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5

6 UNITED STATES DEPARTMENT OF INTERIOR
7 OFFICE OF HEARINGS AND APPEALS
8 HEARINGS DIVISION
9

10 ESTILL RANCHES, L.L.C.,) NV - _____
11 Appellant,)
12 vs.) Appeal from the Asst. Field
13 BUREAU OF LAND MANAGEMENT,) Manager's Decision dated
14 Respondent.) 5/5/04, Winnemucca Grazing
) District, Nevada, relating
) to the Soldier Meadows
) Allotment.
)

15
16 NOTICE OF PARTIAL APPEAL, STATEMENT OF REASONS,
17 and
18 PETITION FOR PARTIAL STAY
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17 reports the partial non-achievement of

18 certain other "Allotment Objectives" and

19 "Rangeland Health Standards", but the

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NOTICE

1
2 *NOTICE IS HEREBY GIVEN TO THE HEARINGS DIVISION (SLC), TO*
3 *THE BUREAU OF LAND MANAGEMENT, AND TO ALL OTHERS TO WHOM IT MAY*
4 *CONCERN* that: (1) BLM is required to transmit this filing to the
5 Hearings Division, Office of Hearings and Appeals, Salt Lake
6 City, Utah "within 10 days after receipt" of this filing, as
7 required by 43 C.F.R. § 4.472(a) (as amended). See 68 Fed.Reg.
8 68765, 68770 (12/10/03). Estill requests that you
9 simultaneously serve a copy of your transmittal upon Estill's
10 lawyer at the above noted address. (2) BLM and "any person
11 named in the decision" are required to file their response, if
12 any, to Estill's Petition for Partial Stay "within 10 days after
13 receiving" this filing, as required by 43 C.F.R. § 4.472(b) (as
14 amended). See 68 Fed.Reg. 68765, 68771 (12/10/03). Estill
15 requests that you simultaneously serve a copy of any response
16 upon Estill's lawyer at the above noted address. (4) Hearings
17 Division is required to review and decide the Estill's Petition
18 for Partial Stay in accordance with the time period prescribed
19 by 43 C.F.R. § 4.472(d) (as amended). See 68 Fed.Reg. 68765,
20 68771 (12/10/03). Estill specifically urges the Hearings
21 Division to decide their Petition for Partial Stay before July
22 15, 2004, since that is the turnout date under Estill's existing
23 Grazing Permit for 1,117 head of cattle.

NOTICE OF PARTIAL APPEAL

24
25 *ESTILL RANCHES, L.L.C. ("Estill") is adversely affected in*
26 *part* by the "Final Multiple Use Decision Soldier Meadows
27

28 **Estill's NOA, SOR, PFS - 4**

1 Allotment" dated May 5, 2004 ("FMUD"), and its related or
2 dependent "Final Allotment Re-Evaluation Summary" dated March
3 3, 2003 ("2003 AE"), "Determination/Management Action Selection
4 Report" dated March 3, 2003 ("2003 MASR"), and "Soldier Meadows
5 Multiple Use Management Environmental Assessment" (EA NV-020-03-
6 09) dated March 10, 2003 ("2003 EA") (including its associated
7 or dependent "Finding of No Significant Impact for the Soldier
8 Meadows Allotment Evaluation EA# 020-03-09" dated May 5, 2004),
9 and gives notice of partial appeal therefrom pursuant to 43
10 C.F.R. §§ 4.470, 4160.4.

11 Estill appeals (or does not appeal) all portions of the
12 FMUD (including its related and dependent documents), as
13 described below:

14 (1) Multiple Use Allotment Objectives. Estill appeals the "Short Term Objectives"
15 and "Long Term Objectives" if inconsistent
16 with the objectives stated in the "Notice
17 of Full Force and Effect Multiple Use
18 Decision Soldier Meadows Allotment" dated
19 January 24, 1994 ("1994 FMUD") and the
20 applicable land use plan. FMUD, pp. 4-7.

21 (2) Rangeland Health Standards. Estill
22 appeals the Rangeland Health Standards and
23 Guidelines if the "Multiple Use Allotment
24 Objectives" are more specific and more
25 objectively evaluated. Estill also appeals
26 the application of California State water
27 quality criteria within Nevada State. FMUD,
28 p. 7.

(3) Permitted Use. Estill appeals the
quantification of grazing capacity and its
associated determination of permitted use;
additional forage is available on a
sustained yield basis to be activated above

1 12,168 AUMs.¹ Schweigert Affidavit ¶ 82-86
2 (which is attached as Exhibit "F").

3 Estill does not appeal the authorization to
4 use the 4,481 AUMs of Active "Not
5 Scheduled" use (FMUD, p. 8), but Estill
6 appeals the phased-in authorization of such
7 "Not Scheduled" use (FMUD, pp. 8-10) and
8 the terms and conditions upon which the
9 phased-in authorization will occur (FMUD,
10 p. 9,14,15). Estill contends that the
11 authorization of the 4,481 AUMs of Active
12 "Not Scheduled" use -- which occurred
13 through the 1994 FMUD -- should be
14 effective immediately.

15 (4) Season of Use. Estill does not appeal
16 the "Final" season of use, i.e. May 1 to
17 April 30, but Estill appeals the "Interim"
18 season of use, i.e. July 15 to April 30.
19 FMUD. p. 8. Estill contends that the
20 season of use should be yearlong both on an
21 "Interim" and "Final" basis.

22 (5) Kind and Class of Livestock. Estill
23 does not appeal the "Cow/Calf" as a kind
24 and class of livestock to be authorized,
25 but Estill appeals the limitation to just
26 "Cow/Calf". "Ewe/Lamb" and "Nanny/Kid"
27 should also be authorized kinds and classes
28 of livestock. FMUD, p. 8.

(6) Percent Federal Range. Estill appeals
the "100%" percent public land status, when
Estill owns/controls unfenced private land
within the Allotment to which a percentage
less than 100% should be applied.

(7) Grazing System. Estill appeals the
"Interim" grazing system in its entirety.
Estill appeals the "Final" grazing system
only as related:

¹ "AUM" or "Animal Unit Month" is defined at 43 C.F.R. §
4100.0-5. See also 43 C.F.R. § 4130.8-1(c) (which states that
"an animal unit month is defined as a month's use and occupancy
of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5
sheep, or 5 goats over the age of 6 months at the time of
entering the public lands").

1 (a) to cattle numbers (with the
2 exception of the period of time
between 1/1 and 3/31);

3 (b) to the end-date for grazing the
4 "Hot Springs" and "Colman" Pastures
(which Estill contends should be
5 1/15); and,

6 (c) to the lack of flexibility in when
7 the Private land is scheduled for use
(i.e. cattle are off of the allotment,
8 which Estill contends should be any 1
month period between 10/1 and 1/15, to
be coordinated annually with BLM).

9 FMUD, pp. 8-11. See also FMUD, p. 13
10 (entitled "Interim Grazing System").²

11 (8) Criteria. Estill does not appeal
12 Criterion "A" if applied and implemented
subject to at least Subpart 4160, i.e.
13 decision-making process. However, Estill
appeals Criterion "B" and "C".

14 (9) Range Improvements. Estill does not
15 appeal Range Improvement #1 (Mahogany Creek
16 Exclosure Fence), #2 (Idaho Canyon Fence),
17 #3 (Desert Dace Protective Fence), and #4
(County Road/Colman Fence), but Estill
appeals: (1) the requirement of "riding and
herding" until fences are completed; (2)
the indefinite scheduling and construction

18
19 ² Since Estill only seeks to stay in part the FMUD, the
20 granting of Estill's "Petition for Partial Stay" will permit
Estill to graze as follows during the stay period in Year 1:

21 Year 1: 300 cattle 05/01 - 07/15 Warm Springs
22 1,117 cattle 07/15 - 09/30 *Idaho Canyon/Stanley Camp
23 1,117 cattle 10/01 - 10/15 *Idaho Canyon/Stanley Camp
24 0 cattle 10/16 - 11/15 Private
25 1,117 cattle 11/16 - 12/31 Hot Springs/Colman
26 1,037 cattle 01/01 - 03/31 South
27 1,117 cattle 04/01 - 04/30 South

28 * = Use will be in accordance with the 1994 FMUD.

1 of the Range Improvements; (3) the Desert
2 Dace Protective Fence should it be
3 authorized and constructed without off-site
4 water development to mitigate the loss of
5 access to the livestock water therein
6 (including any associated water rights
7 owned by Estill); and, (4) the County
8 Road/Colman Fence to the extent Estill is
9 required to pay 100% of the construction
10 cost when the fence is constructed to
11 mitigate non-livestock resources. FMUD, pp.
12 13-14.

13 (10) Terms and Conditions. Estill does not
14 appeal terms and conditions 6,8,9,10, but
15 Estill appeals the remainder of the terms
16 and conditions. FMUD, pp. 15-16.

17 (11) Grazing Permit. Estill does not appeal
18 modification of their existing Grazing
19 Permit to the extent consistent with the
20 provisions of the FMUD not appealed herein
21 (43 C.F.R. § 4130.3-3), but Estill appeals
22 the issuance of a new Grazing Permit since
23 Estill's existing Grazing Permit is
24 effective through 2007, and appeals the
25 declaring as "null and void" Estill's
26 existing Grazing Permit.

27 (12) Wild Horse and Wildlife Decisions.
28 Estill does not appeal the "Wild Horse and
Burro Management" and "Wildlife" Decisions
because these Decisions do not change such
management previously decided and
implemented in the 1994 FMUD, but Estill
disputes, challenges, and appeals any
findings made in the 2003 AE and the 2003
MASR with respect to wild horses and
wildlife not contributing to non-attainment
of "Allotment Objectives" and "Rangeland
Health Standards". This is particularly
true for wild horses because BLM has not
kept the wild horse numbers at the
appropriate management level at any time
during the evaluation process, and the
field data, reports, and 2003 AE support a
conclusion that wild horses have been a
factor in non-attainment of some of the
"Objectives" and "Standards". FMUD, pp. 18-
20.

1 (13) Future Monitoring and Grazing
2 Adjustments. Estill does not appeal the
3 future monitoring, evaluation, and
4 modification of Estill's existing Grazing
5 Permit consistent with law. FMUD, p. 20.

6 The FMUD was issued by the authorized officer of the U.S.
7 Department of Interior, Bureau of Land Management with the
8 Winnemucca District, Nevada. The Statement of Reasons are
9 included herein.

10 STATEMENT OF REASONS

11 *ESTILL RANCHES, L.L.C.* ("Estill") submits their Statement
12 of Reasons in support of their "Notice of Partial Appeal".
13 Estill incorporates herein their written comments and protest
14 previously submitted to BLM.

15 **I. INTRODUCTION.**

16 This is a dispute over a grazing decision relating to
17 approximately 327,000 acres of public land within the Soldier
18 Meadows Allotment, Winnemucca District, Nevada, which is located
19 approximately 60 air miles northwest of Winnemucca, Nevada and
20 approximately 110 air miles northeast of Reno, Nevada. See
21 Exhibit "A", p. 22.

22 The disputed grazing decision arose from a finding that the
23 "Allotment Objectives" and "Rangeland Health Standards" were not
24 being met by the authorized livestock use within the Soldier
25 Meadows Allotment. The grazing decision expressed the finding
26 at page 1, which stated:

27 "The Determination document determined that
28 allotment objectives and SRH (Standards for
Rangeland Health) were not achieved under
the existing management and that livestock

1 grazing was a significant factor in that
2 non-attainment."

3 Exhibit "A", p. 1. Based upon such finding, the grazing
4 decision changed the authorized livestock use expressed within
5 Estill's present Grazing Permit. Specifically, the grazing
6 decision changed the status of 4,481 AUMs of the "active use",
7 the season of use, the grazing system, and the terms and
8 conditions within Estill's Grazing Permit. See Exhibit "A", p.
9 3 (wherein the grazing decision stated that "BLM believes this
10 grazing system will result in significant progress toward
11 attaining the allotment specific objectives and SRH.")

12 The finding expressed within the disputed grazing decision
13 is erroneous. The uncontroverted evidence is that BLM's own
14 2003 AE and 2003 MASR determined that all but two of the
15 "Allotment Objectives" and "Rangeland Health Standards" were met
16 in whole or in part. Of the 2 not-met, the uncontroverted
17 evidence is that BLM was incapable of finding that livestock use
18 was the factor in the failure because livestock use did not
19 occur upon the public land where the two not-met objectives
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1 applied; namely Mahogany Creek³ and Summer Camp Creek⁴. Of the
2 certain "Objectives" and "Standards" that were partially not-
3 met, the preponderance of evidence is that BLM's 2003 AE and
4 2003 MASR erred in their finding for any one or all of the
5 following reasons: (1) the "Objective" or "Standard" was, in
6 fact, wholly met; (2) BLM was incapable of making a finding of
7 partially not-met due to the erroneous collection and/or
8 interpretation of the monitoring data; (3) livestock use was not
9 a factor or a significant factor in the purported failure;
10 and/or, (4) a less onerous alternative existed to meet or make
11 significant progress in meeting the "Objectives" and "Standards"
12 purportedly partially not-met. Based upon such erroneous
13 finding, BLM cannot lawfully change Estill's present Grazing
14 Permit, and thus, BLM's grazing decision must be stayed (as
15 appealed) and must be set aside (as appealed).

19 ³ Mahogany Creek is partially within the Mahogany Camp
20 Exclosure and partially within the Stanley Camp Pasture.
21 Mahogany Creek has not been grazed within the Mahogany Camp
22 Exclosure since about 1979. Mahogany Creek has not been grazed
23 within the Stanley Camp Pasture since 1994, even though the 1994
24 FMUD authorized use therein, especially after construction of
the Idaho Canyon Fence.

25 ⁴ Summer Camp Creek is within the Stanley Camp Pasture.
26 The Stanley Camp Pasture has not been grazed since 1994, even
27 though the 1994 FMUD authorized use therein, especially after
28 construction of the Idaho Canyon Fence.

1 II. STATEMENT OF FACTS.

2 Estill owns private land within and adjacent to the Soldier
3 Meadows Allotment, Winnemucca Grazing District, Nevada⁵, along
4 with the entitlement to graze other grazing allotments, water
5 rights, livestock, and improvements. This private land, other
6 grazing allotments, water rights, livestock, and improvements
7 facilitate a yearlong domestic cow-calf and ewe-lamb livestock
8 operation which is dependent by use upon the public land within
9 the Soldier Meadows Allotment and other grazing allotments. To
10 this extent, the private land serves -- in whole or in part --
11 as the "base property" for a Grazing Preference to harvest
12 16,070 AUMs of forage upon the public land within the Soldier
13 Meadows Allotment. Estill Declaration ¶ 3-7 (which is attached
14 as Exhibit "G").

15 Based upon this ownership of "base property", on November
16 18, 1998, BLM issued a Grazing Permit to Estill to authorize the
17 use of Estill's Grazing Preference within the Soldier Meadows
18 Allotment. Exhibit "B"; Estill Declaration ¶ 7. This Grazing
19 Permit authorizes Estill to graze certain numbers of cattle
20

21 ⁵ The Soldier Meadows Allotment is located approximately 60
22 miles northwest of Winnemucca, Nevada. The Allotment includes
23 327,739 acres of public land. The Allotment includes a rich
24 diversity of flora and fauna characteristic of its diverse
25 topography. Its valley floor of approximately 4,000 feet in
26 elevation is dominated by shadescale overstory and squirreltail
27 understory. Its mountain top of approximately 9,000 feet in
28 elevation is dominated by a mix of aspen stands and various sage
brush overstory and Idaho Fescue and Mountain Brome understory.

1 during certain seasons of use within the Allotment in accordance
2 with the 1994 FMUD (attached as Exhibit "C"), as follows:

| | | | |
|---|------|--------|-------------|
| 3 | 500 | cattle | 01/01-03/31 |
| | 1117 | cattle | 04/01-04/30 |
| 4 | 1117 | cattle | 07/15-10/14 |
| | 1117 | cattle | 11/16-12/31 |

5 This Grazing Permit is effective through December 15, 2007.
6 Exhibit "B"; Estill Declaration ¶ 7.

7 During the term of Estill's Grazing Permit, BLM collected
8 some monitoring data upon the public land within the Soldier
9 Meadows Allotment. Estill Declaration ¶ 10. BLM then evaluated
10 the data

11 "in order to determine if current
12 (livestock) management is attaining the
13 allotment objectives and Standards for
14 Rangeland Health (SRH) within the SMA
(Soldier Meadows Allotment)."

15 Exhibit "A", p. 1. This evaluation was documented in BLM's
16 "Final Allotment Re-Evaluation Summary" dated March 3, 2003
17 ("2003 AE") and BLM's "Determination/Management Action Selection
18 Report" dated March 3, 2003 ("2003 MASR"). See Exhibit "A", p.
19 1. The relevant parts of the 2003 AE are attached as Exhibit
20 "D", and the relevant parts of the 2003 MASR are attached as
21 Exhibit "E".

22 On March 3, 2003, BLM made public their 2003 AE and 2003
23 MASR. Estill Declaration ¶ 11. The 2003 AE and 2003 MASR
24 disclosed certain findings relative to the "Allotment
25 Objectives" and "Rangeland Health Standards". Exhibits "D", "E".
26 Though the 2003 AE and 2003 MASR did not group all of its
27 findings into particular categories, these findings can be

28 Estill's NOA, SOR, PFS - 13

1 grouped into four (4) different categories: namely, "No
2 Conclusion"⁶ (Schweigert Affidavit ¶ 7-8); "Unequivocally Met"⁷
3 (Schweigert Affidavit ¶ 10-11); "Unequivocally Not Met"⁸
4 (Schweigert Affidavit ¶ 13,15); and, "Equivocally (Partially)
5 Met"⁹ (Schweigert Affidavit ¶ 17).

6 As to the "No Conclusion" category, the 2003 AE reported
7 that BLM made no finding relative to the following "Allotment
8 Objective(s)" or "Rangeland Health Standard(s)":

9 Allotment Objectives (Schweigert Affidavit
10 ¶ 7):

11 Combined upland grass utilization of the
12 Black Rock Pasture by the end of the
13 grazing season. Exhibit "D", p. 45-46.
14 (Upland Grass/Dry Meadows #2).

15
16 ⁶ "No Conclusion" means that BLM did not collect any
17 monitoring data and/or the data was insufficient to make any
18 conclusion relative to the particular "Allotment Objective" or
19 "Rangeland Health Standard".

20 ⁷ "Unequivocally Met" means that BLM collected monitoring
21 data and made a conclusion that the particular "Allotment
22 Objective" or "Rangeland Health Standard" was met.

23 ⁸ "Unequivocally Not Met" means that BLM collected
24 monitoring data and made a conclusion that the particular
25 "Allotment Objective" or "Rangeland Health Standard" was not-
26 met.

27 ⁹ "Equivocally (Partially) Met" means that BLM collected
28 monitoring data and made a conclusion that the particular
"Allotment Objective" or "Rangeland Health Standard" was met in
part and not-met in part.

1 Combined upland grass utilization by the
2 end of the grazing season (exclusive of
3 Black Rock Pasture). Exhibit "D", p. 46.
4 (Upland Grass/Dry Meadows #3).

5 Upland grass utilization by wild horses in
6 pastures rested from livestock use, once
7 AML (Appropriate Management Level) is
8 achieved. Exhibit "D", p. 46. (Upland
9 Grass/Dry Meadows #4).

10 Upland grass utilization by wild horses in
11 the Black Rock Pasture, once AML is
12 achieved. Exhibit "D", p. 46. (Upland
13 Grass/Dry Meadows #5).

14 Water Quality for watering of livestock,
15 coldwater aquatic life propagation, water
16 contact recreation and wildlife propagation
17 (Soldiers Creek). Exhibit "D", p. 47 (WATER
18 QUALITY OBJECTIVES #3.B.).

19 Sage grouse canopy cover (nesting). Exhibit
20 "D", p. 48-49 (VEGETATION OBJECTIVES, B.2.
21 (Sage Grouse)).

22 Desired Plant Community. Exhibit "D", p. 49
23 (VEGETATION OBJECTIVES, C. (Desired Plant
24 Community Objectives)).

25 Rangeland Health Standard (Schweigert
26 Affidavit ¶ 8):

27 Rangeland Health Standard #5. "Habitat
28 conditions meet the life cycle requirements
of special status species", as related to
Western yellow-billed cuckoo, Black Tern,
Tiehm Milkvetch, Schoolcraft Catseye,
Crosby Buckwheat, Windloving Buckwheat,
Grimy Ivesia, Cordelia beardtongue 5
(Exhibit "D", p. 57-58).

As to the "Unequivocally Met" category, the 2003 AE and
2003 MASR reported that BLM made a finding that the following
"Allotment Objective(s)" or "Rangeland Health Standard(s)" were
wholly met:

Allotment Objectives (Schweigert Affidavit
¶ 10):

Estill's NOA, SOR, PFS - 15

1 Riparian woody species (aspen and willow)
2 utilization objective. Exhibit "D", p. 45
3 (UTILIZATION OBJECTIVES, Riparian/Wet
4 Meadow #1).

5 Stubble height requirements for Mahogany,
6 Summer Camp, and Snow Creeks. Exhibit "D",
7 p. 45 (UTILIZATION OBJECTIVES, Riparian/Wet
8 Meadow #1).

9 Stubble height requirements for Colman,
10 Slumgullion, and Donnelly Creeks, when
11 cattle leave the pasture. Exhibit "D", p.
12 45 (UTILIZATION OBJECTIVES, Riparian/Wet
13 Meadow #1).

14 Water Quality of Class A water bodies
15 (Summer Camp Creek and Mahogany Creek).
16 Exhibit "D", p. 46 (WATER QUALITY
17 OBJECTIVES #1).

18 Water Quality of Class B water bodies (Snow
19 Creek). Exhibit "D", p. 46 (WATER QUALITY
20 OBJECTIVES #2).

21 Water Quality for watering of livestock,
22 coldwater aquatic life propagation, water
23 contact recreation and wildlife propagation
24 (Slumgullion Creek). Exhibit "D", p. 47
25 (WATER QUALITY OBJECTIVES #3.B.).

26 Water Quality for Desert Dace habitat.
27 Exhibit "D", p. 47 (WATER QUALITY
28 OBJECTIVES #3(sic)).

Riparian Condition Class, Snow Creek.
Exhibit "D", p. 47-48 (VEGETATION
OBJECTIVES, A.3. (Riparian Objectives)).

Riparian Condition Class, Donnelly Creek.
Exhibit "D", p. 48 (VEGETATION OBJECTIVES,
A.4 (Riparian Objectives)).

Riparian Condition Class, Colman Creek.
Exhibit "D", p. 48 (VEGETATION OBJECTIVES,
A. 5 (Riparian Objectives)).

Sage grouse canopy cover (vegetal
manipulation). Exhibit "D", p. 48
(VEGETATION OBJECTIVES, B. 1. (Sage
Grouse)).

1 Rangeland Health Standards (Schweigert
Affidavit ¶ 11):

2 Rangeland Health Standard #5. "Habitat
3 conditions meet the life cycle requirements
4 of special status species", as concerns:

5 * Desert Dace (Exhibit "D", p. 51; see
also Exhibit "E", p. 22-23);

6 * Lahontan Cutthroat Trout (Exhibit
7 "D", p. 52-53; see also Exhibit "E",
p. 23-24);

8 * Soldier Meadows Ciquefoil (Exhibit
9 "D", p. 53; see also Exhibit "E", p.
24-25);

10 * Elongate Mud Meadows springsnail
11 (Exhibit "D", p. 53; see also Exhibit
"E", p. 25);

12 * Springsnails (Exhibit "D", p. 53;
13 see also Exhibit "E", p. 25);

14 * Pygmy Rabbit (Exhibit "D", p. 54;
see also Exhibit "E", p. 25-26);

15 * California Bighorn Sheep (Exhibit
16 "D", p. 55; see also Exhibit "E", p.
26);

17 * Prebles Shrew (Exhibit "D", p. 55;
18 see also Exhibit "E", p. 26-27);

19 * Northern Goshawk (Exhibit "D", p.
55-56; see also Exhibit "E", p. 27);

20 * Western Burrowing Owl (Exhibit "D",
21 p. 56; see also Exhibit "E", p. 27);

22 * Greater Sage Grouse (Exhibit "D", p.
56; see also Exhibit "E", p. 27)

23 * Least Bittern (Exhibit "D", p. 56;
24 see also Exhibit "E", p. 27-28);

25 * White-faced Ibis (Exhibit "D", p.
56; see also Exhibit "E", p. 28);

26 * Smooth Stickleaf (Exhibit "D", p.
27 57; see also Exhibit "E", p. 28).

1 As to the "Unequivocally Not Met" category, the 2003 AE
2 reported that BLM made a finding that the following "Allotment
3 Objective(s)" were wholly not-met:

4 Allotment Objectives:

5 Riparian Condition Class, Mahogany Creek.
6 Exhibit "D", p. 47 (VEGETATION OBJECTIVES,
A.1. (Riparian Objectives)).

7 Riparian Condition Class, Summer Camp
8 Creek. Exhibit "D", p. 47 (VEGETATION
OBJECTIVES, A.2. (Riparian Objectives)).

9 Schweigert Affidavit ¶ 13. No finding was made by BLM that any
10 "Rangeland Health Standards" were wholly not-met. Schweigert
11 Affidavit ¶ 15.

12 As to the "Equivocally (Partially) Met" category, the 2003
13 AE reported that BLM made a finding that the following
14 "Allotment Objective(s)" and "Rangeland Health Standard(s)" were
15 partially met and partially not-met:

16 Allotment-Wide Management Objectives:

17 Stubble height requirements on meadows
18 surrounding desert dace habitat. Exhibit
19 "D", p. 45. (UTILIZATION OBJECTIVES,
Riparian/Wet Meadow #1).

20 Riparian wet meadow (grasses, grass-like,
21 and forb) utilization. Exhibit "D", p. 45.
(UTILIZATION OBJECTIVES, Riparian/Wet
Meadow #2).

22 Upland grass utilization by the end of the
23 livestock use period, exclusive of the
Black Rock Pasture. Exhibit "D", p. 45.
24 (UTILIZATION OBJECTIVES, Upland Grass/Dry
Meadows #1).

25 Upland browse utilization by livestock.
26 Exhibit "D", p. 46. (UTILIZATION
OBJECTIVES, Upland Browse #1).

1 Water Quality for watering of livestock,
2 coldwater aquatic life propagation, water
3 contact recreation and wildlife propagation
4 (Donnelly Creek and Colman Creek). Exhibit
5 "D", p. 47 (WATER QUALITY OBJECTIVES
6 #3.A.).

7 Riparian Condition Class, Slumgullion
8 Creek. Exhibit "D", p. 48 (VEGETATION
9 OBJECTIVES, Riparian Objectives #6).

10 Rangeland Health Standards:

11 Rangeland Health Standard #1. "Soil
12 processes are appropriate to soil type,
13 climate, and land form." Exhibit "D", p. 49
14 (VEGETATION OBJECTIVES D.1); see also
15 Exhibit "E", p. 20-21.

16 Rangeland Health Standard #2.
17 "Riparian/wetland systems are in properly
18 functioning condition." Exhibit "D", p. 49-
19 50 (VEGETATION OBJECTIVES D.2); see also
20 Exhibit "E", p. 21.

21 Rangeland Health Standard #3. "Water
22 quality criteria in [Nevada] State Law
23 shall be achieved or maintained." Exhibit
24 "D", p. 50 (VEGETATION OBJECTIVES D.3); see
25 also Exhibit "E", p. 21-22.

26 Rangeland Health Standard #4. "Populations
27 and communities of native plant species and
28 habitats for native animal species are
healthy, productive and diverse." Exhibit
"D", p. 51 (VEGETATION OBJECTIVES D.4); see
also Exhibit "E", p. 22.

Rangeland Health Standard #5. "Habitat
conditions meet the life cycle requirements
of special status species", as related to
bats (Exhibit "D", p. 54-55; see also
Exhibit "E", p. 26), and as related to
Nevada Viceroy [Exhibit "D", p. 56-57
(VEGETATION OBJECTIVES D.5); see also
Exhibit "E", p. 28].

29 See Schweigert Affidavit ¶ 17.

30 A few days later, on March 10, 2003, BLM issued the
31 "Soldier Meadows Multiple Use Management Environmental
32

33 **Estill's NOA, SOR, PFS - 19**

1 Assessment" (EA NV-020-03-09) ("2003 EA"). Estill Declaration
2 ¶ 12. The relevant parts of the 2003 EA are attached as Exhibit
3 5 to Schweigert Affidavit.¹⁰

4 After the 2003 AE, 2003 MASR, and 2003 EA were issued, BLM
5 solicited and received comments from the interested publics and
6 from Estill. Estill Declaration ¶ 13. BLM also conducted
7 several meetings with the interested publics and with Estill.

