



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
4160 (NV022.44)

September 14, 2000

CERTIFIED MAIL NO. 7099 3220 0009 6610 7665
RETURN RECEIPT REQUESTED

FINAL MULTIPLE USE DECISION
BOTTLE CREEK ALLOTMENT

Dear Mr. Delong:

The Record of Decision for the Paradise-Denio Environmental Impact Statement was issued on September 18, 1981. The Paradise-Denio Management Framework Plan was issued on July 9, 1982. These documents guide management of the public lands within the Paradise-Denio Resource Area and more specifically within the Bottle Creek 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 and standards for rangeland health for the Bottle Creek Allotment and to determine if management adjustments may be necessary to meet the management objectives and standards.

On June 23, 2000, the Final Allotment Evaluation and Proposed Multiple Use Decision were issued. A protest was received from Intermountain Range Consultants who represents Delong Ranches Inc., Mel Hummel, and Wilson Ranches.

The following are the multiple use management objectives and standards for rangeland health under which management of the Bottle Creek Allotment will be monitored and evaluated.

A. Short Term Objectives

1. The objective for utilization of key streambank riparian plant species is 30% on Big Creek (POTRT, PRVI POA, CAREX, SALIX, and JUNCUS) and 50% on Bottle Creek and Burro Bill Creek (SALIX, POTRT, PRVI, POA, CAREX, and JUNCUS).

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2. The objective for utilization of key plant species in wetland riparian habitats is 50% (SALIX, POA, and JUNCUS).
3. The objective for utilization of key plant species in upland habitats is 50% (POSE, SIHY, CELE3, AMAL2, STTH2, CEANO, and AGSP).

B. Long Term Objectives

1. Manage, maintain, and improve public rangeland conditions to provide forage on a sustained yield basis for big game, with reasonable numbers of 70 AUMs for mule deer, 12 AUMs for pronghorn and 71 AUMs for bighorn sheep by:
 - a. Improve to and maintain 19,205 acres in good or excellent mule deer habitat condition within the ecological potential of the rangeland habitat.
 - b. Improve to and maintain 38,898 acres in fair to good pronghorn habitat condition within the ecological potential of the rangeland habitat.
 - c. Improve to and maintain 12,536 acres in good to excellent bighorn sheep habitat condition within the ecological potential of the rangeland habitat.
2. Manage, maintain, and improve public rangeland conditions to provide forage on a sustained yield basis for livestock, with an initial stocking level of 3434 AUMs.
3. Improve range condition from poor to fair on 120,298 acres and from fair to good on 9,684 acres.
4. Maintain and improve free roaming behavior of wild horses by protecting and enhancing their home ranges.
5. Improve to and/or maintain 8 acres of ceanothus habitat types by allowing for successful reproduction and recruitment within the stand.
6. Improve to and/or maintain 21 acres of mahogany habitat types by allowing for successful reproduction and recruitment within the stand.

7. Improve to and/or maintain 183 acres of aspen (to be considered a "critical" management species) habitat types by allowing for successful reproduction and good recruitment within the stand.
8. Improve or maintain 162 acres of riparian and meadow habitat types in good condition by allowing sufficient species diversity, reproduction and recruitment for maintenance and improvement of herbaceous and woody riparian species.
9. Improve or maintain state water quality criteria of Bottle Creek from its point of origin to the first diversion to the Nevada Class A water standards.
10. Improve the stream habitat condition from 59% on Big Creek to an overall optimum of 60% or above and maintain stream habitat condition of 70% or above (excellent condition rating) on Bottle Creek.
 - a. Streambank cover 60% or above.
 - b. Streambank stability 60% or above.
 - c. Maximum summer water temperatures below 68°F.
11. Improve or maintain suitable sage grouse strutting, nesting, brood rearing, and/or wintering habitat in good condition within the ecological potential of the rangeland habitat.

The following parameters have been found to constitute good conditions for sage grouse use:

Strutting Habitat

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

Nesting Habitat

1. Sagebrush between 7 and 31 inches in height (optimum = 16 inches)
2. Sagebrush canopy cover of 15-30% (optimum = 27%)
3. 25-35% basal ground cover
4. Average understory height of 6-7 inches (grasses)

Brood Rearing Habitat

Early Season

1. Sagebrush canopy cover of 10-21% (optimum = 14%)

Late Season

1. Meadow areas that are in functioning condition
2. Residual meadow vegetation of no less than 3-6 inches in height

Winter Habitat

1. Greater than 20% sagebrush canopy cover

C. Standards for Rangeland Health

1. Soil processes will be appropriate to soil types, climate and land form.
2. Riparian/wetland systems are in proper functioning condition.
3. Water quality criteria in Nevada or California State Law shall be achieved or maintained.
4. Populations and communities of native plant species and habitats for native animal species are healthy, productive and diverse.
5. Habitat conditions meet the life cycle requirements of special status species.

D. Livestock Management Decision

I have reconsidered my proposed decision in light of the points of protest submitted by Bob Schweigert on behalf of DeLong Ranches Inc., Mel Hummel, and Wilson Ranches. Based upon that reconsideration and evaluation of monitoring data for the Bottle Creek Allotment, consultation with permittees, and other interested publics, and recommendations from my staff, it is my final decision for livestock to change the management:

DELONG RANCHES, INC.

From:

- 1 Grazing AUMs
 - a. Permitted Use 227 AUMs
 - b. Historical Suspended 117 AUMs
 - c. Total 344 AUMs

2 Season of Use 9/1-11/8

3 Grazing System

<u>Animals</u>	<u>Dates</u>	<u>AUMs</u>
100 C	9/1-11/8	227

To:

- 1 Grazing AUMs
 - d. Permitted Use 227 AUMs
 - e. Historical Suspended 117 AUMs
 - f. Total 344 AUMs

2 Season of Use 9/1-11/8

3 Grazing System

<u>Animals</u>	<u>Dates</u>	<u>AUMs</u>	<u>Use Area</u>
100 C	9/1-11/8	227	Presnel Use Area.

The terms and conditions must be in conformance with the Standards and Guidelines for the Sierra Front - Northwestern Great Basin Area Resource Advisory Council, approved by the Secretary of Interior on February 12, 1997.

Terms and Conditions for Delong Ranches, Inc.

1. All schedules, flexibilities, and terms and conditions addressed in the allotment management plan dated 10/26/70 are suspended.
2. Pursuant 43 CFR 10.4(g) the holder of this authorization must notify the authorized officer by telephone, with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 (CFR 10.2). Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the immediate vicinity of the discovery and protect it from your activities for 30 days or until notified to proceed by the authorized officer.

