

1-9-92



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
NEVADA STATE OFFICE  
850 HARVARD WAY  
P.O. BOX 12000  
RENO, NEVADA 89520-0006

IN REPLY REFER TO:

4160/4700  
(N2-92-3)  
(NV-931.1)

JAN 09 1992

Board of Land Appeals  
Office of Hearings and Appeals  
Arlington, VA 22203

Dear Sirs:

Attached is an appeal, dated December 17, 1991, filed by the Nevada State Commission for the Preservation of Wild Horses; this Notice of Appeal was received by the Paradise-Deno Area Manager on December 19, 1991. This is an appeal of a "Notice of Full Force and Effect Final Multiple Use Decision for the Paiute Meadows Allotment" dated November 22, 1991, an appeal of the Paiute Meadows Final Allotment Evaluation Summary, and an appeal of the Black Rock Range East Herd Management Area Wild Horse Capture Gathering Plan.

The attached file includes the following documents:

1. Memorandum from the District Manager, Winnemucca to the State Director, Nevada, dated January 3, 1992.
2. The Notice of Appeal, dated December 17, 1991, received in the Winnemucca District Office on December 19, 1991.
3. Area Manager's Notice of Full Force and Effect Multiple Use Decision for the Paiute Meadows Allotment, dated November 11, 1991.

The complete administrative file, along with Bureau of Land Management's (BLM's) response to the appeal points, will be transmitted to the Board and the Appellant in the immediate future.

Additionally, through our Solicitor, we intend to file a motion with the Board requesting that the effect of the decision not be stayed, pending administrative review of the appeal. We will also request that the Board place the decision in full force and effect, pending review, based upon emergency resource conditions which would allow BLM to proceed with a planned, mid-January 1992, round-up of "excess wild horses" that are currently damaging the vegetative resources on this allotment.

Sincerely,

752 K LYNN BENNETT

For

Billy R. Templeton  
State Director, Nevada

3 Attachments

3 - As noted above

cc: ✓ Catherine Barcomb (w/attach)  
Regional Solicitor, Sacramento, CA (w/attach)  
DM, Winnemucca (w/o attach)

Copy III

Form 1271-1a  
(May 1987)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

FY 1992

4160

OFFICIAL FILE COVER

Subject Code

File Title: APPEAL - N2-92-3 - [REDACTED] NEVADA STATE COMMISSION FOR THE PRESERVATION OF WILD HORSES - Paiute Meadows Allotment

PERIOD COVERED	DISPOSAL AUTHORITY	
	GENERAL RECORDS SCHEDULE CITATION	BUREAU RECORDS SCHEDULE CITATION
From: December 19, 1991		
To: Indef.		BLM 4/21a2

DISPOSITION DATA

Retain in Local Office 2 Years after cutoff Transfer Date to Record Center \_\_\_\_\_ Retain in Records Center \_\_\_\_\_ Years  
Offer Date to National Archives and Records Administration (NARA) \_\_\_\_\_ Destruction Date when 26 years old

Cross-References and Remarks:

IMPORTANT

*This file constitutes a part of the official records of the Bureau of Land Management and should not be separated or papers withdrawn without notifying the person in charge of the files.*

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

In reply refer to:

4160 (NV241.4)

Memorandum

*Jan. 3, 1992*

To: State Director, 931.1

From: District Manager, Winnemucca District

Subject: Transmittal of Grazing Appeal on the Paiute Meadows Allotment  
N2-92-03 Commission for the Preservation of Wild Horses, State of  
Nevada

Attached is the subject appeal file for transmittal to the IBLA containing the following documents:

1. District Manager's Grazing Appeal Transmittal dated 01/03/92
2. Notice of Appeal dated 12/19/91
3. Area Manager's Notice of Full Force and Effect Multiple Use Decision for the Paiute Meadows Allotment dated 11/22/91

A detailed memorandum from the District Manager containing a chronological summary of events leading to the appeal and detailed responses to the appeal points and grounds of error will be forwarded to you by February 14, 1992.

1-Attachment  
Appeal File N2-92-03

*Jon Wenker*

N29203

Form 1850-2  
(December 1979)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

GRAZING APPEAL TRANSMITTAL

TO:

State Director: 931.1

The appeal identified herein has been filed and is forwarded to you, together with copies of the pertinent District Office records, for action and transmittal to an Administrative Law Judge in accordance with 43 CFR 4.470.

1. Name(s) of appellant(s)

Commision for the Preservation of Wild Horses, State of Nevada  
c/o Catherine Barcomb N2-92-03

2. Appeal was filed (date)  
12/19/91

3. Decision appealed from was served on appellant(s)  
(date) 11/23/91

4a.  I do not recommend that a motion to dismiss the appeal be filed

b.  I recommend that motion to dismiss the appeal be filed. I am submitting my recommendations in a separate memorandum to you

5. Recommendations as to approximate time for hearing (specify week or month)

a. Preferred time \* April 1992

b. Alternative acceptable time May 1992

\* If preferred time is more than 90 days hence, give reasons under "Remarks" item 8.

