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OFFICE OF ATTORNEY GENERAL
DEPUTY ATTORNEY GENERAL

NEVADA FIRST CORPORATION
P.O. Box 490, 620 Melarkey Street
Winnemucca, Nevada 89446-0490
(702) 623-2586

The Honorable Harvey C. Sweitzer
Administrative Law Judge
Office of Hearings and Appeals
Hearings Division
6432 Federal Building
Salt Lake City, Utah 84138

January 31, 1995

Re: Nevada First Corporation, et al. v. Bureau of Land
Management

Your Honor:

Nevada First Corporation has submitted to the Bureau of Land Management a final Proposed Management Plan for the Little Owyhee Allotment on January 30, 1995. After several meetings with the Bureau's Area Manager and his Range and Wildlife staff, as far as we know, we have reached agreement on the issues and concerns. Thus, we have written the proposal as such.

My understanding from the area manager is that an additional review by other members of the BLM staff will now be made, then it will be presented to Nevada Department of Wildlife and the Horse Groups for their approval.


I have offered to the Bureau to help make these presentations or answer any questions that might arise. We all feel good about the final proposal and hope to have all parties in agreement shortly.

I have been in contact with Mr. John Payne from the Regional Solicitor's Office and he promised to move the Bureau along as quickly as possible.

If the Bureau moves in a timely manner, I am anticipating that this will all be done before February 13, 1995. However, due to the closeness of the 13th, I don't want the lack of proper review by all parties to undermine the work we have all done.

I therefore request a further continuance of the hearing of this matter of 30 days, to the 13th of March, 1995. If we have not settled by that date, we anticipate that non-settlement will be possible, and the hearing may commence.

Sincerely,


Gary L. Bengochea
Chief Operating Officer
Nevada First Corporation

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IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region
2800 Cottage Way
Room E-2753
Sacramento, California 95825-1890

OFFICE OF ATTORNEY GENERAL
DEPUTY ATTORNEY GENERAL

JAN 30 1995

Honorable Harvey C. Sweitzer
United States Department of the Interior
Office of Hearings and Appeals
Hearings Division
6432 Federal Building
Salt Lake City, Utah 84138

Re: Nevada First Corporation, et al. v. Bureau of Land
Management

Dear Judge Sweitzer:

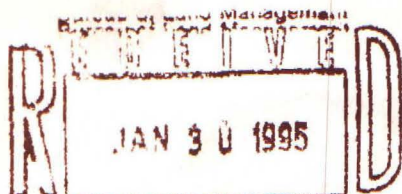
As we discussed in our January 30, 1995, telephone conversation, this letter is to inform you that the Bureau of Land Management is still proceeding with settlement negotiations and is optimistic about the chances of settling. I will notify you by telephone immediately when and if the parties agree to a settlement.

Sincerely,

David Nawi
Regional Solicitor

By: *for* John R. Payne
Assistant Regional Solicitor

(See Distribution next page)



DISTRICT OFFICE
WINNEMUCCA, NEVADA

NEVADA FIRST CORPORATION
P.O. Box 490, 620 Melarkey Street
Winnesucca, Nevada 89446-0490
(702) 623-2586

January 30, 1995

Mr. Pete Christensen, Area Manager
Bureau of Land Management
Paradise-Denio Resource Area
705 East 4th Street
Winnesucca, NV 89445


Dear Pete:

Attached is Nevada First Corporation's Final Proposed Land Management Plan for the Little Owyhee Allotment. This Final Management Plan has all the changes requested by your staff. It should, therefore, satisfy all the concerns and issues of difference by all parties of interest.

When the BLM makes presentation of this proposal to Nevada Department of Wildlife and the Horse Groups I will make myself available to attend these meetings and help or answer any questions that might arise.

I want to thank you and your staff again for the time and efforts put forth to accomplish this proposal.