3. The authorized officer reserves the authority to modify annual grazing authorizations as long as the modification is consistent with meeting management objectives and Standards for Rangeland Health, and remains in the designated general season of use.
4. Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of springs, streams, meadows, riparian habitats, or aspen stands.
5. The permittee is required to perform normal maintenance on the range improvements as per their signed cooperative agreements/section 4 permits prior to turning out in a pasture or use area scheduled for livestock use.
6. The permittee's certified actual report, by pasture/use area, is due 15 days after the end of the authorized grazing period.
7. Bottle Creek Allotment is a common use allotment. This grazing permit and annual authorizations define where each permittee is authorized to graze within the allotment. Authorization to graze a use area of Bottle Creek Allotment does not establish future priority use of that portion of the allotment for any of the permittees.

Rationale:

The permitted use and season of use will be maintained at 100 C, 227 AUMs and 09/01 to 11/08. Monitoring data indicated short term utilization objectives and standards for rangeland health will be met at these stocking levels and season of use.

The scheduling of grazing by use area, and subsequent report of actual use by use area, will allow more accurate assessment of management practices. The seven use areas for the Bottle Creek Allotment are identified as follows: Alexander, Upper, Little South Fork, Common, Bottle Creek, Presnel, and North (see Map). The establishment of these use areas will improve livestock distribution, more effectively manage use, and/or improve/maintain vegetation condition. The new use areas and initial stocking levels by use area are necessary in order to meet the multiple use objectives and standards for rangeland health for the allotment.

The use areas are general areas of use and drift is expected. Due to lack of physical barriers, some livestock drift is expected between Alexander and Common Use Areas. Drift among other use areas is expected to be minimal.

HOENCK

From:

- 1 Grazing AUMs
 - a Permitted Use 300 AUMs
 - b Historical Suspended 103 AUMs
 - c Total 403 AUMs

- 2 Season of Use 4/1-6/30 & 9/1-12/1

- 3 Grazing System

<u>Animals</u>	<u>Dates</u>	<u>AUMs</u>
70 C	4/1-6/30	209
30C	9/1-12/1	91

To:

- 1 Grazing AUMs
 - a Permitted Use 300 AUMs
 - b Historical Suspended 103 AUMs
 - c Total 403 AUMs

- 2 Season of Use 4/1-6/30

- 3 Grazing System

<u>Animals</u>	<u>Dates</u>	<u>AUMs</u>	<u>Use Area</u>
100 C	4/1-6/30	300	Common Use Area

The terms and conditions must be in conformance with the Standards and Guidelines for the Sierra Front - Northwestern Great Basin Area Resource Advisory Council, approved by the Secretary of Interior on February 12, 1997.

Terms and Conditions for Hoenck

- 1. All schedules, flexibilities, and terms and conditions addressed in the allotment management plan dated 10/26/70 are suspended.

- 2. Pursuant 43 CFR 10.4(g) the holder of this authorization must notify the authorized officer by telephone, with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or

objects of cultural patrimony (as defined at 43 (CFR 10.2). Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the immediate vicinity of the discovery and protect it from your activities for 30 days or until notified to proceed by the authorized officer.

3. The authorized officer reserves the authority to modify annual grazing authorizations as long as the modification is consistent with meeting management objectives and Standards for Rangeland Health, and remains in the designated general season of use.
4. Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of springs, streams, meadows, riparian habitats, or aspen stands.
5. The permittee is required to perform normal maintenance on the range improvements as per their signed cooperative agreements/section 4 permits prior to turning out in a pasture or use area scheduled for livestock use.
6. The permittee's certified actual report, by pasture/use area, is due 15 days after the end of the authorized grazing period.
7. Bottle Creek Allotment is a common use allotment. This grazing permit and annual authorizations define where each permittee is authorized to graze within the allotment. Authorization to graze a use area of Bottle Creek Allotment does not establish future priority use of that portion of the allotment for any of the permittees.

Rationale:

Monitoring data and desired stocking rate calculations indicates that short-term utilization objectives and standards for rangeland health will be met at this stocking level and season of use. Monitoring data collected in 1995 and 1996 indicates that short term utilization objectives are being met for both riparian and upland habitats during the spring, early summer and fall months in the flats in the vicinity of Alexander Ranch and south of the Bottle Creek along both sides of the Bottle Creek Road. Standards and Guidelines and objectives for both uplands and riparian areas are being met in this area.

The scheduling of grazing by use area, and subsequent report of actual use by use area, will allow more accurate assessment of management practices. The seven use areas for the Bottle Creek Allotment are identified as follows: Alexander, Upper, Little South Fork, Common, Bottle Creek,

Presnel, and North (see Map). The establishment of these use areas will improve livestock distribution, more effectively manage use, and/or improve/maintain vegetation condition. The new use areas and initial stocking levels by use area are necessary in order to meet the multiple use objectives and standards for rangeland health for the allotment.

The use areas are general areas of use and drift is expected. Due to lack of physical barriers, some livestock drift is expected between Alexander and Common Use Areas. Drift among other use areas is expected to be minimal.

HUMMEL

From:

1	Grazing AUMs			
	a	Permitted Use	1,136 AUMs	
	b	Historical Suspended	0 AUMs	
	c	Total	1,136 AUMs	
2	Season of Use	4/1-12/30		
3	Grazing System			
		<u>Animals</u>	<u>Dates</u>	<u>AUMs</u>
		75 C	4/1-5/31	150
		160C	6/1-11/30	963
		23 C	12/1-12/30	23

To:

1	Grazing AUMs				
	a	Permitted Use	1,136 AUMs		
	b	Historical Suspended	0 AUMs		
	c	Total	1,136 AUMs		
2	Season of Use	6/1-8/15 & 11/1-1/31			
3	Grazing System				
		<u>Animals</u>	<u>Dates</u>	<u>AUMs</u>	<u>Use Area</u>
		125 C	6/1-7/31	251	Upper
		50 C	6/1-6/14	23	Alexander
		50 C	6/15-7/15	51	Little S. Fork
		50 C	7/16-7/31	26	Alexander
		175C	8/1-8/15	86	Alexander
		231 C	11/1-1/31	699	Common

The Terms and Conditions must be in conformance with the Standards and Guidelines for the Sierra Front - Northwestern Great Basin Area Resource Advisory Council, approved by the Secretary of Interior on February 12, 1997.