6. Estimated time (in days) hearing will require  
2 days

7. Approximate number of other range users who may request to intervene 3

8. Remarks (See item 5 above; also include any other information helpful to the Administrative Law Judge in making his arrangements for the hearing; continue on reverse side, if necessary)

There currently are 5 total appeals of this same grazing decision. The appellants may wish to combine their appeals for one hearing.

Winnemucca

District

Jan. 3, 1992

(Date)

Ron Wenker

(Signature of Authorized Officer)

Copy to: Office of Hearings and Appeals, Salt Lake City, Utah  
Director, (220) Washington, D.C.

Forward with this transmittal: (1) related grazing application(s); and (2) Authorized Officer's final decision on application(s) with evidence of service upon the applicant(s).



COMMISSIONERS  
N2-9-203

Dan Keiserman  
Las Vegas, Nevada

Michael Kirk, D.V.M., Chairman  
Reno, Nevada

Paula S. Ashew  
Carson City, Nevada

Steven Fulstone  
Smith Valley, Nevada

Dawn Lappin  
Reno, Nevada

COMMISSION FOR THE  
PRESERVATION OF WILD HORSES

Stewart Facility  
Capitol Complex  
Carson City, Nevada 89710  
(702) 687-5589

December 17, 1991

Bureau of Land Management  
**RECEIVED**  
DEC 19 1991  
DISTRICT OFFICE  
WINNEMUCCA, NEVADA

Scott Billing, Area Manager  
Paradise-Denio Resource Area  
BLM-Winnemucca District Office  
705 East 4th Street  
Winnemucca, Nevada 89445

- RE: Appeal - Paiute Meadows Multiple Use Final Decision
- Appeal - Paiute Meadows Final Allotment Evaluation Summary
- Appeal - Black Rock Range East Herd Management Area Wild Horse Gathering Plan

Dear Mr. Billing,

The Commission for the Preservation of Wild Horses, representing the State of Nevada, as an affected interest for wild horses and their habitat, is formally appealing your Notice of Full Force and Effect Final Multiple Use Decision of Paiute Meadows Allotment, Allotment Evaluation, and Black Rock East Gathering Plan for the following reasons:

1) The Commission was given no opportunity to review or comment on the Bureau of Land Managements Final Decision for this Allotment prior to its finalization. FLPMA, the 1971 Wild Free Roaming Horse and Burro Act, NEPA, and BLM grazing regulations grant the State of Nevada the right to participate in the making of decisions about the management of the public's rangelands including those denominated "multiple use decisions" by the Bureau.

a) The Final Decision was after the fact of a Livestock Agreement (11/19/91). BLM Instruction Memorandum NV-89-268 states: "If controversy still exists, then the BLM implements the desired changes via a "Proposed Grazing Decision." The comments you received on your draft allotment evaluation (July 3, 1991), clearly indicated that a controversy existed. "If the BLM, under its instructions memorandum (IM NO NV 89-268 change 2), determined this decision to be "non-controversial" then this Full Force and Effect Decision is not necessary.

Telephone conversations with the District on December 10, 1991, confirmed that because the Resource Area intended to go Full Force and Effect, no draft decision was sent out for public comment. Yet, page 33 of the Final Allotment Evaluation, dated November 22, 1991, refers to (VII A) a November 1, 1991, meeting with permittee to discuss management alternatives and potential

Scott Billing, Area Manager

December 17, 1991

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agreement; a November 11, 1991, meeting with the permittee to discuss carrying capacities and potential agreement; and a November 14, 1991, meeting with the permittee to discuss carrying capacity and proposed agreement. You also refer to a November 12, 1991, consultation meeting between the BLM and Western Range Service, a range consulting firm for the permittee, to discuss interpretation of monitoring data and carrying capacity.

Whether or not there was a "draft" available for the permittee; Western Range Service and the permittee did in fact have the only opportunity to comment and consult regarding carrying capacities, management alternatives, and resolution of any disagreement. Unlike the livestock operator, appellants were not shown the final until after the decision was issued.

The decision for the Paiute Meadows Allotment violated our rights to participate as "affected interests."

2) The Bureau did not implement its land use plan (MFP III) through proper activity plans. The Bureau has violated FLPMA (43 CFR 1610.5-3 (a)(c) and 1610.5-5), and its' own land use plan through failure to amend the original MFP III, which has significantly changed the short term objectives through the November 19, 1991, "Livestock Use Agreement." Changes in the allotment's short term objectives were negotiated through the permittee's "Livestock Use Agreement" and were not consulted, coordinated or cooperatively reviewed by the affected interests. Appellants never had an opportunity to review, let alone comment on the new short term objectives prior to your acceptance of them. It appears as though the Area Manager "cut a deal" for the benefit of the livestock and then issued a Full Force and Effect Decision against wild horses.

