following the grazing decision make necessary adjustments based upon monitoring results and other data then available..."

Bureau of Land Management national Instruction Memorandum No. 86-706 states:

"BLM policy is to issue decisions or enter into agreements within 5 years of publication of a Range Program Summary following completion of a grazing environmental impact statement (EIS)."

The allotment evaluations and manager decisions affecting livestock and wild horse numbers or management are necessary to implement the land use plan in absence of proper activity plans. It is apparent that the Humboldt County Coordinated Resource Management Planning processes and activity planning processes could not meet the land use plan schedule. Therefore, it is reasonable that management actions of the second allotment evaluation and manager's decision concerning the Leadville Allotment must achieve land use plan objectives and decisions. Extending the land use plan objectives is beyond the Resource Manager's discretion and will require amending the land use plan.

Response:

The Winter 1994 Wild Horse Removal Plan does not extend the current land use plan. The 1988 Allotment Evaluation and Livestock Grazing Agreement signed in 1989 met the requirements of the land use plan and Instruction Memorandum 86-706. The current re-evaluation is a continuation of the process. Factual support for this appeal point indicates that the Commission for the Preservation of Wild Horses is appealing the Notice of Final Full Force and Effect Multiple Use Decision - Leadville Allotment, which established the carrying capacity for livestock and wild horses, not the Winter 1994 Removal Plan. Refer to Appeal File No. N2-94-6 - Commission for the Preservation of Wild Horses - Notice of Final Full Force and Effect Decision Leadville Allotment, for the Districts response to this appeal point.

3. Carrying Capacity of the Leadville Allotment must be established and available forage allocated fairly to wild horses.

This Final Decision, Notice of Final Full Force and Effect Multiple Use Decision - Buffalo Hills Allotment - February 9, 1993 and Notice of Full Force and Effect Multiple Use Decision - Soldier Meadows Allotment - January 24, 1994, established the carrying capacity or appropriate management levels for the Calico Mountains Wild Horse Herd Management Area. This appropriate management level is to be in a thriving natural ecological balance with livestock to achieve the allotment specific objectives of the Leadville Allotment. The Final Decision uses different procedure and criteria to determine appropriate management levels from the Buffalo Hills and Soldier Meadows Final Decisions.

Leadville Allotment Final Decision uses 50 percent utilization of key species of riparian habitat a procedure criteria for carrying capacity computations. The Buffalo Hills and Soldier Meadows Final Decisions use 60 percent utilization as the procedure criteria in their carrying capacity computations. This criteria is not consistent with the same ecosystem that directly affects the Calico Wild Horse Herd. Allocation of available forage was proportional to the land use plan in the Leadville and Soldier Meadows Final Decision and unknown in the Buffalo Hills Final Decision. Allocation of forage to horses was arbitrary.

Carrying capacity computations and appropriate management levels were established by procedures that weight averaged use pattern mapping data. Calculations based upon formula Example C of Appendix 2 of the "Rangeland Monitoring Analysis, Interpretation and Evaluation (TR 4400-7)" do not fully consider riparian habitat. Example C assumes rangeland production is not uniform and utilization is uniform. Utilization data

N2 94 13

confirms the conclusions of the Reevaluation that livestock distribution problems are causing heavy and severe use utilization of riparian habitats; thus the Final Decision, and others, are flawed in procedure to establish carrying capacity.

Response:

Carrying capacity for the Leadville Allotment was established by the Final Full Force and Effect Multiple Use Decision - Leadville Allotment on January 19, 1994. Refer to Appeal File No. N2-94-6 - Commission for the Preservation of Wild Horses - Notice of Final Full Force and Effect Decision Leadville Allotment, for the Districts response to this appeal point.

Capture plans do not establish carrying capacity. Capture plans do outline the methods and procedures to be used in the capture and removal of excess wild horses and burros.

4. The Final Decision requires compliance to the National Environmental Protection Act.

Implementation of the "Strategic Plan for the management of Wild Horses and Burros on Public Lands" required the restructuring of the herds based upon adoptability. These actions were not assessed in a programmatic environmental impact statement or specific environmental assessment. Bureau of Land Management Policy must be consistent with applicable laws and regulations.

Allocation of available forage of the allotments carrying capacity require environmental analysis and consultation of affected interests. The Sonoma-Gerlach Final Grazing Environmental Impact Statement did not set the initial stocking levels for wild horses and livestock based upon composition and compatibility with multiple use. Monitoring data must be the basis for adjustment in ungulate populations to meet land use plan objectives.

Response:

The approved Winter 1994 Wild Horse Removal Plan was in compliance with the National Environmental Policy Act. On November 24, 1994 the District contacted the Commission for the Preservation of Wild Horses to solicit input and discuss the preparation of an environmental assessment for the Winter 1994 Wild Horse Removal Plan. The draft capture plan and preliminary environmental assessment were issued December 13, 1993 for public comment. The District did not receive any comments specific to the draft capture plan or preliminary environmental assessment. On January 19, 1994, an environmental assessment which analyzed the effects of a selective removal based on age criteria was approved. The final capture plan and environmental assessment is in accordance with the National Environmental Policy Act, and did analyze the selective removal of horses which occurs through implementation of the Strategic Plan for the Management of Wild Horses on Public Lands.

Factual support for the remainder of the appeal point which addresses allocation of available forage indicates that the Commission for the Preservation of Wild Horses is appealing the Leadville and Soldier Meadows Allotments Final Full Force and Effect Multiple Use Decisions, not the Winter 1994 Wild Horse Removal Plan. Refer to Appeal File No. N2-94-6 -Commission for the Preservation of Wild Horses - Notice of Final Full Force and Effect Decision Leadville Allotment, and Appeal File No. N2-94-12 - Commission for

N2 94 13

the Preservation of Wild Horses - Notice of Final Full Force and
Effect Decision Soldier Meadows Allotment, for the Districts
response to this aspect of the appeal point.

N2 94 13