Terms and Conditions for Hummel

1. All schedules, flexibilities, and terms and conditions addressed in the allotment management plan dated 10/26/70 are suspended.
2. Pursuant 43 CFR 10.4(g) the holder of this authorization must notify the authorized officer by telephone, with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 (CFR 10.2). Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the immediate vicinity of the discovery and protect it from your activities for 30 days or until notified to proceed by the authorized officer.
3. The authorized officer reserves the authority to modify annual grazing authorizations as long as the modification is consistent with meeting management objectives and Standards for Rangeland Health, and remains in the designated general season of use.
4. Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of springs, streams, meadows, riparian habitats, or aspen stands.
5. The permittee is required to perform normal maintenance on the range improvements as per their signed cooperative agreements/section 4 permits prior to turning out in a pasture or use area scheduled for livestock use.
6. The permittee's certified actual report, by pasture/use area, is due 15 days after the end of the authorized grazing period.
7. Upper Use Area includes the portion of Big Creek above private land located in Section 11, T39N, R32E; as well as the headwater areas of Big Creek and the Little South Fork of Bottle Creek.
8. Livestock use of the Upper Use Area and Little South Fork Use Area is not authorized outside of the scheduled dates or above the scheduled numbers. The permittee has the flexibility of later turn out, early removal and/or reduced numbers of livestock in those areas. That flexibility allows the permittee to place those cattle that would otherwise be on the Upper Use Area or Little South Fork Use Area, onto the Alexander Use Area, provided

multiple use objectives and Standards for Rangeland Health will be met.

9. Bottle Creek Allotment is a common use allotment. This grazing permit and annual authorizations define where each permittee is authorized to graze within the allotment. Authorization to graze a use area of Bottle Creek Allotment does not establish future priority use of that portion of the allotment for any of the permittees.

Rationale:

Allotment specific objectives and riparian standards are not being met in the summer use area under the present grazing system due to lack of livestock control and hot season grazing occurring in meadows and creeks. Under present conditions, livestock are following the "green" up the mountain as temperatures warm up and are concentrating in areas such as the Big Creek drainage and the meadows which form the headwaters of Big Creek and Little South Fork of Bottle Creek. Analysis of stream survey data indicates long term objectives for stream habitat conditions are not being met in the upper reaches and headwaters of Big Creek and are being met in the lower and mid reaches of the creek. This is also reflected in stream functionality data gathered. The lower and mid reaches of the creek are in proper functioning condition while the upper portion and the headwater meadows are functioning at risk with a downward trend. The Little South Fork of Bottle Creek was also documented as functioning at risk with a downward trend.

The scheduling of grazing by use area, and subsequent actual use by use area, will allow more accurate assessment of management practices. The seven use areas for the Bottle Creek Allotment are identified as follows: Alexander, Upper, Little South Fork, Common, Bottle Creek, Presnel, and North(see Map). The establishment of these use areas will improve livestock distribution, more effectively manage use, and/or improve/maintain vegetation condition. The new use areas and initial stocking levels by use area are necessary in order to meet the multiple use objectives and standards for rangeland health for the allotment.

Livestock use would not be permitted in the upper reaches of Big Creek, nor in the headwater areas of Big Creek and the Big South Fork of Bottle Creek, after July 31. Nor would use be permitted after July 15 in the Little South Fork of Bottle Creek, which is at a lower elevation. After these dates, drying of upland grasses and higher temperatures result in the tendency for cattle to concentrate in riparian areas and also in increased use of woody

species. Removal of livestock by those dates is expected to result in improved livestock distribution and allow regrowth of herbaceous vegetation where adequate soil moisture is available. Because small numbers of cattle can result in heavy utilization of riparian vegetation during the hot season, it is important that all cattle be removed by those dates. The permittee is also responsible for ensuring that cattle do not drift into these areas outside the scheduled period of use.

The grazing schedule is expected to allow utilization objectives to be met and allow progress toward meeting long term allotment specific objectives and standards. The grazing schedule allows the permittee the flexibility of further reducing the period of use and numbers of cattle in the at risk riparian areas, while maintaining the stability of his grazing operation. The permittee intends to control livestock by a combination of herding and of fence construction on private land on Big Creek.

Further fence construction to facilitate livestock management will be evaluated through the project planning process.

Under this grazing schedule, permitted use is reduced 197 AUMs the spring/summer, and increased 197 AUMs in the fall/winter. Water development to facilitate the shift in grazing will be evaluated through the project planning process.

The use areas are general areas of use and drift is expected. Due to lack of physical barriers, some livestock drift is expected between Alexander and Common Use Areas. Drift among other use areas is expected to be minimal.

WILSON

From:

1	Grazing AUMs	
	a Permitted Use	1,771 AUMs
	b Historical Suspended	945 AUMs
	c Total	2,716 AUMs
2	Season of Use-	4/1-12/15

3	Grazing System		
	<u>Animals</u>	<u>Dates</u>	<u>AUMs</u>
	208 C	4/1-12/15	1,771

To:

1	Grazing AUMs		
a	Permitted Use		1,771 AUMs
b	Historical Suspended		945 AUMs
c	Total		2,716 AUMs

2 Season of Use- 4/1-12/15

3	Grazing System			
	<u>Animals</u>	<u>Dates</u>	<u>AUMs</u>	<u>Use Area</u>
	208 C	4/1-6/14	513	North
	208 C	6/15-7/15	212	Bottle Creek
	208 C	7/16-12/15	1,046	North

The terms and conditions must be in conformance with the Standards and Guidelines for the Sierra Front - Northwestern Great Basin Area Resource Advisory Council, approved by the Secretary of Interior on February 12, 1997.

Terms and Conditions for Wilson

1. All schedules, flexibilities, and terms and conditions addressed in the allotment management plan dated 10/26/70 are suspended.
2. Pursuant 43 CFR 10.4(g) the holder of this authorization must notify the authorized officer by telephone, with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 (CFR 10.2). Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the immediate vicinity of the discovery and protect it from your activities for 30 days or until notified to proceed by the authorized officer.
3. The authorized officer reserves the authority to modify annual grazing authorizations as long as the modification is consistent with meeting management objectives and Standards for Rangeland Health, and remains in the designated general season of use.
4. Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of springs, streams, meadows, riparian habitats, or aspen stands.

5. The permittee is required to perform normal maintenance on the range improvements as per their signed cooperative agreements/section 4 permits prior to turning out in a pasture or use area scheduled for livestock use.
6. The permittee's certified actual report, by pasture/use area, is due 15 days after the end of the authorized grazing period.
7. Grazing authorized in Bottle Creek Use Area does not include use in the Little South Fork of Bottle Creek or at the headwaters of the Big South Fork of Bottle Creek.
8. Livestock use in Bottle Creek Use Area is not authorized outside of the scheduled dates or above the scheduled numbers. The permittee has the flexibility of later turn out, early removal and/or reduced numbers of livestock in Bottle Creek Use Area. That flexibility allows the permittee to place those cattle that would otherwise be on Bottle Creek Use Area, onto the North Use Area, provided multiple use objectives will be met.
9. Bottle Creek Allotment is a common use allotment. This grazing permit and annual authorizations define where each permittee is authorized to graze within the allotment. Authorization to graze a use area of Bottle Creek Allotment does not establish future priority use of that portion of the allotment for any of the permittees.