8 Id.

9 Through comments and discussions, Estill submitted
10 proposals to BLM. Estill Declaration ¶ 14. These proposals were
11 made without respect to the merits of BLM's findings, but with
12 respect to satisfying BLM's purported concerns relative to the
13 "Allotment Objectives" and "Rangeland Heath Standards" that were
14 purportedly wholly "not-met" (identified above within the
15 "Unequivocally Not Met" category) and that were purportedly
16 "partially not-met" (identified above within the "Equivocally
17 (Partially) Met" category). Id. In other words, Estill denied
18 BLM's findings relative to the "Objectives" and "Standards" that
19 were purportedly wholly "not-met" and purportedly "partially
20 not-met" (Schweigert Affidavit ¶ 14,15,18-81), but Estill was
21 willing to accommodate BLM's purported findings should any
22 grazing decision not adversely affect Estill's livestock
23 operation. Id.

24
25 ¹⁰ Note that the associated or dependent "Finding of No
26 Significant Impact" for the 2003 EA was issued with the FMUD on
27 May 5, 2004.

1 Notwithstanding Estill's efforts, BLM rejected Estill's
2 proposals. Estill Declaration ¶ 15. This rejection occurred on
3 October 17, 2003, when BLM issued their "Proposed Multiple Use
4 Decision Soldier Meadows Allotment" ("PMUD"); occurred again on
5 May 5, 2004, when BLM issued their "Final Multiple Use Decision
6 Soldier Meadows Allotment" ("FMUD"); and, even occurred again
7 on the eve of expiration of the FMUD appeal period, when Estill
8 requested and BLM failed to make changes in at least the
9 "Interim Grazing System" to mitigate the immediate and
10 irreparable harm expected to be caused upon Estill. Id.

11 Having no choice, Estill was forced to file this appeal,
12 seeking to set aside those provisions within the FMUD that
13 changed the permitted use (as appealed); imposed the "Interim"
14 season of use (as appealed); imposed the "Interim" and "Final"
15 Grazing Systems (as appealed); and, imposed the terms and
16 conditions (as appealed). Estill Declaration ¶ 16.

17 Facing immediate and irreparable harm, Estill was also
18 forced to file this stay petition, seeking to stay the FMUD (as
19 appealed). Estill Declaration ¶ 17. The need for a stay is
20 apparent when examining the effects of the "Interim Grazing
21 System" upon Estill's present livestock operation as authorized
22 in Estill's Grazing Permit. Estill Declaration ¶ 18. As will be
23 more fully discussed below in the "Petition for Partial Stay",
24 a stay is warranted for two (2) basic reasons (which are the
25 most immediate). Id. First, the "Interim Grazing System"
26 authorizes only 300 head of cattle in the Idaho Canyon Pasture

1 between July 15, 2004 and September 30, 2004, leaving no home
2 for 817 head of cattle as authorized in Estill's present Grazing
3 Permit between July 15, 2004 and September 30, 2004. Compare
4 Exhibit "A", p. 9 and Exhibit "B"; Estill Declaration ¶ 20-24.
5 Second, the "Interim Grazing System" creates a trespass trap in
6 the Hot Springs Pasture and in the Colman Pasture between
7 October 1, 2004 and November 15, 2004, by scheduling livestock
8 use in the unfenced Warm Springs Pasture between October 1, 2004
9 and November 15, 2004. See Exhibit "A", pp. 9,22; Estill
10 Declaration ¶ 25-27. Between October 1 and November 15, the
11 natural propensity of the cattle is to drift to lower
12 elevations, i.e. from the Warm Springs Pasture to the Hot
13 Springs and/or Colman Pastures. Id. In fact, this natural
14 propensity is exacerbated by the occurrence of hunting season
15 beginning in October, whereby numerous hunters will disturb
16 cattle grazing in the Warm Spring Pasture, making the cattle
17 more likely to drift to lower elevations, i.e. from the Warm
18 Springs Pasture to the Hot Springs and/or Colman Pastures. Id.
19 Unless stayed, BLM guaranteed trespass claims when the FMUD
20 included term and condition #13, which states that "During the
21 interim grazing system, no livestock grazing is authorized east
22 of the County Road (Colman Use Area) between the Soldier Meadows
23 Ranch and the Summit Lake Indian Reservation until after
24 November 15." Exhibit "A", p. 16; Estill Declaration ¶ 27. The
25 trespass trap is guaranteed because no fence or physical barrier
26 completely separates Warm Springs Pasture from the Hot Springs
27

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1 Pasture, and likewise, no fence or physical barrier completely
2 separates the Hot Springs Pasture from the Colman Pasture.

3 **III. DISCUSSION OF LAW and ARGUMENT.**

4 43 C.F.R. §§ 4100.0-8, 4110.3, and 4130.3-3¹¹ authorize BLM
5 to issue a grazing decision to change/modify the permitted use,
6 the season of use, the grazing systems, and/or the terms and
7 conditions within a Grazing Permit. However, Sections 4100.0-8,
8 4110.3 and 4130.3-3 condition any change/modification of a
9 Grazing Permit upon certain and specific findings, as follows:

10 First, the grazing decision must survive
11 the test of being an action specifically
12 provided for in the land use plan or
13 "clearly consistent" with and adhering to
14 the terms, conditions, and decisions of the
15 land use plan. 43 C.F.R. § 4100.0-8. See 43
16 C.F.R. §§ 1601.0-5(b), 1601.0-5(c).¹² See

15 ¹¹ Section 4100.0-8 states that "Livestock grazing
16 activities and management actions approved by the authorized
17 officer shall be in conformance with the land use plan".
18 Section 4110.3 states that BLM can change permitted use "to
19 conform with land use plans or activity plans, or to comply with
20 the provisions of subpart 4180". Section 4130.3-3 states that
21 BLM can modify terms and conditions, which includes seasons of
22 use and grazing systems, "when the active use or related
23 management practices are not meeting the ... management
24 objectives, or is not in conformance with the provisions of
25 subpart 4180".

26 ¹² Section 1601.0-5(b) states that "(c)onformity or
27 conformance means that a resource management action shall be
28 specifically provided for in the plan, or if not specifically
mentioned, shall be clearly consistent with the terms,
conditions, and decisions of the approved plan or plan
amendment." Section 1601.0-5(c) states that "(c)onsistent means

1 also Joe Stamatakis, 98 IBLA 4, 7 (1987);
2 Southern Utah Wilderness Alliance, 111 IBLA
3 207, 211 (1989).

4 Second, the grazing decision must be
5 supported by the reason expressed therein.
6 In other words, a finding must exist that
7 the applicable "Allotment Objectives"
8 and/or "Rangeland Health Standards" are
9 not-met as evidenced by monitoring
10 information. 43 C.F.R. §§ 4110.3, 4130.3-3.
11 In addition, a finding must exist that if
12 an "Objective" and/or "Standard" is not-
13 met, the current authorized livestock use
14 is the reason. Id.

15 Third, the change/modification made by the
16 grazing decision is necessary to achieve
17 the purported not-met "Objective" and/or
18 "Standard". Id. In other words, whether
19 there exists a rational nexus between the
20 reason for the decided management action
21 and the change/modification to the Grazing
22 Permit? See 43 C.F.R. § 4.478(b).

23 Fourth, the change/modification made by the
24 grazing decision is reasonably possible of
25 accomplishment. 43 C.F.R. § 4.478(b). See
26 James D. Wilcox v. Bureau of Land
27 Management, 134 IBLA 57, 73 (1995) (wherein
28 the Board stated that "While the existence
of alternatives methods of achieving
legitimate range management goals does not
necessarily mandate revision of a BLM
decision reached in the exercise of its
discretionary authority ..., these less
onerous options cannot be totally ignored
when evaluating the reasonableness of BLM's
decision.")

29 If any of these conditions cannot be satisfied, then the grazing
30 decision must be set aside in accordance with 43 C.F.R. §
31 4.478(b). See Filippini Ranching Co. and Paris Ranch v. Bureau

32 that the Bureau of Land Management plans will adhere to the
33 terms, conditions, and decisions of officially approved and
34 adopted resource related plans".

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1 of Land Management, 149 IBLA 54, 60-77 (1999) (wherein the Board
2 sustained the set aside of a grazing decision that changed the
3 permitted use, the season of use, the grazing system, and the
4 terms and conditions within a Grazing Permit when the evidence
5 demonstrated an erroneous finding by BLM that "objectives" were
6 not-met).

7 In the present matter, the FMUD cannot satisfy the
8 conditions to change/modify Estill's Grazing Permit. In fact,
9 on its face, the FMUD is based upon a failure to meet "Allotment
10 Objectives" and "Rangeland Health Standards". See Exhibit "A",
11 pp. 1,3. However, an examination of the evidence and the
12 preponderance of evidence reveals otherwise. As separately
13 discussed below, no information is reported in the 2003 AE and
14 2003 MASR, upon which the FMUD relies, to evidence: (a) the non-
15 achievement of the "Allotment Objectives" and "Rangeland Health
16 Standards" within the Soldier Meadows Allotment; and/or, (b) if
17 non-achievement of any of the "Objectives" and/or "Standards",
18 the present livestock use is the reason. Further, the evidence
19 at hearing will demonstrate that the change/modification made
20 by the FMUD to Estill's Grazing Permit is not necessary to
21 achieve (or can achieve) the purported not-met "Objective"
22 and/or "Standard". And, the evidence at hearing will further
23 demonstrate that the change/modification made by the FMUD is
24 draconian in nature; other rational management actions are
25 available and were proffered by Estill to BLM to mitigate the
26 (purported) concern, regardless of the merits (or lack of

1 merits) of the "concern". Accordingly, the FMUD cannot be
2 sustained and should be stayed (as appealed) and set aside (as
3 appealed).

4 A. Information reported in the 2003 AE and 2003 MASR,
5 upon which the FMUD relies, evidences the achievement
6 of or evidences no conclusion on the majority of the
"Allotment Objectives" and "Rangeland Health
Standards" within the Soldier Meadows Allotment.

7 The uncontroverted evidence is that BLM's own 2003 AE and
8 2003 MASR concluded that many of the "Allotment Objectives" and
9 "Rangeland Health Standards" were met, as fully discussed in
10 Schweigert Affidavit ¶ 10,11. Since these "Objectives" and
11 "Standards" were met, no justification exists to change/modify
12 Estill's Grazing Permit. Schweigert Affidavit ¶ 12.

13 In addition, the uncontroverted evidence is that BLM's own
14 2003 AE and 2003 MASR concluded that many other of the
15 "Allotment Objectives" and "Rangeland Health Standards" were not
16 subject to a conclusion by BLM that they were met or not-met,
17 as fully discussed in Schweigert Affidavit ¶ 7,8. In other
18 words, BLM made no conclusion relative to certain "Objectives"
19 and "Standards". Since no conclusion was made by BLM that these
20 "Objectives" and "Standards" were met or not-met, no
21 justification exists to change/modify Estill's Grazing Permit.
22 Schweigert Affidavit ¶ 9. See also Schweigert Affidavit ¶ 15.

23 B. Information reported in the 2003 AE and 2003 MASR,
24 upon which the FMUD relies, evidences that the present
25 livestock use was not the reason for the non-
achievement of certain other "Objectives".

26 The uncontroverted evidence is that BLM's own 2003 AE
27 concluded that certain other "Allotment Objectives" were not-

1 met. Schweigert Affidavit ¶ 13. These certain other
2 "Objectives" related to Mahogany Creek and Summer Camp Creek.
3 Id. However, the same uncontroverted evidence demonstrates that
4 the authorized livestock use within Estill's Grazing Permit was
5 not the reason for the non-attainment, since no livestock use
6 had occurred upon such riparian areas (i.e. Mahogany Creek and
7 Summer Camp Creek) since before the beginning of the evaluation
8 period. Schweigert Affidavit ¶ 14. Since Estill's livestock use
9 was not the cause of the failure to meet such "Objectives", no
10 justification exists to change/modify Estill's Grazing Permit.
11 Schweigert Affidavit ¶ 16.

12 C. Information reported in the 2003 AE and 2003 MASR,
13 upon which the FMUD relies, reports the partial non-
14 achievement of certain other "Allotment Objectives"
15 and "Rangeland Health Standards", but the
16 preponderance of evidence demonstrates: (1)
17 achievement, not partial non-achievement; or, (2) that
18 Estill's authorized use is not responsible for such
19 partial non-achievement.

20 The uncontroverted evidence is that BLM's own 2003 AE and
21 2003 MASR concluded that certain other "Allotment Objectives"
22 and "Rangeland Health Standards" were partially met and partially
23 not-met. Schweigert Affidavit ¶ 17. To the extent these
24 "Objectives" and "Standards" were met in part, no justification
25 exists to change/modify Estill's Grazing Permit. And, to the
26 extent these "Objectives" and "Standards" were not-met in part,
27 it perhaps suggests that a change/modification to Estill's
28 Grazing Permit is warranted. However, as discussed below, the
preponderance of evidence demonstrates that BLM's conclusion
that certain "Objectives" and "Standards" were not-met in part

1 was erroneous. See West Cow Creek Permittees v. Bureau of Land
2 Management, 142 IBLA 224, 238 (1998) (wherein the Board stated
3 that "A party challenging BLM's evaluation must do more than
4 offer a contrary opinion; an appellant must show by a
5 preponderance of the evidence that BLM erred when collecting the
6 underlying data, when interpreting that data, or when reaching
7 the conclusion").

8 (1) **Stubble height requirements on meadows**
9 **surrounding desert dace habitat.**

10 Though BLM's 2003 AE concluded that the "Objective"
11 regarding stubble height requirements on meadows surrounding
12 desert dace was partially met (Schweigert Affidavit ¶ 18), the
13 2003 AE reported that the "Objective" was actually met on all
14 meadows surrounding dace hot springs all years, except that it
15 was not met on "some" sites in 2000 (Schweigert Affidavit ¶ 19).

16 Estill reviewed the 2000 information relied upon by BLM.
17 Estill found that BLM erred in interpreting the data and/or in
18 reaching the conclusion because a single occurrence does not
19 warrant overall non-achievement (Schweigert Affidavit ¶ 20.a.)
20 and because the reason for the non-achievement in that spot and
21 in that single year was due to wild horses, not livestock
22 (Schweigert Affidavit ¶ 20.b.). And, regardless of the merits
23 of BLM's erroneous interpretation and/or conclusion, BLM's FMUD
24 implemented a management fence to abate any future herbivore
25 use. Schweigert Affidavit ¶ 20.c. Thus, such purported partial
26 non-attainment cannot drive a change/modification in Estill's
27 Grazing Permit.

1 (2) Riparian wet meadow (grasses, grass-like, and
2 forb) utilization.

3 Though BLM's 2003 AE concluded that the "Objective"
4 regarding riparian wet meadow utilization was partially met
5 (Schweigert Affidavit ¶ 21), the 2003 AE reported that the
6 "Objective" was met on all wet meadows throughout the Soldier
7 Meadows Allotment in all years, except for wet meadows at Rock
8 Spring and Clear Spring in 1995, 1997, and 1999 (Schweigert
9 Affidavit ¶ 22).

10 Estill reviewed the 1995, 1997, and 1999 information relied
11 upon by BLM. Estill found that BLM erred in interpreting the
12 data and/or in reaching the conclusion because the meadows at
13 Rock Spring and Clear Spring are not "wet" meadows, but are
14 "dry" meadows to which this objective does not apply. Schweigert
15 Affidavit ¶ 23.

16 (3) Upland grass utilization by the end of the
17 livestock use period, exclusive of the Black Rock
18 Pasture.

19 Though BLM's 2003 AE concluded that the "Objective"
20 regarding upland grass utilization by the end of the livestock
21 use period was partially met (Schweigert Affidavit ¶ 24), the
22 2003 AE reported that the "Objective" was met on uplands and dry
23 meadows in all years throughout the Soldier Meadows Allotment,
24 except at Rock Spring and Clear Spring in 1995, 1997, and 1999
25 (Schweigert Affidavit ¶ 25).

26 Estill reviewed the 1995, 1997, and 1999 information relied
27 upon by BLM. For four (4) reasons, Estill found that BLM erred
28 in interpreting the data and/or in reaching the conclusion.

1 Schweigert Affidavit ¶ 26. First, Rock Spring and Clear Spring
2 are developed livestock water facilities, with livestock water
3 troughs on or near the dry meadows. The "Objective" is
4 inappropriately and unreasonably applied to areas near or upon
5 livestock water troughs, also used by wild horses and wildlife.
6 Schweigert Affidavit ¶ 27. Second, no utilization transect data
7 was collected by BLM in 1995 at Rock Spring and Clear Spring to
8 even make a conclusion. Schweigert Affidavit ¶ 28.a. See also
9 Schweigert Affidavit ¶ 28.b. Third, no utilization transect
10 data was collected by BLM in 1997 at Clear Spring to even make
11 a conclusion. Schweigert Affidavit ¶ 29.a. And, though
12 utilization transect data was collected by BLM in 1997 at Rock
13 Spring, the data demonstrated "light" and "slight" utilization,
14 consistent with the "Objective". Schweigert Affidavit ¶ 29.a.
15 See also Schweigert Affidavit ¶ 29.b. Fourth, no utilization
16 transect data was collected by BLM in 1999 at Rock Spring and
17 Clear Spring to even make a conclusion. Schweigert Affidavit ¶
18 30.a. See also Schweigert Affidavit ¶ 30.b.

19 (4) Upland browse utilization by livestock.

20 Though BLM's 2003 AE concluded that the "Objective"
21 regarding upland browse utilization by livestock was partially
22 met (Schweigert Affidavit ¶ 31), the 2003 AE reported the
23 "Objective" was met for the Soldier Meadows Allotment, except
24 that "this objective was not accomplished at Rock and Clear
25 springs areas in the Warm Springs Pasture, utilization levels
26
27

1 | were exceeded in 1995, 1997, and 1999." Schweigert Affidavit ¶
2 | 32,33.

3 | Estill reviewed the 1995, 1997, and 1999 information relied
4 | upon by BLM. For four (4) reasons, Estill found that BLM erred
5 | in interpreting the data and/or in reaching the conclusion.
6 | First, BLM's own data throughout the Warm Springs Pasture, where
7 | Rock Spring and Clear Spring exist, demonstrated that the
8 | "Objective" was met. Schweigert Affidavit ¶ 34. Second, no
9 | utilization data was collected by BLM in 1995 at Rock Spring and
10 | Clear Spring to even make a conclusion. Schweigert Affidavit ¶
11 | 35.a. Third, no utilization data was collected by BLM in 1997
12 | at Clear Spring to even make a conclusion. Schweigert Affidavit
13 | ¶ 35.b. And, though utilization data was collected by BLM in
14 | 1997 at Rock Spring, the data demonstrated "slight" utilization,
15 | consistent with the "Objective". Schweigert Affidavit ¶ 35.b.
16 | Fourth, no utilization data was collected by BLM in 1999 at Rock
17 | Spring and Clear Spring to even make a conclusion. Schweigert
18 | Affidavit ¶ 35.c.

19 | (5) Water Quality for watering of livestock,
20 | coldwater aquatic life propagation, water contact
21 | recreation and wildlife propagation (Donnelly
22 | Creek and Colman Creek); and, Water quality
23 | criteria in Nevada State Law shall be achieved or
24 | maintained (Standard #3).

25 | Though BLM's 2003 AE reported that the "Objective"
26 | regarding Water Quality for watering of livestock, coldwater
27 | aquatic life propagation, etc., on Donnelly Creek and Colman
28 | Creek was partially met, and though BLM's 2003 AE and 2003 MASR
reported that "Standard" #3 for Donnelly Creek and Colman Creek

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1 was partially met (Schweigert Affidavit ¶ 36), the 2003 AE
2 reported that the "Objective" for Donnelly Creek was met in all
3 years; and the "Objective" for Colman Creek was met except for
4 one turbidity measurement in one year, i.e. 2002. Schweigert ¶
5 39.

6 Estill reviewed the Colman Creek water quality information
7 relied upon by BLM. Estill found that BLM erred in interpreting
8 the data and/or in reaching the conclusion. The data disclosed
9 only a single exceedance in turbidity which, under Nevada Law,
10 was incapable of constituting a violation of Nevada State water
11 quality standards. Schweigert Affidavit ¶ 41-44.

12 (6) Riparian Condition Class, Slumgullion Creek.

13 Though BLM's 2003 AE concluded that the Riparian Condition
14 Class "Objective" for Slumgullion Creek (to improve from 48% in
15 1990, to 63% by 2001) was partially met, the 2003 AE reported
16 that the Riparian Condition Class, relative to the "Objective",
17 was 74% in 1990, and 61.3% in 1999. Schweigert Affidavit ¶ 45.

18 Estill reviewed the Slumgullion Creek information relied
19 upon by BLM. Estill found that BLM erred in interpreting the
20 data and/or in reaching the conclusion. The information
21 disclosed a material typographical error that impacted the
22 quantification of the "Objective". Schweigert Affidavit ¶ 46.a.
23 And, regardless of the error, the preponderance of the evidence
24 does not warrant a change/modification in Estill's Grazing
25 Permit. See Schweigert Affidavit ¶ 46-48.

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1 (7) Soil processes are appropriate to soil type,
2 climate, and land form ("Standard" #1) and
3 Populations and communities of native plant
4 species and habitats for native animal species
5 are healthy, productive and diverse ("Standard"
6 #4).

7 Though BLM's 2003 AE and 2003 MASR concluded that
8 "Standard" #1 (soils) and "Standard" #4 (plant and animal
9 habitat) were partially met (Schweigert Affidavit ¶ 49), the
10 2003 AE reported that "Standards" #1 and #4 were met throughout
11 the Soldier Creek Allotment, except for some sites in the Warm
12 Springs Pasture "near Rock and Clear Springs." Schweigert
13 Affidavit ¶ 50,51.

14 Estill reviewed the information relied upon by BLM. Estill
15 found that BLM erred in collecting the data, in interpreting the
16 data, and/or in reaching the conclusion. The data disclosed
17 that BLM did not collect their field assessments using any of
18 the approved indicators, did not rely upon the approved
19 indicator, and did not follow manualized procedures in
20 formulating their conclusion. Schweigert Affidavit ¶ 53-63.
21 Even BLM's surrogate "indicator" did not demonstrate a
22 conclusion that the "Standards" were not met. Schweigert
23 Affidavit ¶ 64.

24 (8) Riparian/wetland systems are in properly
25 functioning condition ("Standard" #2).

26 Though BLM's 2003 AE and 2003 MASR concluded that
27 "Standard" #2 (proper functioning condition of riparian areas)
28 was partially met (Schweigert Affidavit ¶ 66), the 2003 AE
reported that "Standard" on: Mahogany Creek was met; Stanley

1 Camp Creek was met; Snow Creek was not-met (but that non-
2 attainment was unrelated to livestock grazing); Colman Creek was
3 met (except for two reaches but that non-attainment on such
4 reaches was unrelated to livestock grazing); Slumgullion Creek
5 was met (except for one reach but that non-attainment on such
6 reach was due to wild horses); Donnelly Creek was met (except
7 for one reach but that non-attainment on such reach was
8 unrelated to livestock grazing); and, Soldier Creek was non-met
9 (but that non-attainment was unrelated to livestock grazing).
10 Schweigert Affidavit ¶ 72.

11 Estill reviewed the proper functioning condition
12 information relied upon by BLM. Estill found that BLM erred in
13 collecting the data. Schweigert Affidavit ¶ 68-70. Estill also
14 found that BLM erred in interpreting the data and/or in making
15 their conclusion. Schweigert Affidavit ¶ 71-73. Estill also
16 found that a demonstrably more accurate survey method disclosed
17 that stream condition had, in fact, improved over time.
18 Schweigert Affidavit ¶ 75.

19 (9) Habitat conditions meet the life cycle
20 requirements of special status species
("Standard" #5).

21 BLM's 2003 AE and 2003 MASR concluded that "Standard" #5
22 (life cycle requirements of special status species) was
23 partially met as related to bats (Pale Townsend's big eared bat;
24 Pacific Townsend's big-eared bat; Spotted bat; Small-footed
25 myotis; Long-eared myotis; Fringed myotis; Long-legged myotis;
26
27

28 Estill's NOA, SOR, PFS - 34

1 and Yuma myotis) (Schweigert Affidavit ¶ 77), and as related to
2 the Nevada Viceroy (Schweigert Affidavit ¶ 78).

3 Estill reviewed the information relied upon by BLM. Estill
4 found that BLM erred in interpreting the information or in
5 reaching a conclusion. As to bats, no evidence exists that
6 they exist on the Allotment. Further, BLM's concedes the
7 "potential" habitat for bats is limited. Schweigert Affidavit
8 ¶ 80. As to the Nevada Viceroy, there exists no correlation
9 between the species and "Riparian Functional Condition" (which
10 BLM erroneously collected, as discussed above). Further, the
11 species habitat is tied to willow and aspen wherein the
12 preponderance of the evidence demonstrates an improving stream
13 condition within the Allotment. Schweigert Affidavit ¶ 81.

14 PETITION FOR PARTIAL STAY

15 *ESTILL RANCHES, L.L.C.* ("Estill") submits their Petition
16 for Partial Stay. The Petition for Partial Stay is filed in
17 accordance with 43 C.F.R. § 4.471(a) (*as amended*). See 68
18 Fed.Reg. 68765, 68770 (12/10/03).

19 Estill contends that the facts and law demonstrate
20 sufficient justification to stay the FMUD, as appealed, pending
21 resolution of his appeal pursuant to the standard provided in
22 43 C.F.R. § 4.471(c) (*as amended*). See 68 Fed.Reg. 68765, 68770
23 (12/10/03).

24 ///
25 ///
26 ///

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1 I. RELATIVE HARM AND IRREPARABLE INJURY ELEMENTS.

2 A. The relative harm weighs in favor of Estill, and
3 irreparable harm will occur to Estill.

4 Beside what has already been expressed, Estill is expected
5 to experience the following harms, and immediate and irreparable
6 harms, should the FMUD be allowed to become effective.

7 A stay is warranted for two (2) general reasons. Estill
8 Declaration ¶ 18. First, the "Interim Grazing System" only
9 authorizes 300 head of cattle in the Idaho Canyon Pasture
10 between July 15, 2004 and September 30, 2004, leaving no home
11 for 817 head of cattle as authorized in Estill's present Grazing
12 Permit between July 15, 2004 and September 30, 2004. Compare
13 Exhibit "A", p. 9 and Exhibit "B". Second, the "Interim Grazing
14 System" creates a trespass trap in the Hot Springs Pasture and
15 in the Colman Pasture between October 1, 2004 and November 15,
16 2004, by scheduling livestock use in the unfenced Warm Springs
17 Pasture between October 1, 2004 and November 15, 2004. See
18 Exhibit "A", pp. 9,22.

19 As to the first reason, the immediate reduction of cattle
20 numbers permitted between July 15 and September 30 required by
21 the FMUD is not supported by monitoring data collected over
22 time, and BLM's FMUD and supporting documents give no rationale
23 for such immediate and irreparable reduction in livestock
24 authorization. Estill Declaration ¶ 19. Nevertheless, the FMUD
25 requires the immediate reduction by 817 head during the subject
26 time period. Id.

1 Estill has nowhere to go with this number of cattle. Estill
2 Declaration ¶ 20. Estill's other BLM and Forest Grazing Permits
3 are already committed so the deficit created by the FMUD cannot
4 be taken up in other allotments in which Estill is permitted.
5 Id.

6 Estill presently has 150 head of cattle within the Soldier
7 Meadows Ranch, which are "Soldier Meadows Allotment" cattle that
8 are routinely grazed annually on the Allotment, that are staged
9 to go onto the Allotment on July 15, 2004, and that must go on
10 the Allotment, as the private meadows are insufficient to
11 sustain them through the time period. Estill Declaration ¶ 21.

12 In addition, Estill has approximately 350 cattle within the
13 Wall Canyon Allotment. Estill Declaration ¶ 21. Estill
14 typically pulls these cattle off the Wall Canyon Allotment to
15 put on the Soldier Meadows Allotment on or around July 15
16 annually, due to drying conditions on the Wall Canyon Allotment
17 at this time of year. Id.

18 In addition, Estill has 600 cattle within the Bare
19 Allotment which must be removed on July 1, 2004. Estill
20 Declaration ¶ 21. These cattle are scheduled to go onto the
21 Soldier Meadows Allotment on July 15, 2004, as they normally
22 have under the 1994 FMUD. Id. The 600 cattle which would be
23 removed from the Bare Allotment are cattle which are "Soldier
24 Meadows" cattle; that is, they are the mother herd which Estill
25 normally places on the Soldier Meadows Allotment July 15th,
26 under operation of the 1994 FMUD. Id.

1 It is not economically feasible to feed cattle during the
2 summer period, due to lack of area on which to feed, due to
3 costs which exceed returns, and due to impaired cattle
4 performance. Cattle performance would be impaired due to a
5 required immediate change in the cattle's diets. Estill
6 Declaration ¶ 22. Cattle depend upon bacteria in their rumen
7 (stomachs) to digest the type of feed they are consuming. Id.
8 Some types of bacteria dominate when cattle are grazing
9 primarily grasses, and other types of bacteria dominate when
10 cattle consume primarily browse or forbs. Id. The change in
11 dominance of rumen bacteria normally occurs gradually, because
12 as the feed changes with the season, their rumen bacteria have
13 the time to adjust with the gradually changing forage. Id.
14 Right now, the rumen bacteria of the cattle is accustomed to the
15 present feed they are grazing, i.e., green grasses. Id.
16 Immediately placing the cattle on baled hay would impair the
17 mother cows' performance, because it takes several weeks for the
18 rumen bacteria to change, and an immediate change in forage base
19 would mean the dominant bacteria could not adequately digest the
20 baled hay, leading to weight loss of mother cows, and poor
21 performance, weight loss, and possible mortality of their calves
22 subjected to such radical change. Id.