3) The Final Decision to remove 400 to 600 wild horses to retain current livestock use on the allotment represents a significant action. Under NEPA the Bureau is obligated to analyze the significant impacts to the wild horse population. An EIS or at the very least an EA is required as a minimum to meet NEPA compliance.

4) The monitoring data was collected to establish stocking levels under the land use plan. We do not argue that the riparian and vegetative communities have been severely impacted. We do argue how that data was analyzed and whether or not the monitoring data was utilized in the Livestock Use Agreement (i.e. the Final Multiple Use Decision).

a) Initially in the Draft Allotment Evaluation recommended a stocking level of both wild horses and livestock to be 4,597 AUM's. However, the use of this stocking level would have reduced the wild horses to 33 animals. With no explanation the final decision increases stocking level to 4,950 AUM's to accomodate an increase of 27 wild horses. According to the draft

Scott Billing, Area Manager  
December 17, 1991  
Page 3

AE 4,597 is the carrying capacity for the allotment. By giving the permittee his 4,350 authorized active preference in addition to the minimum necessary AUM's for wild horses you are exceeding your previously stated carrying capacity for the allotment.

b) Heavy and severe grazing by wild horses south of Paiute Creek was instrumental in the Bureau's decision to reauthorize livestock grazing north of Paiute Creek. According to the Final AE, Use Pattern Mapping conducted for four years established that prior to introduction of livestock north of Paiute Creek, there was slight to light utilization of stream bank riparian vegetation. Severe grazing use covered less than 1% of the north area. After the 1990 introduction of livestock, heavy grazing use covered approximately 49% of the north area. Your own monitoring data indicates that the introduction of livestock has taken this allotment from a 1% rate to a 49% rate of heavy use in the north area.

c) According to BLM's documents you have analyzed livestock and wild horse use from 1987 through 1990. There is no mention in any of these documents as to whether that included your unauthorized livestock use (trespass), which copies of your documents indicate was severe between Black Rock Range East and West from 1985 through the present. A range tour was attended by members of this Commission, affected parties, and the permittee's legal council wherein trespass in the northern portion of the allotment as well as illegal salting near waters was occurring.

d) According to the Livestock Use Agreement, voluntary non-use will be applied for in the event that forage is temporarily available without notification to the affected interests. The agreement also states that should any horses migrate from the west portion of their HMA to the east portion the permittee will re-activate the non-use. The scheduled non-use for livestock must be suspended non-use, requiring a District Managers Decision to reinstate, as opposed to "not scheduled non-use" until such a time as monitoring shows availability of forage.

APPEAL OF THE FULL FORCE AND EFFECT BLACK ROCK RANGE EAST HERD  
MANAGEMENT AREA WILD HORSE GATHERING PLAN

The Commission is hereby filing an appeal to the November 22, 1991, Wild Horse Gathering Plan based on the following:

1) The Bureau has ignored the entire land use planning process by issuing this document. The Bureau has not analyzed whether an Environmental Impact Statement is required due to the severity of the reduction, or at a minimum a Draft Environmental Assessment and Draft Capture Plan, thereby deleting the public participation process as required by the Land Use Planning Process.



Scott Billing, Area Manager  
December 17, 1991  
Page 4

2) Your own capture plan states that your census data from July 1989, February 1990, and July 1991, shows significant swings in population numbers. By not considering the HMA as a whole rather than a portion of an allotment your actions are not accounting for the horses full utilization of their habitat, including seasonal movement. Prior to gathering wild horses from the Black Rock East HMA, the Bureau must determine the impacts to the populations in the Black Rock West HMA. By your own admission in your "Livestock Use Agreement" there is significant movement of wild horses identified by your promise to the permittee to assess the impacts of a fence separating the HMA "for control of migration of wild horses."

3) We are appealing Winnemucca Districts simplification of manipulation of age and sex ratios. On page 4 of the gather plan, you state the "The Wild Horse and Burro Advisory Board has recommended that the BLM continue to pursue fertility control, population modeling, and other options as a management tool to regulate or suppress reproductive rates in wild horses and burros. It is possible that sex ratios in the Black Rock Range-East HMA may be manipulated to favor a higher percentage of males over females." There is no Bureau policy that has enacted the Advisory Board recommendations. According to WO IM NO. 91-216, the Bureau is "returning captured wild horses 10 years of age or older to herd areas." There is no current policy to authorize the manipulation of sex ratios. Furthermore an EA needs to be done regarding the cumulative impacts of one or more of these strategies.


In Nevada, pilot fertility control programs have been discussed for implementation. It is a lengthy process of identifying areas for possible implementation, gathering necessary data, having decisions in place, having a HMAP, doing EA's, submitting draft and final documents for most of the above, then draft and final documents for a pilot fertility control program agreed upon by all of the multiple users of the public lands. This is not a process to be taken lightly especially when adjusting populations of animals. It appears as though you have not given adequate consideration to this process. It would be in the best interest of the Bureau, the wild horses, and the public to investigate further studies before implementation. Statewide criteria needs to be developed before methods other than capture are considered.