Rationale:

Stream survey and functionality data indicates the long term objectives, along with standards, for stream and riparian habitats are not being met in the upper reaches of Bottle Creek and are being met in the lower to mid reaches above the private lands. This is due to the upper reaches and Little South Fork of Bottle Creek, being accessible to livestock during the hot season while the lower portions of the creek are less accessible due to the steepness of the canyon and woody riparian species such as cottonwoods and willows protecting the creek. These observations from the stream surveys are also reflected in stream functionality data gathered. The upper reaches of Bottle Creek and Big South Fork of Bottle Creek were found to be non-functioning to functioning at risk with a static to downward trend while the lower and mid reaches of the creek were found to be at proper functioning condition.

The scheduling of grazing by use area, and subsequent report of actual use

by use area, will allow more accurate assessment of management practices. The seven use areas for the Bottle Creek Allotment are identified as follows: Alexander, Upper, Little South Fork, Common, Bottle Creek, Presnel, and North (see Map). The establishment of these use areas will improve livestock distribution, more effectively manage use, and/or improve/maintain vegetation condition. The new use areas and initial stocking levels by use area are necessary in order to meet the multiple use objectives and standards for rangeland health for the allotment

Livestock use would not be permitted in Bottle Creek, nor in the Big South Fork of Bottle Creek, after July 15. After these dates, drying of upland grasses and higher temperatures result in the tendency for cattle to concentrate in riparian areas and also in increased use of woody species. Removal of livestock by those dates is expected to result in improved livestock distribution and allow regrowth of herbaceous vegetation where adequate soil moisture is available. Because even small numbers of cattle can result in heavy utilization of riparian vegetation during the hot season, it is important that all cattle be removed by those dates. The permittee is also responsible for ensuring that cattle do not drift into these areas outside the scheduled period of use.

The grazing schedule is expected to allow utilization objectives to be met and allow progress toward meeting long term allotment specific objectives and standards. The grazing schedule allows the permittee the flexibility of further reducing the period of use and numbers of cattle in the at risk riparian areas, while maintaining the stability of his grazing operation. Preventing cattle from going into Bottle Creek before June 15 would be facilitated by a drift fence north of Bottle Creek.

The use areas are general areas of use and drift is expected. Due to lack of physical barriers, some livestock drift is expected between Alexander and Common Use Areas. Drift among other use areas is expected to be minimal.

E. Range Improvement Projects:

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

Two raised bog areas occur in T. 39 N., R. 33 E., Section 7, NE and T. 39 N., R. 33 E., Section 6, SE. The bog in section 7 has already has been

fenced and a water trough installed to protect the site from livestock grazing. The present fencing and water troughs may need to be replaced. Fence the raised bog in Section 6 and install a pipeline and water either from the bog or one of the springs that is within several hundred feet of the bog.

Develop Lone Tree Spring in T.40N., R.35E., Sec 19 and install a well in the vicinity of the old AMEX wetlands.

Develop Mine Spring in T.40N., R.33E., Sec 30 and install a well between the Bottle Creek Ranches and the Hoenck's Ranch in the vicinity of the Bottle Creek road.

Construct enclosure fence and/or riparian pasture around the upper portion of Big Creek to protect these habitats.

Construct a drift fence in Section 14, T40N, R32E, to facilitate preventing cattle from going into Bottle Creek early.

Construct drift fences in Section 25, T40N, R32E to facilitate management of livestock use of Little South Fork.

Construct drift fences in Section 11, T39N, R32E to facilitate management of livestock use of Boulder Creek and Big Creek.

Rationale:

These two raised bogs are unique botanical and geological features estimated to be up to 10,000 years old. Both raised bogs have been noted as being unique and in need of protection as noted from the Jackson Mountains Wildlife Inventory and Analysis written in 1973.

Developing springs or wells on the flats will aid in spreading out livestock in these areas and providing additional waters for livestock use after 07/31. The well in the vicinity of the old AMEX wetlands will allow the Wilsons livestock to graze this area after 10/30 and take pressure off the Halburg Mine area where wild horses are located.

The construction of an enclosure fence around the upper portion of Big Creek will better manage livestock use on the creek and help ensure obtainment of utilization objectives for Big Creek.

Construction of the drift fences would assist in controlling the number of livestock and period of use in riparian areas. The amount of herding would be reduced.

F. Grazing Permits

A ten year grazing permit will be issued to Delong Ranches, Inc., Robert and Susan Hoenck, Mel Hummel, and Harry and Joy Wilson upon completion of the decision process. The permit will reflect this decision and all other grazing permits will become null and void.

Authority

The authority for this decision is contained in Title 43 of the Code of Federal Regulations; pertinent citations are below:

- 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 permitted use specified in a grazing permit or grazing lease and shall make changes in the permitted use as needed to manage, maintain, or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.
- 4130.3-1(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 of the allotment.

4130.3-2 “The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands.

4130.3-3 “Following consultation, cooperation, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active grazing use or related management practices are not meeting the land use plan, allotment management objectives, or is not in conformance with the provisions of subpart 4180. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

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 by following the requirements set out in 4.470 of this title. As stated in that part, the appeal must be filed within 30 days after receipt of the decision or within 30 days after the date the proposed decision becomes final as provided in 4160.3(a). Appeals and petitions for stay of the decision shall be filled at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals.”

4180.1 “The authorized officer shall ;take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as

practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist:

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restoted or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.

APPEAL PROCEDURES:

Any applicant, permittee, lessee, or other interested public whose interest is adversely affected by the final livestock decision may file an appeal, and may petition for stay of the decision pending final determination on appeal under Sec 43 CFR 4160.4 and 4.470. The appeal and petition for stay must be filed at the following address:

Colin P. Christensen
AFM Renewable Resources
Bureau of Land Management
Winnemucca Field Office
5100 E. Winnemucca Blvd.
Winnemucca, NV 89445

The appeal and petition for stay must be filed within thirty (30) days following receipt of the final decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

Should you wish to file a motion for stay, the appellant shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellants 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.

As noted above the petition for stay must be filed in the office of the authorized officer.

G. Wild Horse Management Decision

In accordance with 43 CFR Subpart 4700, it has been determined through the evaluation of monitoring data that a thriving natural ecological balance will be obtained by providing wild horses 240 AUM's annually for that portion of the Jackson Mountains HMA within the Bottle Creek Allotment. This decision will result in maintaining the present population at 20 wild horses. They will be managed at a range of 12 to 20 wild horses (144 to 240 AUMs).

Excess wild horses within the Bottle Creek Allotment will be removed periodically to maintain the population within the AML range outlined above or until the AML is modified.

