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United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Winnemucca District Office  
5100 East Winnemucca Boulevard  
Winnemucca, Nevada 89445  
702-623-1500

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*not necessary*  
*support*

*File*

In Reply Refer To:  
(NV-221.3)  
4160

February 14, 1997

CERTIFIED MAIL NO. Z 374 146 008  
RETURN RECEIPT REQUESTED

Ms. Cathy Barcomb  
Commission for the Preservation  
of Wild Horses  
1105 Terminal Way, Ste. 209  
Reno, NV 89502

Dear Interested Public:

Please find enclosed the Final Multiple Use Decision for Happy Creek Allotment.

Please feel free to contact Lynnda Jackson of my staff at 702-623-1500 if you have any questions related to this document.

Sincerely yours,

Colin P. Christensen  
ADM Renewable Resources

Enclosure



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Winnemucca District Office  
5100 East Winnemucca Boulevard  
Winnemucca, Nevada 89445  
702-623-1500

In Reply Refer To:  
4160  
(NV-241.2)

February 14, 1997

CERTIFIED MAIL NO. Z 374 145 998  
RETURN RECEIPT REQUESTED

### FINAL MULTIPLE USE DECISION HAPPY CREEK ALLOTMENT

Roy Shurtz  
Happy Creek, Inc.  
P.O. Box 2148  
Elko, NV 89803

Dear Mr. Shurtz:

The record of Decision of the Paradise-Denio Environmental Impact Statement was issued on 09/18/81. The Paradise-Denio Management Framework Plan was issued on 07/09/82. These documents guide the management of public lands within the Happy 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 for the Happy Creek Allotment and to determine if management adjustments may be necessary to meet the management objectives.

On June 7, 1996, the Proposed Multiple Use Decision of Happy Creek Allotment was issued. No protests of that decision were received.

The base property for grazing privileges on Happy Creek Allotment is currently owned by Happy Creek, Inc. On February 6, 1997, you applied for the transfer of grazing privileges from Happy Creek Land and Cattle Limited Partnership, the former base property owner, to Happy Creek, Inc.



The following are the multiple use management objectives under which management on the Happy Creek Allotment will be monitored and evaluated:

#### Short Term Objectives

1. The objective for utilization of key species on streambank riparian habitat on Happy Creek is 30%.
2. The objective for utilization of key species on wetland riparian habitat is 50% utilization.
3. The objective for utilization of key species on upland habitat is 50%.
4. The objective for utilization of key species on upland habitat within wild horse winter range is 25% on September 1, and 50% on March 1.

#### Long Term Objectives

1. Manage, maintain and improve public rangeland conditions to provide forage on a sustained yield basis for big game, with an initial forage demand of 262 AUMs for mule deer and 38 AUMs for bighorn sheep.
  - a. Improve to and maintain 5,341 acres of Jackson Mountain DS-8 in good or excellent mule deer habitat condition and 756 acres of Quinn River DY-6, 6,637 acres of Bilk Creek DY-9, and 16,391 acres of Jackson Mountain DY-18 in fair to good habitat condition.
  - b. Improve to and maintain 5,792 acres Jackson Mountain BY-6 in good to excellent bighorn sheep habitat condition.
  - c. Improve to and maintain 3,419 acres of Buff Peak PS-12, 9,204 acres of Bilk Creek PW-14, and 18,326 acres of Jackson Mountain PY-13 ranges in good or excellent pronghorn habitat condition.
2. Manage, maintain and improve public rangeland conditions to provide forage on a sustained yield basis for livestock, with an initial stocking rate of 3,724 AUMs.
3. Improve range condition from poor to fair on 93,654 acres and from fair to good on 1,912 acres.

4. Maintain and improve free roaming behavior of wild horses by protecting and enhancing their home ranges.
5. Improve or maintain 463 acres of riparian and meadow habitat types in good condition with maximum species diversity, reproduction and recruitment for maintenance of herbaceous and woody species.
6. Improve or maintain 336 acres of mountain mahogany habitat in good condition by allowing for successful reproduction and recruitment in the stand.
7. Improve or maintain bitterbrush and 41 acres of serviceberry maximizing reproduction in the community.
8. Protect sage grouse strutting grounds and brooding areas. Maintain a minimum of 30% canopy cover of sagebrush for nesting and winter use.
9. Improve to or maintain the following stream habitat conditions from 50% on Happy Creek to an overall optimum of 60% or above.
  - a. Streambank cover to 60% or above.
  - b. Streambank stability 60% or above.
  - c. Maximum summer water temperatures below 70 degrees Farenheidt.
10. Improve to and maintain water quality of the perennial reaches of Happy Creek to the state criteria set for the following beneficial uses: stockwater, cold water aquatic life, water contact recreation and wildlife propagation.