In conclusion we appeal this gather on the basis of the above mentioned concerns as well as the fact that the Bureau may not gather horses without the evidence that wild horses are the sole contributor to overgrazing. The data in the AE and the

Scott Billing, Area Manager  
December 17, 1991  
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Gather Plan does not support that wild horses are the only  
damaging factor. In fact the data does support that there was  
no overgrazing north of Pauite Creek prior to the reauthorization  
of livestock.

Sincerely,



CATHERINE BARCOMB  
Executive Director

N 29203

710 710-240

<b>SENDER:</b> • Complete items 1 and/or 2 for additional services. • Complete items 3, and 4a & b. • Print your name and address on the reverse of this form so that we can return this card to you. • Attach this form to the front of the mailpiece, or on the back if space does not permit. • Write "Return Receipt Requested" on the mailpiece below the article number. • The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
3. Article Addressed to:  Ms. Cathy Barcomb Commission for the Pres. of Wild Horses & Burros Stewart Facility Capitol Complex Carson City, NV 89710		4a. Article Number <b>P477558760</b>	
5. Signature (Addressee) <i>[Handwritten Signature]</i>		4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
6. Signature (Agent) <i>[Handwritten Signature]</i>		7. Date of Delivery <b>23 NOV</b>	
PS Form 3811, November 1990 MAIL ROOM COMPLEX CARSON CITY, NV 89710		8. Addressee's Address (Only if requested and fee is paid)	
U.S. GPO: 1991-287-066		<b>DOMESTIC RETURN RECEIPT</b>	



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
WINNEMUCCA DISTRICT OFFICE  
705 EAST 4TH STREET  
WINNEMUCCA, NEVADA 89445



IN REPLY REFER TO  
4160  
(NV-240)

November 22, 1991

CERTIFIED MAIL NO. 477558764  
RETURN RECEIPT REQUESTED

## NOTICE OF FULL FORCE AND EFFECT FINAL MULTIPLE USE DECISION PAIUTE MEADOWS ALLOTMENT

Dan Russell  
P.O. Box 339  
Folsom, CA 95630

Dear Mr. Russell:

The Record of Decision for the Paradise-Denio Environmental Impact Statement and the Management Framework Plan (Land Use Plan) was issued on July 09, 1982. These documents established the multiple use goals and objectives which guide management of the public lands on the Paiute Meadows allotment.

Monitoring has been established on the Paiute Meadows allotment to determine if existing multiple uses for the allotment are consistent with attainment of the objectives established by the Land Use Plan (LUP). Monitoring data has been collected and has been analyzed, through the allotment evaluation process, to determine progress in meeting multiple use objectives for the Paiute Meadows allotment, and to determine if changes are needed in existing management in order to meet specific multiple use objectives for this allotment.

Through the allotment evaluation process the Bureau of Land Management determined that a change in existing management is required in order to meet multiple use objectives for this allotment. Analysis of the monitoring data indicates that the existing numbers of wild horses and livestock is significantly contributing to the failure in meeting the multiple-use objectives for the Paiute Meadows Allotment. Analysis of the wildlife monitoring data does not indicate a need for a change in the existing management of wildlife. Therefore, this decision changes livestock and wild horse grazing use only and establishes the carrying capacity for livestock and wild horses that will result in a thriving natural ecological balance.

Through consultation, coordination and cooperation (CCC), comments were received and considered. As a result of evaluation conclusions and after consideration of input received through CCC, and in order to meet multiple use objectives established by the LUP, it is my decision to implement the grazing management changes on the Paiute Meadows Allotment through an agreement between the Bureau of Land Management and Daniel H. Russell dated November 22, 1991. The terms of that agreement are as follows:

## ALLOTMENT OBJECTIVES

The following allotment specific objectives tie the Paradise-Denio Resource Area Management Framework Plan III (Land Use Plan-LUP) and Paradise-Denio Resource Area Rangeland Program Summary (RPS) objectives together into quantified objectives for this allotment. The achievement of these objectives will be evaluated through monitoring over time.

## 1. Short Term

- a) Utilization of key streambank riparian plant species on Paiute, Battle and Bartlett Creeks shall average 30% on woody species over a period of time as indicated by utilization data collected at the end of the grazing period and 50% on herbaceous species as indicated by utilization data collected at the end of the growing season.
- b) Utilization of key plant species in wetland riparian habitats shall average 50% over a period of time as indicated by utilization data collected at the end of the growing season.
- c) Utilization of key plant species in upland habitats shall average 50% over a period of time as indicated by utilization data collected at the end of the growing season.
- d) Utilization of crested wheatgrass shall average 50% following completion of the Paiute Seeding fence reconstruction until such time as the seeding meets the long term objective of good condition, at which time utilization shall average 60% over a period of time as indicated by utilization data collected at the end of the growing season.