With the establishment of the AML for Bottle Creek Allotment, the wild horse population within the northern portion of the Jackson Mountains HMA will be managed in a range of 60 to 100 horses.

Rationale:

Based on monitoring during 1995 and 1996, which has not identified any significant problems associated with wild horse use of the range, the AML for the Bottle Creek Allotment is established at 20 wild horses. This is based on the average number of horses, which is 19 horses, within the Bottle Creek Allotment from May 1995 to April 1996 by month.

The Bottle Creek Allotment AML will be 240 AUMs of the 1200 AUMs allocated to wild horses in the northern portion of the Jackson Mountain HMA. It is recognized that by itself, 20 wild horses in the Bottle Creek Allotment is not a genetically viable population. However, as indicated, these horses interact with horses in other allotments and this interaction should assure genetic viability. The wild horses within Bottle Creek Allotment will be managed in conjunction with horses in Deer Creek, Happy Creek and Wilder Quinn Allotments. AML's (Appropriate Management Levels) have been established in Happy Creek (60 head), Wilder-Quinn (10 head) and Deer Creek (10 Head) Allotments. The sum total of the AML of all allotments in the northern portion of the Jackson Mt. HMA will be the management level. Management will not be fragmented by allotment. When population levels exceed the AML within the total herd area, the horses will be gathered regardless of the allotment they may be inhabiting at the time of the gather.

The population range of 60 -100 horses for the northern portion of the Jackson Mountains HMA is based on AML's established through final multiple use decisions for the Happy Creek, Deer Creek, and Wilder-Quinn Allotments.

Compliance and Monitoring

Population adjustments will occur when data indicates the population is not consistent with the established AML. The AML will remain unchanged until data indicates a change is necessary to reach allotment and HMA objectives including maintenance of a thriving natural ecological balance and multiple-use relationship in the herd area.

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:

- 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.
- 4710.3.1 Herd Management Areas-...In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the

animals, the relationships with other users of the public and adjacent private lands, and the constraints contained in 4710.4.

- 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 animal immediately...
- 4770.3(a) Administrative remedies - Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR part 4.

APPEAL PROCEDURES

If you wish to appeal this wild horse management decision, it may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR part 4. If you appeal, your appeal must be filed with the Bureau of Land Management at the following address:

Colin P. Christensen
AFM Renewable Resources
Bureau of Land Management
Winnemucca District Office
5100 E. Winnemucca Blvd.
Winnemucca, NV 89445

Your appeal must be filed within thirty (30) days from receipt of 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 4942, January 19, 1993) for a stay (suspension) of the wild horse decision during the time that your appeal is being reviewed by the Board, the petition for 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
6201 Federal Building
125 South State Street
Salt Lake City, UT 84138-1180

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. A petition for a stay is required to show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellants success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

H. Wildlife Management

Adjustment to wildlife numbers is not warranted. Reasonable numbers will remain at the level outlined in the Land Use Plan. Reasonable numbers of wildlife are as follows:

Mule Deer	70 AUMs
Pronghorn	12 AUMs
Bighorn Sheep	71 AUMs

Rationale:

Analysis of monitoring data indicates that overall, the utilization objectives for upland habitats have been met. Wildlife did not contribute to the non-

attainment of utilization objectives for wetland and streambank riparian habitat. Therefore, a change in the existing wildlife populations or the existing wildlife management, within the Bottle Creek Allotment, is not warranted.

I. Future Monitoring and Grazing Adjustments

The Winnemucca Field Office will continue to monitor the Bottle Creek 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 and the Standards for Rangeland health are being achieved under the new grazing management strategy. In addition, these subsequent evaluations will determine if adjustments are required to meet the established allotment specific objectives and standards.

The Bottle Creek Allotment is scheduled to be re-evaluated in FY 2006.

Sincerely yours,



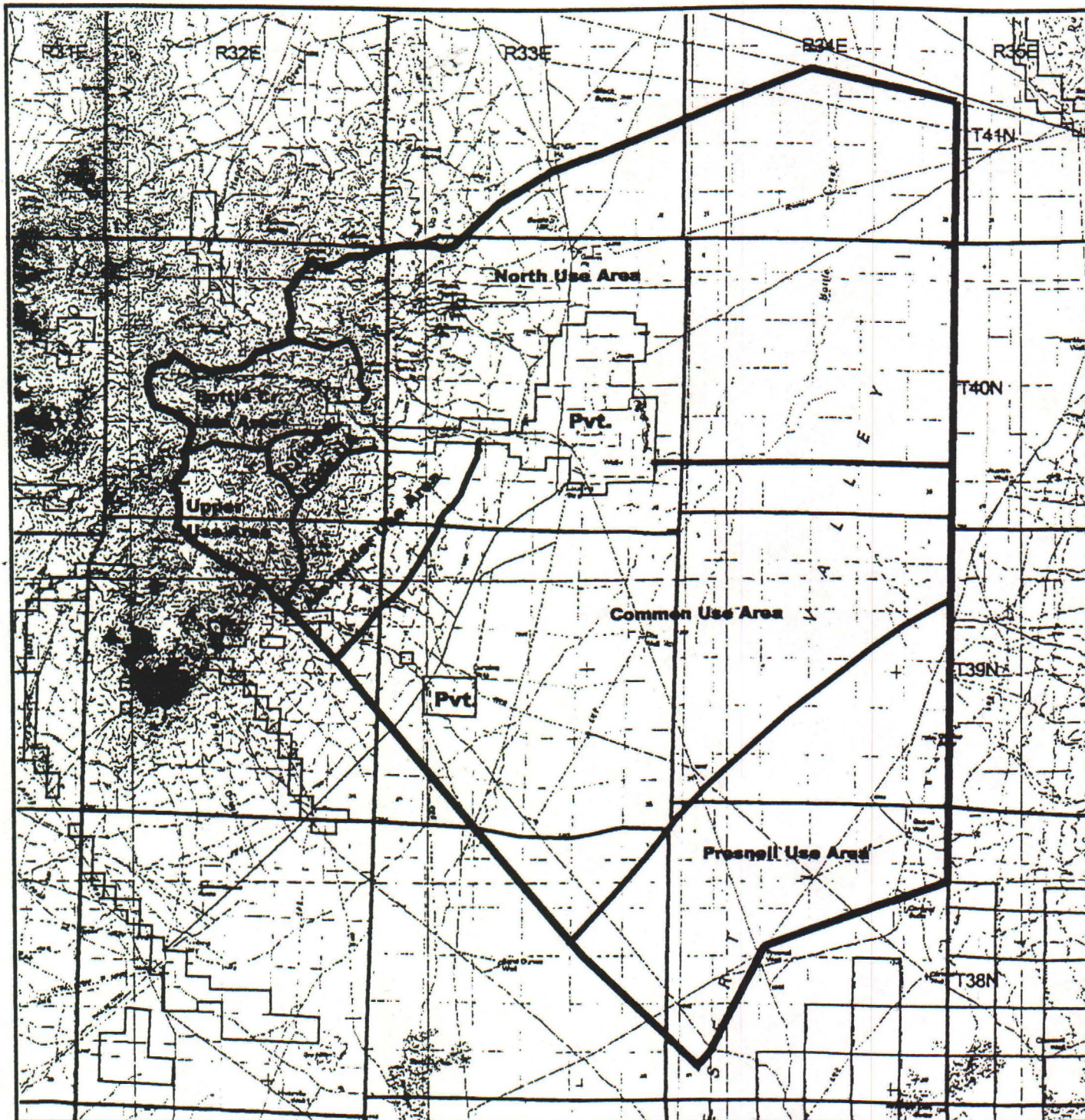
Colin P. Christensen
Assistant Field Manager
Renewable Resources