#### WILDLIFE MANAGEMENT

Analysis of existing management of wildlife habitat does not indicate that current wildlife populations are contributing to failure in meeting multiple use objectives. Therefore, no change in wildlife use is recommended at this time.



## LIVESTOCK DECISION

Based upon the evaluation of monitoring data for the Happy Creek Allotment, consultation with you and other interested publics, and recommendations from my staff, my final decision for livestock follows:

The total number of animal unit months of specified livestock grazing on Happy Creek Allotment will remain as follows:

Available for Active Use	Historic Suspended	Total
3724 AUMs	974 AUMs	4698 AUMs

Authorized grazing use on Happy Creek Allotment is changed FROM:

<u>No.</u>	<u>Kind</u>	<u>Period of Use</u>	<u>% Fed</u> <u>Land</u>	<u>AUMs</u>
500	C	04/01 to 08/30	100	2499
272	C	10/15 to 02/28	100	<u>1225</u>
			Total	3724

Authorized grazing use on Happy Creek Allotment is changed TO:

### Grazing Schedule:

The final grazing schedule is dependent upon completion on the corridor fence along Happy Creek in the South of the Highway Use Area. Until the fence is completed, livestock will be removed from the South of the Highway Use area by July 15. A grazing permit for the interim grazing system will be issued after this decision becomes final. A grazing permit for the final grazing system will be issued upon completion of the corridor fence.

Final Grazing Schedule:

<u>Area of Use</u>	<u>No.</u>	<u>Kind</u>	<u>Period of Use</u>	<u>% Fed</u>	
				<u>Land</u>	<u>AUMs</u>
South of Highway	500	C	04/01 to 05/14	100	723
	350	C	05/15 to 07/15	100	713
	500	C	07/16 to 08/30	100	756
Upper Happy Creek	150	C	05/15 to 07/15	100	306
North of Highway	272	C	10/15 to 02/28	100	<u>1225</u>
				Total	3723

Interim Grazing Schedule:

<u>Area of Use</u>	<u>No.</u>	<u>Kind</u>	<u>Period of Use</u>	<u>% Fed</u>	
				<u>Land</u>	<u>AUMs</u>
South of Highway	717	C	04/01 to 05/14	100	1037
	567	C	05/15 to 07/15	100	1156
Upper Happy Creek	150	C	05/15 to 07/15	100	306
North of Highway	272	C	10/15 to 02/28	100	<u>1225</u>
				Total	3724

Terms and Conditions:

To control livestock distribution, water will only be pumped from wells located within the authorized area of use.

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

You are required to perform normal maintenance on range improvements as per your signed Cooperative Agreements and Section 4 Permits.

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

Deviations in grazing use may be authorized on an annual basis where such deviation will allow attainment of multiple use objectives for the allotment.



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 vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

#### Structural Improvements:

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

1. Corridor fence along Happy Creek in the South of the Highway Use Area, extending 1.5 miles from NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 33, T41N, R32E to the point of diversion for irrigation.
2. Fence to reduce drift between the North of the Highway Use Area and the South of the Highway Use Area extending 3.5 mile from Sec. 35, T42N, R32E to Sec. 16, T42N, R32E.

#### Rationale:

While utilization levels have been met over the great majority of the Upper Happy Creek Use Area, utilization levels have been exceeded on meadows, streambank riparian habitat on portions of Happy Creek and its tributaries, and upland browse species. Failure to meet these objectives is primarily the result of livestock use. After mid-July 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 from the Upper Happy Creek Use Area by July 15 is expected to improve 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 July 15.

Utilization objectives for riparian species on Happy Creek in the South of the Highway Use Area have also been exceeded. Exclusion of grazing along 1.5 miles of Happy Creek by corridor fencing will eliminate grazing impacts to the creek in this use area. The flow of water below the corridor fencing site is controlled for irrigation purposes and is not available for the development of streambank riparian habitat. Until construction of the corridor fence is



completed, cattle will be removed from the South of the Highway Use Area by July 15 to eliminate hot season grazing.