23 Left with nowhere to place or feed their livestock, Estill
24 will otherwise have to sell the 817 head of mother cows, thereby
25 not only losing the numbers of cattle and the income from their
26 calves, but also losing the herd of cows which knows and is

1 accustomed to the forage, waters, and topography of the Soldier
2 Meadows Allotment. Estill Declaration ¶ 23. Such knowledge in
3 the mother herd takes years and years to regain if a new herd
4 of cattle is later brought into the allotment. Id.

5 Therefore, for all of the foregoing reasons, Estill is
6 immediately and irreparably harmed by the change in authorized
7 livestock numbers. Estill Declaration ¶ 24.

8 As to the second reason, the livestock grazing system and
9 rotation of cattle itself creates an immediate and irreparable
10 harm to Estill, by requiring use of the Warm Springs Pasture,
11 but prohibiting use of the Hot Springs and Colman Pastures,
12 between October 1 and November 15. Estill Declaration ¶ 25.

13 Between October 1 and November 15, the natural propensity
14 of the cattle is drift to lower elevations, i.e. from the Warm
15 Springs Pasture to the Hot Springs and/or Colman Pastures.
16 Estill Declaration ¶ 26. This natural propensity is exacerbated
17 by the occurrence of hunting season beginning in October,
18 because the presence of numerous hunters will disturb cattle
19 grazing in the Warm Springs Pasture, making the cattle more
20 likely to drift to lower elevations, i.e. from the Warm Springs
21 Pasture to the Hot Springs and/or Colman Pastures. Id.

22 This drift is likely because there exist no fences or
23 natural boundaries which completely restrict the movement of
24 cattle between Warm Springs Pasture and Hot Springs Pasture. Id.
25 The "division line" between the Warm Springs Pasture and Hot
26 Springs Pasture is in fact no more than a line on a map. Id.

1 Likewise, the "division line" between Hot Springs Pasture and
2 Colman Pasture is no more than the County Road, which does not
3 in any way serve as an impediment to cattle crossing the line.
4 Id.

5 While these general area divisions and use areas have been
6 helpful in planning general livestock movements and rotations
7 within the Allotment under the 1994 FMUD, the 2004 FMUD creates
8 untenable terms and conditions which change the general use
9 areas into areas of prohibited use. Estill Declaration ¶ 26.

10 Unless the "Interim Grazing System" is stayed, BLM
11 guarantees trespass claims when the FMUD included term and
12 condition #13, which states that "During the interim grazing
13 system, no livestock grazing is authorized east of the County
14 Road (Colman Use Area) between the Soldier Meadows Ranch and the
15 Summit Lake Indian Reservation until after November 15." Exhibit
16 "A", p. 16; Estill Declaration ¶ 27. This term and condition,
17 combined with the season of use prescribed by the "Interim"
18 system, combined with the natural and exacerbated propensity of
19 cattle to drift downhill in the fall when disturbed, combined
20 with the lack of physical barrier between the three pastures,
21 creates an immediate threat of trespass claims, including
22 jeopardy to Estill's livestock Grazing Permit. Estill
23 Declaration ¶ 27.

24 Notwithstanding the lack of merit of the FMUD and "desires"
25 to change the livestock management system, Estill offered a less
26 onerous rotation of cattle which would alleviate all of BLM's

27
28 **Estill's NOA, SOR, PFS - 40**

1 purported concerns in the "interim". Estill Declaration ¶ 28.
2 Specifically, Estill proposed to make use as follows in the
3 "interim" (i.e. until a pasture division fence is constructed
4 separating the Hot Springs Pasture from the Colman Pasture):

5 a. Warm Springs Pasture in May, June, and
6 early July, when the natural propensity of
7 the cattle is to drift uphill to fresh
8 forage, moving up-elevation with the
9 spring and early summer forage availability
10 and available water sources. The natural
11 propensity of the cattle, being to move
12 uphill in the spring, would mean that they
13 are drifting uphill away from the Colman
14 "Pasture". They would also be close in
15 elevation to the next pasture to be used,
16 Idaho Canyon.

17 b. Idaho Canyon Pasture in late July,
18 August, September, and early October.
19 Idaho Canyon is a high elevation pasture
20 with super-abundant forage and late-season
21 livestock water sources. To the extent the
22 1994 FMUD permits use of the Stanley Camp
23 Pasture, Estill proposed to also use this
24 pasture consistent with the 1994 FMUD, once
25 the pasture fence between Stanley Camp and
26 Idaho Canyon was constructed.

27 Because the western boundary of the
28 Idaho Canyon Pasture is a fenced boundary,
cattle could not drift down into Warm
Springs, Hot Springs, or Colman by using
this pasture at this time of year.

c. Private lands from mid-October through
mid-November.

d. Colman Pasture and Hot Springs Pasture
from mid-November through mid-January.

e. South Pasture from mid-January through
the end of April, at which time the May 1
rotation would begin again.

25 Estill Declaration ¶ 28. Though BLM personnel expressed to
26 Estill before issuance of the FMUD, and again to Estill on June

1 7, 2004, that such "Interim Grazing System" would satisfy all
2 of their resource "concerns", BLM nevertheless refused to amend
3 their "Interim Grazing System" prior to the appeal expiration
4 period. Id.

5 B. The relative harm does not weigh in favor of the BLM
6 and no resource damage will occur if the stay is
7 granted.

8 No harm or irreparable harm will occur to the BLM or to the
9 public land in the Soldier Meadows Allotment by staying the
10 FMUD, as appealed. In fact, the FMUD is premised upon a notion
11 that only certain "Allotment Objectives" and "Rangeland Health
12 Standards" have not been met in part, which in-and-of-itself
13 does not mean that harm has occurred to the public land or that
14 irreparable harm will occur by staying the FMUD, as appealed.
15 The FMUD identified no harm or irreparable harm that has
16 occurred over time by the use of Estill's Grazing Permit.

17 **II. LIKELIHOOD OF SUCCESS ELEMENT .**

18 For the reasons stated above in the "STATEMENT OF REASONS",
19 Estill has sustained his burden of demonstrating a likelihood
20 of success on the merits. See Gordon G. King et al. v. Bureau
21 of Land Management, IBLA 98-128 (Order dated April 28, 1998, p.
22 3) which stated that "(w)e note that the Board has held that
23 when the other elements are present it is not necessary in order
24 to justify a stay that the petitioner's right to prevail on the
25 merits of the controversy be free from doubt where he 'has
26 raised questions going to the merits so serious, substantial,
27 difficult and doubtful, as to make them a fair ground for

1 litigation and thus for more deliberative investigation.'"
2 Here, there should be no question that Estill has raised such
3 questions as to the lack of merit of the FMUD, as appealed.

4 III. PUBLIC INTEREST ELEMENT .

5 The public has an interest in maintaining and stabilizing
6 the cattle operation of Estill. This interest was fundamental
7 to the passage of the Taylor Grazing Act. Estill's cattle
8 operation can not remain stable if BLM is able to implement the
9 FMUD. Staying the FMUD, as appealed, and allowing Estill to
10 graze their cattle consistent with their Grazing Permit, as
11 modified by the FMUD provisions not appealed, will permit an
12 opportunity to determine whether the legal and factual reasons
13 advanced by the BLM for the FMUD is warranted.

14 CONCLUSION

15 Estill urges the Administrative Law Judge of the Hearings
16 Division to grant their "Petition for Partial Stay" (as
17 appealed), and to set aside the FMUD in due course (as
18 appealed).

19 Respectfully submitted, June 10, 2004.

20 SCHROEDER & LEZAMIZ LAW OFFICES, L.L.P.

21 by [Handwritten Signature]

22 W. ALAN SCHROEDER
23 the lawyer for Estill Ranches, L.L.C. - Appellant.

1 CERTIFICATE OF FILING and SERVICE

2 I certify that on June 10, 2004, I transmitted the
3 foregoing document to "*the BLM field office that issued the*
4 *decision*" in accordance with 43 C.F.R. §§ 4.470(a), 4.471(a) (as
5 amended), and I did so by depositing with U.S. Postal Service
6 at Boise, Idaho an envelope containing the original of said
7 document, with postage for *certified mail, return receipt*
8 *requested*, addressed to said office, as follows:

9 USDI-BLM
10 Winnemucca Field Office
11 5100 East Winnemucca Blvd.
12 Winnemucca, Nevada 89445-2921;

13 and, in addition, on June 10, 2004, I served a copy on the
14 "*appropriate office of the Office of the Solicitor*" in
15 accordance with 43 C.F.R. § 4.471(b)(2) (as amended), by
16 depositing with the U.S. Postal Service at Boise, Idaho an
17 envelope containing a copy of said document, with postage for
18 *certified mail, return receipt requested*, addressed as follows:

19 USDI-Office of the Regional Solicitor
20 2800 Cottage Way; Room E-1712
21 Sacramento, California 95825;

22 and, in addition, on June 10, 2004, I served a *courtesy copy*
23 thereof by depositing with the U.S. Postal Service at Boise,
24 Idaho an envelope containing a copy of said document, with
25 postage for *first class mail*, as follows:

26 USDI-Office of Hearings and Appeals
27 Hearings Division
28 139 East South Temple, Suite 600
Salt Lake City, Utah 84111;

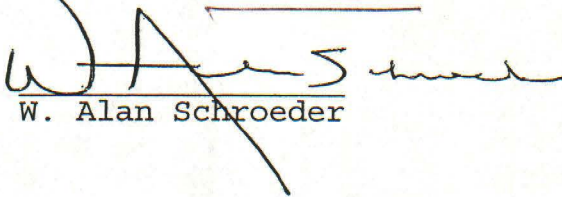
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Intermountain Range Consultants
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(Via hand delivery);

1 and, in addition, on June 15, 2004, I will served a copy on the
2 "person(s) named in the decision" in accordance with 43 C.F.R.
3 §§ 4.470(a), 4.471(b)(1) (*as amended*), by depositing with the
4 U.S. Postal Service at Boise, Idaho an envelope containing a
5 copy of said document, with postage for *certified mail, return*
6 *receipt requested* at the addresses noted on the attached pages
7 1 and 2, and with postage for *first class mail* at the addresses
8 noted on the attached page 3. The justification for the
9 difference is that the same interested public have multiple
10 representatives. Certified mailing is only going to one
11 representative.

7 Dated: June 10, 2004.

8 
9 W. Alan Schroeder

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In Reply Refer To:
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(NV022.15)

MAY 05 2004

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**FINAL MULTIPLE USE DECISION
SOLDIER MEADOWS ALLOTMENT**

Estill Ranches, LLC.
c/o John Estill
P.O. Box 655
Eagleville, CA 96110

Dear Mr. Estill:

BACKGROUND

The Sonoma-Gerlach Final Environmental Impact Statement was issued on 09/18/81. The Sonoma-Gerlach Management Framework Plan Record of Decision was issued on 07/09/82. The Soldier Meadows Allotment (SMA) Evaluation and Final Multiple Use Decision (FMUD) were issued in January 1994. These documents have guided the management of public lands within the Soldier Meadows Allotment to date.

Monitoring data has been collected on this allotment in accordance with Bureau policy and regulations. These data have been evaluated in order to determine if current management is attaining the allotment objectives and Standards for Rangeland Health (SRH) within the SMA. The Final Allotment Re-evaluation, Determination and Management Action Selection Report (MASR) were completed and mailed to you on March 3, 2003. The Determination document determined that allotment objectives and SRH were not achieved under the existing management and that livestock grazing was a significant factor in that non-attainment. The SMA Environmental Assessment (EA) analyzed livestock grazing alternatives that were developed to achieve the allotment objectives and SRH. This EA was mailed to you on March 10, 2003, for your review and comment.

EXHIBIT "A"

Due to the existing and potential habitats for threatened fish species, Lahontan cutthroat trout and desert dace, the BLM entered into formal consultation with the U.S. Fish and Wildlife Service (Service) for the proposed livestock grazing system. The WFO received a Biological Opinion (BO) dated August 14, 2003, which stated that "...it is the Service's biological opinion that the 2003-2013 livestock grazing system for SMA, as proposed, is not likely to jeopardize the continued existence of the threatened LCT or the threatened desert dace."

Seventeen (17) comment letters were received on the above-mentioned EA. After review of specific public comments on the EA, BLM grouped them into four broad categories: (1) Monitoring, (2) National Environmental Policy Act (NEPA)/Planning, (3) Sensitive Species, and (4) Outside the Scope of EA.

A summary of the comments in those response categories follows:

Monitoring - The majority of comments received on the EA dealt with monitoring. These comments stated that there was a lack of key areas, or insufficient site specific vegetative, water quality and riparian monitoring data. Other comments addressed were inadequate inventories and/or analysis of weeds, soils, bats and cultural resources. Additional comments indicated that certain objectives, such as 6 inch stubble height were unreasonable.

Monitoring data was collected on the allotment during the allotment re-evaluation period. These data were analyzed, interpreted and evaluated to determine the attainment and/or non-attainment of allotment specific objectives and SRH. A monitoring term and condition has been included in the Final Multiple Use Decision.

The Winnemucca Field Office will continue to monitor the SMA. 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 and the SRH are being achieved or there is significant progress toward attainment 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 SRH.

NEPA/Planning - Several comments on the EA were made regarding NEPA and Land Use Plan (LUP). Some comments stated that the LUP was outdated therefore necessitating the need for an Environmental Impact Statement. Other comments were that the NEPA analysis of grazing alternative(s) was inadequate, and BLM did not allow thirty (30) days for review, inadequate NEPA analysis of proposed fences, drought, wilderness, livestock impacts to wildlife and wild horse/burro. There were also comments that BLM had not complied with the Nevada Water Quality Standards, SRH, Land Use Plan, Stipulated Agreements, and existing Multiple Use Decisions. A few comments alleged violations of the grazing regulations and inadequate responses to livestock trespass.

The EA for the SMA complies with NEPA and associated Council of Environmental Quality regulations (40 CFR 1500-1508). The BLM used a systematic, interdisciplinary approach to evaluate environmental impacts from the proposed action and encouraged public participation.

In addition, BLM rigorously explored and objectively evaluated reasonable alternatives as required under 40 CFR 1502.14(a). The proposed action and alternatives on BLM administered lands are in conformance with the Sonoma-Gerlach Land Use Plan approved in 1982. Currently, the WFO is in the process of developing a new Land Use Plan for lands administered by BLM. It is anticipated that the plan will be completed in 3-4 years.

Sensitive Species - Some comments on the EA were made concerning sensitive species issues on the SMA. These comments ranged from alleged violations of the Endangered Species Act (ESA) to inadequate analysis of Special Status Species such as sage-grouse, hydrobiid snails and neotropical migrants.

During the allotment re-evaluation process, the WFO requested and received a sensitive species list from the Service. Sensitive species were addressed and analyzed in the EA. Furthermore, the Determination/Management Action Selection Report also addressed sensitive species.

The proposed livestock grazing system is in conformance with the Interim Sage-Grouse Management Guidelines (Information Bulletin No. NV-2001-028) since it incorporates allotment objectives that will improve and/or maintain suitable sage-grouse habitat.

As noted above, BLM complied with the ESA by reintitiated formal section 7 consultations, which resulted in the Service issuing a no jeopardy BO.

Outside of the Scope of the EA - A few comments were received that were considered to be outside the scope of analysis in the EA. Comments considered outside of the scope dealt with the following issues: National Conservation Area (NCA), Off Road Vehicles (ORV), Dude Ranch, Fire Prevention, Fifth Amendment of the Constitution Violations, Nevada Department of Wildlife (NDOW)/Private Land Owner Agreements, Conservation Easements, and Access.

DECISION

Based upon consideration of comments received on the EA and draft BO, and meetings with you, we have selected the summer/fall/winter/early spring grazing alternative presented on page 8. This grazing system is subject to the allotment specific objectives/SRH and terms & conditions which are described below. BLM believes this grazing system will result in significant progress toward attaining the allotment specific objectives and SRH.

BLM issued the SMA Proposed Multiple Use Decision (PMUD) to you and the interested publics on October 17, 2003.

BLM received protests to the PMUD from the Western Watersheds Project on October 28, 2003 and Estill Ranches LLC on October 30, 2003.

On November 24, 2003 BLM conducted a tour with you, U. S. Fish and Wildlife Service (USFWS), Nevada Department of Wildlife (NDOW), Nevada Department of Agriculture (NDOA) and a representative from the Western Watersheds Project (WWP) to discuss points of

protests. On March 16, 2004 BLM staff and our Field Solicitor held a meeting with you, your range consultant and attorney, Western Watersheds Project representative and attorney, and a Nevada Department of Agriculture representative to further discuss protest points and alternative grazing systems.

Your protest points and comments at these meetings were taken into consideration in the development of the Final Multiple Use Decision (FMUD). BLM's responses to your points of protest are attached to this document.

The following are the multiple use allotment objectives and SRH under which grazing on the SMA will be monitored and evaluated:

A. Short Term Objectives:

1. Grazing on Colman and Donnelly Creeks would be permitted under all or a portion of the following criteria, which BLM will determine are applicable based on site potential and stream characteristics:
 - a. Riparian herbaceous utilization would ensure a 6-inch stubble height is left when livestock are removed from Colman Creek; and/or
 - b. Riparian herbaceous utilization would ensure a 4-inch stubble height is left when livestock are removed and a 6-inch stubble height remains at the end of the growing season on Donnelly Creek; and/or
 - c. Within all use areas, utilization would not exceed 30 percent on willow species greater than 5 feet in height, 20 percent on willows less than 5 feet in height, and 10 percent on any height of aspen species; and/or
 - d. Streambank alteration would not exceed 10 percent.
2. The objective for utilization of key plant species in wetland/lentic riparian habitats is fifty percent (50%) for sedges (*Carex* spp.), rushes (*Juncus* spp.) and bluegrass (*Poa* spp.).
3. The objective for utilization of key plant species in streambank riparian habitats on lotic systems, which are not specified above, is thirty percent (30%) for sedges (*Carex* spp.), rushes (*Juncus* spp.) and bluegrass (*Poa* spp.).
4. The objective for utilization of key plant species in upland habitats is fifty percent (50%) on the following: bluebunch wheatgrass (*Agropyron spicatum*), serviceberry (*Amelanchier*), curlleaf mountainmahogany (*Cercocarpus ledifolius*), basin wildrye (*Elymus cinereus*), ephedra (*Ephedra*), winterfat (*Eurotia lanata*), Idaho fescue (*Festuca idahoensis*), meadow barley (*Hordeum brachyantherum*), Baltic rush (*Juncus balticus*), lupine (*Lupinus caudatus*), Indian ricegrass (*Oryzopsis hymenoides*), bluegrass (*Poa*), Nevada bluegrass (*Poa nevadensis*), Sandberg bluegrass (*Poa secunda*), antelope

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.
3. Improve and/or maintain public rangeland conditions to provide forage on a sustained yield basis for livestock.
4. Maintain and improve the free-roaming behavior of wild horses by protecting and enhancing their home ranges.
 - a. Manage, maintain, or improve public rangeland conditions to provide forage on a sustained yield basis for wild horses.
 - b. Maintain and improve wild horse habitat by assuring free access to water.
5. Improve and/or maintain ceanothus (*Ceanothus*), mahogany (*Cercocarpus*), serviceberry (*Amelanchier*), bitterbrush (*Purshia tridentata*), ephedra (*Ephedra*), winterfat (*Eurotia lanata*) and aspen (*Populus tremuloides*) habitats by allowing for successful reproduction and recruitment based on site potential.
6. Improve and/or maintain riparian and meadow habitat types to ensure species diversity and quality and to maximize reproduction and recruitment.
7. Improve and/or maintain fisheries habitat in good to excellent condition based upon stream potential.
8. Improve and/or maintain lentic and lotic riparian habitats to properly functioning condition (PFC).
9. Numbers of wild horses will be managed within the Appropriate Management Level (AML) range in the Black Rock Range West, Warm Springs Canyon and Calico Mountains Herd Management Areas (HMAs). Gatherings will occur periodically as needed when monitoring reveals numbers are approaching or exceeding the AML range.
10. Maintain Mahogany Creek and Summer Camp Creek to the State of Nevada designated Class A (NAC 445A.124) water standards.
11. Maintain Snow Creek to State of Nevada designated Class B (NAC 445A.125) water standards (due to the tributary rule found at NAC 445A.145 (or subsequent revisions)).

bitterbrush (*Purshia tridentata*), bottlebrush squirreltail (*Sitanion hystrix*), needleandthread (*Stipa comata*), Thurber needlegrass (*Stipa thurberana*), and snowberry (*Symphoricarpos*).

B. Long Term Objectives:

1. Manage, maintain, or improve public rangeland conditions to provide forage on a sustained yield basis for big game, with reasonable numbers of 786 AUMs for mule deer, 429 AUMs for pronghorn, and 264 AUMs for bighorn sheep.
 - a. Improve to and maintain mule deer habitat in good to excellent condition within the ecological potential of the rangeland habitat.
 - b. Improve to and maintain pronghorn habitat in fair to good condition within the ecological potential of the rangeland habitat.
 - c. Improve to and maintain bighorn sheep habitat in good to excellent condition within the ecological potential of the rangeland habitat.
2. Improve and/or maintain suitable sage-grouse strutting, nesting, brood rearing, and/or wintering habitat in good condition within the site potential of the rangeland habitat.

The following parameters have been found to constitute optimum (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 10-21% (optimum = 14%).

12. All other surface waters within the allotment are subject to, and will be measured by, the State's water quality standards, found at NAC 445A.121 (or subsequent revisions).

C. Standards and Guidelines for Rangeland Health

1. Soil processes will be appropriate to soil type, climate and land form.
2. Riparian/wetland systems are in properly 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 Grazing Decision

Based upon the evaluation of the SMA monitoring, consultation with the permittee, USFWS and other interested publics, NEPA analysis, consideration of comments received on the EA, and the PMUD and recommendations from my staff, it is my final decision to change the management of livestock as follows:

FROM: Description of Existing Use

1. Grazing Animal Unit Months (AUMs)
 - a. Total Preference 16,070
 - b. Suspended Preference 3,902
 - c. Active Preference 12,168
 - d. Not Scheduled 4,481
 - e. Exchange of Use 0
 - f. Scheduled Use 7,687
2. Season of Use 07/15 to 10/14
11/16 to 04/30
3. Kind and Class of Livestock Cow/Calf
4. Percent Federal Range 100%
5. Grazing System

- C. Livestock grazing in this area could occur under an approved grazing prescription developed specifically to accomplish the objectives of the resource management plan. A proposed prescriptive grazing plan would require consultation with the USFWS.

RATIONALE

The grazing management system consists of limited use (20%) during the spring and summer with the majority (80%) of use occurring in the cool dormant season during the fall and winter. The allotment is divided into five use areas: Idaho Canyon, Warm Springs, Hot Springs, Colman and South.

Table 2 above implements the interim grazing system for the 2004 – 2005 grazing season. Livestock would begin grazing in the Idaho Canyon Use Area on July 15 and move into Warm Springs (north and west) and graze from October 1 until November 15. On November 16 livestock would trail into Hot Springs & Colman Use Areas and graze until December 15 when they would be moved onto private lands. Livestock grazing within the Colman Use Area cannot occur until after November 15 in accordance with the Biological Opinion dated August 14, 2003. Livestock would leave private lands and graze in the South Use Area until April 30 completing the interim grazing system.

Table 3 reflects the permanent grazing system implemented upon construction of the county road fence, which will be subject to analysis in accordance with the NEPA of 1969. In the event that this fence is not constructed the interim grazing system will remain in effect. Under the permanent grazing system, livestock would graze within Idaho Canyon Use Area from May 1 until July 31 then move into the Warm Springs Use Area and graze from August 1 until September 30. Livestock season of use would alternate between early (5/1 – 7/31) and late (8/1 – 9/30) within the Idaho Canyon and Warm Springs Use Areas. On October 1 livestock would trail into Hot Springs & Colman Use Areas and graze until December 15 when they would be moved onto private lands. Livestock grazing within the Colman Use Area cannot occur until after November 15 in accordance with the Biological Opinion dated August 14, 2003. All livestock will be on private lands from December 16 through January 15. On January 16, livestock would leave private lands and graze in the South Use Area until April 30 completing the grazing cycle.

Table 4 is the same grazing system as identified in Table 3 above but shows the schedule activating the Not Scheduled AUMs in accordance with Term and Condition (T&C) #5 identified in the T&C section below.

This grazing system is the result of BLM's extensive analysis of a reasonable range of grazing management alternatives and associated environmental impacts presented in the SMA EA. BLM has reviewed and taken into consideration comments on these alternatives from the permittee and interested public. BLM has conducted numerous meetings and field tours to discuss and attempt to resolve issues expressed by the permittee and interested public.

After coordination and consultation with the permittee and interested publics BLM has selected a grazing management system which is a combination of alternatives analyzed in the EA. This

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3. Construct the Desert Dace Protective Fence. BLM will fund construction and materials. Estill Ranches will maintain this project.
4. Construct the County Road/Colman fence. BLM will complete NEPA, Estill Ranches will fund construction and materials. Estill Ranches will maintain this project.

These fencing projects will reduce or eliminate the potential of adverse livestock impacts to Lahontan cutthroat trout (LCT) habitat in the Stanley Camp Riparian Pasture and Colman Creek in addition to designated Desert Dace critical habitat in the Hot Springs Use Area. LCT and Desert Dace are federally listed threatened species, protected under the ESA.

After construction of the range improvements and implementation of the 2005-2014 grazing system, livestock distribution and management throughout the allotment will be improved. The allotment pastures/use areas will benefit from the range improvement projects by providing a more uniform utilization pattern, better use of the vegetation, and the flexibility to rest or defer livestock from resource sensitive areas. The range improvements are essential for the final grazing system to function properly.

TERMS AND CONDITIONS

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

1. No livestock grazing will be authorized within the Mahogany Creek Enclosure or the Stanley Camp Riparian Pasture except under an approved grazing prescription developed specifically to accomplish the objectives of the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Resource Management Plan (RMP). A prescriptive grazing plan would require consultation with the USFWS prior to implementation.
2. Grazing on Colman and Donnelly Creeks would be permitted under all or a portion of the criteria, which BLM will determine are applicable, based on site potential and stream characteristics:
 - a. Riparian herbaceous utilization would ensure a 6-inch stubble height is left when livestock are removed from Colman Creek; and/or
 - b. Riparian herbaceous utilization would ensure a 4-inch stubble height is left when livestock are removed and a 6-inch stubble height remains at the end of the growing season on Donnelly Creek; and/or

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grazing management system is within the range of actions the public could have reasonably anticipated BLM to consider. Comments on the grazing alternatives presented in the EA and the grazing system in the Proposed Multiple Use Decision were taken into consideration in developing this grazing system. As a result, no further environmental analysis of the grazing management system is necessary and no further opportunity for public input is required.

Weather conditions, range readiness and monitoring will determine livestock movement between use areas. Some livestock drift may occur due to a lack of fencing between use areas, however, drift will be controlled and kept to a minimum through herding and riding by the permittee.

This grazing system was selected after the EA analysis, consideration of comments submitted on the EA and PMUD and based upon BLM's expertise. Since the majority of livestock use (80%) is during the cooler season the potential for livestock impacts to riparian and LCT habitats are reduced. This majority (80%) of use during the cooler season will also result in increased livestock distribution throughout the upland rangelands and away from riparian areas. Livestock demand for water will be decreased due to cooler weather and snowfall therefore livestock will not congregate on streambank riparian or wetland riparian areas. The drainages and associated riparian areas will be protected during the winter months due to frozen banks, ice, and dormant vegetation, resulting in minimizing potential livestock impacts in riparian areas.

In summary, the livestock grazing system will alleviate conflicts between hot season livestock grazing and riparian resources under the existing permit. This grazing system will therefore allow for significant progress to be made toward achieving allotment specific objectives and SRH.

INTERIM GRAZING SYSTEM

Until construction of the proposed County Road/Colman fence livestock grazing will be in accordance with the Interim Grazing System identified in Table 2 above.

RANGE IMPROVEMENTS

The following range improvements are required for the final grazing system to function and are incorporated into this FMUD. Until the fences are constructed, the interim livestock grazing system will require riding and herding by the permittee to maintain cattle in the appropriate use areas. The following projects are scheduled for construction upon completion of NEPA analysis and dependent upon funding, existing workforce and project priorities.

1. Reconstruct the existing fence from the Mahogany Creek Enclosure fence to the Summit Lake Reservation fence. BLM will fund construction and materials. Estill Ranches will maintain this project.
2. Construct the Idaho Canyon fence from the existing Pine Forest Allotment fence to the Mahogany Creek Enclosure fence. BLM will fund construction and materials. Estill Ranches will maintain this project.