Certified copies:

Certified Numbers

Delong Ranches, Inc.	7099 3220 0009 6610 7665
Wilson Ranch, Inc.	7099 3220 0009 6610 7672
Robert and Susan Honeck	7099 3220 0009 6610 7689
Mel Hummel	7099 3220 0009 6610 7696
Sierra Club-Toiyabe Chapter	7099 3220 0009 6610 7702
Wild Horse Organized Assistance	7099 3220 0009 6610 7719
U.S. Fish and Wildlife Service	7099 3220 0009 6610 7726
NV Department of Wildlife (Fallon)	7099 3220 0009 6610 7733
Resource Concepts	7099 3220 0009 6610 7740
Humbolt County Commissioners	7099 3220 0009 6610 7757
NV Department of Wildlife (Wmca)	7099 3220 0009 6610 7764
Nevada State Clearinghouse	7099 3220 0009 6610 7771
Nevada Woolgrowers Assn.	7099 3220 0009 6610 7788
Nevada Cattlemen's Association	7099 3220 0009 6610 7795
Intermountain Range Consultants	7099 3220 0009 6610 7801
NV Commission for the Preservation of Wild Horses	7099 3220 0009 6610 7818
Walt Wilson	7099 3400 0014 2804 8940

Map
Bottle Creek Allotment Including Use Areas





United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Winnemucca Field Office
5100 East Winnemucca Boulevard
Winnemucca, Nevada 89445
(775) 623-1500
<http://www.nv.blm.gov/winnemucca>

In Reply Refer To:
4160 (NV022.44)

Summary of protest points from Intermountain Range Consultants on behalf of Delong Ranches Inc., Mel Hummel, Wilson Ranches, received July 12, 2000, to the Bottle Creek Allotment Proposed Multiple Use Decision, mailed on June 23, 2000.

Protest Point #1

The decision - at page 2 - incorrectly states that the "reasonable numbers" of wildlife defined by the land use plan are "initial forage demand" by wildlife. However, the land use plan identified "reasonable numbers" as the numbers of wildlife/AUMs which would reasonably be expected for the respective species of wildlife in conditions of good wildlife habitat. The decision at "G. Wildlife Management" correctly refers to "reasonable numbers". Therefore, the "objective" should be changed to correctly reflect the terminology used in the land use plan and in the Wildlife Management portion of the Decision".

Response

The Long Term Objective # 1 will read: Manage, maintain, and improve public rangeland conditions to provide forage on a sustained yield basis for big game; with reasonable numbers of 70 AUMs for mule deer,

Protest Point #2

The decision - at page 2 - errs in establishing an objective for wild horses within this allotment. At the date of passage of the "Wild Horse and Burro Act", there were no wild horses occupying the area which is now the Bottle Creek Allotment. That fact is not changed by any subsequent erroneous designation of "herd management area" which is in conflict with the physical fact. The permittees have offered to provide affidavits to the Bureau to that effect, and have on numerous occasions informed the Bureau of that fact. The only reason that horse use has expanded into this allotment is the failure of the BLM to control over a great many years the expansion of the horse populations on the Happy Creek Allotment. This error must be corrected by eliminating all provisions for a wild horse herd in the Bottle Creek Allotment. Wild horses did not exist on this allotment at the date of passage of the Act. However, domestic horses did exist on the allotment, and were permitted within the allotment.

Response

In 1982 the Winnemucca District approved its Land Use Plans (LUP) for the Sonoma/Gerlach and Paradise/Denio Resource Areas. These LUP's established boundaries for the Herd Management Areas (HMA) within the District. Wild horse census maps were used to show current populations and distributions of the animals. These maps were used to create boundaries using reasonable assumptions of distribution for winter and summer ranges. Those boundaries make up the HMA's including the Jackson Mountains HMA. In 1993 a portion of the Jackson Mountains Allotment was divided off to recreate the Bottle Creek Allotment, the reestablished allotment contains a portion of the Jackson Mountains HMA (7%).

The Bottle Creek Evaluation addresses setting an AML of 20 horses (240 AUMS) for the portion of the allotment that falls within the Jackson Mountains HMA. This proposed allocation for horses is within an area identified as a wild horse distribution area through public consultation. If the permittee's had a problem with the boundaries of the HMA, those concerns should have been expressed in the consultation period for the Paradise/Denio Resource Area LUP in 1982 and subsequent decision.

If the permittees would like to submit letters about wild horse historic populations, areas of use, and orientation; the Bureau would gladly take this information to add to our historic documentation.

Protest Point #3

The decision - at page 2 - errs in proposing to 'maximize' recruitment of aspen (Objective 7) and to "maximize" reproduction and recruitment of woody riparian species" on meadow habitat types. Both are physical impossibilities in the face of wildlife, wild horse, and livestock grazing which is permitted in the allotment. By definition, if any animal "eats" a sprig of willow, recruitment is not "maximized". Also by definition, meadow habitat types do not have the ecological potential to support woody riparian species, but instead have the ecological potential to support herbaceous riparian species. These objectives should be changed to eliminate reference to "maximizing" recruitment, and to eliminate reference to "maximizing reproduction and recruitment of woody riparian species" on meadow habitat.

Response

The Long Term Objective # 7 will read: Improve to and/or maintain 183 acres of aspen (to be considered a "critical" management species) habitat types to allowing for successful reproduction and good recruitment within the stand.