## 2. Long Term

- a) Manage, maintain, or improve public rangeland conditions to provide forage on a sustained yield basis for livestock, with an initial stocking level of 7,827 AUMs.
- b) Improve range condition from poor to fair on 161,158 acres and from fair to good on 15,938 acres. [1]
- c) Improve to or maintain 86 acres of ceanothus habitat types in good condition. [1]
- d) Improve to or maintain 345 acres of mahogany habitat types in good condition. [1]
- e) Improve to or maintain 188 acres of aspen habitat types in good condition. [1]
- f) Improve to or maintain 529 acres of riparian and meadow habitat types in good condition. [1]

- g) Improve to or maintain 15 acres of serviceberry, 82 acres of bitterbrush, 55 acres of ephedra, and 112 acres of winterfat vegetation types in good condition. [1]
- h) Improve to and maintain the water quality of Paiute, Battle and Bartlett Creeks to the State criteria set for the following beneficial uses: livestock drinking water, cold water aquatic life, wading (water contact recreation), and wildlife propagation.
- i) Improve to or maintain the 1000 acre Paiute seeding in good condition. (5-10 acres per AUM)

Footnote:  
 [1] Ecological status will be used to redefine/quantify these objectives where applicable.

CARRYING CAPACITY

The combined carrying capacity for livestock and wild horses shall be 4950 AUMs for the term of this agreement.

AGREED UPON CHANGES IN LIVESTOCK USE

A. From (Description of existing use)

- 1. Grazing Preference (AUMs)
  - a. Total Preference 9, 932
  - b. Suspended Preference 2, 105
  - c. Active Preference 7, 827
  - d. Not Scheduled 3, 477
  - (non use)
  - e. Scheduled Use 4, 350

The authorized grazing use for the Paiute Meadows Allotment during 1990 and 1991 was adjusted to 4350 AUMs in conjunction with the transfer of grazing preference to Daniel H. Russell dated 01/05/90.

2. Season of Use - 05/01 to 11/05

During the 1990 transfer, the season of use was also adjusted.

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

4. Percent Federal Range -- 97%

5. Grazing System

During 1990 in conjunction with the transfer of grazing

preference to Daniel H. Russell dated 01/05/90, grazing use was authorized north of Paiute Creek with herding practices designed to control drift of livestock south of Paiute Creek. For the years 1988-1989 cattle were also turned out north of Paiute Creek, controlling drift south of Paiute Creek. Grazing use was not at full active preference during the period 1983-1990. The active preference for the allotment has been 7,827 AUMs since at least 1983. The permittee has generally turned out in the spring and gathered in the fall. During the period 1983-1990 licensed livestock cattle use has varied as follows:

1983	No use
1984	6,283 AUMs
1985	4,896 AUMs
1986	No use
1987	No use
1988	1,143 AUMs
1989	2,342 AUMs
1990	4,350 AUMs

B. To: (Description of Agreed upon Changes)

A. Livestock Use:

During the term of this agreement livestock management on the Paiute Meadows allotment will be as follows:

1. Grazing Preference Status (AUMs)

a.	Total Preference	9, 932
b.	Suspended Preference	2, 105
c.	Active Preference	7, 827
d.	Not Scheduled (Voluntary Non-Use)	3, 477
e.	Scheduled Authorized Use	4, 350

2. Season of Use - 04/15 to 02/28

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

4. Percent Federal Range - 100%

5. Grazing System

This agreement implements a deferred rotation grazing system as follows:

Year 1 and 2

North Paiute

446 Cattle	04/15 to 07/15	1348 AUMs
243 Cattle	10/16 to 02/28	<u>1088 AUMs</u>
		2436 AUMs

South Paiute

446 Cattle	07/16 to 10/15	1348 AUMs
126 Cattle	10/16 to 02/28	<u>566 AUMs</u>
		1914 AUMs

Total AUMs 4350 AUMs

Use of the Paiute Seeding will be deferred until after seedripening during Year 1 and 2. Grazing use by livestock will be authorized in the seeding from July 15 through October 15. The utilization objective for the Paiute Seeding will be 50% of the standing crop during the first two years following reconstruction of the seeding boundary fence.

Year 3South Paiute

446 Cattle	04/15 to 07/15	1348 AUMs
126 Cattle	10/16 to 02/28	<u>566 AUMs</u>
		1914 AUMs

North Paiute

446 Cattle	07/16 to 10/15	1348 AUMs
243 Cattle	10/16 to 02/28	<u>1088 AUMs</u>
		2436 AUMs

Total AUMs 4350 AUMs

Use of the Paiute Seeding will be authorized for 04/15 to 07/15, concurrently with the South Paiute Use Area, with a utilization objective of 60% of the standing crop if the long term objective for good condition has been met. In the event it has not, the utilization objective will remain 50%.