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- c. Within all use areas utilization would not exceed 30 percent on willow species greater than 5 feet in height, 20 percent on willows less than 5 feet in height, and 10 percent on any height of aspen species; and/or
- d. Streambank alteration would not exceed 10 percent.
3. Livestock turnout and removal dates may be modified by up to two weeks. A modified turnout into a pasture will be dependent upon range readiness factors such as state of plant growth, soil moisture and condition of meadows and weather conditions, such as cold temperatures or snow accumulation. BLM will allow up to two weeks for livestock to move between use areas. This flexibility is necessary especially when moving cows with young calves between the South and Warm Springs Use Areas in the spring. This flexibility will facilitate livestock movement between use areas without any detrimental effects on uplands, streambank and wetland riparian habitats or other range resources. Any changes to the season of use (i.e. turn out or off dates) would have to be coordinated and authorized by the BLM in advance.
4. BLM will evaluate the Donnelly and Colman Creek monitoring data annually to determine if the riparian herbaceous and/or woody vegetation and/or bank alteration criteria have been met. If any of these criteria are exceeded, BLM would initiate the following actions:
 - a. If monitoring at the end of the grazing season indicates allotment specific objectives, Terms and Conditions or SRH were not attained, and livestock grazing is a significant factor for non-attainment, appropriate corrective actions (e.g. reduction in season of use and/or numbers of livestock) will be taken prior to the next grazing season. If livestock grazing resulted in this non-attainment, BLM in conjunction with the permittee and interested publics will reassess livestock grazing to determine if a change in management is warranted to ensure these criteria are achieved. If BLM and the permittee cannot reach an agreement on the action, BLM will issue a decision implementing a change in livestock management.
5. BLM will monitor the allotment to determine if a portion of the 4,481 Not Scheduled AUMs, from the 1994 FMUD, would be activated. Activation of these AUMs would be phased in at 25% increments if the criteria outlined in the allotment terms and conditions are attained for two consecutive grazing seasons, since it takes two years to complete a grazing cycle. However, if these criteria are not achieved, livestock numbers and AUMs would remain at or below the current level. These AUM's will be proportionally activated based upon the percentage of summer versus winter livestock use shown in Year #2. Example: 300 cows from 05/1 to 09/30 = 1509 AUMs which is 20% of the 7680 AUMs of total use. 1037 cows from 10/1 to 4/30 = 6170 AUMs which is 80% of the 7680 AUMs of total use.

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6. Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of springs, streams, riparian habitats or aspen stands.
7. Since the majority of the use areas are unfenced, it is the responsibility of the permittee to incorporate riding and herding to insure livestock grazing occurs within the appropriate use area in accordance with the permit schedules.
8. Pursuant to 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 10.4(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.
9. The permittee is required to perform maintenance on range improvements as per your signed cooperative agreements and Section 4 permits prior to livestock turnout.
10. The permittee's certified actual use report, by pasture, is due 15 days after the end of the authorized grazing period.
11. The grazing authorization with the schedules of use outlined in this decision will be the only approved use, and all other schedules, flexibilities and terms & conditions addressed in the 1994 Soldier Meadows Allotment Final Multiple Use Decision are suspended unless revised.
12. The authorized officer reserves the right to modify annual grazing authorizations as long as the modification is consistent with management objectives, SRH and remains in the designated season of use.
13. During the interim grazing system, no livestock grazing is authorized east of the County Road (Colman Use Area) between the Soldier Meadows Ranch and the Summit Lake Indian Reservation until after November 15.

GRAZING PERMIT

A ten year grazing permit, reflecting the terms and conditions of this decision, will be offered upon completion of the decision making process. Any existing permit would become null and void as the new ten-year permit becomes effective.

AUTHORITY

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

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- 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 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 as 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 plan or other activity plan, or 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

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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 of the proposed decision becomes final as provided in 4160.3(a). Appeals and petitions for a stay of the decision shall be filed 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 appropriate Office of Hearing 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 every 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 restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.

F. WILD HORSE AND BURRO MANAGEMENT

BLM is re-affirming our previous management action outlined in the 1994 SMA FMUD that established the AML for the Black Rock Range West, Warm Springs Canyon and Calico Mountains HMAs.

The proposed action for wild horses is to manage the Black Rock Range West, Warm Springs Canyon and Calico Mountains HMAs at the AML range consistent with the 1994 SMA FMUD and EA# NV-020-00-27.

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 maintained by

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managing and providing forage (AUMs) for the following number of wild horses within the Black Rock Range West, Warm Springs Canyon and Calico Mountains HMAs.

Wild horse populations are managed within the AML range. The established AML range for the Black Rock Range West, Warm Springs Canyon and Calico Mountains HMAs is described in Table 4 below:

Table 4 - Wild Horse Numbers and AUMs

| HMA | AML Range for Wild Horses | AUM Range for Wild Horses | AML Range for Wild Burros | AUM Range for Wild Burros |
|-----------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| BLACK ROCK RANGE WEST | 56 - 93 | 672 - 1116 | 0 | 0 |
| WARM SPRINGS Canyon | 105 - 175 | 1260 - 2100 | 14 - 24 | 168 - 288 |
| CALICO MOUNTAINS* | 39 - 65 | 468 - 780 | 0 | 0 |

*Approximately twenty percent (20%) of the wild horse numbers within the Calico Mountains HMA are in the Soldier Meadows Allotment.

Excess wild horses and burros within the SMA will be removed periodically to manage the population within the AML range outlined above or until the AML is modified.

RATIONALE

Based on monitoring data collected during the re-evaluation period there have not been any significant problems associated with wild horse/burro use of the allotment. The AML range established in the 1994 SMA Multiple Use Decision and EA# NV-020-00-27 is still applicable today. It is recognized that horses from the Black Rock Range West HMA (Soldier Meadows Allotment) interact with horses in the Black Rock Range East HMA (Paiute Meadows Allotment), and this interaction will assure genetic viability. Wild horses within the Black Rock Range West HMA will be managed in conjunction with wild horses in the Black Rock Range East HMA. AML ranges have been established within the HMAs and will be managed in accordance with the 2000 Wild Horse Strategy. When population levels exceed the AML range within the HMAs, wild horses/burros will be gathered regardless of the allotment they may be inhabiting at the time of the gather.

COMPLIANCE AND MONITORING

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

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G. WILDLIFE MANAGEMENT

We are re-affirming our past management action that outlined wildlife reasonable numbers that are in accordance with the Sonoma Gerlach Land Use Plan and also stated in the 1994 SMA FMUD.

Analysis of existing management of wildlife habitat indicates that current wildlife populations did not contribute to the non-attainment of the allotment objectives or SRH. Therefore, a change in the existing wildlife populations or the existing wildlife management within the SMA is not warranted.

Wildlife populations will be managed at the reasonable numbers outlined in the Land Use Plan as follows in Table 5 below. Reasonable numbers of wildlife are as follows:

Table 5 - Wildlife AUMs

| Species | AUMs |
|--------------------|------|
| Mule Deer | 786 |
| Pronghorn Antelope | 429 |
| Bighorn Sheep | 264 |
| Total | 1479 |

RATIONALE

Analysis of existing management of wildlife habitat indicates that current wildlife populations did not contribute to the non-attainment of the allotment objectives or the SRH. Therefore, a change in the existing wildlife populations or the existing wildlife management within the SMA is not warranted.

FUTURE MONITORING AND GRAZING ADJUSTMENTS

The Winnemucca Field Office will continue to monitor the SMA. 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 SRH 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.

APPEAL PROCEDURES

In accordance with 43 CFR 4.470, 4160.3(d), and 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. The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 CFR 4.470, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

Pursuant to 43 CFR 4.471 and 4160.3(d), an appellant also may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision.

The appeal and any petition for stay must be filed at the office of the authorized officer Les W. Boni, Assistant Field Manager, Renewable Resources. Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Solicitor, Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825-1890.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must 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.

43 CFR 4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

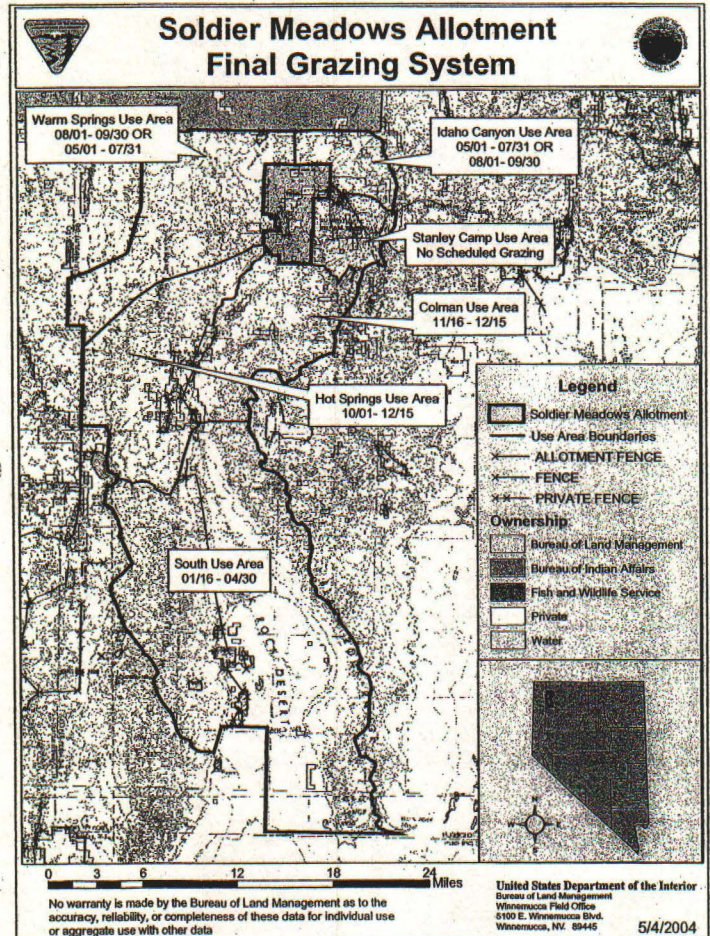
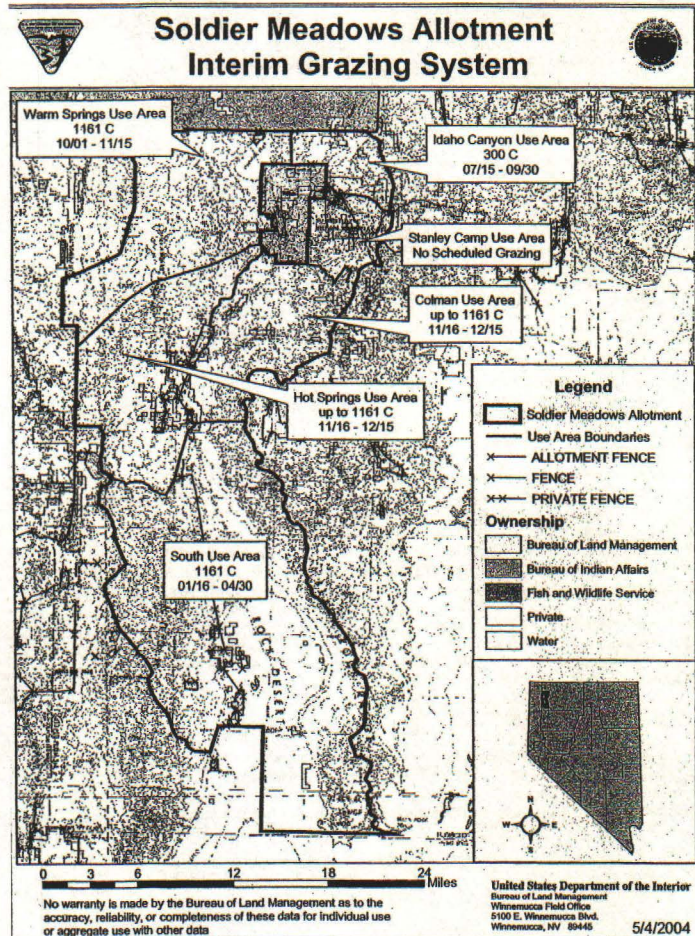
Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division in Salt Lake City, Utah, a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the decision (43 CFR 4.472(b)).

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

Sincerely,

Les W. Boni
 Les W. Boni
 Assistant Field Manager
 Renewable Resources

Enclosures: PMUD protest points and responses (45p)
 Allotment Maps (2p)
 FONSI
 cc Refer to enclosed list



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
GRAZING PERMIT

STATE NY
OFFICE 030
OPERATOR NUMBER 272008
PREFERENCE CODE 03
DATE PRINTED 11/18/99
TERM 12/13/1997 TO 12/13/2007

ESTILL RANCHES LLC
JOHN ESTILL
P.O. BOX 67
LIKELY, CA 96114

BUREAU OF LAND MANAGEMENT
WINNEMLICCA F. O.
3100 E KINN. BLVD.
WINNEMLICCA, NY 89445

THIS GRAZING PERMIT IS OFFERED TO YOU BASED ON YOUR RECOGNIZED GRAZING PREFERENCE ON THE PUBLIC LANDS AND/OR OTHER LANDS ADMINISTERED BY THE BLM. YOU ARE AUTHORIZED TO MAKE GRAZING USE TO THE EXTENT OF YOUR ACTIVE GRAZING PREFERENCE AS SHOWN BELOW UPON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS INCORPORATED HEREIN AND YOUR PAYMENT OF GRAZING FEES.

| ALLOT PASTURE | LIVESTOCK | | GRAZING PERIOD | | TYPE | AUM'S |
|-----------------------|-----------|--------|----------------|-------|------------|-------|
| | NUMBER | KIND | BEGIN | END | | |
| 00128 SOLDIER MEADOWS | 500 | CATTLE | 01/01 | 03/31 | 100 ACTIVE | 1496 |
| | 1117 | CATTLE | 06/01 | 08/30 | 100 ACTIVE | 1102 |
| | 1117 | CATTLE | 07/15 | 10/14 | 100 ACTIVE | 3579 |
| | 1117 | CATTLE | 11/16 | 12/31 | 100 ACTIVE | 1689 |

TERMS AND CONDITIONS:

THE LIVESTOCK NUMBERS, SEASON OF USE, AND OTHER CONDITIONS ARE FROM THE FINAL FULL FORCE AND EFFECT MULTIPLE USE DECISION DATED JANUARY 24, 1994. IF THROUGH AN ADMINISTRATIVE HEARING YOUR APPEAL IS UPHOLD, A NEW GRAZING PERMIT WILL BE ISSUED REFLECTING THE JUDGEMENT. THE GRAZING PERMIT WILL BE ISSUED FOR ONE-YEAR. IF THERE HASN'T BEEN A RULING BEFORE THIS GRAZING PERMIT EXPIRES, ANOTHER ONE YEAR PERMIT WILL BE ISSUED TO COVER THE 1997 GRAZING SEASON. ACCURATE ACTUAL USE WILL BE SUBMITTED WITHIN 15 DAYS OF LIVESTOCK BEING REMOVED. THE PERMITTEE IS REQUIRED TO PERFORM NORMAL MAINTENANCE ON THE RANGE IMPROVEMENT PROJECTS WHICH HAVE BEEN ASSIGNED. NO SALT AND/OR MINERAL BLOCKS SHALL BE PLACED WITHIN ONE QUARTER (1/4) MILE OF SPRINGS, MEADOWS, STREAMS, RIPARIAN HABITATS OR ASPEN STANDS. IN THE EVENT THAT TOPOGRAPHY AND/OR AVAILABLE WATER SOURCES DO NOT ALLOW FOR THE 1/4 MILE REQUIREMENT, COORDINATION WILL BE NECESSARY WITH THE BLM. WITHIN THE HOT SPRINGS PASTURE NO SALT AND/OR MINERAL BLOCKS SHALL BE PLACED WITHIN 1/2 MILE OF HOT SPRINGS.

SALT AND/OR MINERAL BLOCKS SHALL NOT BE PLACED WITHIN ONE QUARTER

EXHIBIT "B"



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Winnemucca District Office
705 East 4th Street
Winnemucca, Nevada 89445

BY REPLY REFER TO:
4160
(NV-026.1)

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JAN 24 1994

NOTICE OF FULL FORCE AND EFFECT MULTIPLE USE DECISION
SOLDIER MEADOWS ALLOTMENT

R.C. Roberts
801 A Street
San Rafael, CA 94901

Dear Mr. Roberts:

On December 10, 1993, the Soldier Meadows Re-evaluation and Proposed Full Force and Effect Multiple Use Decision was mailed to all affected interests. We received protests from the Commission for the Preservation of Wild Horses, Wild Horse Organized Assistance, and the Nevada Division of Wildlife. Protest points are briefly summarized below along with my response to each point.

Commission/WHOA

- 1. The Proposed Decision extends the land use plan short term objectives in excess of 14 years. Range Management-Management Framework III Decision RM-1 set a five year schedule to accomplish wild horse herd management area plans, and other approved activity plans, to establish appropriate management levels to assure viable herds in balance with their habitat by 1987. Short term objectives of the Proposed Decision adjusts the land use plan short term objectives to the year 2001.

Response:

Based on the above protest point we have re-reviewed the Management Framework Plan (MFP) for the Sonoma-Gerlach Resource Area, signed in 1982. Considering that document and the Bureau's procedures in writing MFP's, our response is that these documents only state goals for the management of the area they cover and do not establish specific short term or long term objectives. Objectives are developed in site specific documents that implement the goals of the MFP. The short term objectives you refer to were established in 1988 in the Livestock Agreement with the permittees. We look at the short term objectives in our re-evaluations and if our monitoring indicates we are not achieving these then we conclude that we will not be able to achieve our long term objectives, so adjustments must be made. A new decision is issued with the necessary changes and we continued to monitor to see if those changes allow us to meet our short term objectives. If we still are not meeting those short term objectives then further adjustments will be made. This is the process we are following and the reason we are issuing this decision to make adjustments to meet the short term objectives.

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In regards to the statement that the MFP set a five year time frame to develop activity plans, the MFP did not set any time frames for the development of these plans. The MFP states that subsequent to issuing a decision and establishing monitoring we would then "develop and implement (as time and funding permit) allotment management plans and activity plans for other uses". To date this resource area has not had the time nor the funding to complete the needed activity plans.

- 2. The Proposed Decision adjusts the wild horse herd boundaries for the Black Rock West, Warm Springs and Black Rock East Wild Horse Management Areas. These herd areas are delineated in the Sonoma-Gerlach Unit Resource Analysis and Final Grazing Environmental Impact Statement. Any modification or adjustment to these boundaries must be supported by herd delineation data in an environmental analysis to amend the current land use plan.

Response:

The proposed decision does not adjust the boundary between Black Rock East and West HMA's. The Soldier Meadows and Palute Meadows Allotment Re-evaluations documented, from observations over the last ten years, wild horses moving between the two HMA's. The re-evaluations recommended that all the wild horses in the HMA's be managed as one herd, and that is what was carried forward in the proposed decision. For administrative purposes we will still track the mountain as two HMA's. Because this action does not officially change the HMA boundaries it is not considered a Land Use Plan adjustment so the current Land Use Plan does not need to be amended.

After reviewing the proposed boundary adjustment for the Black Rock West and Warm Springs HMA's it was decided to delete that from the Multiple Use Decision. It is more appropriate to deal with it as an adjustment to the Land Use Plan.

- 3. The Proposed Decision did not consider the allotment short term objective for upland wetland riparian habitat. Rangeland monitoring data found in Appendix 4 of the Final Soldier Meadows Allotment Re-evaluation consistently states "severe" utilization of this key habitat. Carrying capacity computations found in Appendix 5 presents no data to indicate the use of "severe" or 90 percent as the actual utilization or the allotment specific objective of 50 percent as the desired utilization level. Weight averaging of the use pattern mapping data further distracts from the allotment specific objective for wetland meadow habitats.

Response:

What Appendix 4 was stating was the range of levels of utilization that were recorded while conducting utilization transects. In conducting utilization transects we sample at least 10 points and record the levels of use on the key vegetation species. The points are then summarized and the average utilization for that area is recorded. That average is then used in our carrying capacity calculations. The purpose of us mentioning the range of utilization levels recorded on our transects was to give a complete picture of what was happening on the ground and not hide behind averages that may not show the full picture. None of the utilization transects showed an average utilization of 90% or "severe" which is why that use level did not show up in the carrying capacity calculations.

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- 4. The Proposed Decision arbitrarily allocates available forage to wild horse and livestock. The land use plan ratio of initial stocking rates for livestock and wild horses were not at a thriving natural ecological balance in 1982. Data and analysis of the Final Environmental Impact Statement did not suggest or conclude that the existing conditions were protecting or restoring natural resources. Therefore, the allocation of available forage must be based upon monitoring data, wild horse herd population dynamics and forage preference of competing ungulates.

Response:

It was recognized in the MFP that the forage allocation made for livestock and wild horses/burros was only a starting point and that numbers would be adjusted to appropriate levels based on monitoring. The 1988 evaluation for this allotment documented that livestock numbers were too high so they were adjusted downward, but wild horses/burros numbers were not addressed. The re-evaluation for this allotment established the total carrying capacity for livestock and wild horses/burros based on monitoring data. The AMUs were then divided between livestock and wild horses/burros on a proportional basis (based on the ratio established in the MFP) in accordance with MFP decision Range 1.1 and Wild Horse/Burro 1.1. I felt this was the appropriate and most equitable way to divide the total carrying capacity between livestock and wild horses/burros. We will continue to monitor to determine if these new stocking rates are appropriate, and if not make future adjustments.

- 5. The Proposed Decision established an appropriate management level for the East Black Rock Wild Horse Herd of 31 horses. The Soldier Meadows Final Allotment Re-evaluation presents no data or analysis to support this appropriate management level.

Response:

This Proposed MUD did not establish an AML for the Black Rock Range - East or West HMA. The Soldier Meadows Proposed MUD and the Palute Meadows Final MUD established an AML for the Black Rock Range HMA. The Black Rock Range HMA was established based on monitoring which documented wild horses move freely from one side of the mountain to the other. Each MUD established a carrying capacity for wild horses and livestock (see Commission/WHOA #4). These figures were combined to determine available forage for wild horses in the Black Rock Range HMA, an AML of 186 adult horse was the result. (refer to page 32 of the FHUD)

- 6. The Proposed Decision is to set a carrying capacity that will meet all allotment objectives and protect natural resources. The capture and release of unadoptable horses to levels above the carrying capacity will cause over utilization to key habitats. Delaying wild horse and livestock adjustments for a minimum of six years is contrary to existing federal regulations that prohibits management actions causing significant resource damage.

Response:

Wild horse numbers should be at or very near AML in the Calico Mountain and Warm Springs Canyon HMAs after the 1994 winter gather based on previous captures and the estimated herd age structure. The Black Rock Range HMA will not get to AML after the first gather. Livestock will not use the Summit Lake Pasture portion of the Black Rock Range HMA until range projects are constructed and riparian condition classes improve to 70%, therefore, for the short term there will only be wild

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horses. Also, BLM will implement utilization and stubble height criteria that will insure important habitat is not over utilized by livestock.

7. The Proposed Decision endorses the broad policy to leave unadoptable horses within the herd area. The sex and age composition of the surviving horses is critical to the longevity and genetic viability of the herd. Data collected in 1993 indicates the Warm Springs herd suffered over 50 percent mortality last winter. The recruitment rate for 1993 was only six percent. Depending upon the surviving herd's age composition, the Proposed Decision's re-structuring of this herd could jeopardize this herd within two or three years. Implementation of broad policy that effects the sex ratio and age structure of this herd requires an environmental assessment.

Response:

The Sonoma-Gerlach Resource Area as part of the BLM is required to follow current BLM policies, such as the "Strategic Plan for the Management of Wild Horses and Burros on Public Lands". Returning unadoptable animals due to age requirements (6 years and older) does not equate to undesirable animals remaining.

An EA (FY94 NV-020-4-09) completed on 1/19/94 states: "The social structure may be affected which could lead to a decreased foaling and recruitment rate for the first year following removal as bands reorganized. However, the recruitment rate may increase after this due to a stabilization of social structure, and improved body condition of mares through reduced competition for forage. By releasing horses six years of age and older, the base genetic makeup of the herds should remain intact within the HMAs". The Strategic Plan for the Management of Wild Horses and Burros on Public Lands documented that the basic gene pool of each herd will remain intact. Until wild horse numbers are stabilized for the long term, BLM can not accurately ascertain the effects on herd viability, genetics, sex ratios, and age structures in this EA.

8. The Proposed Decision restructures the Calico Wild Horse Herd. This action was not assessed by any NEPA document that assesses genetic data, age structure data, or herd longevity to assure its viability.

Response:

See the response to Commission/WHO #7.

Division of Wildlife

1. The Proposed Decision eliminates the riparian Short Term Objective #2:

The Proposed Decision eliminates the Fox Mountain Habitat Management Plan objective #8:

The Proposed Decision eliminates the Black Mountain Bighorn Sheep Reestablishment Operations Plan objective:

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For example, Warm Springs Pasture Short Term Objective #6 maintains a percentage of species composition by weight. This objective can be met by severe utilization resulting in no residual cover for nesting birds or wintering mammals. The objective ignores a detailed list of key plant species and their allowable use levels found in the Fox Mountain Habitat Management Plan.

Response:

The DPC objectives in this decision describe the vegetative community that will best meet the goals and objectives from the MFP and activity Plans. The DPC objectives were developed considering all of the goals and objectives identified. An example is on pages 34 and 35 of the Final Re-evaluation. Wildlife habitat was analyzed and the limiting factors identified for mule deer were forage vigor, quality, and cover. The DPC objectives were then tailored to meet those mule deer needs. On the other hand ensuring adequate residual cover is a function of utilization objectives, not a DPC objective. We feel that the utilization objectives established in this decision will meet the needs identified in the protest point.

The plant species lists referred to are for the entire area of the HMP (802,870 acres). As key areas are selected for monitoring purposes the key plant species that occur in those areas will be identified and we will manage for those in accordance with this decision and all affected activity plans (including the Fox Mountain HMP).

5. The Proposed Decision establishes a carrying capacity by flawed assumptions without consideration of critical wildlife habitat. Appendix 6, Stocking Level Calculating and Procedures, of the Soldier Meadow Allotment Re-evaluation did not consider wetland riparian habitat objectives. Appendix 4, Utilization, of the Soldier Meadow Allotment Re-evaluation, repetitively documents severe utilization of riparian vegetation within wetland meadow habitats during all years of monitoring.

The Proposed Decision carrying capacity computation is based upon Example C of Appendix 2 of the "Rangeland Monitoring Analysis, Interpretation and Evaluation (R 400-7)". Example C assumes rangeland production is not uniform and utilization is uniform. Utilization data confirms the conclusions of the Re-evaluation that livestock distribution problems are causing heavy and severe utilization of critical wildlife habitat; thus the Proposed Decision's use and rationale for Example C is flawed for a carrying capacity computation.

Response:

Appendix 4 was stating the range of levels of utilization that were recorded while conducting utilization transects. In conducting utilization transects we sample at least 10 points and record the levels of use on the key vegetation species. The points are then summarized and the average utilization for that area is recorded. That average is then used in our carrying capacity calculations. The purpose of us mentioning the range of utilization levels recorded on our transects was to give a complete picture of what was happening on the ground and not hide behind averages that may not show the full picture. None of the utilization transects showed an average utilization of 90% or "severe" which is why that use level did not show up in the carrying capacity calculations.

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Response:

Utilization objectives which are referred to were described on pages 2, 20, and 24 in the Proposed MUD. These utilization objectives were carried forward from the Final Re-evaluation. The format of the Final MUD is modified to make more clear the utilization objectives to the readers of this document.

To avoid misunderstanding, the Fox Mtn HMP covers portions of the Calico, Soldier Meadows, and a small part of the Hot Springs Pastures; not the entire Soldier Meadows Allotment. The Proposed Decision used a 4 inch stubble height instead of utilization levels as a management action for Donnelly Creek. The interdisciplinary team felt using stubble height in this instance would be more effective to improve riparian vegetation and stream bank conditions along Donnelly Creek.

2. The Proposed Decision's stream bank riparian short term and long term objectives extend the land use plan achievement schedule to the years 2001 and 2017, respectively.

Based on the above protest point we have re-reviewed the Management Framework Plan (MFP) for the Sonoma-Gerlach Resource Area, signed in 1982. There is not a decision in the MFP establishing an "achievement schedule" with specific dates for accomplishment. The MFP establishes goals for us to work towards but does not set any specific time frames for accomplishment. The only document that does discuss time frames is the Sonoma-Gerlach Grazing Environmental Impact Statement which states that the "time necessary for changes in vegetation condition and production" is approximately 2024. Our goal of achievement of 2017 is well within that time frame.

3. Though projects may be dependent upon funding, Selective Management Actions of the Soldier Meadows Allotment Re-evaluation should have considered carrying capacity computations to meet all allotment specific objectives. The Proposed Decision should have implemented actions to meet our agreements.

Response:

The Final Re-evaluation identified pasture specific projects that are required to implement management for the allotment which includes projects identified in the various activity plans (pages 53 - 75). The evaluation of monitoring identified livestock distribution as the primary management action to improve resource conditions; not a carrying capacity problem. The Final MUD changed season of use in all the pastures, reduced the stocking levels in the Warm Springs, Calico, and Black Rock pastures, and implemented utilization criteria so that livestock will be moved when it is reached. Based on the changes in numbers, season of use, and utilization criteria we should be able to move towards accomplishing long term objectives without the completion of the range improvement projects proposed. Those projects proposed will only make achievement easier.