Protest Point #4

The decision - at page 3 - proposes a stream habitat condition of 75% on Bottle Creek (Objective 10). This is an excessively high standard, which is not consistent with the land use plan, and which is not, to our knowledge, imposed upon any other permittee within any other allotment within the Winnemucca District. It is arbitrary and capricious for either or both reasons. Such a habitat condition is further not a biological necessity for any species of wildlife or livestock. Therefore, the excessive diversion from the standards set forth in the LUP, and used on other allotments within the District, is unreasonable and unwarranted. The Decision would have the ultimate effect of punishing the permittees, and jeopardizing their permits, if the habitat condition of Bottle Creek drops below 75%. This is not reasonable, is not a practice imposed upon other permittees on other allotments, and is arbitrary and capricious. The objective should be revised to state the standard which is used throughout the District, which is "60% or above". The fact that the existing livestock authorization and related management practices has resulted in, and may be expected to continue in, a habitat condition exceeding 60% (e.g. 75% of optimum), should not be used as a tool to punish the permittees for their good stewardship.

Response

While the 70% or higher stream habitat condition objective on Bottle Creek for habitat condition is higher than the objective for streams in other allotments, those streams usually have a lower habitat rating to start out with and may have a lower potential for habitat. Bottle Creek rated 75% of habitat optimum at the last survey, with a riparian condition rating of 79%. To have the lower objective of 60% would allow a degradation of the habitat that could impact necessary biological needs for fish and other aquatic organisms in Bottle Creek such as cool water temperatures, adequate spawning and rearing substrates, adequate instream and bank cover for protection from predators, and adequate pool and riffle combinations for cover, spawning and macroinvertebrate production.

The long term objective #10 will read: "Improve.... and maintain stream habitat conditioning of 70% or above (excellent condition rating) on Bottle Creek.

Protest Point #5

The Decision - at page 3 - proposes to diverge from the LUP objective for sage grouse habitat. Such divergence proposes objectives which define the "optimum" is parenthetically synonymous with "good" condition in the Decision. However, "optimum" is not merely "good" habitat - it is "the best" habitat. Webster defines "optimum" as "the most favorable", not merely "good".

Further, the Decision erroneously applies this "most favorable" standard to the whole of the allotment without regard for the fact that sage grouse can and do successfully occupy and reproduce in areas which are not defined by the parameters listed in the proposed Decision (i.e., less than "most favorable"). Additionally, the Decision erroneously applies this "most favorable" standard without regard for the fact that the "most favorable" conditions may exceed the ecological potential of the specific areas of the allotment to which the standard will be applied, or which grouse occupy. These proposed objectives which define "the best" should be removed from the Final Decision, in favor of the existing LUP objective. The permittees do not contest that the parameters listed may reflect what is "most favorable" to sage grouse. However, the LUP does not prescribe "perfect" conditions for sage grouse, and the proposed objectives are excessive; are not in conformance with the LUP objectives for sage grouse habitat; and are beyond the ecological potential of many portions of the allotment.

Response

The proposed objective does include optimum condition rating for sage grouse habitat. The objective also states that we are going to manage the habitat within a range of values. The objective does not state we are trying to attain optimum habitat conditions. WL1.1, WL1.5, WL1.11, and WL 1.28 state that the BLM will protect the following critical wildlife use areas: 1. Wildlife concentration areas and 2. Sage grouse strutting, nesting, and nesting and brooding areas. WL 1.5 further says that the BLM's management objectives of activity plans will include specific objectives pertaining to improving and maintaining desired meadow habitat. In the development of activity plans, meadows will be considered as critical areas. Through WL1.21 it is the intent of this objective to maintain and improve habitat for sensitive species in this instance sage grouse.

The Long Term Objective # 11 will read: Improve or maintain suitable sage grouse strutting, nesting, brood rearing, and/or wintering habitat in good condition within the ecological potential of the rangeland habitat.

Protest Point #6

The Decision - at page 4 - lists the Standards of Rangeland Health. However, the Decision errs in inclusion of these standards as objectives. The grazing regulations do not provide for the standards to be included as allotment specific objectives, but rather that grazing management and allotment objectives provide that the standards are accounted for in allotment management. That accounting is the specific purpose of the LUP and allotment-specific objectives. The inclusion of the generic "standards" does not add to, but rather detracts from, the orderly administration and evaluation of the range. For example, there exists no measurement standard for "proper functioning condition" of riparian areas, and the "determination" of "functionality" is at the subjective whim of the examiner. This is contrary to Bureau policy regarding the establishment of allotment

objectives (which are to be objective {versus subjective}, quantifiable, measurable, and attainable). The inclusion of these generic "standards" as though they are quantifiable, measurable objectives, places the permittees' permits at jeopardy at the whim of the authorized officer. The same is true of each of the "standards". These are not reasonable "objectives" unless quantified and specified to the particular conditions within the allotment. If the "standards" are not already accounted for in the allotment-specific objectives, then the Final Decision should provide for such quantification. However, if the Bureau believes that the allotment-specific objectives do incorporate the generic "standards", then the allotment-specific objectives meet the requirements of the regulations, and the Final decision should so state.

Response

The listed Standards for Rangeland Health apply to every grazing allotment within the Sierra Front-Northwestern Great Basin Area, including Bottle Creek Allotment. The Standards are goals to be achieved and management will be evaluated against achievement of those goals.

Washington Office Instruction Memorandum No. 2000-153 states:

Use the best information available (qualitative and quantitative), including information provided by sources outside the BLM, and professional judgement to assess whether standards are being achieved.

It is clearly within Bureau policy to utilize the methodology described in Technical References 1737-9 and 1737-15 to determine proper functioning condition and use that information to determine if that standard is being met.

In addition to the Standards for Rangeland Health, management will be evaluated against the allotment specific objectives. If allotment specific objectives are met, it is expected that the standards will also be met. Information used to evaluate attainment of allotment specific objectives will also be used to determine if the standards are being met. However, other available information may also be used to evaluate whether the standards are being met.

LIVESTOCK MANAGEMENT DECISION:

Protest Point #1

The Decision - for each permittee - confines the permittee to certain "use areas" of the allotment. However, for the reasons stated in our comments dated June 2, 2000, and in our original comments to the first draft of the allotment Evaluation, dated September 27,

1999, this is not reasonable nor feasible. The confinement to "use area" should be removed from the final decision, because the net effect is to destabilize the operation of each of the permittees, rather than stabilizing the operations as required of the Bureau by the Taylor Grazing Act. The action to confine is unnecessary to the management of the range and resources, is not possible to accomplish without fencing of each of the "use areas", and is of no value to the future evaluation and management of the allotment. The confinement provision should be removed from the Final Decision, in favor of recognition that the stated "use areas" are the general area where the majority of each permittees livestock use is expected to occur; but that 1) drift occurs between areas, and 2) in event of livestock forage imbalances on account of weather or other events such as wildfire, such use may be shifted in whole or in part to other areas of the allotment.