Sincerely,


Gary L. Bengochea
Nevada First Corporation
Vice President

GLB/ljs

Enclosures

NEVADA FIRST CORPORATION
P.O. Box 490, 620 Melarkey Street
Winnesucca, Nevada 89446-0490
(702) 623-2586

Mr. Pete Christensen, Area Manager
Bureau of Land Management
Paradise-Denio Resource Area
705 East 4th Street
Winnesucca, NV 89445

Re: NFC's Final Proposed Land Management Plan For Little Owyhee

Dear Pete:

This final proposal results from several meetings of Charley Amos, myself and you and your staff. Through consultation, coordination and cooperation between NFC and the BLM, we believe this proposal meets and resolves the problems and concerns we all had. We appreciated the efforts and input from all, thus, allowing us the opportunity to settle the issues of difference.

This proposal will deal strictly with the Livestock part of the decision. If we can come to an agreement on the Livestock portion of the decision, then we believe the Horse and Wildlife parts we can live with. We would hope, however, that the Bureau will continue to keep all wildhorses out of the areas that are not within the HMA areas and also will maintain the horses so that they will not exceed the new adjusted set numbers.

We will remain open to any discussions between ourselves and the interested parties regarding any concerns of wildlife that may deal with private properties.

This proposal reduces use on the late summer pastures of the allotment which contain the riparians by: 1) Reducing summer season of use by 30 days (8/31 instead of 9/30). 2) Creating an additional late summer pasture (Antelope #2), thus reducing the period of use on Capitol Peak Pasture and better regulating the use in this area. 3) Encouraging more spring use, which will again reduce summer season of use. 4) Identifying riparian areas of concern that will be fenced and expressing the need for continued monitoring for on-going problems that may occur. 5) Further reducing the season of use on the public portions of Capitol Peak Pasture by using Calico Pasture, not only to facilitate livestock movements, but to help in relieving riparian use.

LIVESTOCK PROPOSAL

The following Little Owyhee Allotment Management System is:

1. Grazing Preference (AUM's)

a. Total preference	47,463
b. Suspended preference	2,581
c. Non-use for Conservation Purpose	17,082
d. Active preference	27,800
Initial stocking rate	26,578
Voluntary Non-use	1,222

2. Season of Use

Spring Use <i>→ 3500</i>	03/01 to 06/30(*1)
Summer Use	07/01 to 08/31
Winter Use	09/01 to 02/28(*4)

*1) Spring period of use will be 03/01 to 05/31; however, any additional use that can be made in June would reduce the time of use in the Summer Pastures. Actual season of use will be determined by monitoring and flexibility each year. If conditions allow, spring pasture use would be extended into June, allowing for more use, up to 18462 AUM's. This would reduce the summer pasture season of use, putting less demand on the riparian areas, and could reduce the estimated 5116 AUM's that would be used. As much winter use as possible, up to 3000 AUM's, should also be taken. The season of use and AUM numbers will not change; however, livestock numbers could, depending upon water availability and annual fluctuation of the livestock operation.

3. Kind and Class of Livestock - Cattle, Cow/Calf
4. Percent Federal Range - 100%
5. Grazing System

Spring Use (Each Year)

<u>Pasture</u>	<u>Livestock #</u>	<u>Period of Use</u>	<u>AUM's</u>
Fairbanks		03/01 to 05/31	
Twin Valley		03/01 to 05/31	
Lake Creek		03/01 to 05/31	
Total	6104 - 4603		18462

*11,000
3,000*

*1) Spring use of 18462 AUM's will be used throughout all three pastures. Water availability and monitoring will determine the

distribution between these pastures. Spring period of use will be 03/01 to 05/31, however, any additional use that can be made in June would reduce the time of use in the Summer Pastures up to maximum of 6/30. This could reduce the time of use in Antelope #2 and Capitol Peak Pastures, thus, further reducing the demands on riparian areas. Any additional use in the spring pastures over 3500 head would be removed off the allotment when spring grazing use is over.