4. Desired Plant Community objectives must be consistent with land use plan and approved activity plans. The Proposed Decision's "Allotment Objectives for Uplands and Meadows" implement the concept of Desired Plant Community without considering wildlife management action for achievement. Achievement of these new objectives cannot assure that forage and cover will be provided for wildlife.

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We agree with the conclusions that livestock distribution is a problem and that the technique described for calculating carrying capacity would not be the appropriate method for dealing with problems created by poor distribution. That is why we chose to modify the technique back in 1992 when we established the standard procedure for the resource area for calculating capacity in these allotment re-evaluations. The technique was modified by dropping out the slight and light utilization categories and only considering the moderate, heavy, and severe utilization categories. We felt this would cause the calculations to better emphasize the problems of poor distribution and over stocking. Using this modified technique for calculating carrying capacity and requiring the movement of livestock based on acceptable utilization limits we feel we will solve the problems identified in this re-evaluation.

6. Livestock management is required to meet short term utilization objectives for stream bank, wetland riparian and upland habitats. The Proposed Decision eliminated the wetland riparian short term utilization limitation of the land use plan. The Proposed Decision did not set utilization limits for mountain browse species essential to the welfare of big game species. Terms and conditions of any grazing authorization or permit under this decision, cannot quantify the annual utilization of key vegetational species critical to wildlife.

The Proposed Decision suggests continued management of wildlife habitat consistent with the land use plan and habitat management plans. Contrary to the Wildlife Management Decision, Livestock and Wild Horse Decisions do not recognize short term objectives for wildlife habitat. Wildlife habitats require significant protection to resolve resource conflicts and restore depleted wildlife populations.

Response:

Utilization objectives were stated for mountain browse species in the final re-evaluation. That objective was stated in the wild horse portion of the proposed MUD (see page 24) but was inadvertently omitted for the livestock section. We appreciate this being brought to our attention and it will be added in the final MUD.

I have considered the proposed decision in light of these protest points and on the basis of monitoring data, the CCC process, interdisciplinary team recommendations, and consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act my final decision is:

ALLOTMENT WIDE MULTIPLE USE OBJECTIVES

UTILIZATION OBJECTIVES

Riparian/Wet Meadows:

1. Do not exceed 30% utilization of current years growth on the key riparian trees and shrubs, which includes: Aspen (*Populus tremuloides*) and Willows (*Salix spp.*). For Mahogany, Summer Camp, Snow Creeks, and the hot springs associated with the Desert Dace grasses and grass-like plants will have a minimum stubble height of 6 inches. A 4 inch stubble height will apply for Coleman, Slungullion, and Donnelly Creeks when the cows leave the pasture

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for the following: Nevada Bluegrass (*Poa nevadensis*), Sedges (*Carex spp.*), Rushes (*Juncus spp.*), Intermediate Wheatgrass (*Agropyron intermedium*), and Tufted Hairgrass (*Deschampsia cespitosa*).

- The utilization levels for wet meadows (not identified above), grass and grass-like species is 50%. If the utilization level is exceeding the 50% level by February 28 the carrying capacity will be evaluated to determine if a downward adjustment is required. The evaluation will include livestock and wild horse actual use, along with wildlife and climatic factors.

Upland Grass/Dry Meadows:

- Livestock and wild horse utilization levels is 50% at the end of the livestock use period (except for the Black Rock Pasture).
- For the Black Rock Pasture, combined utilization shall not exceed 60% by February 28 or the start of the new growing season.
- By February 28, or the start of the new grazing season, utilization shall not exceed 60% (utilization on these species from 50 to 60% will occur during the dormant season and should not have a detrimental impact to plant health and vigor).
- The utilization level by wild horses, once the AML is reached, shall not exceed 20% by July 15 (seed dissemination) in livestock rested pastures.
- For the Black Rock Pasture, once AML is reached, utilization level by wild horses shall not exceed 30% by December 31.

Upland Browse:

- Livestock utilization levels for shall not exceed 50% by the end of the livestock grazing use period.

WATER QUALITY OBJECTIVES

- Improve or maintain Mahogany Creek to Class A water standards.
- Improve or maintain the water quality of the following streams to the State criteria set for livestock drinking water, cold water aquatic life, water contact recreation (wading), and wildlife propagation:

Summer Camp Creek
Snow Creek
Donnelly Creek
Slungullion Creek
Soldiers Creek

- Maintain water quality standards for Desert Dace habitat in the springs where they occur to the following:

temperature - 32-38°C/90-100°F
nitrates - 90 mg/L
turbidity - 50 NTU
pH - 6.5-9.0
D.O. - 5.0 mg/L

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VEGETATION OBJECTIVES

A. Riparian Objectives:

- Improve the riparian condition class on six (6) miles of Mahogany Creek to 70% (from 1992 baseline data of 68%) within the short term (2001) and maintain excellent riparian stream condition (70% of optimum or better) to the year 2017.
- Improve the riparian condition class on 2 miles of Summer Camp Creek to 70% (from 1990 baseline data of 60%) within the short term (by 2001) and maintain excellent riparian stream condition (70% of optimum or better) to the year 2017.
- Improve the riparian condition class on 3 miles of Snow Creek to 70% (from 1990 baseline data of 60%) within the short term (by 2001) and maintain excellent riparian stream condition (70% of optimum or better) to the year 2017.
- Improve the riparian condition class on 8 miles of Donnelly Creek to 62% (from baseline 1989 data of 52%) within the short term (by 2001) and achieve excellent riparian stream condition (70% of optimum or better) to the year 2017.
- Improve the riparian condition class on 8 miles of Coleman Creek to 66% (from baseline 1991 data of 44%) within the short term (by 2001) and achieve excellent riparian stream habitat condition (70% of optimum or better) to the year 2017.
- Improve the riparian condition class on 8 miles of Slungullion Creek to 63% (from baseline 1990 data of 48%) within the short term (by 2001) and achieve excellent riparian stream habitat condition (70% of optimum or better) to the year 2017.

B. Sage Grouse:

Protect known sage grouse strutting and nesting habitat and improve brooding habitat by: (WL-1.11)

- Following NDOW's guidelines for Vegetal Control Programs in Sage Grouse Habitat in Nevada.
- Maintain sagebrush canopy at 30% in sage grouse nesting areas where sagebrush does not exceed three (3) feet in height.

C. Desired Plant Community Objectives for Uplands and Meadows:

RATIONALE: The limiting factor for wildlife is forage vigor, quality, and cover, therefore, the objectives need to be vegetative ones. Livestock and wild horse objectives are for a sustainable yield of forage, which desired plant communities would account for.

Objectives for this allotment were based on ecological status inventory data. The seral stage of each vegetative community and it's potential was considered in conjunction with the wildlife, wild horse, and livestock use to develop desired plant community objectives. Short term objectives will be used to determine the progress each community is making toward it's desired stage. Key areas for all pastures will be established by an interdisciplinary team in Key Ecological Sites.

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Summit Lake Pasture

Objective 1

Short Term

Increase the composition by weight the overall percentage of the following perennial grasses: AGSP, FEID, STH2, ELCI2, POA++, STCO4, and SIHY from 28% to 35% on Ecological Site 023XY007 (Loamy 14-16") in Site Write-up Area (SWA) U044 by the year 2001. The aggregate of ELCI2, POA++, SIHY, and STCO4 can only make up 10% of the total composition.

Long Term

Within Ecological Site 023XY007 (Loamy 14-16") manage for the following percent composition by weight:

| Percent Composition By Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 28% | 45% | 60% |
| Forbs | 7% | 10% | 10% |
| Shrubs | 65% | 45% | 30% |

This objective should be achieved by the year 2017. The shrub component still maximizes the potential of the site to provide quality mule deer habitat as described in BLM's 6630 Manual.

Objective 2

Short Term

Maintain or increase perennial grasses at 45% composition by weight on Ecological Site 023XY017 (Claypan 14-16") in SWA U044 by the year 2001. These perennial grasses are FEID, AGSP, STH2, POA++, SIHY, and ELCI2 with the aggregate of the latter three making up no more than 10% of the total composition.

Long Term

Within Ecological Site 023XY017 (Claypan 14-16") manage for a desired plant community with the following percent composition by weight:

| Percent Composition By Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 45% | 55% | 65% |
| Forbs | 11% | 10% | 10% |
| Shrubs | 44% | 35% | 25% |

This objective should be accomplished by the year 2017.

Objective 3

Short Term

Increase FEID and AGSP each from 2% to 6% composition by weight on Ecological Site 023XY026 (Mahogany Savanna) in SWA U044 by the year 2001. Maintain PUTR2 above 10% and CELE3 at 22% composition by weight.

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Long Term

Within Ecological Site 023XY026 (Mahogany Savanna) manage for a desired plant community with the following percent composition by weight:

| Percent Composition By Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 23% | 30% | 40% |
| Forbs | Trace | 3% | 10% |
| Shrubs | 77% | 62% * | 50% |

* At least 25% must be CELE3 and 10% PUTR2.

This objective should be accomplished by the year 2017. The shrub component still maximizes the potential of the site to provide quality mule deer habitat as described in BLM's 6630 Manual.

Objective 4

Short Term

Maintain the existing plant community with 61% perennial grasses, 22% forbs, and 17% shrubs in Ecological Site 023XY013 (dry meadows) in SWA U044 by the year 2001.

Long Term

Within Ecological Site 023XY013 (dry meadows) in SWA U044 manage for the desired plant community with the following percent composition by weight:

| Percent Composition by Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 61 | 65 | 80 |
| Forbs | 22 | 22 | 20 |
| Shrubs | 17 | 13 | 0 |

Decrease the percent composition by weight of JUBA by increasing the percent composition by weight of PONE3 and HOBR.

This objective should be achieved by 2017.

Objective 5

Short Term

Maintain the existing plant community with 89% perennial grasses, 11% forbs, and 0% shrubs in Ecological Site 023XY025 (wet meadows) in SWA U202 by the year 2001.

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Long Term

Within Ecological Site 023X025 (wet meadows) in SWA U202 manage for the desired plant community with the following percent composition by weight:

| Lifeform | Percent Composition By Weight | | |
|-------------------|-------------------------------|---------|-----------|
| | Existing | Desired | Potential |
| Perennial Grasses | 89 | 85 | 80 |
| Forbs | 11 | 15 | 20 |
| Shrubs | 0 | 0 | 0 |

Decrease the percent composition by weight of Carex by increasing the percent composition by weight of DECE.

This objective should be achieved by 2017.

Rationale: The Summit Lake Pasture has been identified as yearlong bighorn sheep range (BRBY-2, BRBY-4), mule deer summer range (BRDS-8), as well as a sage grouse strutting ground and brood use area. It is also used yearlong by wild horses and by cattle for 3 months. By achieving these objectives the vegetative communities would be meeting the needs of the mentioned wildlife, wild horses, and livestock.

Warm Springs Pasture

Objective 1

Short Term

Increase perennial grasses from 34% to 41% composition by weight on Ecological Site 023X017 (Claypan 14-16") in SWA U125 by the year 2001. These perennial grasses are: AGSP, STH2, POA+, SIHY, and FEID.

Long Term

Increase FEID from a trace to 7% composition by weight while managing for a desired plant community with the following percent composition by weight.

| Lifeform | Percent Composition By Weight | | |
|-------------------|-------------------------------|---------|-----------|
| | Existing | Desired | Potential |
| Perennial grasses | 34% | 50% | 65% |
| Forbs | 8% | 10% | 10% |
| Shrubs | 56% | 40% | 25% |

This objective should be completed by the year 2017. The shrub component still maximizes the potential of the site to provide quality mule deer habitat as described in BLM's 6630 Manual.

Objective 2

Short Term

Maintain the following perennial grasses: STH2, SIHY, and POA++ at 46% composition by weight through the year 2001 on Ecological Site 023X031 (Claypan 10-14") in SWA U174. Also try to get AGSP established on the site.

Long Term

Increase AGSP to 5% composition by weight, as it's potential on the site is 20 to 50% composition by weight. Establish a desired plant community consisting of the following vegetation:

| Lifeform | Percent Composition By Weight | | |
|-------------------|-------------------------------|---------|-----------|
| | Existing | Desired | Potential |
| Perennial Grasses | 46% | 5% | 65% |
| Forbs | 12% | 12% | 10% |
| Shrubs | 42% | 33% | 25% |

This objective should be achieved by the year 2017. The shrub component still maximizes the potential of the site to provide quality mule deer habitat as described in BLM's 6630 Manual.

Objective 3

Short Term

Increase AGSP from 9% to 13% and STH2 from 8% to 12% composition by weight on Ecological Site 023X039 (Loamy Slope 10-14") in SWA U125 by the year 2001.

Long Term

Manage for a desired plant community consisting of the following percent composition by weight within Ecological Site 023X039 (Loamy Slope 10-14"):

| Lifeform | Percent Composition By Weight | | |
|-------------------|-------------------------------|---------|-----------|
| | Existing | Desired | Potential |
| Perennial Grasses | 35% | 50% | 65% |
| Forbs | 6% | 10% | 10% |
| Shrubs | 52% | 40% | 25% |

This objective should be reached by the year 2017. The shrub component still maximizes the potential of the site to provide quality mule deer habitat as described in BLM's 6630 Manual.

Objective 4

Short Term

Increase AGSP, FEID, and STH2 collectively, from 27% to 36% composition by weight on Ecological Site 023X066 (Ashy Loam 12-14") in SWA U162 by the year 2001 while maintaining PUTR2 above 20% composition by weight.

Long Term

Within Ecological Site 023X066 (Ashy Loam 12-14") manage for the following percent composition by weight:

| Lifeform | Percent Composition By Weight | | |
|-------------------|-------------------------------|---------|-----------|
| | Existing | Desired | Potential |
| Perennial Grasses | 33% | 43% * | 60% |
| Forbs | 2% | 8% | 10% |
| Shrubs | 65% | 49% ** | 30% |

* Must be at least 20% FEID.
** Must be at least 20% PUTR2.

This objective should be achieved by the year 2017. The shrub component still maximizes the potential of the site to provide quality mule deer habitat as described in BLM's 6630 Manual.

Objective 5

Short Term

Maintain or increase FEID at 12% and increase AGSP from 2% to 5% composition by weight. Maintain PUTR2 at 9% composition; increase CELE3 from 3% to 6% composition by weight on Ecological Site 023X026 (Mahogany Savanna) in SWA U161 by the year 2001.

Long Term

Manage for the following percent composition by weight on Ecological Site 023X026 (Mahogany Savanna):

| Lifeform | Percent Composition By Weight | | |
|-------------------|-------------------------------|---------|-----------|
| | Existing | Desired | Potential |
| Perennial Grasses | 35% | 40% * | 40% |
| Forbs | 3% | 10% | 10% |
| Shrubs | 54% | 50% ** | 50% |

* Must be at least 15% FEID, 10% AGSP.
** Must be at least 9% CELE3, and 9% PUTR2.

This objective should be achieved by the year 2017. The shrub component still maximizes the potential of the site to provide quality mule deer habitat as described in BLM's 6630 Manual.

Objective 6

Short Term

Maintain PONE3 at 12% and increase composition by weight for forbs from 8% to 11% with LUPINE making up no more than 5% composition by weight of the forbs in SWA U199 on Ecological Site 023X013 (dry meadows) by the year 2001.

Long Term

Within Ecological Site 023X013 (dry meadows) in SWA U199 manage for the desired plant community with the following percent composition by weight:

| Lifeform | Percent Composition By Weight | | |
|-------------------|-------------------------------|---------|-----------|
| | Existing | Desired | Potential |
| Perennial Grasses | 92 | 85 | 80 |
| Forbs | 8 | 15 | 20 |
| Shrubs | 0 | 0 | 0 |

Increase composition by weight PONE3 from 12% to 15% in SWA U199 on Ecological Site 023X013 (dry meadows) by the year 2017.

Rationale: This Warm Springs Pasture has been identified as pronghorn yearlong (BRPY-7) and summer range (BRPS-1, BRPS-8); mule deer yearlong (BRDY-3) and winter range (BRDW-4); and as a sage grouse brood use area. It is also used yearlong by wild horses/burros and by cows for three months a year.

Calico Pasture

Objective 1

Short Term

Increase STH2 from 9% to 12% composition by weight on Ecological Site 027X079 (Gravelly Claypan 8-10") in SWA U063 by the year 2001.

Long Term

Within Ecological Site 027X079 (Gravelly Claypan 8-10") manage for the following percent composition by weight:

| Lifeform | Percent Composition By Weight | | |
|-------------------|-------------------------------|---------|-----------|
| | Existing | Desired | Potential |
| Perennial Grasses | 25% | 32% | 45% |
| Forbs | 8% | 8% | 5% |
| Shrubs | 67% | 60% | 50% |

This objective should be achieved by the year 2017. The shrub component still maximizes the potential of the site to provide quality antelope habitat as described in BLM's 6630 Manual.

Objective 2

Short Term

Increase AGSP from 2% to 5% composition by weight on Ecological Site 023X037 (Clay Slope 8-12") in SWA U109 by the year 2001.

Long Term

Manage for a desired plant community with the following percent composition by weight on Ecological Site 023X037 (Clay Slope 8-12"):

| Lifeform | Percent Composition By Weight | | |
|-------------------|-------------------------------|---------|-----------|
| | Existing | Desired | Potential |
| Perennial Grasses | 26% | 36% | 70% |
| Forbs | 2% | 22% | 10% |
| Shrubs | 42% | 42% | 20% |

Perennial grasses may include: AGSP - must be at least 8%, STH2, POA+, SIHY, FEID. This objective should be achieved by the year 2017. The shrub component still maximizes the potential of the site to provide quality antelope habitat as described in BLM's 6630 Manual.

Objective 3

Short Term

Increase FEID from 2% to 6% composition by weight while trying to establish AGSP on Ecological Site 023X017 (Claypan 14-16") in SWA U042 by the year 2001.

Long Term

Manage for a desired plant community with the following percent composition by weight:

| Percent Composition By Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 34% | 46% | 65% |
| Forbs | 28% | 20% | 10% |
| Shrubs | 38% | 34% | 25% |

Perennial grasses include FEID, AGSP, POA++, STH2, SIHY and other perennial grasses. This objective should be accomplished by 2017. The shrub component still maximizes the potential of the site to provide quality antelope habitat as described in BLM's 6630 Manual.

Rationale: The Calico Pasture has been identified as pronghorn antelope winter range (BRPW-1). Wild horses use this pasture yearlong and cows use it for one month (April 1 - April 30) for two years and then rest it for two years.

Soldier Meadows Pasture

Objective 1

Short Term

Increase composition by weight of AGSP from 31% to 36% on Ecological Site 023XY039 (loamy slope 10-14") in SWA U159 by the year 2001.

Long Term

Within Ecological Site 023XY039 (loamy slope 10-14") manage for the following percent composition by weight:

| Percent Composition by Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 35 | 44 | 65 |
| Forbs | 7 | 10 | 10 |
| Shrubs | 58 | 46 | 25 |

This objective should be achieved by the year 2017. The shrub component still maximizes the potential of the site to provide quality mule deer and antelope habitat as described in BLM's 6630 Manual.

Objective 2

Short Term

Increase FEID and STH2 collectively from 12% to 18% composition by weight on Ecological Site 023XY017 (claypan 14-16") in SWA U229 by the year 2001.

Long Term

Within Ecological Site 023XY017 (claypan 14-16") in SWA U229 manage for the following percent composition by weight:

| Percent Composition by Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 23 | 35 | 65 |
| Forbs | 8 | 10 | 10 |
| Shrubs | 69 | 55 | 25 |

This objective should be achieved by the year 2017.

Objective 3

Short Term

Increase the composition by weight STH2 from 1% to 6% on Ecological Site 024XY005 (loamy 8-10") in SWA U181 by the year 2001.

Long Term

Within Ecological Site 024XY005 (loamy 8-10") in SWA 181 manage for the following percent composition by weight:

| Percent Composition by Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 7 | 17 | 55 |
| Forbs | 3 | 5 | 5 |
| Shrubs | 87 | 78 | 40 |

This objective should be achieved by 2017.

* The remaining 3% is comprised of BRTE.

Objective 4

Short Term

Maintain or increase by weight the perennial grasses at 40% or higher on Ecological Site 023XY039 (loamy slope 10-14") in SWA U117 by 2001. The perennial grasses include AGSP and SIHY.

Long Term

Within Ecological Site 023XY039 (loamy slope 10-14") in SWA U117 manage for the following percent composition by weight:

| Percent Composition by Weight | | | |
|-------------------------------|-----------|---------|-----------|
| Lifeform | Existing* | Desired | Potential |
| Perennial Grasses | 40 | 45 | 65 |
| Forbs | 7 | 10 | 10 |
| Shrubs | 48 | 45 | 25 |

This objective should be achieved by 2017.

* The remaining 5% is comprised of BRTE.

Objective 5

Short Term

Increase by weight the following perennial grasses: SIHY, STH2, and POA++ collectively from 12% to 18% on Ecological Site 023XY037 (clay slope 8-12") in SWA U187 by 2001. Also try to establish AGSP on the site from the adjacent range sites.

Long Term

Within Ecological Site 023XY037 (clay slope 8-12") manage for the following Desired Plant Community while trying to establish AGSP on the site:

| Percent Composition by Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 12 | 25 | 70 |
| Forbs | 2 | 7 | 10 |
| Shrubs | 86 | 68 | 20 |

This objective should be achieved by 2017.

Objective 6

Short Term

Increase by weight the perennial grasses from 5% to 8% and increase ARSP55 from 4% to 10% on Ecological Site 024XY025 (loamy slope 5-8") in SWA U114 manage for the following Desired Plant Community:

| Percent Composition by Weight | | | |
|-------------------------------|-----------|---------|-----------|
| Lifeform | Existing* | Desired | Potential |
| Perennial Grasses | 5 | 10 | 20 |
| Forbs | Trace | 5 | 5 |
| Shrubs | 92 | 85 | 75 |

This objective should be achieved by 2017.

* The remaining 3% is comprised of BRTE.

Objective 7

Short Term

Maintain the existing plant community with 61% perennial grasses, 22% forbs, and 17% shrubs in Ecological Site 023XY013 (dry meadows) in SWA U201 by the year 2001.

Long Term

Within Ecological Site 023XY013 (dry meadows) in SWA U201 manage for the desired plant community with the following percent composition by weight:

| Percent Composition by Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 61 | 65 | 80 |
| Forbs | 22 | 22 | 20 |
| Shrubs | 17 | 13 | 0 |

Increase the percent by weight of the perennial grasses by 4%, while maintaining or decreasing the percent JUBA at 24%.

Rationale: The Soldier Meadows Pasture has been identified as pronghorn yearlong (BRPY-5) and winter (BRPW-6, BRPW-7); mule deer summer (BRDS-7, BRDS-5) and winter (BRDW-4); and bighorn sheep yearlong (BRBY-1, BRBY-2). It is also used yearlong by wild horses and burros and cows for one month a year (April 1- April 30).

Black Rock Pasture

Objective 1

Short Term

Increase ORHY, SIHY, and STSP3 from a trace to 3% composition by weight on Ecological Site 027XY018 (Gravelly Loam 4-8") in SWA U005 by the year 2001.

Long Term

Manage for a desired plant community with the following percent composition by weight on Ecological Site 027XY018 (Gravelly Loam 4-8").

| Percent Composition By Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | Trace | 3% | 25% |
| Forbs | Trace | 3% | 5% |
| Shrubs | 100% | 88% | 70% |

The perennial grasses may include ORHY, POSE, SIHY, and STSP3. This objective should be achieved by 2017.

Objective 2

Short Term

Increase ORHY from 6% to 9% composition by weight on Ecological Site 027XY016 (Sodic Dunes) in SWA U004.

Long Term

Within Ecological Site 023XY016 (Sodic Dunes) manage for a plant community with the following percent composition by weight:

| Percent Composition By Weight | | | |
|-------------------------------|----------|---------|-----------|
| Lifeform | Existing | Desired | Potential |
| Perennial Grasses | 16% | 20% | 35% |
| Forbs | Trace | 3% | 5% |
| Shrubs | 84% | 77% | 65% |

Perennial grasses may include : ORHY- must be at least 12% composition, DISP3, ELC12, and SIHY. This objective should be accomplished by the year 2017.

Rationale: The Black Rock Pasture has been identified as yearlong pronghorn antelope range (BRPY-5). It is used as a winter pasture by cattle (Jan. 1 - March 30) and it has wild horse use.

Hot Springs Pasture

Resource objectives, including livestock will be established in the Desert Dace Habitat Management Plan. These objectives will be incorporated into the re-evaluation/AMP.

Conduct a re-evaluation in 2001 analyzing resource objectives. If BLM identifies significant resource problems sooner, then a re-evaluation will be completed at that time.

Conduct a re-evaluation in 2017 to determine if long term desired plant community objectives have been achieved.

CARRYING CAPACITY

The combined carrying capacity for livestock and wild horses/burros to achieve these objectives are:

| | |
|-----------------------|-------------|
| Livestock | 12,168 AUMs |
| Wild Horse and Burros | 5,034 AUMs |
| | 17,202 AUMs |

The carrying capacity between livestock and wild horses/burros is based on the LUP ratios in accordance with MFP Decisions - Range 1.1 and Wild Horse and Burro 1.1. An exception was made on the Soldier Meadows Allotment southern end of the Black Rock Range Herd Management Area (HMA) where winter habitat is the limiting factor for the wild horses.

LIVESTOCK MANAGEMENT DECISION

Based upon the evaluation of monitoring data for the Soldier Meadow Allotment, consultation with the permittee, and other affected interests it is my decision to change the livestock management:

From:

1. Grazing Preference (AUMs)
 - a. Total Preference 16,070
 - b. Suspended Preference 4,017
 - c. Active Preference 12,053
 - d. Not Scheduled 2,913
 - e. Exchange of Use 0
 - f. Scheduled Use 9,140
2. Season of Use
 - 01/10 - 05/20 (winter)
 - 05/21 - 10/30 (summer)
3. Number and Class of Livestock
 - 1500, cow/calf (winter)
 - 500, cow/calf (summer)
4. Percent Federal Range 100%

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To:

| | Black Rock | Calico | Soldier M. | Warm Spring | Summit Lake | Hot Springs |
|------|------------|----------|------------|-------------|-------------|-------------|
| yr 1 | 1/1-3/31 | 4/1-4/30 | rested | 7/15-10/14 | rested | 11/16-12/31 |
| yr 2 | 1/1-3/31 | rested | 4/1-4/30 | rested | 7/15-10/14 | 11/16-12/31 |
| yr 3 | 1/1-3/31 | rested | 4/1-4/30 | rested | 7/15-10/14 | 11/16-12/31 |
| yr 4 | 1/1-3/31 | 4/1-4/30 | rested | 7/15-10/14 | rested | 11/16-12/31 |
| yr 5 | 1/1-3/31 | 4/1-4/30 | rested | 7/15-10/14 | rested | 11/16-12/31 |
| yr 6 | 1/1-3/31 | rested | 4/1-4/3 | rested | 7/15-10/14 | 11/16-12/31 |

The grazing system was changed from a two year deferred/rest rotation system under a four year cycle with five pastures (refer to existing system map overlay) to a two year deferred/rest rotation system with six pastures under a four year cycle (refer to proposed system map overlay). By restricting livestock grazing, the grazing system allows for the key species to meet physiological requirements and assures that spawning of LCT will not be impacted by livestock grazing. Riding and herding is required for all pastures and in particular the Summit Lake Pasture.

Late Winter-January 1 to March 31: Livestock will graze the Black Rock Pasture.

Spring-April 1 to April 30: The two spring pastures are the Calico and Soldier Meadows Pastures. The Calico Pasture will be used for two consecutive years and then rested for two years while the Soldier Meadows Pasture is grazed.

Summer-July 15 to October 14: The two summer pastures are Summit Lake and Warm Springs. Livestock will graze each of the pastures on a two year alternate cycle. When the Summit Lake Pasture is grazed for two consecutive years the Warm Springs Pasture is rested for two consecutive years.

The Summit Lake Pasture will be divided into three separate use areas by the proposed riparian pasture fences; Idaho Canyon-north, Stanley Camp-middle (riparian), and Coleman Creek-south.

Livestock grazing in the Stanley Camp use area will not be allowed until riparian vegetation and stream bank conditions meet the objectives set in this re-evaluation. When the LCT Recovery Plan is approved, BLM will adopt those objectives. In the interim cattle will be allowed to trail through the pasture for three (3) days or less. The proposed trailing route runs along the ridge above the various creeks headwaters. The intent is to move groups of cows, 300 to 400 head at a time, over the three day period and not take three entire days to move the herd from one sub-pasture to the other. At times the entire herd may be moved instead of the smaller groups.