## Designated Areas of Use:

The areas of use are unfenced, with some natural barriers preventing livestock drift. To the extent that livestock drift may occur, the Bureau retains the authority to initiate trespass action if all reasonable alternatives have not been utilized to prevent the drift.



## 1) Winter Use Area:

This area would include all the lower foothills and lower country along the entire eastern portion of the allotment and fall below 1750 meters in elevation.

## 2) South Paiute Use Area:

This use area would be the southern portion of the allotment specifically from Paiute Creek south including the higher country above 1750 meters in elevation.

## 3) North Paiute Use Area:

This use area would be the northern portion of the allotment specifically from Paiute Creek north including the higher country above 1750 meters in elevation.

The attached map titled Paiute Meadows Allotment Use Areas outlines the livestock use areas as described above.

This distribution of authorized livestock use implements a grazing system and is not intended to constitute an assignment of the Total Grazing Preference or any part thereof to a specific area of use within the allotment. As the system may change, the distribution may change.

## Terms and Conditions:

Grazing use will be in accordance with this Livestock Use Agreement.

Flexibility in turnout, movement between use areas, and removal dates will be allowed if approved in advance by BLM and if consistent with management objectives.

Salt and/or mineral blocks shall not be placed within one quarter (¼) mile of springs, streams, meadows, riparian habitats or aspen stands.

The permittee is required to perform normal maintenance on the range improvements to which he has been assigned maintenance responsibility.

The permittee will be required to do the necessary riding to keep livestock in the proper use area during the proper time periods.

## 6. Voluntary Non-Use

Voluntary Non-Use will be applied for by Daniel H. Russell to the extent of any Animal Unit Months of forage harvested annually by wild and free roaming horses in excess of 600 AUMs, based upon the post-gather census, but in no event shall such voluntary non-use application be for more than 300 AUMs.

This agreement allows Daniel H. Russell to apply for activation of the voluntary non-use in the event that forage is temporarily available.

## RANGE IMPROVEMENTS

1. In order to assist the Bureau in achieving allotment specific objectives, Daniel H. Russell agrees to provide the labor for the reconstruction of the Paiute Seeding Fence in the South Paiute Use Area to be completed prior to the end of grazing year 1992. The BLM will provide the materials for the reconstruction of this fence.
2. By this agreement, Daniel H. Russell is requesting the construction of an allotment boundary fence on the west side of the allotment. The BLM agrees to complete an Environmental Assessment analyzing the proposal to construct this boundary fence by September 30, 1993. The proposed fence would essentially follow the west boundary of the East Black Rock HMA, the resource area boundary, and the allotment boundary. This fence would assist in establishing the integrity of the HMA division between the West Black Rock HMA and the East Black Rock HMA. In addition this fence will provide for control of migration of wild horses, if any, from the West Black Rock HMA into the East Black Rock HMA.

If the EA determines that no significant impact would result from the construction of the proposed fence, Daniel H. Russell agrees to work cooperatively with the Bureau in the fence design and construction. This includes an agreement to provide an amount of labor that is equitable to the interested parties. This also includes an agreement to maintain an equitable portion of the boundary fence once it is completed. Maintenance responsibilities will be assigned to affected grazing permit holders in an equitable proportion. The BLM would provide the archeological inventory, all materials in construction of the fence and additional labor. The BLM will develop a Cooperative Agreement for construction and maintenance of the proposed project. The BLM will use every option available to secure funding for the construction of the proposed project.

## FUTURE MONITORING AND GRAZING ADJUSTMENTS

The Paradise-Denio Resource Area will continue to monitor the Paiute

Meadows Allotment. Daniel H. Russell will work cooperatively with the BLM in the development of a monitoring plan for the Paiute Meadows Allotment. This monitoring data will continue to be collected in the future to provide the necessary information for subsequent evaluation. These evaluations are necessary to determine if the allotment specific objectives are being met under the new grazing management strategy. In addition, these subsequent evaluations will determine if adjustments are required to meet the established allotment specific objectives.

The Paiute Meadows allotment is scheduled to be re-evaluated in 1995.

#### TERM/EXPIRATION OF AGREEMENT

This agreement sets forth the grazing management to be implemented on the Paiute Meadows Allotment following the adjustment of the wild horse population to the Appropriate Management Level (AML) of 50 horses or a population of horses ten (10) years of age or over, whichever is greater, within the Black Rock East HMA. In the event that this removal of horses to the adjusted AML cannot be made prior to April 15, 1992, or in the event that this removal of horses leaves a population in excess of 75 horses as determined by the BLM's post gather census, to be conducted within one month following the gather, this agreement shall be null and void upon the express written option of Daniel H. Russell (or assignee/transferee) delivered to the BLM office in Winnemucca, Nevada, and a new agreement or decision shall then be issued to implement interim management on the Paiute Meadows Allotment.

In the event that this agreement becomes null and void, for whatever reasons, no word, number and/or phrase shall be considered an admission and/or commitment by any party to this agreement unless otherwise expressly agreed by that party.