Summer Use

<u>Year</u>	<u>Pasture</u>	<u>Livestock #</u>	<u>Period of Use</u>	<u>AUM's</u>
1995	Antelope #1	2000	05/15 to 05/31	1118
	Antelope #2	1000	07/01 to 07/15	500
	Rock Springs	1000	06/01 to 07/15	1479
	Calico	(*2)	06/01 to 08/31	1000
	Capitol Peak	1000	07/16 to 08/15 08/16 to 08/31(*3)	1019
1996	Antelope #1	1500	06/01 to 06/30	1479
	Antelope #2	1000	07/01 to 07/15	493
	Rock Springs	2000	05/15 to 05/31	1118
	Capitol Peak	1000	07/16 to 08/15 08/16 to 08/31(*3)	1019
	Calico	(*2)	06/01 to 08/31	1000

The above grazing schedule for summer use would repeat, odd year and even year, after two grazing seasons.

*2) The Calico Pasture will be used with variable numbers and times to facilitate all movements between BLM Pastures and U.S. Forest Allotment.

*3) Cows on the public portion of Capitol Peak Pasture will be removed 8/16 to Calico Pasture. Remaining cows on private lands on the West side of Capitol Peak Pasture will be removed by 8/31. The AUM's in Calico Pasture should not exceed 1000 AUM's until monitoring data identifies a difference.

The period of use 05/15 to 05/31 is to facilitate movements on to the U.S. Forest. These dates are tentative and may vary due to weather and changes in operations; however, the AUM level would not change.

In 1996, 500 head of cattle from Antelope #1 will be removed from the Allotment, by June 30. At this time the balance of 1000 head will be moved into Antelope #2.

Winter Use (Each Year)

<u>Year</u>	<u>Pasture</u>	<u>Livestock #</u>	<u>Period of Use</u>	<u>AUM's</u>
	Lake Creek North	221	09/01 to 02/28	1315
	Twin Valley South	100	11/01 to 02/28	394
	Fairbanks (below rim)	260	10/01 to 02/28	1291

Provided that forage and water are available, any non-use taken in Lake Creek, Twin Valley and Fairbanks pastures in the spring may be activated in the winter.

*4) Winter use will be made in eight service areas of the above three pastures:

1. South Twin Valley Winter-Only. This area will consist of the basin around the Little Humboldt Ranch from the southern pasture boundary north to Four-mile Butte. This will be a winter-use-only area by livestock and the season of use will be 11/01 to 02/28. Off dates may fluctuate depending upon green-up which may occur earlier or later, however, no later than 03/31 in this area.

2. North Lake Creek: This area has three service areas within it:

Area A. The area generally serviced by the Maiden Springs Pipeline.

Area B. The area generally serviced by the Lake Creek Reservoir, the East Fork of the Little Owyhee and Cathcart Cabin.

Area C. The area generally serviced by Willow Reservoir and Wild Bill Spring.

Winter use in this pasture will be such that use in any service area is made not more than two years out of three in a row. For example: Area A and Area B are used in year 1. Area A and Area C are used in year 2. Area B and/or Area C may be used in year 3, but Area A will not be used. The necessity to continue such rest will be determined by monitoring of all areas after winter use and after summer non-use. Livestock will use larger or smaller areas depending upon the weather, natural waters and puddles, and for that reason, the areas above are described as "general" service areas. For this reason, an attempt to delineate boundaries of these general use areas would be an academic exercise. The area in total is approximately 45,000 acres, approximately 1/3 of which is in each general use area.

Due to the location of this winter use area the season of use would be 09/01 to 02/28. Off dates again may fluctuate depending up on green-up occurring earlier or later, however, no later than 03/31 in this area.

This area will also have cattle moved through in the late spring/early summer. This later use will be minimized to the extent possible by NFC in drifting or driving livestock through to the summer pastures.

3. South Fairbanks: This area has four service areas within it:

- Area A. The area generally served by private waters at the Bullhead Ranch, Fairbanks Reservoir and Pete's Reservoir.
- Area B. The area generally served by private waters along the North Fork of the Little Humboldt and Chimney Dam Reservoir.
- Area C. The area generally served by Whiskey Spring and Mud Spring and Cave spring.
- Area D. The area east of the North Fork and generally served by private waters along the North Fork of the Little Humboldt River and private waters along the South Fork of the Little Humboldt River and various reservoirs.