Based on the above, when cattle graze in Summit Lake Pasture, they will start in the Coleman Creek use area and graze for four (4) weeks, move north into the Stanley Camp use area for two (2) weeks, then move into the Idaho Canyon use area to graze for six (6) to eight (8) weeks. When the proposed AMP is completed the Stanley Camp use area will be grazed late (between 7/15-10/14) until the next re-evaluation. The re-evaluation will analyze if the season of use should be modified. The time frames for livestock movements are estimated. The livestock will be moved from one sub-pasture to the next as the utilization levels on key riparian plants approaches use criteria (see pg. 8).

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To:

1. Grazing Preference (AUMs)
 - a. Total Preference 16,070
 - b. Suspended Preference 3,902
 - c. Active Preference 12,168
 - d. Not Scheduled 4,481
 - e. Exchange of Use 0
 - f. Scheduled Use 7,687
2. Number of Livestock and Season of Use by pasture

| Pasture | Lvt Num | Season | AUMs |
|-----------|---------|---------------|------|
| Black Rk | 500 | 1/01 - 3/31 | 1480 |
| Calico | 1117 | 4/01 - 4/30 | 1102 |
| Soldier M | 1117 | 4/01 - 4/30 | 1102 |
| Summit LR | 1117 | 7/15 - 10/14 | 3379 |
| Warm Spr. | 1117 | 7/15 - 10/14 | 3379 |
| Hot Spr. | 1117 | 11/16 - 12/31 | 1726 |

The carrying capacity was determined on a pasture basis. The livestock AUMs associated with the rest pasture will not be allocated to any user (livestock, wild horse/burros, or wildlife) during the rest year in order to maintain a thriving natural ecological balance in the allotment. Therefore, on any given year approximately 7,687 AUMs will be used by livestock. The livestock stocking rate per pasture will not exceed the pastures' livestock carrying capacity.

3. Class of Livestock cow/calf
4. Percent Federal Range 100%

GRAZING SYSTEM

From:

| | Black Rock | Calico | Soldier M. | Warm Spring | Summit Lake |
|------|------------|-----------|------------|-------------|-------------|
| yr 1 | 11/16-4/15 | 4/16-6/15 | rested | 6/16-11/15 | rested |
| yr 2 | 11/16-4/15 | 4/16-6/15 | rested | 6/16-11/15 | rested |
| yr 3 | 11/16-4/15 | rested | 4/16-6/15 | rested | 6/16-11/15 |
| yr 4 | 11/16-4/15 | rested | 4/16-6/15 | rested | 6/16-11/15 |

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The Stanley Camp use area fence will provide controlled livestock grazing for Summer Camp and Snow Creeks for two (2) out of four (4) years. Under the proposed system the Summit Lake Pasture will be grazed for three (3) months for two (2) years then rested for two (2) years for a total use period of six (6) months out of forty-eight (48) months. The riparian pasture will be grazed a total of one (1) month out of forty-eight (48) months. There will be no authorized grazing within the Mahogany Creek Enclosure.

Late Fall/Early Winter-November 16 to December 31: Cattle will graze the Hot Springs Pasture.

An interim plan will not be developed to cover the next six years - which is two gather cycles, except for the Warm Springs Pasture. Livestock use periods will be coordinated with the Wall Canyon Allotment (Surprise Resource Area). This will be done on an annual basis until an AMP is written combining the two allotments (see page 45 of the Final Re-evaluation).

Rationale: Closely regulated livestock management will allow achievement of allotment multiple use objectives. Proposed range projects and changing the grazing dates in the Summit Lake and Hot Springs Pastures are designed to enhance riparian vegetation and LCT/Desert Dace habitat. This grazing system also meets the upland and meadow complexes vegetation requirements in the other pastures.

LIVESTOCK DECISION ACTIONS

- 1) Livestock Management

Require permittee to herd livestock so the short term utilization objectives for stream bank riparian, wetland riparian, and upland habitats are achieved.

For adjacent pastures, where utilization or residual vegetation heights have not been exceeded, the gates could be opened a week before the move dates. This would allow cattle to drift into the new pasture. Within a week after the move date the remaining cows would be moved and the gate shut.

If livestock have to be moved due to utilization or residual height requirements, all livestock shall be removed from that area within a week or less and kept out of that area for the remaining grazing period.

Trailing will be allowed for no longer than three days across any pasture that is not scheduled to be used during that time period - for example: crossing the Hot Spring Pasture when moving from the Calico Pasture to the Summit Lake Pasture.

Livestock will not graze the Summit Lake Pastures until range projects are completed. In addition, livestock will not graze the Stanley Camp sub-pasture until vegetation and stream bank conditions meet the criteria described in the Re-evaluation or those adopted by BLM from the approved LCT Recovery Plan.

Actual use billing will be considered once an AMP is written. The operator will have to submit accurate livestock numbers and dates along with submitting the information within specified time frames.

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If monitoring indicates that utilization levels cannot be kept at the recommended stubble heights and browse utilization along the creeks during the combined use periods (livestock and wild horses), after the AML is reached, then the streams, or geographic area, will be excluded from livestock and wild horses.

- 2) Write an AMP by FY 95 incorporating the Wall Canyon Allotment into the Soldier Meadows Allotment.

TERMS AND CONDITIONS

The below mentioned terms and conditions will be incorporated into the term permit (which will expire in 2001 to correspond with the next re-evaluation) and their annual authorization via the grazing bill:

Grazing use will be in accordance with this grazing decision.

Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of springs, streams, meadows, riparian zones, or aspen stands. The area immediate to the Desert Dace habitat blocks shall not be placed within 1/2 mile of those springs.

The permittee is required to perform normal maintenance on the range projects which have been assigned maintenance responsibility.

Livestock will be moved as the key riparian species approach the 6 inch stubble height level and 30% utilization levels for Summer Camp, Mahogany, and Snow Creeks; and the Desert Dace spring complexes and 4 inches for Coleman, Slungullian, and Donnelly Creeks.

Livestock and wild horse utilization levels for wet meadows grass and grass-like species will not exceed 50% by the end of the livestock use period. If use exceeds 50% before the end of the livestock use period then the livestock will be moved within the pasture or removed from the pasture.

Livestock and wild horse utilization levels for grass, grass-like and upland browse species is 50% at the end of the livestock use period (except for the Black Rock Pasture). If use exceeds 50% before the end of the livestock use period then the livestock will be moved within the pasture or removed from the pasture.

For the Black Rock Pasture, combined utilization shall not exceed 60% by February 28 or the start of the new growing season. If use exceeds 60% before the end of the livestock use period then the livestock will be moved within the pasture or removed from the pasture.

When livestock use the Stanley Camp use area a herder and BLM resource specialist shall be present. If a herder is not present or a BLM resource specialist is not available, the livestock can not be turned out; or if during the grazing period neither are no longer available then the livestock shall be removed.

WILD HORSE/BURRO MANAGEMENT DECISION

Based on the evaluation of the monitoring data for the Soldier Meadows Allotment, consultations with the permittee, and affected interests my decision for wild horses and burros is:

WILD HORSE/BURRO APPROPRIATE MANAGEMENT LEVELS

The following wild horse and burro AMLs are based on monitoring and should result in a thriving natural ecological balance for the three herd management areas:

| Herd Management Area | Wild Horse/Burro Number-AML | AUMs |
|----------------------|-----------------------------|------|
| Black Rock Range* | 186 | 2232 |
| Warm Springs Canyon | 199** | 2389 |
| Calico Mountains*** | 65 | 780 |
| Grand Totals | 450 | 5401 |

* The number of horses to be managed north and south of Slungullian will be based on the ratio shown on page 49 of the Soldier Meadows Allotment Final Re-evaluation. Due to combining the calculated carrying capacities for wild horses from the Soldier Meadows and Paiute Meadow Allotments, there are 749 AUMs for wild horses in the Soldier Meadows Allotment that were not obligated. These AUMs will not be obligated to any other users to insure continued resource improvement. Due to an error in the Paiute Meadows FHUD, this HMA was incorrectly identified as the Black Rock Mountain HMA - it is the "Black Rock Range HMA".

** The breakdown between wild horses and burros is: 175 wild horses
24 burros

*** Only 30% of the Calico Mountains HMA is contained within the Soldier Meadows Allotment. The number of horses is for the Soldier Meadows Allotment portion of the HMA.

Once AML is reached - which should take two gather cycles - in about six years, the wild horse and burro population will be maintained within the following ranges in order to ensure that the carrying capacity is not exceeded. These ranges are based on gathering horses every three years. If gathering schedules change, these ranges may change.

AUTHORITY

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

- 4100.0-8 Land use plans - 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 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 Changes in grazing preference status - 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.
- 4120.3-1(a) Conditions for range improvements - Range improvements shall be installed, use, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.
- 4130.6-1(a) Mandatory terms and conditions - 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 shall not exceed the livestock carrying capacity as determined through monitoring and adjusted as necessary.
- 4130.6-2 Other terms and conditions - 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
- 4130.6-3 Modification - 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 lease or permit if monitoring data show that present grazing use is not meeting the land use plan or management objectives.

| Herd Management Area | Wild Horse/Burro 75% of AML to AML | AUMs |
|----------------------|------------------------------------|----------------------|
| Warm Springs Canyon | 149 to 199 | 1788 to 2389 |
| Calico Mountains | 49 to 65 | 588 to 780 |
| Grand Totals | 198 to 264 | 2376 to 3169 |
| Black Rock Range* | 55% of AML to AML 121 to 186 | AUMs 1452 to 2232 |

* The 35% rate is the customary range used in wild horse and burros planning documents and activity plans for the Paradise-Denlo Resource Area.

Rationale: During the evaluation period wild horse and burro numbers have exceeded the initial stocking level of 10,140 AUMs (in 1991 by almost 7,000 AUMs). Wild horses and burros have made disproportionate use of the forage resource during the evaluation period, especially in the west side of the Black Rock Range and Calico Mountains BMAs. Wild horses have adversely impacted the headwaters of Coleman, Snow, and Summer Camp Creeks by overgrazing the vegetation and trampling the spring areas. Wild horses have damaged water projects in the Warm Springs Pasture by flattening stock water tanks and pipelines.

WILD HORSE DECISION ACTIONS

- 1) The utilization level on upland grass/dry meadows vegetation key species by wild horses and burros, once AML is reached, shall not exceed 20% by July 15 on livestock rest pastures. If the utilization levels are not being met after the second year of rest, then the AML will be adjusted.
- 2) By February 28, or the start of the new grazing season, utilization on upland grass/dry meadows vegetation key species shall not exceed 60% (utilization on grass species from 50 to 60% by wild horses and burros will occur during the dormant season and should not have a detrimental impact to plant health and vigor). For upland browse and wet meadows, utilization shall not exceed 50%.
- 3) Maintain the wild horse and burro population within the recommended range to prevent numbers from exceeding AML. This should keep utilization levels on key species at acceptable levels, thereby, achieving a Thriving Natural Ecological Balance and provide for a healthy and thriving wild horse/burro population. If livestock or wild horses/burros exceed the calculated carrying capacity it would not be possible to meet utilization goals and to maintain a functioning vegetation community.

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) Policy - Wild horses and burros shall be managed as self-sustaining populations of health 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 uses of the public and adjacent private lands, and the constraints contained in 4710.4.
- 4710.4 Constraints on Management - 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 Removal of Excess Animals from Public Lands - 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...

WILDLIFE MANAGEMENT

Based on the interpretation and analysis of monitoring data and consultation with affected interest I will implement the following:

- 1) Continue with the management of wildlife as outlined in the Land Use Plan, Soldier Meadows Desert Dace, Fox Mountain, and Mahogany Creek Habitat Management Plans.
- 2) Manage Mahogany, Summer Camp, and Snow Creeks for Lahontan cutthroat trout.
- 3) Manage the hot spring complex in the Hot Springs Pasture for Desert Dace and Soldier Meadows cinquefoil.

Rationale: The analysis of monitoring data indicates the multiple use objectives for the allotment are not being met. Use pattern mapping and field observations have documented that livestock and wild horses are the primary factor in not meeting objectives. Wildlife are impacting their associated habitat, but not to the extent that warrants changes in the existing management.

FUTURE MONITORING AND GRAZING ADJUSTMENTS

The Sonoma-Gerlach Resource Area will continue to monitor the Soldier Meadows Allotment. Monitoring data will continue to be collected in the future to provide the necessary information to determine if the allotment specific objectives are being met under the new grazing management strategy. Subsequent evaluations will determine if adjustments are required to meet the established allotment specific objectives. The allotment is scheduled for re-evaluation in 2001.

Soldier Meadows Final MUD
January 24, 1994

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Livestock Appeal Rights

If you wish to appeal this livestock management decision for the purpose of a hearing before an Administrative Law Judge, in accordance with 43 CFR 4160.4, you are allowed thirty (30) days from receipt of this notice within which to file such appeal with:

Sonoma-Gerlach Resource Area Manager
Bureau of Land Management, Winnemucca District
705 East 4th Street
Winnemucca, NV 89445

The appeal shall state the reasons, clearly and concisely, as to why you think the Full Force and Effect Decision is in error.

Wild Horse Appeal Rights

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 an appeal is taken, your appeal must be filed with the Bureau of Land Management,

Sonoma-Gerlach Resource Area Manager
Bureau of Land Management, Winnemucca District
705 East 4th Street
Winnemucca, NV 89445

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 4939, January 19, 1993) for a stay (suspension) of this 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 Interior
2800 Cottage Way, Room 2753
Sacramento, CA 95825

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

Soldier Meadows Final MUD
January 24, 1994

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This Final Full Force and Effect Decision shall take effect January 24, 1994 and is issued in accordance with:

43 CFR 4160.3(c) - "...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 (emphasis added)."

The rationale to implement the decision Full Force and Effect are:

- Allotment wide riparian habitat, including those containing T&E species, is being adversely impacted by livestock and wild horse grazing.
- Immediately start implementing livestock management actions that will improve riparian and upland vegetation (utilization limits on riparian woody/herbaceous, meadow grass/grass-like, upland grasses, and browse species). These management actions will enhance identified Lahontan Cutthroat Trout habitat within the Summit Lake Pasture and Desert Dace habitat in the Hot Springs Pasture.
- Implement the Reasonable and Prudent Measures along with the Terms and Conditions outlined in the Fish and Wildlife Service's Biological Opinion on the proposed Soldier Meadows Allotment Livestock Grazing and Wild Horse and Burro Management Decision dated 12/2/93. This Biological Opinion is a response from formal consultation with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act of 1973, as amended. At issue are the potential adverse effects to Lahontan Cutthroat Trout and Desert Dace habitats within the Soldier Meadows Allotment.
- The combined carrying capacity for the allotment is almost exceeded by the existing population of wild horses. Monitoring data used in the preparation of the allotment re-evaluation documented there was not substantial difference in grazing use patterns between post-livestock and the years a pasture was rested from livestock. Regardless of when data was collected, use pattern mapping substantiated that the water sources, meadows, and certain upland areas are consistently receiving heavy use.

Soldier Meadows Final MUD
January 24, 1994

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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.

If you have any questions, please contact Rich Adams, at (702) 623-1500.

Sincerely Yours,



Bud Cribley, Area Manager
Sonoma-Gerlach Resource Area

cc (The Final Decision was mailed certified to the following individuals and groups):

NV Dept. of Wildlife P877068507
Mrs. Dawn Lappin, WHOA P877068508
Ms. Rose Strickland, Sierra Club P877068509
Ms. Cathy Barcomb Commission for the Preservation of Wild Horses P877068510
Mr. Craig Downer P877068511
Dr. Gary Vinyard, UNR P877068512
Ms. Deborah Allard P877068513
Trout Unlimited, Sagebrush Chapter P877068514
Mr. Demar Dahl, NV Land Action Assn. P877068515
Ms. Johanna H. Wald, NRDC P877068516
Mr. Mike Hornbarger P877068517
Ms. Barbara Spolter, Wilderness Society P877068518
Mr. Martin Larraneta P877068519
Palute Meadow Ranch P877068520
NV Woolgrowers Assn. P877068521
NV Cattlemen Assn. P877068522
Mr. Thomas Van Horne P877068523
Internatn Fed. Landbank Assoc. P877068524
WH&B Comm, Nat'l Academy of Science P877068525
Ms. Paula Jewell, Humane Soc. of U.S. P877068526
Mr. Jack Piccolo, Summit Lake Paiute Tribe P877068527
The Nature Conservancy P877068528
William Brigham NV Bighorns Unlimited, Reno Chapter P877068529
Mr. Scott Tomsen P877068530
Mr. Julian Smith P877068531
Mr. Dick Stump P877068532
Mr. Jack Horning P877068533
Mr. Andy Johas P877068534
Mr. William C. Cummings P877068535
Ms. Karen Sussman, ISPM&B P877068536
Messrs. Paul Holcher/Dave Stix P877068537
Mr. Donald Molda, Humane Soc. of South NV P877068538
Mr. Derrel Fulwider P877068539
American Horse Protection Assn. P877068540
Ms. Nancy Whitaker, API P877068541
Mr. Robert Sam, Summit Lake Paiute Tribe P877068542

Soldier Meadows Final MUD
January 24, 1994

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The Proposed Decision was mailed to the following individuals and groups:

| | |
|---|-------------------------------|
| USDI, Sheldon Wildlife Refuge | Mr. Craig Plummer |
| Honorable Richard Bryan | Mr. Scott Bell, USFS |
| USDI, BLM Susanville/Carson City | USDI, FWS Reno/Portland |
| Mr. John Marvel | Honorable Harry Reid |
| Div. of State Lands | State Multiple Use Advis |
| Mr. Jerry Townsend, BIA-Western NV Agency | Desert Research Inst, UNR |
| Div. of Conservation Districts, NV | Chairman NV Conservation Dist |
| Mr. Tom Ballow, NV Dept. of Ag. | Honorable James H. Bilbray |
| Mr. Hillary Winebarger | Honorable Barbara Vucanovich |
| USDI, BLM Portland/Sacramento | |



MAR 03 2003

Dear Interested Public:

Please find enclosed the Final Allotment Re-Evaluation Summary for Soldier and Paiute Meadows Allotments, and the Determination/Management Action Selection Report.

An Environmental Assessment (E.A.) analyzing the impacts of the proposed actions on these allotments will be forth coming followed by the Proposed Multiple Use Decisions and Final Multiple Use Decisions.

If you have any questions, please contact Ron Pearson at (775) 623-1500.

Sincerely,

for Les W. Boni
Assistant Field Manager
Renewable Resources

Enclosures

- Final Allotment Re-Evaluation
- Determination/Management Action Selection Report

EXHIBIT "D"

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The Paiute Meadows and Soldier Meadows Allotments are being re-evaluated together in the same document in accordance with the stipulated agreement between affected interests and the Bureau of Land Management (BLM). The two allotments share some of the same resource values since they border each other in the Black Rock Range.

The Allotments are located in the northwest portion of Humboldt County. Soldier Meadows Allotment is approximately forty miles northwest of Gerlach, Nevada and ranges from the valley floor of the Black Rock Desert to the higher terrain of the Calico and Black Rock Mountain Ranges. The Paiute Meadows Allotment is approximately 40 air miles southwest of Denio, Nevada and encompasses the east side of the Black Rock Range. The allotment boundary extends from the higher elevations in the Black Rock Range to the east arm of the Black Rock Desert.

Vegetative types in the allotments range from greasewood and saltgrass sites on the flats at elevations of 4,000' to sagebrush, bitterbrush, mountainmahogany and aspen sites in the higher elevations at 8,600'.

I. PURPOSE

This Re-Evaluation is necessary to determine if Allotment Objectives and Standards for Rangeland Health are being met under present management identified in the Multiple Use Decisions (MUD) issued in January 1994 for Soldier Meadows and July 1995 for Paiute Meadows. The Soldier Meadows MUD was issued to R.C. Roberts who was the livestock permit holder at that time. The ranch was leased and then sold to Estill Ranches LLC in December of 1997 and they own and operate the ranch today. The original Paiute Meadows MUD was issued on April of 1993 to Bill and Gail Phillips who controlled the livestock permit through a lease of the ranch base properties. The ranch was eventually sold to Irv and Sandy Brown in April of 1994 and a subsequent MUD was issued to the Browns' in July of 1995, the Browns' still own and operate the ranch today.

This Re-evaluation will assess actual use, climatological, utilization, ecological site inventory, stream survey, wild horse/burro distribution and census, and wildlife habitat data to determine the effectiveness of the present management on the rangeland resources.

II. SUMMARY OF DATA

A. CURRENT STOCK PLAN

The current stocking rate by treatment is as follows:

PAIUTE MEADOWS ALLOTMENT

SOLDIER/PAIUTE MEADOWS ALLOTMENT
 FINAL RE-EVALUATIONS
 MARCH 3, 2003

III. CONCLUSIONS

SOLDIER MEADOWS ALLOTMENT

ALLOTMENT WIDE MULTIPLE USE OBJECTIVES

UTILIZATION OBJECTIVES

Riparian/Wet Meadows:

- Do not exceed 30% utilization of current years growth on the key riparian trees and shrubs which includes: Aspen (*Populus tremuloides*) and Willows (*Salix spp.*). For Mahogany, Summer Camp, Snow Creeks, and the hot springs associated with the Desert Dace grasses and grass-like plants will have a minimum stubble height of 6 inches. A 4 inch stubble height will apply for Colman, Slumgullion, and Donnelly Creeks when the cows leave the pasture for the following: Nevada Bluegrass (*Poa nevadensis*), sedges (*Carex spp.*), rushes (*Juncus spp.*), Intermediate Wheatgrass (*Agropyron intermedium*), and Tufted Hairgrass (*Deschampsia cespitosa*).

This objective was accomplished except in 2000. Some sites associated with the Desert Dace hot springs north of Mud Meadow Reservoir, utilization levels were exceeded and stubble height was not maintained

- The utilization levels for the wet meadows (not identified above), grass and grass-like species is 50%. If the utilization level is exceeding the 50% level by February 28 the carrying capacity will be evaluated to determine if a downward adjustment is required. The evaluation will include livestock and wild horse actual use, along with wildlife and climatic factors.

This objective was accomplished with the exception of exceeding utilization levels in 1995, 1997 & 1999 at Rock and Clear Springs in the Warm Springs Pasture.

Upland Grass/Dry Meadows:

- Livestock and wild horse vegetative utilization levels are not to exceed 50% at the end of the livestock use period (except for the Black Rock Pasture).

This objective was not accomplished. Utilization levels were exceeded in 1995, 1997 & 1999 at Rock and Clear Springs in the Warm Springs Pasture.

- The Black Rock Pasture combined vegetative utilization shall not exceed 60% by February 28 or the start of the new growing season.

It is inconclusive as to if this objective was accomplished. Data collected in May of 1996 documented slight to moderate use.

- By February 28, or the start of the new grazing season, vegetative utilization shall not exceed 60% (utilization on these species from 50 to 60% will occur during the dormant season and should not have a detrimental impact to plant health and vigor).

There has not been sufficient data collected to evaluate this objective.

- The vegetative utilization level by wild horses, once the Appropriate Management Level (AML) is reached, shall not exceed 20% by July 15 (seed dissemination) in livestock rested pastures.

Since AML has not been achieved during the reevaluation period this objective has not been measured.

- For the Black Rock Pasture, once AML is reached, vegetative utilization level by wild horses shall not exceed 30% by December 31.

Since AML has not been achieved during the reevaluation period this objective has not been measured.

Upland Browse:

- Livestock vegetative utilization levels shall not exceed 50% by the end of the livestock grazing use period.

This objective was not accomplished at Rock and Clear springs areas in the Warm Springs Pasture, utilization levels were exceeded in 1995, 1997 & 1999.

WATER QUALITY OBJECTIVES

- Improve and/or maintain Mahogany Creek to Class A water quality standards. (Summer Camp Creek is included as a tributary).

Class A water quality standards were achieved on Mahogany and Summer Camp Creeks.

- Improve and/or maintain Snow Creek to Class B water quality standards.

Class B water quality standards were achieved on Snow Creek.

- Prevent Bureau authorized activities from degrading the natural quality of water. The Bureau will use the State's water quality criteria, found at NAC 445A.119, as benchmarks to determine whether or not the objective is being met.

A. The criteria for watering of livestock, coldwater aquatic life propagation, water contact recreation and wildlife propagation shall be applied to the following sources: Donnelly Creek and Colman Creek.

The water quality criteria for the state of Nevada were achieved on all streams with the exception of one turbidity measurement in 2002 on Colman Creek.

B. The criteria for watering of livestock, water contact recreation and wildlife propagation shall be applied to the following sources: Slumgullion Creek and Soldier Creek.

The water quality criteria for the state of Nevada were achieved on Slumgullion Creek. Soldier Creek was not sampled.

3. Maintain water quality standards for Desert Dace habitat in the springs where they occur to the following:

| | |
|-------------|------------------|
| temperature | 32-38°C/90-100°F |
| nitrate | 90 mg/L |
| turbidity | 50 NTU |
| pH | 6.5-9.0 |
| D.O. | 5.0 mg/L |

Water quality standards were met.

VEGETATION OBJECTIVES

A. Riparian Objectives:

1. Improve the riparian condition class on six (6) miles of Mahogany Creek to 70% (from 1992 baseline data of 68%) within the short term (2001) and maintain excellent riparian stream condition (70% of optimum or better) to the year 2017.
Not met in 1997, stream survey analyzes indicated 66.6%.
2. Improve the riparian condition class on 2 miles of Summer Camp Creek to 70% (from 1990 baseline data of 60%) within the short term (by 2001) and maintain excellent riparian stream condition (70% of optimum or better) to the year 2017.
Not met in 1997, stream survey analyzes indicated 64.5%.
3. Improve the riparian condition class on 3 miles of Snow Creek to 70% (from 1990 baseline data of 60%) within the short term (by 2001) and maintain excellent riparian stream condition (70% of optimum or better) to the year 2017.

dependent solely on the availability of sagebrush canopy cover. Several authors have verified this conclusion while working to determine the conditions best suited to sage grouse production. Factors such as understory nesting cover, abundance of herbaceous forage, height of the overstory canopy, and condition and utilization of meadows have been found to be equally important in determining sage grouse habitat condition. Based on this information, the current objective for sage grouse habitat is in need of requantification.

- C. Desired Plant Community Objectives: (Refer to pages 88 - 103 which lists the DPC objectives)

Desired Plant Community Objectives (DPC) for this allotment were developed based upon Ecological Status Inventory (ESI) data. These data were considered in conjunction with wildlife, wild horse, and livestock forage demands in developing site specific long term (10+ yrs.) DPC objectives. There have been no new key areas established or monitored during the evaluation period using DPC objectives. The DPC and ESI data will be considered if any additional key areas are established by an interdisciplinary team and coordinated with interested publics.

- D. Standards and Guidelines of Rangeland Health

1. Soil processes will be appropriate to soil type, climate and land form.

Partially Met.

Rationale:

To maintain soil processes a healthy, productive and diverse plant community is necessary. Improved ecological condition would increase productivity, litter, soil fertility, infiltration and nutrient cycling.

Upland vegetative utilization objectives were achieved except for some sites in the Warms Springs Pasture near Rock and Clear Springs. Exceeding the utilization objectives increases the potential for erosion on areas with high erosion susceptibility from wind. Wetland/riparian vegetation utilization objectives were achieved except for one spring complex that is inhabited by desert dace within the Hot Springs use area. Exceeding the wetland/riparian vegetation utilization objectives increases the potential for soil erosion via runoff.

2. Riparian/wetland systems are in properly functioning condition.

Achieved, stream survey analyzes indicated 71.5%.

4. Improve the riparian condition class on 8 miles of Donnelly Creek to 62% (from baseline 1989 data of 52%) within the short term (by 2001) and achieve excellent riparian stream condition (70% of optimum or better) to the year 2017.

Achieved, stream survey analyzes indicated 71.3%.

5. Improve the riparian condition class on 8 miles of Colman Creek to 66% (from baseline 1991 data of 44%) within the short term (by 2001) and achieve excellent riparian stream habitat condition (70% of optimum or better) to the year 2017.

Achieved, stream survey analyzes indicated 66.6%.

6. Improve the riparian condition class on 8 miles of Slumgullion Creek to 63% (from baseline 1990 data of 48%) within the short term (by 2001) and achieve excellent riparian stream habitat condition (70% of optimum or better) to the year 2017.

Achieved in 1990 (74%) and not achieved in 1999 stream survey analyzes indicated 61.3%.

B. Sage Grouse:

Protect known sage grouse strutting and nesting habitat and improve brooding habitat by: (WL-1.II)

1. Following Nevada Division Of Wildlife (NDOW) guidelines for Vegetal Control Programs in Sage Grouse Habitat in Nevada.

The Vegetal Control Program guideline identified by Nevada Division Of Wildlife (NDOW) has been met. There has been no vegetal manipulations as a result of new range improvement projects such as fencing, brush control, or pipelines.

2. Maintain sagebrush canopy at 30% in sage grouse nesting areas where sagebrush does not exceed three (3) feet in height.