In no event will this agreement be effective after February 28, 1995. Following the expiration date of February 28, 1995, a new agreement or decision will be issued regarding the livestock grazing management on the Paiute Meadows Allotment.

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

4100.0-8 "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b)".

4110.3 "The authorized officer shall periodically review the grazing

preference specified in a grazing permit or grazing lease and may make changes in the grazing preference status. These changes shall be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either specified in an applicable land use plan or necessary to manage, maintain or improve rangeland productivity".

4110.3-2(b) "When monitoring shows active use is causing an unacceptable level or pattern of utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives."

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

4110.3-3(c) "When the authorized officer determines that the soil, vegetation, or other resources on the public lands require temporary protection because of conditions such as drought, fire, flood, or insect infestation, after consultation with affected permittees or lessees and other affected interests, action shall be taken to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use. Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions which are placed in full force and effect under 4160.3(c) of this title."

4120.3-1(a) "Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management."

4120.3-2 "Any person may enter into a cooperative agreement with the Bureau of Land Management for the installation, use, maintenance, and/or modification of range improvements needed to achieve management objectives. The cooperative agreements shall specify the division of costs or labor, or both, between the United States and cooperator(s). Title to structural or removable improvements shall be shared by the United States and cooperator(s) in proportion to the actual amount of the respective contribution to the initial construction. Title to nonstructural or nonremoveable improvements shall be in the United States."

4120.3-7 "The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part."

4130.6 "Livestock grazing permits and leases shall contain terms and conditions necessary to achieve the management objectives for the public lands and other lands under Bureau of Land Management administration."

4130.6-1(a) "The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity as determined through monitoring and adjusted as necessary under 4110.3, 4110.3-1 and 4110.3-2 ".

4130.6-2 "The authorized officer may specify in grazing permits and leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to: ...

(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;"

4130.6-3 "Following careful and considered consultation, cooperation and coordination with the lessees, permittees, and other affected interests, the authorized officer may modify terms and conditions of the permit or lease if monitoring data show that present grazing use is not meeting the land use plan or management objectives."

4160.3(c) "A period of 30 days after receipt of the final decision is provided for filing of an appeal. Decisions that are appealed shall be suspended pending final action except as otherwise provided in this section. Except where grazing use the preceding year was authorized on a temporary basis under 4110.3-1(a) of this title, an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal. The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration. Full force and effect decisions shall take effect on the date specified, regardless of an appeal."

This final decision is issued in Full Force and Effect in accordance with Title 43 CFR 4160.3(c) and is effective on December 01, 1991. This decision has been placed in Full Force and Effect due to the combined current forage demand by livestock and wild horses of 10,642 AUMs which is in excess of the calculated carrying capacity of 4950 AUMs. This over-obligation is causing damage to the vegetative resource on the Paiute Meadows Allotment.

If you wish to appeal this decision for livestock management for the purpose of a hearing before an Administrative Law Judge, in accordance with 43 CFR 4.470 you are allowed thirty (30) days from receipt of this notice within which to file such appeal with the Area Manager, Paradise-Denio Resource Area, Bureau of Land Management, Winnemucca District, 705 E. 4th Street, Winnemucca, NV 89445. The appeal shall state the reasons, clearly and concisely as to why you think the final decision is in error.

WILD HORSE AND BURRO MANAGEMENT DECISION

The allotment specific objectives for Wild Horses and Burros on the Paiute Meadows Allotment are:

Maintain and improve the free-roaming behavior of wild horses by protecting and enhancing their home ranges.

Manage, maintain, or improve public rangeland conditions to provide an initial level of 600 AUMs of forage on a sustained yield basis for 50 (AML) adult wild horses and maintain a thriving natural ecological balance.

Maintain and improve wild horse habitat by assuring free access to water.

It has been determined through monitoring that a thriving natural ecological balance can be obtained through an AML of 50 adult wild horses for the Black Rock Range East Herd Management Area in the Paiute Meadows allotment. All animals in excess of the AML of 50 adult wild horses will be removed from the Black Rock Range East HMA and from those areas where wild horses have moved outside of the HMA boundaries in the Paiute Meadows allotment and in the Black Rock Desert between the eastern boundary of the Paiute Meadows allotment and the Quinn River. All adult wild horses in excess of ten (10) years of age that are removed in the gather process will be returned to the Black Rock Range East Herd Management Area in accordance with Washington Office Instruction Memorandum 91-216.

RATIONALE: The analysis and evaluation of available monitoring data indicates that management actions for wild horses must be modified to meet multiple use objectives for the Paiute Meadows allotment. Current and past grazing use by wild horses is not meeting allotment objectives. In the South Paiute use area the conflict has been solely with wild horses and in the North Paiute use area it has been a combination of livestock and wild horses. The current forage demand is in excess of the identified carrying capacity of 600 AUMs for adult wild horses in the Black Rock Range East HMA. The adjustment of wild horses to 50 head of adult wild horses or 600 AUMs of forage demand and the reduction of the Active Use for livestock to 4350 AUMs will result in the achievement of a thriving natural ecological balance of the resources in the Paiute Meadows allotment as indicated by the evaluation of monitoring data. The level of 50 adult animals will maintain a viable herd which will be self sustaining.