Areas A and B are the main winter areas of use because of water availability, however, they will be used in conjunction with areas C and D. Areas C and D are actually early spring use areas and will accommodate the natural cattle drift once the spring thaw occurs. Winter use in this pasture will be such that use in any service area is made not more than two years out of three in a row. For example: Area A and Area C are used in year 1. Area A and Area D are used in year 2. Area B and Area C or D may be used in year 3, but Area A will not be used. The necessity to continue such rest will be determined by monitoring of all areas after winter use and after summer non-use. Livestock will use larger or smaller areas depending upon the weather, natural waters and puddles, and for that reason, the areas above are described as "general" service areas.

The season of use for this winter use area would be 10/01 to 02/28. Again, off dates may fluctuate depending upon green-up occurring earlier or later, however, no later than 03/31 in this area.

This area will also have cattle moved through in the spring from the Bullhead Ranch to other spring-use areas. This later use will be minimized to the extent possible by NFC in drifting or driving livestock through to the spring-use areas.

The Proposed livestock grazing system is intended to offer the permittee the opportunity to incorporate flexibility in times, dates and numbers into the grazing use in the Little Owyhee Allotment. This flexibility in livestock management offers the permittee the opportunity to demonstrate that the resource objectives can be consistently met.

The success of this proposed grazing plan rests with the commitments by both the permittee and the BLM to conduct the following activities:

The permittee's responsibility is to:

1. Ensure that livestock are not allowed to exceed resource utilization objectives in any pasture during the season of use.
2. Ensure that construction of the identified water projects or riparian enclosure fences is done in a timely fashion once BLM has completed the necessary documentation and clearance work. NFC will provide materials and labor to construct the fences and will be responsible for their maintenance.

The BLMs responsibility is to:

1. Ensure that the necessary compliance and documentation paperwork to construct the identified enclosure fences is completed in a timely fashion.
2. Conduct monitoring, in consultation, coordination and cooperation with NFC, of utilization in all pastures annually to determine livestock, wild horse and wildlife use.
3. Evaluate, in consultation, coordination and cooperation with NFC, all monitoring data to determine attainment or non-attainment of the objectives.

A. Implementation Guidelines

Utilization monitoring will be conducted by the BLM, using the Key Forage Plant Method at key management areas, and other areas as may be selected by BLM and NFC through consultation, at the end of the grazing season and/or growing season to determine overall utilization in the pastures.

If the end of season monitoring indicates that utilization objectives have not been met, BLM and NFC will meet to discuss necessary adjustments in livestock grazing which would be made for the next grazing season. Each pasture will be considered as a separate management unit with individual adjustments being made for each pasture.

For example, if monitoring at the end of the grazing season in the Capitol Peak Pasture, indicates that the utilization objective was not met on wetland/riparian habitats and it was determined that the season of use was the cause for the non-attainment of the objective, the season of use would be adjusted the following year by an appropriate number of days. This adjustment would be made to the removal date, to provide

immediate relief to the natural resources. Twelve days will be adjusted if BLM and NFC cannot mutually agree on what an appropriate number of days should be. If the reduction in season of use in Capitol Peak Pasture did not assist in achievement of the utilization objective, the following year, another appropriate number of days would be deducted from the season of use in this pasture with the same understanding as above for the adjustment to be made. The permittee would have the opportunity to explore alternate solutions to the problem, such as increased riding, private and/or public land water developments, or fencing. The immediate relief measure implemented (reduction in season of use) would stand until monitoring data indicated that the permittee's implemented actions would result in attainment of the utilization objectives.

Using the above example, if 50% utilization was the utilization objective for wetland/riparian vegetation, and the utilization was determined to be heavy, the season of use would be adjusted the following grazing season. The original season of use would be restored in increments equal to the reduction, if the permittees alternate management action along with the reduction in season of use resulted in less than 50% utilization. If after recovery of lost season of use, objectives are again exceeded, an appropriate reduction would again be implemented.