Response

The Taylor Grazing Act was enacted, in part, "to stabilize the livestock industry dependent upon the public range." This stabilization was accomplished over the years following its enactment. Stabilization would not be reversed by implementation of the Proposed Multiple Use Decision for Bottle Creek Allotment.

We agree that the use areas are general areas of use and recognize that drift is expected. As stated in the Proposed Decision, we recognize that due to lack of physical barriers, some livestock drift is expected between Alexander and Common Use Areas. Drift is expected to be minimal onto Upper and Presnel Use Areas. Following construction of drift fences identified in the Final Evaluation, drift is expected to be minimal on Bottle Creek Use Area, North Use Area and Little South Fork Use Area. Prior to fence construction, drift will be reduced by herding conducted by the permittees. It is particularly important that cattle be removed from Upper, Little South Fork and Bottle Creek Use Areas by the scheduled dates. We recognized that this will require diligent effort by the permittees.

If changes in grazing are needed due to fire or other reasons, those changes will be handled the same way they are handled on other allotments. Changes are made in consultation with the permittees and others, and are made after consideration of a variety of factors. The responsibility to authorize the change rests with the authorized officer.

Protest Point #2

The Decision Terms and Conditions 1 and 3 for each permittee are self-contradictory. If the Bureau is reserving the authority to modify annual grazing authorizations, as it does at T&C #3, then the final Decision should remove the first sentence of T&C #1, because the two T&C's inform the public, and the permittees, of exactly opposite intentions.

Response

We have no objection to revising that Term and Condition to read:

All schedules, flexibilities and terms and conditions addressed in the allotment management plan dated 10/26/70 are suspended.

Of course, that change does not negate that permitted use is authorized through the annual grazing authorization, and that authorization specifies the approved use.

Protest Point #3

T&C #6 for all permittees is an impossibility, because of the natural drift between use areas (which the Decision recognizes is inevitable, regardless of whether it is "minimal" or something more than "minimal"). The T&C will require certified reporting of the presence of livestock within unfenced, unboundaried "use areas". It is physically impossible to monitor the presence of every cow on every "use area" on a day-to-day basis, and the T&C will ultimately make "liars" out of each of the permittees, because it will require them to certify the presence of their livestock in areas when the fact is that the certified numbers of cattle may not be in the specific area. This T&C should be removed from the final decision.

Response

Actual use is important for evaluating livestock management. We need the best information available and permittees are required to provide accurate actual use information to the extent that they are able. Frequently the data is not exact to the cow. For example, death loss occurs and the date is usually unknown.

On Bottle Creek Allotment the permittees will be able to provide reliable actual use data where drift is minimal. We recognize that actual use information for Alexander and Common Use Area will include some drift between use areas. Where drift does occur, it is appropriate to also include that information on the actual use report. This is particularly important to report significant drift if it occurs.

Protest Point #4

The above discussion is further emphasized - at page 11 ("rationale") - for Hummel, which emphasizes that the permittees are to be responsible for "ensuring that cattle do not drift into these (unboundaried) areas outside the scheduled period of use", and - at page 13 (T&C #7) - for Wilson, which emphasizes a lack of authorization to graze in Little South Fork of Bottle Creek and the headwaters of the Big south Fork of Bottle Creek. Like the other "confinement" provisions, these are unwarranted, unreasonable, and

unattainable without fencing.

Response

We recognize the conscientious effort required to control livestock prior to fence construction and that higher levels of drift may occur prior to fence construction.

Protest Point #5

The Decision - at page 12 - states that "water development to facilitate the shift in grazing will be evaluated through the project planning process. However, the permittees have already stressed to the Bureau, in correspondence and in person, that certain water developments ARE necessary in order to facilitate the changes. It is unreasonable, in the face of such information from the people who run the livestock, for the Bureau to ignore such information, and for the Bureau to defer the immediate installation of such water facilities. One does not have to walk into the desert without water in order to establish that water is necessary, yet that is what the decision proposes.

Response

We agree that some water development is necessary. The proposed grazing management is dependent upon additional water at the lower elevations on the southern portion of the allotment. Other water development would also be useful. The list of proposed range improvements will be included in the final decision.

Protest Point #6

The Decision - at page 15 - admits that prevention of cattle drift before June 15 into Bottle Creek"would be facilitated by a drift fence north of Bottle Creek." The same is true of all of the other "use areas". Yet the Decision authorizes absolutely no water developments and no fences to facilitate the changes in management which the Bureau seeks. The permittees are not necessarily opposed to some of the changes, but have informed the Bureau of the fences and water developments necessary to make the changes work. The Decision errs in requiring the changes in management without providing for the facilitating range improvements. These actions are not reasonable. As such, they should be removed from the final Decision, or the Final decision should authorize the required fences and waters. As is always the case, some of the fences and some of the waters are of higher necessity to achieve the purported desired results, and those improvements should receive highest priority.

Response

Range improvements will not be authorized through the Final Decision. The

authorization to construct a fence or develop water cannot occur until the proposed improvement has been evaluated through the project planning process, which includes, among other considerations, the NEPA process.

You are correct that the proposed grazing management is dependent upon additional water at the lower elevations on the southern portion of the allotment. Other water development would also be very useful. Also, although herding can greatly reduce the expected drift into the upper elevations, it is most useful as an interim practice on this allotment. Fencing would be more effective and reliable.

The lists of proposed range improvements will be included in the final decision.

WILD HORSE MANAGEMENT DECISION.

Protest Point #1

The decision - at page 18 - provides for the maintenance of 20 wild horses in a location (Bottle Creek Allotment) which wild horses did not inhabit at the date of passage of the Act. This is contrary to the law. The Final decision should remove this provision, and should provide for the immediate removal of wild horses from the Bottle Creek allotment.

Response

In 1982 the Winnemucca District approved its Land Use Plans (LUP) for the Sonoma/Gerlach and Paradise/Denio Resource Areas. These LUP's established boundaries for the Herd Management Areas (HMA) within the District. Wild horse census maps were used to show current populations and distributions of the animals. These maps were used to create boundaries using reasonable assumptions of distribution for winter and summer ranges. Those boundaries make up the HMA's including the Jackson Mountains HMA. In 1993 a portion of the Jackson Mountains Allotment was divided off to recreate the Bottle Creek Allotment, the reestablished allotment contains a portion of the Jackson Mountains HMA (7%).

The Bottle Creek Evaluation addresses setting an AML of 20 horses (240 AUMS) for the portion of the allotment that falls within the Jackson Mountains HMA. This proposed allocation for hoses is within an area identified as a wild horse distribution area through public consultation. If the permittee's had a problem with the boundaries of the HMA, those concerns should have been expressed in the consultation period for the Paradise/Denio Resource Area LUP in 1982 and subsequent decision.