It is unclear whether the vegetative communities present in the allotment are capable of obtaining the recommended sagebrush canopy cover adjacent to strutting areas and for nesting and brood rearing habitat. Passe et al. (1982) in: "Relation Between Soil, Plant Communities, and Climate on Rangelands of the Intermountain West", while working in the Sagebrush Steppe ecoregion, found that total vegetative canopy coverage under Potential Natural Community conditions, in Wyoming Big Sagebrush communities, ranged from 8% to 24% with an average plant cover of 17%. Sage grouse habitat condition is not

Properly Functioning Condition = PFC
Functioning at Risk = FAR
Non Functional = NF
Trend = static, upward, downward

| CREEK | REACH | RATING | FACTORS |
|-----------------|-------|----------------|--|
| Mahogany Ck. | 1 | PFC | |
| | 2 | PFC | |
| | 3 | PFC | |
| Summer Camp Ck. | 1 | PFC | |
| | 2 | PFC | |
| | 3 | PFC | |
| Snow Ck. | 1 | FAR (static) | Mechanical damage and removal of bank cover by wild horses |
| Colman Ck. | 1 | NF | Highly erosive channel and vertically unstable |
| | 2 | FAR | Erosive uplands, unstable banks and lack of cover |
| | 3 | PFC | |
| Slumgullion Ck. | 1 | FAR (downward) | Wild Horse use |
| | 2 | PFC | |
| | 3 | PFC | |
| Cherry Ck. | 1 | FAR (downward) | Incised channel |
| | 2 | PFC | |
| Donnelly Ck. | 1 | FAR (static) | Braided, non-sinuuous channel and lack of cover |
| | 2 | PFC | |
| | 3 | FAR (static) | Channelization and unstable banks |
| Soldiers Ck. | 1 | FAR (static) | Lack of vegetation and unstable banks. |

3. Water quality criteria in Nevada or California State Law shall be achieved or maintained.

The water quality criteria for the state of Nevada were achieved on all measured streams with the exception of one turbidity measurement on Colman Creek.

4. Populations and communities of native plant species and habitats for native animal species are healthy, productive and diverse.

Partially Met.

Rationale:

Healthy plant communities must be able to complete their life cycle by preventing damage during the critical growth period. Critical growth period in a plant growth cycle is when food reserves are the lowest and grazing is the most harmful. This period begins with the boot stage and closes with complete mature seed. Periodic rest during the critical growth period allows for plants to increase vigor, maintain and increase root reserves, increase density and produce seed.

Upland vegetative utilization objectives were achieved except for some sites in the Warms Springs Pasture near Rock and Clear Springs. Wetland/riparian vegetation utilization objectives were achieved except for one spring complex that is inhabited by desert dace within the Hot Springs use area. See Response for #2.

5. Habitat conditions meet the life cycle requirements of special status species.

Partially Met

Rationale:

desert dace (*Eremichthys acros*, DD)

The hot springs and their outflows to the south and west of the Soldier Meadows Ranch are the only known habitats for the Desert dace. The Desert dace has been federally listed as Threatened since 1985 (Federal Register Volume 50, p. 50304), and is the only member of the genus, *Eremichthys*. At the time of listing, critical habitat was also listed, that encompasses 50 feet on each side of designated thermal springs and their outflow streams (USFWS 1997). At least ten thermal outlets and the associated downstream channels support this unique, spring dwelling species.

To date, there is little information regarding the species or its habitat requirements. The basic habitat requirements for the Desert dace that were identified in the "Recovery Plan for the Rare Species of Soldier Meadows" were based on the seasonal distribution of the species relative to temperature (USFWS 1997). Research is currently being conducted by the United States Geological Survey (USGS) to determine the seasonal distribution and population levels of Desert dace within each spring system. The research project is also determining the presence and distribution of non-native fish species within the spring complexes of the SMA, which were identified as a threat to the long term viability of the Desert dace (USFWS 1997). Preliminary data indicate that the populations with multiple age classes exist within all of the systems that were identified in the 1997 Recovery Plan.

MET

aquatic species, it does indicate the stream's ability to sustain these resource values. Therefore the improvement of stream habitat on Colman Creek, indicated by the recent stream survey, may be a sign of riparian functionality improvement within the headwater area. The FAR rating with a Static trend on Donnelly may be reinforced by the relatively static condition of the aquatic habitats.

MET

Soldier Meadow cinquefoil (*Potentilla basaltica*)

This species occurs in moist salt-crust clay in alkaline meadows and cooled outflow stream margins below thermal springs, generally on slight southeast slopes. The recorded elevations are 4,380 to 4,580 feet. It occurs in the moist meadow environment of the Hot Springs use area. Soldier Meadow cinquefoil appears to invade disturbed sites but does not appear to be a disturbance dependent species. They appear to be confined to a narrow range of micro-sites associated with moist but not saturated alkaline silty soils associated with micro terrain features near thermal springs.

Cinquefoil is a low growing, perennial herb with prostrate stems. Flowering begins in May and continues through the summer. Flowers are bright yellow and occur in loose clusters. A total population is estimated at 85,000 individuals in eleven subpopulations adjacent to hot springs in the Soldier Meadows area. Current data indicate that the population is stable, in fact new populations have been discovered in areas adjacent to the Hot Springs.

MET

Elongate Mud Meadows springsnail (*Prygulopsis notidicola*)

Habitat conditions for this species are included below under the Species of Concern Section for Springsnails

MET

Springsnails

At least nine species of springsnails (Hydrobiidae) exist within the SMA. Six of the nine unique species found within the SMA have been identified to genus/species (Table 1). The majority of these species are members of the genera *Prygulopsis*, with one species belonging to the *Fluminicola* genus. These genera prefer cool, flowing water and gravel substrate (Sada et al. 2001). Primary threats to springsnails are habitat alteration via water diversions, excessive livestock grazing, nonnative macroinvertebrate establishment, and water depletion (Sada et al. 2001). Habitat conditions for this species are unknown, yet they are assumed to be similar to that of the desert dace. Therefore, these species' habitats are likely to be in good condition.

MET

Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*, LCT)

Four streams and a portion of one other exist within the SMA that are considered occupied or potential habitat for LCT, a federally listed Threatened species since 1975 (Federal Register Vol. 40, p. 29864). Mahogany, Summer Camp, Snow, and Colman Creeks exist entirely within the SMA and currently are occupied by LCT. The majority of Donnelly Creek exists within the SMA, although it does not contain a population of LCT.

The SMA contains the only lacustrine population of LCT within the Northwestern Lahontan Distinct Population Segment¹ (NWLDPs). This population exists within the Summit Lake basin and is the largest and most stable population of LCT within the NWLDPs (USFWS 1995). Management within this basin since the mid-1970s has attempted to restore riparian and aquatic habitats, which had been severely degraded by improper livestock grazing during the previous decades (Platts 1990). The exclusion of livestock from the majority of the watershed has resulted in a 400% increase in summer streamflow and a 50% increase in water depth, which has led to a significant increase in LCT (Platts 1990). Mahogany and Summer Camp Creeks serve as the sole spawning tributaries for this terminal lake population. Furthermore, Mahogany and Summer Camp also support a fluvial population of LCT. The majority of these lotic habitats exist on public land with the lower portions of Snow and Mahogany Creek flowing through the Summit Lake Paiute Tribe (SLPT) reservation before entering Summit Lake. Colman Creek contains an increasing population of transplanted LCT, which were moved from Washburn Creek in 1999 and then further supplemented in 2000. Donnelly Creek is listed in the 1995 LCT Recovery Plan as a stream with the potential for LCT reintroduction (USFWS 1995).

Only the North Fork of Donnelly, which is unoccupied by LCT, remained relatively static since the last stream habitat survey. While all of the designated LCT recovery streams, which are currently occupied by a population of LCT, improved in overall stream habitat condition. This improvement is reflected in the Habitat Condition Index (HCI) of the General Aquatic Wildlife Surveys, which were conducted by the Nevada Division of Wildlife (NDOW). The HCI values, according to the last stream survey conducted by NDOW, rated Mahogany, Summer Camp, Snow, and Donnelly Creeks as being "Excellent". Colman Creek rated as "Good" and the North Fork of Donnelly rated as "Fair". Riparian functionality data indicate that all streams are at Properly Functioning Condition (PFC), except for portions of two streams. Colman Creek and Donnelly Creek each had one reach that was classified as Functional-At Risk (FAR) with a Static Trend. Colman Creek also had a headwater reach that was classified as Non-Functional. Although riparian functionality does not indicate habitat quality for

¹ The Endangered Species Act of 1973, as amended, included within its definition of a protectable species any subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Thus, three DPS units of LCT were identified when the species was listed as federally listed Endangered in 1970 and maintained when the species was reclassified in 1975, as federally listed Threatened.

Table 1. Springsnails

| Common Name | Scientific Name | Status |
|-------------------------------------|-------------------------------|--|
| Northern Soldier Meadows pryg | <i>Prygulopsis militaris</i> | Proposed BLM Sensitive, USFWS Species of Concern |
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| Elongate Mud Meadows pryg | <i>Prygulopsis notidicola</i> | Federal Candidate Species |
| Squat Mud Meadows pryg | <i>Prygulopsis limaria</i> | Proposed BLM Sensitive, USFWS Species of Concern |
| Surprise Valley pryg | <i>Prygulopsis gibba</i> | USFWS Species of Concern |
| Western Lahontan pryg | <i>Prygulopsis longiglans</i> | No Status |
| 2 species found unique ¹ | <i>Prygulopsis</i> spp. | No Status |
| 1 species found unique ¹ | <i>Fluminicola</i> spp. | No Status |

Pygmy rabbit (*Brachylagus idahoensis*)

This species is the smallest North American rabbit and a sagebrush obligate. The rabbit uses tall, dense stands of big sagebrush, primarily basin big sagebrush, with deep, friable soils typically loamy in texture. The Pygmy rabbit mates in early spring and summer. Its primary food is sagebrush, which makes up to 98% of its winter diet. Grasses are important during the summer, comprising as much as 30-40% of its diet. No inventories for pygmy rabbits have been completed within the allotment, and potential high quality habitat sites are considered rare. Potential sites include the edges of floodplains in the upper portions of watersheds and degraded floodplains at lower elevation where channel down-cutting has allowed for the invasion of basin big sagebrush into sites that were formerly occupied by wet and semi-wet meadows. This allotment contains 208023 acres of big sagebrush types which are conducive of pygmy rabbit habitat they are as follows: ARTRW (Wyoming sagebrush) 26399 acres, ARTRV (Vasiana) 65573 acres, ARTRT (Basin Big sagebrush) 2453 acres, ARTR2 (Big sagebrush) 33381 acres, and ARTR3 (Lahontan sagebrush) 80217 acres. With the diverse mix of sagebrush habitats within the allotment, habitat is in order for this species.

MET

Pale Townsend's big-eared bat (*Corynorhinus townsendii pallascens*)

Pacific Townsend's big-eared bat (*Corynorhinus townsendii townsendii*)

Spotted bat (*Euderma maculatum*)

Small footed-myotis (*Myotis ciliolabrum*)

Long-eared myotis (*Myotis evotis*)

Fringed myotis (*Myotis thysanodes*)

Long-legged myotis (*Myotis volans*)

Yuma myotis (*Myotis yumanensis*)

All of these species uses natural caves and cracks in rock outcrops or man-made cavities for breeding, rearing, and/or hibernating habitat. There is no specific information related to breeding colonies of any of these species within the allotment.

Potential breeding and hibernating habitat is considered common in the mountainous and rocky areas. Bats depend upon insect prey and the best potential for insect prey within the allotment occurs near wet meadows and marshlands. That would restrict potential high quality foraging areas to less than one percent of the allotment.

PARTIALLY MET

California bighorn sheep (*Ovis canadensis californiana*)

Bighorn occupy mountainous areas with extensive areas dominated by large rock outcrops that serve as escape cover. Their diet is primarily grasses supplemented by forbs and limited browse.

Populations of this species occur on the Black Rock Range and the Calico Range. Due to a number of factors, bighorn sheep were eliminated from northern Nevada early in the 20th century. Existing populations are the result of numerous NDOW-initiated reintroductions and supplemental releases that began as early as 1963 and most recently in January 2003. The total population in both ranges is estimated by NDOW to be about 170 animals and they currently occupy about 7,000 acres of about 100,000 acres of potential habitat. Populations are increasing slowly as sheep expand into vacant habitat. The NDOW data for both populations shows excellent fall recruitment of lambs, which is indicative of bighorn sheep populations that are healthy and viable.

MET

Preble's shrew (*Sorex preblei*)

This species is a small burrowing mammal associated with meadows and riparian areas in the upper portions of the sagebrush zone. There are no records of shrews within the allotment but potential habitat exists associated with riparian areas and meadows in the northern portion of the Black Rock Range. Shrews feed primarily on insects and other soil invertebrates. Quality habitat includes plant communities dominated by dense herbaceous vegetation that support high levels of prey and soils high in organic matter. Therefore, riparian functionality may be a good indicator of habitat quality for this species. Currently, riparian functionality in the northern portion of the allotment is for the most part in excellent condition.

MET

Northern goshawk (*Accipiter gentilis*)

The species is a known breeder in the Mahogany Creek watershed aspen stands. Found in a variety of dense, mature or old growth aspen habitat, goshawks require large, healthy multi-story stands for nesting and foraging. They forage for prey in and near woodland communities. The Mahogany Creek watershed supports a diverse mosaic of habitats for this species and its prey. These habitats range from patches of open meadows, multi story Aspen stands, and also a stand of early age class Aspen. This early age class stand is a result of the 2000 Wildland fire that burned 12,000 acres of the lower watershed. Therefore, it can be assumed that habitats are in order for this species.

riparian areas, meadows, and aspen wood edges. The condition of these habitats is assumed to be commensurate with that of the riparian functionality data. Therefore, habitats are in order for riparian areas that are in PFC, whereas they may not be in areas which are FAR or NF.

PARTIALLY MET

Smooth stickleaf (*Mentzelia mollis*)

This species is an erect annual herb that blooms in May and June and known from two sites within the Black Rock use area. Habitat is associated with nearly barren eroding shoulder and side slopes of shrink-swell clay soils formed by hydrothermal alteration and weathering of air-fall volcanic ash deposits. These habitats are not likely to be affected by livestock grazing, due to the lack of vegetative resources within these areas. Therefore, it is assumed that habitats are in order for this species.

MET

The following species were also included in 2003 Species List for the SMA provided by the FWS that may occur within the allotment. Each of these species is not known to occur within the SMA.

Western yellow-billed cuckoo (*Coccyzus americanus*)

This species requires multistory cottonwood flood plain. Due to its habitat requirements this species does not exist within the SMA. The closest population is located along the Carson River to the south.

Black tern (*Chlidonias niger*)

Black terns are associated with open water wetlands. There are no habitats of this type within the allotment.

Tiehm milkvetch (*Astragalus tiehmi*)

Schoolcraft catseye (*Cryptantha schoolcraftii*)

Crosby buckwheat (*Eriogonum crosbaya*)

These three species commonly occur together on whitish lake deposited volcanic ash deposits that weather to deep clay soils. They generally occur on gentle slopes north and west of the allotment in the sagebrush steppe zone.

Windloving buckwheat (*Eriogonum anemophilum*)

This is a low perennial herb with leafless flower stalks rising above clumps of white leaves, which are associated with barren, rocky sites of volcanic or other origin. It blooms in late June and July. The nearest population is in Jackson Mountains east of the allotment. Other populations are located south and east of the allotment.

Grimy ivesia (*Ivesia rhypara* var. *rhypara*)

This is a low, spreading perennial cushion plant. Its habitat is dry, relatively barren, light-colored outcrops of welded tuffs on east, south, and west aspects. The nearest population is in Yellow Rock Canyon west of the allotment.

MET

Western burrowing owls (*Athene cunicularia hypugea*)

No known colonies of this species have been observed in the allotment, however Western burrowing owls are known from the Black Rock desert area. Owls occupy open terrain with low vegetation, burrows created by mammals, and an adequate prey base. There is potentially 89,700 acres of suitable habitat for the burrowing owl on the SMA. Habitats are assumed to be in good condition, since the Black Rock desert area has been grazed by a relatively small number of livestock that are broadly dispersed during the evaluation period resulting in minimal effects to the owl's associated habitat types.

MET

Greater sage-grouse (*Centrocercus urophasianus*)

This species is a common large bird of the sagebrush zone. The allotment contains about 200,000 acres of sage-grouse habitat, as well as 6 known leks (communal breeding sites). Recent BLM habitat classifications have been completed as part of the Nevada sage-grouse conservation planning effort. The classifications indicate that about 39 percent of the habitat within the SMA contain all the required habitat components, 67 percent have adequate sagebrush cover but are lacking in appropriate amounts of herbaceous cover and 4 percent are lacking in adequate sagebrush cover. Of the six leks in the Soldier Meadows allotment all are considered active. Therefore the population is assumed to be stable.

MET

Least bittern (*Ixobrychus exilis hesperis*)

Bittern habitat is fresh water marshes and reedy ponds. The only habitat of this type within the allotment is on acquired lands near Soldier Meadows that are not part of any pasture and not included in the grazing schedules of any alternative. Therefore, this species habitats are assumed to be in order.

MET

White-faced ibis (*Plegadis chihi*)

Ibis are seen occasionally as migrants in the fall. They nest in marshes (mainly hardstem bulrush) and feed in marshes and meadows. There is no known breeding habitat within the allotment. Since the marsh habitats are on acquired lands near Soldier Meadows that are not part of any pasture and not included in the grazing schedules of any alternative, this species habitats are assumed to be in order.

MET

Nevada viceroys (*Limenithus archippus lahontani*)

This species of butterfly utilizes willows and aspen as host plants. Habitat includes

Cordelia beardtongue (*Penstemon floribundus*)

This is a perennial herb with tubular blue-violet flowers blooming on the top half of the stems. Its habitat is dry, open, mostly dark-colored volcanic talus, very rocky slopes, or alluvium. The nearest population is in Jackson Mountains east of the allotment.

PAIUTE MEADOWS ALLOTMENT

ALLOTMENT WIDE MULTIPLE USE OBJECTIVES

UTILIZATION OBJECTIVES

1. Short Term
 - a) The objective for utilization of key streambank riparian plant species (CAREX, JUNCUS, SALIX, POTR5, ROWO, POA spp.) on Paiute, Battle and Bartlett Creeks is 30%. Utilization data will be collected at the end of the grazing period.

This objective was not achieved on Paiute Creek in 1994, Battle Creek in 1994, 1995 & 1997 and Bartlett Creek in 1995 & 1997.
 - b) The objective for utilization of key plant species (CAREX, JUNCUS and POA spp.) in wetland riparian habitats is 50%. Utilization data will be collected at the end of the grazing period.

This objective was not achieved on those sites associated with Burnt Spring and Butte Creek in 1994, 1995 & 1997.
 - c) The objective for utilization of key plant species (STTH2, AGSP, FEID, ELCL, POA, ORHY, AMAL, PUTR, SYMPH, EPHEDRA, EULA) in upland habitats is 50%. Utilization data will be collected at the end of the grazing period.

This objective was not achieved on those sites associated with the Rough Canyon and Paiute seeding 1995 & 1997.
2. Long Term
 - a) 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.



BUREAU OF LAND MANAGEMENT
Winnemucca Field Office
5100 East Winnemucca Boulevard
Winnemucca, Nevada 89445
(775) 623-1500
http://www.blm.gov/winnemucca

In Reply Refer To:
4120.2
(NV-022.15)

MAR 03 2003

Dear Interested Public:

Please find enclosed the Final Allotment Re-Evaluation Summary for Soldier and Paiute Meadows Allotments, and the Determination/Management Action Selection Report.

An Environmental Assessment (E.A.) analyzing the impacts of the proposed actions on these allotments will be forth coming followed by the Proposed Multiple Use Decisions and Final Multiple Use Decisions.

If you have any questions, please contact Ron Pearson at (775) 623-1500.

Sincerely,

Les W. Boni
for Les W. Boni
Assistant Field Manager
Renewable Resources

Enclosures

- Final Allotment Re-Evaluation
- Determination/Management Action Selection Report

EXHIBIT "E"

SOLDIER MEADOWS/PAIUTE MEADOWS ALLOTMENTS

DETERMINATION/MANAGEMENT ACTION SELECTION REPORT

BUREAU OF LAND MANAGEMENT (BLM) - WINNEMUCCA FIELD OFFICE

A. INTRODUCTION

This report responds to public comments on the Soldier Meadows/Paiute Meadows Allotment Draft Re-Evaluation issued in November of 2000. It also describes changes to the Re-Evaluation based on public comments, consultation with the U.S. Fish and Wildlife Service and additional input from the Winnemucca BLM Field Office staff.

This document also determines the need for management actions selected for implementation in the Soldier Meadows and Paiute Meadows Allotments in order to meet allotment specific objectives and the Standards for Rangeland Health.

The Soldier Meadows/Paiute Meadows Allotment Draft Re-Evaluation analyzed monitoring data that had been collected during the Re-Evaluation period (1994-2000). The Draft Re-Evaluation determined that existing management practices were not achieving all of the Standards for Rangeland Health (SRH) or allotment specific objectives. The Draft Re-Evaluation included technical recommendations that proposed changes in livestock grazing, along with other management recommendations such as range improvement projects. Implementing these measures are necessary in order to make significant progress toward achievement of the SRH and allotment specific objectives established for public lands.

A 30-day comment period was provided for individuals, organizations and agencies to submit written comments, information and concerns regarding the Draft Re-Evaluation. Comments were received from the following:

| | |
|--|------------------|
| Irv and Sandy Brown (Paiute Meadows Ranch) | January 11, 2001 |
| James Linebaugh (Soldier Meadows Ranch) | January 16, 2001 |
| Summit Lake Paiute Tribe | January 23, 2001 |
| Nevada Division of Wildlife | January 26, 2001 |
| U.S. Fish & Wildlife Service | January 30, 2001 |

Comments pertinent to the issues presented and evaluated in the allotment Final Re-Evaluation are addressed below.

Following the response to comments section is a list of changes made to the Final Re-Evaluation followed by a summary of progress toward meeting the SRH and allotment specific objectives. The last section describes the selected management actions to be implemented in the Soldier Meadows and Paiute Meadows Allotments.

B. RESPONSES TO COMMENTS

~~IRV AND SANDY BROWN January 11, 2001~~

~~We have concluded section 7 consultation on the proposed alternative and have been issued a Biological Opinion.~~

~~COMMENT #17 Term and Conditions (Page 67)~~

~~The first term and condition states that the majority of the pastures are unfenced so it is the permittees responsibility to ensure livestock grazing occurs within the appropriate pasture in accordance with the permit schedules. We believe this condition is insufficient to protect the area around Idaho Canyon; therefore, a fence must be constructed here regardless of the alternative selected. Under condition 2, North Fork Battle Creek should be added as another area of habitat or potential habitat for LCT. For the purpose of the biological assessment, the methods by which items a, b, and c under condition 2 will be evaluated need to be discussed. Under condition 3, the methods for maintaining a minimum stubble height of 6 inches on sites with desert dace also need to be discussed. We believe this may not be enough protection for those areas. For example, trampling, bank stability, and bank erosion may significantly degrade desert dace habitat, but these parameters are not addressed in the terms and conditions. Reinitiation of consultation may be necessary under condition 5 should the grazing authorization be modified during the life of this permit. We request copies of all the actual use reports prepared for these allotments as defined in condition 8, so we can evaluate grazing schedules impacts to listed species.~~

~~RESPONSE~~

~~Regardless of the grazing alternative selected, the proposed reconstruction of the existing fence and construction of a small portion of new fence will be implemented to prevent livestock from drifting into the Stanley Camp Riparian Pasture. Duly noted the North Fork of Battle Creek will be added to the document as LCT habitat. Additional monitoring data was compiled and integrated into the Biological Assessment prior to the initiation of formal Section 7 consultation.~~

C. CHANGES TO THE ALLOTMENT FINAL RE-EVALUATION

Based on comments generated and received on the Draft Soldier/Paiute Meadows Allotment Re-Evaluation changes have been made to the Final Soldier/Paiute Meadows Allotment Re-Evaluation.

D. ANALYSIS OF MONITORING DATA / DETERMINATION

SOLDIER MEADOWS ALLOTMENT

A. Statement of Achievement or Non-Achievement

1. Soil Process will be appropriate to soil types, climate and landform.

Partially Met.
Rationale:

To maintain soil processes a healthy, productive and diverse plant community is necessary. Improved ecological condition would increase productivity, litter, soil fertility, infiltration and nutrient cycling.

Upland vegetative utilization objectives were achieved except for some sites in the Warm Springs Pasture near Rock and Clear Springs. Exceeding the utilization objectives increases the potential for erosion on areas with high erosion susceptibility from wind. Wetland/riparian vegetation utilization objectives were achieved except for one spring complex that is inhabited by desert dace within the Hot Springs use area. Exceeding the wetland/riparian vegetation utilization objectives increases the potential for soil erosion via runoff.

2. Riparian/Wetland systems are in properly functioning condition.

Partially Met.

Rationale:

Properly Functioning Condition = PFC

Functioning at Risk = FAR

Non Functional = NF

Trend = static, upward, downward

| CREEK | REACH | RATING | FACTORS |
|-----------------|-------|----------------|--|
| Mahogany Ck. | 1 | PFC | |
| | 2 | PFC | |
| | 3 | PFC | |
| Summer Camp Ck. | 1 | PFC | |
| | 2 | PFC | |
| | 3 | PFC | |
| Snow Ck. | 1 | FAR (static) | Mechanical damage and removal of bank cover by wild horses |
| Colman Ck. | 1 | NF | Highly erosive channel and vertically unstable |
| | 2 | FAR | Erosive uplands, unstable banks and lack of cover |
| | 3 | PFC | |
| Shulgullion Ck. | 1 | FAR (downward) | Wild Horse use |
| | 2 | PFC | |
| | 3 | PFC | |
| Cherry Ck. | 1 | FAR (downward) | Incised channel |
| | 2 | PFC | |
| Donnelly Ck. | 1 | FAR (static) | Braided, non-sinuuous channel and lack of cover |
| | 2 | PFC | |
| | 3 | FAR (static) | Channelization and unstable banks |
| Soldiers Ck. | 1 | FAR (static) | Lack of vegetation and unstable banks. |

3. Water quality criteria in Nevada and California State Law shall be achieved or maintained.

Partially Met

Rationale

Recovery Plan and appear to have the numbers and ages present to sustain the species.

MET

Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*, LCT)

Four streams and a portion of one other exist within the SMA that are considered occupied or potential habitat for LCT, a federally listed Threatened species since 1975 (Federal Register Vol. 40, p. 29864). Mahogany, Summer Camp, Snow, and Colman Creeks exist entirely within the SMA and currently are occupied by LCT. The majority of Donnelly Creek exists within the SMA, although it does not contain a population of LCT.

The SMA contains the only lacustrine population of LCT within the Northwestern Lahontan Distinct Population Segment¹ (NWLDPSS). This population exists within the Summit Lake basin and is the largest and most stable population of LCT within the NWLDPSS (USFWS 1995). Management within this basin since the mid-1970s has attempted to restore riparian and aquatic habitats, which had been severely degraded by improper livestock grazing during the previous decades (Platts 1990). The exclusion of livestock from the majority of the watershed has resulted in a 400% increase in summer stream flow and a 50% increase in water depth, which has led to a significant increase in LCT (Platts 1990). Mahogany and Summer Camp Creeks serve as the sole spawning tributaries for this terminal lake population. Furthermore, Mahogany and Summer Camp also support a fluvial population of LCT. The majority of these lotic habitats exist on public land with the lower portions of Snow and Mahogany Creek flowing through the Summit Lake Paiute Tribe (SLPT) reservation before entering Summit Lake. Colman Creek contains an increasing population of transplanted LCT, which were moved from Washburn Creek in 1999 and then further supplemented in 2000. Donnelly Creek is listed in the 1995 LCT Recovery Plan as a stream with the potential for LCT reintroduction (USFWS 1995).

Only the habitat conditions on the North Fork of Donnelly, which is unoccupied by LCT, remained relatively static since the last stream habitat survey. While all of the designated LCT recovery streams, which are currently occupied by a population of LCT, improved in overall stream habitat condition. This improvement is reflected in the Habitat Condition Index (HCI) of the General Aquatic Wildlife Surveys, which were conducted by the Nevada Division of Wildlife (NDOW). The HCI values, according to the last stream survey conducted by NDOW, rated Mahogany, Summer Camp, Snow, and Donnelly Creeks as being "Excellent". Colman Creek rated as "Good" and the North Fork of Donnelly rated as "Fair". Riparian functionality data indicate that all streams are at Properly Functioning Condition (PFC), except for portions of two streams. Colman Creek and Donnelly Creek each had one reach that was classified as Functional-At Risk (FAR) with a Static Trend. Colman Creek also had a

The water quality criteria for the state of Nevada were met on all measured streams with the exception of one turbidity measurement on Colman Creek

4. Populations and communities of native plant species and habitats for native animal species are healthy, productive and diverse.

Partially Met.

Rationale:

Healthy plant communities must be able to complete their life cycle by preventing damage during the critical growth period. Critical growth period in a plant growth cycle is when food reserves are the lowest and grazing is the most harmful. This period begins with the boot stage and closes with complete mature seed. Periodic rest during the critical growth period allows for plants to increase vigor, maintain and increase root reserves, increase density and produce seed.