Modifications made to the Capitol Peak Pasture by changing the removal date will not be subject to change with additional spring use. Recovery of reduction in season of use in this pasture (Capitol Peak) would be based only on the demonstration of less than 50% utilization.

In the event of a short-term loss of season of use, decrease in AUMs, or other adverse action, the season of use (etc...) may be restored when alternate management actions or resource improvements are implemented, which will alleviate the problem.

Livestock will not be allowed to re-enter summer pastures already used for the year, except livestock may go into the Calico Pasture up to the maximum authorized use of 1,000 AUM's. Depending upon monitoring and the availability of forage and water, use may be authorized after seed ripe in the winter use areas of Lake Creek Pasture. If this option is not available, then livestock would be removed from the allotment until the commencement of normal winter use.

B. Flexibility in Summer Pastures

Flexibility which becomes available due to extended spring use may occur in the form of changed seasons of use or lengths of use in all summer pastures with the following stipulations:

1. No use beyond 7/27 in Rock Springs, Antelope #1, or Antelope #2 pastures.
2. No use beyond the off date of the Capitol Peak Pasture as presently scheduled or as adjusted.

For example, in an even year, when additional spring use is available to 06/15 (normal scheduled off date 05/31). The permittee may use additional 15 days in any way subject to the above stipulations.

For instance:

Rock Springs season of use may be adjusted from 06/01 to 06/30 to 06/16 to 07/15 (or up to 07/27 as long as utilization after the normal 29 day use period is less than 50%).

Antelope #2 season of use would be adjusted from 07/01 to 07/15 to 07/16 to 07/27 regardless of schedule (07/27 would not be exceeded).

Capitol Peak would recognize a reduction in the duration of use by up to twelve (12) days depending on how the permittee chooses to use additional days, and the ability of the forage and water in Rock Springs and Antelope #2 to sustain additional use. The use period would become 07/27 to the scheduled off date (08/31) or whatever the ending date had been adjusted to.

Note: Stipulation #1 above, for the Rock Springs, Antelope #1 and Antelope #2 pastures may change if monitoring shows utilization objectives are not met when use extends to 07/27.

C. Mitigations Using Spring Pastures

Additional spring use may be used to mitigate reductions in season of use in summer pastures other than Capitol Peak.

For example, if ten days were removed from Antelope #2 pasture the previous year as a result of non-attainment of the objectives. If then the following year, additional spring use becomes available in the amount of ten days. The following is potentially how those ten days could be used to mitigate the loss in grazing time in Antelope #2 pasture.

The adjusted pasture rotation would then become:

Spring use would end 06/10 (normally ends 05/31). Rock Springs use would be 06/11 to 07/10. Antelope #2 use would be 07/11 to 07/15 (previously fifteen days 07/01 to 07/15). Capitol Peak use would then be 07/16 to scheduled off date (08/31) or whatever off date had been adjusted to.

No net loss in total season of use would be realized from a loss in grazing privileges in the Antelope #2 pasture unless off date for Capitol Peak Pasture had been adjusted.

D. Considerations

It may be difficult to ensure attainment of the utilization objectives in all areas. If utilization monitoring of wetland/riparian vegetation in a pasture indicates that the utilization objective has been exceeded by punching of soil, loss of vegetative cover, open soil areas on moist or wet meadows, etc..., these areas would be identified and the permittee would take the responsibility for fencing or doing additional appropriate work to ensure that use in these areas is adjusted to help meet overall objectives. In the interim, when problem areas are identified and until fenced, NFC would do whatever possible to minimize further impacts.

This allowance would not be used as an avenue to fence every wetland/riparian habitat over time. Within the first two years of implementation, it is expected that any problem areas would have been identified. If additional areas continue to arise in future years, this would indicate that a greater problem exists in the implementation of the grazing system and other actions would be taken. The BLM, in consultation, cooperation, and coordination with NFC, will monitor such areas every year.