AUTHORITY: The authority for this decision is contained in Sec. 3(a) and (b) of the Wild-Free-Roaming Horse and Burro Act (P.L. 92-195) as amended and in Title 43 of the Code of Federal Regulations, which states in pertinent parts:

4700.0-6(a) "Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat."

4710.4 "Management of wild horses and burros shall be undertaken with

the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans."

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

This final decision is issued in Full Force and Effect in accordance with Title 43 CFR 4160.3(c) and is effective on December 01, 1991. This decision has been placed in Full Force and Effect due to the combined current forage demand by livestock and wild horses of 10,642 AUMs which is in excess of the calculated carrying capacity of 4950 AUMs. This over-obligation is causing damage to the vegetative resource on the Paiute Meadows Allotment.

Within thirty (30) days of receipt of this decision for wild horse management, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.400. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842-1, Information on Taking Appeals to the Board of Land Appeals. Within thirty (30) days after you appeal, you are required to provide a Statement of Reasons to the Board of Land Appeals and a copy to the Regional Solicitor's office listed in Item 3 on the form. In addition, a copy of the Statement of Reason will be provided to the Area Manager, Paradise-Denio Resource Area, Bureau of Land Management, 705 E. 4th Street, Winnemucca, NV 89445. The appellant has the burden of showing that the decision appealed from is in error.

#### WILDLIFE MANAGEMENT DECISION

The allotment specific objectives for wildlife habitat on the Paiute Meadows Allotment are:

Manage, maintain, or improve public rangeland conditions to provide forage on a sustained yield basis for big game, with an initial forage demand of 1,838 AUMs for mule deer, 307 AUMs for pronghorn, and 180 AUMs for bighorn sheep.

Improve to or maintain 2,134 acres in Black Rock DY-13, 41,678 acres in Black Rock DW-10, and 45,856 acres in Black Rock DS-6 in good or excellent mule deer habitat condition.

Improve or maintain 45,965 acres in Black Rock PS-15 in good pronghorn habitat condition. Improve to or maintain 35,274 acres in Black Rock PY-14; 2,623 acres in Leonard Creek PW-17, and 31,466 acres in Paiute Creek PW-16 in fair or good pronghorn habitat condition.

Improve to or maintain 69,939 acres in Black Rock BY-15 in good to excellent bighorn sheep habitat condition.

Improve to and maintain stream habitat conditions from 43% on Paiute Creek, 58% on Battle Creek, and 50% on Bartlett Creek to an overall optimum of 60% or above.

Streambank cover 60% or above.  
 Streambank stability 60% or above.  
 Maximum summer water temperatures below 70° F.  
 Sedimentation below 10%.

Protect sage grouse strutting grounds and brooding areas.  
 Maintain the big sagebrush sites within two miles of active strutting grounds in mid to late seral stage with a minimum of 30% shrub composition by weight.

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

Mule Deer  
 1,838 AUMs

Pronghorn Antelope  
 307 AUMs

Bighorn Sheep  
 180 AUMs  
 (when introduced)

Within thirty (30) days of receipt of this decision for wildlife management, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.400. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842-1, Information on Taking Appeals to the Board of Land Appeals. Within thirty (30) days after you appeal, you are required to provide a Statement of Reasons to the Board of Land Appeals and a copy to the Regional Solicitor's office listed in Item 3 on the form. In addition, a copy of the Statement of Reason will be provided to the Area Manager, Paradise-Denio Resource Area, Bureau of Land Management, 705 E. 4th Street, Winnemucca, NV 89445. The appellant has the burden of showing that the decision appealed from is in error.

Sincerely yours, ..  
*Scott Delling*  
 Area Manager  
 Paradise-Denio Resource Area

Attachment



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you.
- AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL . . . . . Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.
  
2. WHERE TO FILE  
 NOTICE OF APPEAL . . . . . Bureau of Land Management  
 Winnemucca District Office  
 705 East 4th Street  
 Winnemucca, NV. 89445  
  
 SOLICITOR  
 ALSO COPY TO . . . . . Regional Solicitor  
 Pacific Southwest Region  
 U.S. Dept. of the Interior  
 2800 Cottage Way  
 Sacramento, CA. 95825
  
3. STATEMENT OF REASONS . . . . . Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.  
  
 SOLICITOR  
 ALSO COPY TO . . . . . Regional Solicitor  
 Pacific Southwest Region  
 U.S. Dept. of the Interior  
 2800 Cottage Way  
 Sacramento, CA. 95825
  
4. ADVERSE PARTIES . . . . . Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).
  
5. PROOF OF SERVICE . . . . . Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed

NOTE: A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a))