The grazing schedules are not dependent upon construction of the drift fence to reduce movement of livestock between the North of the Highway Use Area and the South of the Highway. This fence would facilitate keeping cattle in the authorized use area. Through the project planning process other alternatives for eliminating drift can be considered, such as fencing along the highway. Regardless of when or if this fence is constructed, it is the permittee's responsibility to ensure that drift between use areas is minimized.

Grazing is not authorized during March to prevent grazing of emerging forage species and prevent compaction of wet soil. Livestock are not turned out until April 1 in the spring, and winter grazing does not extend past the end of February.

Authority:

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

§4100.0-8 "The authorized officer shall manage livestock grazing on public lands under the principles of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resources 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 of this part. 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 allotments(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."

§4130.3-3 "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 plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. 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."

Appeal:

Any applicant, permittee, lessee or other person 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 CFR 43 4160.4, 4.21 and 4.470. The appeal and petition for stay must be filed at the following address:

Colin P. Christensen  
ADM Renewable Resources  
Bureau of Land Management  
Winnemucca District 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 appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

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



## WILD HORSE DECISION

Based upon the evaluation of monitoring data for the Happy Creek Allotment, consultation with you and other interested publics and recommendations from my staff, my final decision for wild horses follows:

The appropriate management level for wild horses within the Happy Creek Allotment portion of the Jackson Mountains Herd Management Area is 60 horses. They will be managed in a range of 36 to 60 wild horses.

### Rationale:

At the end of this evaluation period there were approximately 100 adult horses utilizing the northern end of the Jackson Mountains Herd Management Area. Movement among the allotments inhabited by this population is apparent through horse trails and seasonal variations in distribution. However, the general distribution of these 100 horses is: 60 head in Happy Creek Allotment, 20 Head in Bottle Creek Allotment, 10 Head in Deer Creek Allotment and 10 Head in Wilder-Quinn Allotment. Observations and utilization data indicate that adequate forage is available for 60 horses in Happy Creek Allotment. Wild horses and livestock distribution overlap is limited so competition for available forage is something less than 1:1.

The limiting factor for the herd size appears to be adequate winter range. This professional assessment is supported by utilization data which showed heavy use, primarily by wild horses, within the winter range in the 1992 grazing year with approximately 25% fewer horses than are now present. While this suggests that 1992 levels may have been too high for the range resources, this conclusion must be tempered with the knowledge that weather conditions were unusually poor for plant production in 1992. Precipitation for the water year (October 1, 1991, through September 30, 1992) was the lowest of all years through the evaluation period and no rain fell in May, which is a critical period for growth. Competition for forage and space between cattle and horses appears to be low at this time. Weighing these factors, it appears that the horses are currently in ecological balance.

Because of potential resource damage to winter range, numbers should not exceed the present level. An additional objective of 25% utilization of key upland species within wild horses winter use areas on September 1 is included in this document. The purpose of the objective is to help assess the adequacy of winter forage for horses.

It is believed that an adequate number of adult horses will inhabit the north portion of the Jackson HMA to provide a genetically viable population. Blood samples for genetic analysis



will be collected when the horses are gathered and the population will be monitored during future gathers.

Authority:

The authority for this decision is contained in Sec. 3(a), 3(b)(1), and 3(b)(2) 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:

§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 "...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 uses 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 areas plans."

§4720.1 "Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately..."



Appeal:

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  
ADM Renewable Resources  
Bureau of Land Management  
Winnemucca District Office  
5100 E. Winnemucca Blvd.  
Winnemucca, NV 89445

Your appeal must be filed within thirty (thirty) 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 4939, 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 a stay must accompany your notice of appeal.

Copies of the notice of appeal and petition for a stay must also be submitted to the:

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

and to the appropriate office of the Solicitor:

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

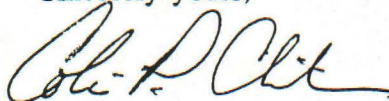
at the same time the original documents are filed with this office.



If you request a stay, you have the burden of proof to demonstrate that a stay should be granted based on the following standards:

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

Sincerely yours,

A handwritten signature in black ink, appearing to read "Colin P. Christensen". The signature is fluid and cursive, with the first and last names being more prominent.

Colin P. Christensen  
ADM Renewable Resources  
Winnemucca District