RATIONALE:

Water and access to the riparian areas are the limiting factors on this allotment, not the vegetative resources. Using monitoring data along with having flexibility, times, dates and numbers will vary year to year.

At the present time the only sources of natural permanently available water in the Spring Pastures are the South Fork, Milligan Creek, North Fork, Wild Bill's Spring and a few springs in the Fairbanks Pasture. There are four wells that are private and a pipeline system that originates from a private spring that are also available for water consumption when livestock are in the area. However, there are numerous reservoirs and other sources from private property which allow for more early spring use. The March 1st turnout and the winter turnouts allow for better management and distribution of the livestock because of availability of water and cooler weather.

The selected management action will eliminate the three pasture rest/rotation spring grazing system. Each pasture will be used every year with less numbers to allow for better distribution. Use will be based on available water in these pastures with the stipulation that livestock will not be moved into a specific area

of use in the spring (03/01 to 06/30) more than two consecutive years. When this allotment receives substantial moisture to fill the numerous reservoirs and to recharge the existing springs and creeks, use will be made on these water sources and the existing wells and pipelines will be rested. When possible, more use in the Spring pastures should be encouraged to further reduce use in the Summer pastures. Weather and climatic conditions will determine this.

This management action will allow the flexibility to better utilize and preserve the resource as prescribed by the October 20 and 21, 1987 Technical Review Team (TRT). Simply stating, due to the immense size of these spring pastures, we can rest within them.

The proposed numbers of head per pasture are the upper limits depending solely on water availability. Our intention is to run 1000 head on a year round basis and an additional 2500 head during the spring season to accommodate our operations. Any additional use in the spring pastures over 3500 head would be removed off the allotment when spring grazing is over.

The AUMs in voluntary non-use can be activated when new water developments are installed and/or when climatic conditions allow for run-off to fill the existing reservoirs. NFC has several sites identified for developments and will proceed with them as soon as BLM has done the environmental and archeological studies (Corral Lakes Reservoir - Evans Lake Reservoir - Rock Creek Reservoir - etc.).

The summer pastures are the pastures that contain the riparian areas that are of concern and have had the greatest conflict.

Nevada First Corporation is proposing to divide the existing Antelope Pasture into two separate pastures. Above Little Owyhee Cow Camp will be known as Antelope #2 which will be a late summer pasture. The South Antelope Pasture will be known as Antelope #1 and will remain early summer use.

Antelope #2 contains the Federal portion of the East Fork of the Little Owyhee River. It also has the same elevation as the Capitol Peak Pasture. By doing this we increase the size of our late summer pastures, thereby reducing the time and utilization demand on major riparian areas in the Little Owyhee Allotment.

We are proposing fencing to accomplish the pasture split; however, until fencing can be accomplished we would follow an interim system. During the interim system, distribution and keeping the cattle out of the riparian areas would be accomplished by riding and running fewer numbers. If monitoring shows that the pasture division fence is not necessary then livestock management would continue as is. The Federal portions of

This pasture sequence between Antelope #2 and Capitol Peak, and Antelope #1 and Rock Springs, is set up to accommodate our movement onto the U.S. Forest Allotment.

With establishment of this new pasture (Antelope #2) and allowing more flexibility in the spring pastures, demand on Capitol as a late summer pasture would be reduced. With BLM and NFC actively monitoring and working cooperatively the desired goals for the resource can be achieved and Nevada First Corporation can continue to run a viable operation. Times, dates and numbers NFC proposed will differ by what monitoring and conditions dictate. Flexibility between NFC and BLM will play an important part in the success of this plan.

Winter use will consist of three pastures: North Lake Creek, South Twin Valley and Fairbanks below the rim. The utilization will be taken when plants are dormant; thus the vegetative resources will not be adversely affected. Water is always ample and not a limiting factor for the winter use, as it is in the other seasons of use. If monitoring shows forage is available, then more winter use should be encouraged. Area's will not be used for more than two consecutive years on the winter pastures. This will be accomplished by the cattle being moved within the