Upland vegetative utilization objectives were achieved except for some sites in the Warm Springs Pasture near Rock and Clear Springs. Wetland/riparian vegetation utilization objectives were achieved except for one spring complex that is inhabited by desert dace within the Hot Springs use area. See Response for #2.

5. Habitat conditions meet the life cycle requirements of special status species.

Partially Met

Rationale: For the most part this was met, yet due to the large number of sensitive species that could exist on the SMA a more in-depth discussion is warranted.

desert dace (*Eremichthys acros*, DD)

The hot springs and their outflows to the south and west of the Soldier Meadows Ranch are the only known habitats for the desert dace. The desert dace has been federally listed as Threatened since 1985 (Federal Register Volume 50, p. 50304.) and is the only member of the genus, *Eremichthys*. At the time of listing, critical habitat was also listed, that encompasses 50 feet on each side of designated thermal springs and their outflow streams (USFWS 1997). At least ten thermal outlets and the associated downstream channels support this unique, spring dwelling species.

To date, there is little information regarding the species or its habitat requirements. The basic habitat requirements for the desert dace that were identified in the "Recovery Plan for the Rare Species of Soldier Meadows" were based on the seasonal distribution of the species relative to temperature (USFWS 1997). Research is currently being conducted by the United States Geological Survey (USGS) to determine the seasonal distribution and population levels of desert dace within each spring system. The research project is also determining the presence and distribution of non-native fish species within the spring complexes of the SMA, which were identified as a threat to the long term viability of the desert dace (USFWS 1997). Preliminary data indicate that the populations exist within all of the systems that were identified in the 1997

headwater reach that was classified as Non-Functional. Although riparian functionality does not indicate habitat quality for aquatic species, it does indicate the stream's ability to sustain these resource values. Therefore the improvement of stream habitat on Colman Creek, indicated by the recent stream survey, may be a sign of riparian functionality improvement within the headwater area. The FAR rating with a static trend on Donnelly may be reinforced by the relatively static condition of the aquatic habitats.

MET

Soldier Meadow cinquefoil (*Potentilla basaltica*)

This species occurs in moist salt-crusted clay in alkaline meadows and cooled outflow stream margins below thermal springs, generally on slight southeast slopes. The recorded elevations are 4,380 to 4,580 feet. It occurs in the moist meadow environment of the Hot Springs use area. Soldier Meadow cinquefoil appears to invade disturbed sites but does not appear to be a disturbance dependent species. They appear to be confined to a narrow range of micro-sites associated with moist but not saturated alkaline silty soils associated with micro terrain features near thermal springs.

¹ The Endangered Species Act of 1973, as amended, included within its definition of a protectable species any subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Thus, three DPS units of LCT were identified when the species was listed as federally listed Endangered in 1970 and maintained when the species was reclassified in 1975, as federally listed Threatened.

Cinquefoil is a low growing, perennial herb with prostrate stems. Flowering begins in May and continues through the summer. Flowers are bright yellow and occur in loose clusters. A total population is estimated at 85,000 individuals in eleven subpopulations adjacent to hot springs in the Soldier Meadows area. Current data indicate that the population is stable; in fact new populations have been discovered in areas adjacent to the Hot Springs.

MET

Elongate Mud Meadows spring snail (*Prygulopsis notidicola*)

Habitat conditions for this species, which is a federally listed Candidate are included below under the Species of Concern Section for Spring snails

MET

Spring snails

At least nine species of spring snails (Hydrobiidae) exist within the SMA. Six of the nine unique species found within the SMA have been identified to genus/species (Table 1). The majority of these species are members of the genera *Prygulopsis*, with one species belonging to the *Fhuminicola* genus. These genera prefer cool, flowing water and gravel substrate (Sada et al. 2001). Primary threats to springsnails are habitat alteration via water diversions, excessive livestock grazing, nonnative macroinvertebrate establishment, and water depletion (Sada et al. 2001). Habitat conditions for this species are unknown, yet they are assumed to be similar to that of the desert dace. Therefore, these species' habitats are likely to be in good condition.

MET

Table 1. Springsnails

| Common Name | Scientific Name | Status |
|-------------------------------------|-------------------------------|--|
| Northern Soldier Meadows pryg | <i>Prygulopsis militaris</i> | Proposed BLM Sensitive, USFWS Species of Concern |
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| Elongate Mud Meadows pryg | <i>Prygulopsis notidicola</i> | Federal Candidate Species |
| Squat Mud Meadows pryg | <i>Prygulopsis limaria</i> | Proposed BLM Sensitive, USFWS Species of Concern |
| Surprise Valley pryg | <i>Prygulopsis gibba</i> | USFWS Species of Concern |
| Western Lahontan pryg | <i>Prygulopsis longigians</i> | No Status |
| 2 species found unique ¹ | <i>Prygulopsis</i> spp. | No Status |
| 1 species found unique ¹ | <i>Fhuminicola</i> spp. | No Status |

Pygmy rabbit (*Brachylagus idahoensis*) This species is the smallest North American rabbit and sagebrush obligate. The rabbit uses tall, dense stands of big sagebrush, primarily basin big sagebrush, with deep, friable soils typically loamy in texture. The Pygmy rabbit mates in early spring and summer. Its primary food is sagebrush, which makes up to 98% of its winter diet. Grasses are important during the summer, comprising as much as 30-40% of its diet. No inventories for pygmy rabbits have been completed within the allotment, and potential high quality habitat sites are considered rare. Potential sites include the edges of floodplains in the upper portions of watersheds and degraded floodplains at lower elevation where channel down cutting has allowed for the invasion of

This species is a small burrowing mammal associated with meadows and riparian areas in the upper portions of the sagebrush zone. There are no records of shrews within the allotment but potential habitat exists associated with riparian areas and meadows in the northern portion of the Black Rock Range. Shrews feed primarily on insects and other soil invertebrates. Quality habitat includes plant communities dominated by dense herbaceous vegetation that support high levels of prey and soils high in organic matter. Therefore, riparian functionality may be a good indicator of habitat quality for this species. Currently, riparian functionality in the northern portion of the allotment is for the most part in excellent condition.

MET

Northern goshawk (*Accipiter gentiles*)

The species is a known breeder in the Mahogany Creek watershed aspen stands. Found in a variety of dense, mature or old growth aspen habitat, goshawks require large, healthy multi-story stands for nesting and foraging. They forage for prey in and near woodland communities. The Mahogany Creek watershed supports a diverse mosaic of habitats for this species and its prey. These habitats range from patches of open meadows, multi story aspen stands, and also a stand of early age class aspen. This early age class stand is a result of the 2000 Wildland fire that burned 12,000 acres of the lower watershed. Therefore, it can be assumed that habitats are in order for this species.

MET

Western burrowing owls (*Athene cunicularia hypugae*)

No known colonies of this species have been observed in the allotment, however Western burrowing owls are known from the Black Rock desert area. Owls occupy open terrain with low vegetation, burrows created by mammals, and an adequate prey base. There is potentially 89,700 acres of suitable habitat for the burrowing owl on the SMA. Habitats are assumed to be in good condition, since the Black Rock desert area has been grazed by a relatively small number of livestock that are broadly dispersed during the evaluation period resulting in minimal effects to the owl's associated habitat types.

MET

Greater sage-grouse (*Centrocercus urophasianus*) This species is a common large bird of the sagebrush zone. The allotment contains about 200,000 acres of sage-grouse habitat, as well as 6 known leks (communal breeding sites). Recent BLM habitat classifications have been completed as part of the Nevada sage-grouse conservation planning effort. The classifications indicate that about 39 percent of the habitat within the SMA contains all the required habitat components, 67 percent have adequate sagebrush cover but are lacking in appropriate amounts of herbaceous cover and 4 percent are lacking in adequate sagebrush cover. Of the six leks in the Soldier Meadows allotment all are considered active. Therefore the population is assumed to be stable.

MET

Least bittern (*Ixobrychus exilis hesperis*)

basin big sagebrush into sites that were formerly occupied by wet and semi-wet meadows. This allotment contains 208,023 acres of big sagebrush types which are conducive of pygmy rabbit habitat they are as follows: ARTRW (Wyoming sagebrush) 26,399 acres, ARTRV (Vaseana) 65,573 acres, ARTRT (Basin Big sagebrush) 2,453 acres, ARTR2 (Big sagebrush) 33,381 acres, and ARTR3 (Lahontan sagebrush) 80,217 acres. With the diverse mix of sagebrush habitats within the allotment, habitat is in order for this species.

MET

Pale Townsend's big-eared bat (*Corynorhinus townsendii pallescens*)

Pacific Townsend's big-eared bat (*Corynorhinus townsendii townsendii*)

Spotted bat (*Euderma maculatum*)

Small footed-myotis (*Myotis ciliolabrum*)

Long-eared myotis (*Myotis evotis*)

Fringed myotis (*Myotis thysanodes*)

Long-legged myotis (*Myotis volans*)

Yuma myotis (*Myotis yumanensis*)

All of these species uses natural caves and cracks in rock outcrops or man-made cavities for breeding, rearing, and/or hibernating habitat. There is no specific information related to breeding colonies of any of these species within the allotment. Potential breeding and hibernating habitat is considered common in the mountainous and rocky areas. Bats depend upon insect prey and the best potential for insect prey within the allotment occurs near wet meadows and marshlands. That would restrict potential high quality foraging areas to less than one percent of the allotment.

PARTIALLY MET

California bighorn sheep (*Ovis canadensis californiana*)

Bighorn occupy mountainous areas with extensive areas dominated by large rock outcrops that serve as escape cover. Their diet is primarily grasses supplemented by forbs and limited browse.

Populations of this species occur on the Black Rock Range and the Calico Range. Due to a number of factors, bighorn sheep were eliminated from northern Nevada early in the 20th century. Existing populations are the result of numerous NDOW-initiated reintroductions and supplemental releases that began as early as 1963 and most recently in January 2003. The total population in both ranges is estimated by NDOW to be about 170 animals and they currently occupy about 7,000 acres of about 100,000 acres of potential habitat. Populations are increasing

slowly as sheep expand into vacant habitat. The NDOW data for both populations shows excellent fall recruitment of lambs, which is indicative of bighorn sheep populations that are healthy and viable.

MET

Preble's shrew (*Sorex preblei*)

Bittern habitat is fresh water marshes and reedy ponds. The only habitat of this type within the allotment is on acquired lands near Soldier Meadows that are not part of any pasture and not included in the grazing schedules of any alternative. Therefore, these species habitats are assumed to be in order.

MET

White-faced ibis (*Plegadis chihi*)

Ibis are seen occasionally as migrants in the fall. They nest in marshes (mainly hardstem bulrush) and feed in marshes and meadows. There is no known breeding habitat within the allotment. Since the marsh habitats are on acquired lands near Soldier Meadows that are not part of any pasture and not included in the grazing schedules of any alternative, this species habitats are assumed to be in order.

MET

Nevada viceroy (*Limenithus archippus lahontani*)

This species of butterfly utilizes willows and aspen as host plants. Habitat includes riparian areas, meadows, and aspen wood edges. The condition of these habitats is assumed to be commensurate with that of the riparian functionality data. Therefore, habitats are in order for riparian areas that are in PFC, whereas they may not be in areas, which are FAR, or NF.

PARTIALLY MET

Smooth stickleaf (*Mentzelia mollis*)

This species is an erect annual herb that blooms in May and June and known from two sites within the Black Rock use area. Habitat is associated with nearly barren eroding shoulder and side slopes of shrink-swell clay soils formed by hydrothermal alteration and weathering of air-fall volcanic ash deposits. These habitats are not likely to be affected by livestock grazing, due to the lack of vegetative resources within these areas. Therefore, it is assumed that habitats are in order for this species.

MET

The following species were also included in 2003 Species List for the SMA provided by the FWS that may occur within the allotment. Each of these species is not known to occur within the SMA.

Western yellow-billed cuckoo (*Coccyzus americanus*)

This species requires multistory cottonwood flood plain. Due to its habitat requirements this species does not exist within the SMA. The closest population is located along the Carson River to the south.

Black tern (*Chlidonias niger*)

Black terns are associated with open water wetlands. There are no habitats of this type within the allotment.

Tiehm milkvetch (*Astragalus tiehmi*)
Schoolcraft catseye (*Cryptantha schoolcraftii*)
Crosby buckwheat (*Eriogonum crosbaya*)

These three species commonly occur together on whitish lake deposited volcanic ash deposits that weather to deep clay soils. They generally occur on gentle slopes north and west of the allotment in the sagebrush steppe zone.

Windloving buckwheat (*Eriogonum anemophilum*)

This is a low perennial herb with leafless flower stalks rising above clumps of white leaves, which are associated with barren, rocky sites of volcanic or other origin. It blooms in late June and July. The nearest population is in Jackson Mountains east of the allotment. Other populations are located south and east of the allotment.

Grimy ivesia (*Ivesia rhypara* var. *rhypara*)

This is a low, spreading perennial cushion plant. Its habitat is dry, relatively barren, light-colored outcrops of welded tuffs on east, south, and west aspects. The nearest population is in Yellow Rock Canyon west of the allotment.

Cordella beardtongue (*Penstemon floribundus*)

This is a perennial herb with tubular blue-violet flowers blooming on the top half of the stems. Its habitat is dry, open, mostly dark-colored volcanic talus, very rocky slopes, or alluvium. The nearest population is in Jackson Mountains east of the allotment.

B. List of Causal Factors for Not Achieving Standards

A combination of livestock grazing practices and excess wild horse & burro numbers are contributing factors for not achieving and/or allowing for the progress towards the Standards for Rangeland Health for #1 and #4.

A combination of historical and current livestock grazing practices and excess wild horse & burro numbers are contributing factors for not achieving riparian functionality. The ability to achieve the Standards for Rangeland Health, specifically riparian functionality, is limited by the geomorphological condition and geological factors found on Colman, Soldier, Slumgullion, Donnelly, and Cherry Creeks.

C. Conformance or Non-Conformance With Guidelines

Existing grazing management practices, levels of grazing use, and past wild horse and burro numbers are significant factors in failing to achieve the Standards and conform with the Guidelines.

Existing grazing management needs to be modified to ensure that the Fundamentals of Rangeland Health are met or making significant progress toward being met.

PAIUTE MEADOWS ALLOTMENT

A. Statement of Achievement or Non-Achievement

1. Soil Process will be appropriate to soil types, climate and landform.

Partially Met.

Rationale:

To maintain soil processes a healthy, productive and diverse plant community is necessary. Improved ecological condition would increase productivity, litter, soil fertility, infiltration and nutrient cycling.

Upland vegetative utilization objectives were achieved except for some sites associated with Rough Canyon and Paiute Seeding. Wetland/riparian vegetation utilization objectives were achieved except for Paiute, Battle, Bartlett, Butte Creeks, and Burnt Spring. Exceeding the wetland/riparian vegetation utilization objectives increases the potential for soil erosion via runoff.



2. Riparian/Wetland systems are in properly functioning condition.

Partially Met.

Rationale:

Property Functioning Condition = PFC
 Functioning at Risk = FAR
 Non Functional = NF
 Trend = static, upward, downward

| CREEK | REACH | RATING | FACTORS |
|------------|-------|----------------|---|
| Battle Ck. | I | FAR (downward) | Lack of vegetative structure, diversity, vigor, adequate cover, coarse woody debris |

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2 P.O. Box 267
Boise, Idaho 83701-0267
3 Telephone: 208-384-1627, Ext. #2
Telecopy: 208-384-1833

4 the lawyer for Estill Ranches, L.L.C. - Appellant.
5
6

7 UNITED STATES DEPARTMENT OF INTERIOR
8 OFFICE OF HEARINGS AND APPEALS
9 HEARINGS DIVISION

10 ESTILL RANCHES, L.L.C.,) NV - _____
11)
Appellant,) Appeal from the Asst. Field
12) Manager's Decision dated
vs.) 5/5/04, Winnemucca Grazing
13 BUREAU OF LAND MANAGEMENT,) District, Nevada, relating
to the Soldier Meadows
14) Allotment.
Respondent.)

15 AFFIDAVIT OF ROBERT N. SCHWEIGERT

16 STATE OF IDAHO)
17) ss.
COUNTY OF ADA)

18 Robert N. Schweigert being first sworn, says:

19
20 1. This affidavit is prepared in support of Estill Ranches,
L.L.C. ("Estill") Notice of Partial Appeal, Statement of
21 Reasons, and Petition for Partial Stay relating to the "Final
Multiple Use Decision" regarding the Soldier Meadows Allotment,
22 dated May 5, 2004, issued by the Winnemucca Field Office of the
Bureau of Land Management.

23 2. My business address is P.O. Box 1033, Winnemucca, Nevada
89446. My business telephone number is 775-623-4555. I own and
24 manage a natural resource management consulting firm named
Intermountain Range Consultants ("IRC"). My firm is principally
25 employed by livestock ranchers in the western United States who
hold grazing authorizations to graze livestock upon lands
26 administered by the Bureau of Land Management ("BLM"), the U.S.
Forest Service ("USFS"), and/or the U.S. Fish and Wildlife
27 Service ("USFWS"). I have also written Environmental
Assessments and Decision documents for adoption by BLM. Other
28 work has included writing a Resource Management Plan for the

EXHIBIT "F"

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1 U.S. Army, at the Umatilla Munitions Depot. My firm has been
operating since 1984.
2

3 3. My educational background and professional experience
are stated in my Statement of Professional Qualifications that
I attach hereto and incorporate by reference to this affidavit
4 as EXHIBIT 1.

5 4. In writing this affidavit and in reporting the findings
and conclusions herein, I have reviewed, relied upon, and
6 considered the following information:

7 a. BLM's "Final Multiple Use Decision
Soldier Meadows Allotment" dated May 5,
8 2004 ("FMUD"), and its related or dependent
"Final Allotment Re-Evaluation Summary"
9 dated March 3, 2003 ("2003 AE"),
"Determination/Management Action Selection
10 Report" dated March 3, 2003 ("2003 MASR"),
and "Soldier Meadows Multiple Use
11 Management Environmental Assessment" (EA
NV-020-03-09) dated March 10, 2003 ("2003
12 EA") (including its associated or dependent
"Finding of No Significant Impact for the
13 Soldier Meadows Allotment Evaluation EA#
020-03-09" dated May 5, 2004),

14 b. My educational background and
professional experience in the field of
15 range management, wildlife habitat
management, and aquatic/riparian
16 management.

17 c. My observations and monitoring of the
resources within the Soldier Meadows
18 Allotment.

19 d. BLM monitoring manuals, policies, and
procedures.
20

21 e. Various BLM monitoring data and
information.
22

23 f. State of Nevada's Nevada Administrative
Code, Nevada Division of Environmental
24 Protection's published Standards for Water
Quality, 2002 303(d) list, and Draft
Continuing Planning Process ("CPP").
25

26 g. An affidavit by Jake T. Porta, Chief of
the Bureau of Water Quality Planning,
27 Nevada Division of Water Resources,
28

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1 concerning application of the Nevada
Administrative Code pertaining to water
2 quality.

3 h. Personal communications I have had with
personnel of BLM and NDEP.
4

5 5. I have been employed by Estill since 2000. In the
course of such employment, I have reviewed various BLM and U.S.
6 Fish and Wildlife Service ("USFWS") documents, including but not
limited to Allotment Evaluations, Environmental Assessments, and
7 Biological Assessments prepared by BLM and Biological Opinions
prepared by USFWS, along with the underlying data and
8 information upon which the agency documents are based.

9 6. The 2004 FMUD is based upon the findings in BLM's 2003
AE (at pages 45-58), including BLM's 2003 MASR (at pages 20-30).
10 The 2003 AE is included in Estill's Appeal as Exhibit "D", and
is incorporated and referred to herein as such. Exhibit "D"
11 reports "Allotment Objectives" and "Rangeland Health Standards"
for which BLM reached no conclusions (see para. 7-9 herein);
12 reports conclusions BLM formed regarding the attainment of
"Objectives" and "Standards" (see para. 10-12 herein); reports
13 conclusions BLM formed regarding the non-attainment of
"Objectives" and "Standards" (see para. 13-16 herein); and
14 reports conclusions BLM formed regarding the partial attainment
of "Objectives" and "Standards" (see para. 17-81 herein).
15 However, the 2004 FMUD fails to acknowledge the livestock
grazing capacity determined by the 2003 AE (see para. 82-86
16 herein).

ALLOTMENT OBJECTIVES AND RANGELAND HEALTH STANDARDS
FOR WHICH BLM REACHED NO CONCLUSION

17 7. BLM's 2003 AE (Exhibit "D") reached NO CONCLUSION on the
following Allotment-Wide Management Objectives ("Objectives"):
18

19 a. Combined upland grass utilization of the
Black Rock Pasture by the end of grazing
20 season. Exhibit "D", p. 45-46. (Upland
Grass/Dry Meadows #2). BLM did not form
21 any conclusion as to this "Objective"
because BLM did not monitor at the end of
22 the grazing season. Exhibit "D", p. 46.

23 b. Combined upland grass utilization by the
end of the grazing season (exclusive of
24 Black Rock Pasture). Exhibit "D", p. 46.
(Upland Grass/Dry Meadows #3). BLM did not
25 form any conclusion as to this "Objective"
because BLM did not monitor at the end of
26 the grazing season. Exhibit "D", p. 46.
27

1 c. Upland grass utilization by wild horses
2 in pastures rested from livestock use, once
3 the wild horse "Appropriate Management
4 Level" ("AML") is achieved. Exhibit "D", p.
5 46. (Upland Grass/Dry Meadows #4). BLM did
6 not form any conclusion as to this
7 "Objective" because, since BLM has not
8 reduced wild horses and burros to AML, BLM
9 did not monitor the effect. Exhibit "D",
10 p. 46.

11 d. Upland grass utilization by wild horses
12 in Black Rock Pasture, once AML is
13 achieved. Exhibit "D", p. 46. (Upland
14 Grass/Dry Meadows #5). BLM did not form
15 any conclusion as to this "Objective"
16 because, since BLM has not reduced wild
17 horses and burros to AML, BLM did not
18 monitor the effect. Exhibit "D", p. 46.

19 e. Water Quality for watering of livestock,
20 coldwater aquatic life propagation, water
21 contact recreation and wildlife propagation
22 in Soldiers Creek. Exhibit "D", p. 47
23 (WATER QUALITY OBJECTIVES #3.B.). BLM did
24 not form any conclusion as to this
25 "Objective" because BLM did not monitor
26 Soldiers Creek for this "Objective".
27 Exhibit "D", p. 47.

28 f. Sage grouse canopy cover (nesting).
Exhibit "D", p. 48-49 (VEGETATION
OBJECTIVES, B.2. (Sage Grouse). BLM did
not form any conclusion as to this
"Objective" because BLM determined the
criterion needs re-quantification, and did
not monitor. Exhibit "D", p. 47.

g. Desired Plant Community. Exhibit "D", p.
49 (VEGETATION OBJECTIVES, C. (Desired
Plant Community Objectives). BLM did not
form any conclusion as to this "Objective"
because BLM did not select monitoring
sites, and did not monitor the "Objective".
Exhibit "D", p. 49.

8. BLM's 2003 AE (Exhibit "D") and BLM's 2003 MASR (Exhibit
"E") reached NO CONCLUSION on the following Rangeland Health
Standard ("RHS"):

RHS #5. "Habitat conditions meet the life
cycle requirements of special status

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species", as relates to Western
yellow-billed cuckoo, Black Tern, Tiehm
Milkvetch, Schoolcraft Catseys, Crosby
Buckwheat, Windloving Buckwheat, Grimy
Ivesia, Cordelia beardtongue 5 (Exhibit
"D", p. 57-58). BLM did not form any
conclusion as to this RHS relative to the
above species, because BLM determined that
these species are not known to occupy the
Soldier Meadows Allotment. Exhibit "D", p.
57.

9. No justification exists to change/modify Estill's
Grazing Permit and related management practices within the
Soldier Meadows Allotment based upon the "Objectives" and "RHS"
discussed in paragraphs 7 and 8, above, since BLM reached NO
CONCLUSION.

ALLOTMENT OBJECTIVES AND RANGELAND HEALTH STANDARDS
WHICH BLM DETERMINED WERE UNEQUIVOCALLY MET

10. BLM's 2003 AE (Exhibit "D") reached the conclusion that
the following Allotment-Wide Management Objectives
("Objectives") were UNEQUIVOCALLY MET:

a. Riparian woody species (aspen and
willow) utilization objective. Exhibit "D",
p. 45 (UTILIZATION OBJECTIVES, Riparian/Wet
Meadow #1).

b. Stubble height requirements for
Mahogany, Summer Camp, and Snow Creeks.
Exhibit "D", p. 45 (UTILIZATION OBJECTIVES,
Riparian/Wet Meadow #1).

c. Stubble height requirements for Colman,
Slumgullion, and Donnelly Creeks, when
cattle leave the pasture. Exhibit "D", p.
45 (UTILIZATION OBJECTIVES, Riparian/Wet
Meadow #1).

d. Water Quality of Class A water bodies
(Summer Camp Creek and Mahogany Creek).
Exhibit "D", p. 46 (WATER QUALITY
OBJECTIVES #1).

e. Water Quality of Class B water bodies
(Snow Creek). Exhibit "D", p. 46 (WATER
QUALITY OBJECTIVES #2).

f. Water Quality for watering of livestock,
coldwater aquatic life propagation, water

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contact recreation and wildlife propagation
(Slumgullion Creek). Exhibit "D", p. 47
(WATER QUALITY OBJECTIVES #3.B.).

g. Water Quality for Desert Dace habitat.
Exhibit "D", p. 47 (WATER QUALITY
OBJECTIVES #3 (sic)).

h. Riparian Condition Class, Snow Creek.
Exhibit "D", p. 47-48 (VEGETATION
OBJECTIVES, A.3. (Riparian Objectives)).

i. Riparian Condition Class, Donnelly
Creek. Exhibit "D", p. 48 (VEGETATION
OBJECTIVES, A.4 (Riparian Objectives)).

j. Riparian Condition Class, Colman Creek.
Exhibit "D", p. 48 (VEGETATION OBJECTIVES,
A. 5 (Riparian Objectives)).

k. Sage grouse canopy cover (vegetal
manipulation). Exhibit "D", p. 48
(VEGETATION OBJECTIVES, B. 1. (Sage
Grouse)).

11. BLM's 2003 AE (Exhibit "D") and BLM's 2003 MASR
(Exhibit "E") reached the conclusion that the following
Rangeland Health Standards ("RHS") were UNEQUIVOCALLY MET:

RHS #5. "Habitat conditions meet the life
cycle requirements of special status
species", as related to:

- Desert Dace (Exhibit "D", p. 51; see
also Exhibit "E", p. 22-23);

- Lahontan Cutthroat Trout (Exhibit
"D", p. 52-53; see also Exhibit "E",
p. 23-24);

- Soldier Meadows Ciquefoil (Exhibit
"D", p. 53; see also Exhibit "E", p.
24-25);

- Elongate Mud Meadows springsnail
(Exhibit "D", p. 53; see also Exhibit
"E", p. 25);

- Springsnails (Exhibit "D", p. 53;
see also Exhibit "E", p. 25);

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- Pygmy Rabbit (Exhibit "D", p. 54;
see also Exhibit "E", p. 25-26);

- California Bighorn Sheep (Exhibit
"D", p. 55; see also Exhibit "E", p.
26);

- Prebles Shrew (Exhibit "D", p. 55;
see also Exhibit "E", p. 26-27);

- Northern Goshawk (Exhibit "D", p.
55-56; see also Exhibit "E", p. 27)

- Western Burrowing Owl (Exhibit "D",
p. 56; see also Exhibit "E", p. 27);

- Greater Sage Grouse (Exhibit "D", p.
56; see also Exhibit "E", p. 27);

- Least Bittern (Exhibit "D", p. 56;
see also Exhibit "E", p. 27-28);

- White-faced Ibis (Exhibit "D", p.
56; see also Exhibit "E", p. 28); and,

- Smooth Stickleaf (Exhibit "D", p.
57; see also Exhibit "E", p. 28).

12. No justification exists to change/modify Estill's
Grazing Permit and related management practices within the
Soldier Meadows Allotment based upon the "Objectives" and "RHS"
discussed in paragraphs 10 and 11, above, since BLM reached a
conclusion that the "Objectives" and "RHS" were UNEQUIVOCALLY
MET.

ALLOTMENT OBJECTIVES AND RANGELAND HEALTH STANDARDS
WHICH BLM DETERMINED WERE UNEQUIVOCALLY NOT MET

13. BLM's 2003 AE (Exhibit "D") reached the conclusion that
the following Allotment-Wide Management Objectives
("Objectives") were UNEQUIVOCALLY NOT MET:

a. Riparian Condition Class, Mahogany
Creek. Exhibit "D", p. 47 (VEGETATION
OBJECTIVES, A.1. (Riparian Objectives)).

b. Riparian Condition Class, Summer Camp
Creek. Exhibit "D", p. 47 (VEGETATION
OBJECTIVES, A.2. (Riparian Objectives)).

14. Though the conclusion stated in paragraph 13, herein,
suggests a need for a change/modification in Estill's Grazing

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1 Permit, no justification exists to change/modify Estill's
2 Grazing Permit and related management practices within the
3 Soldier Meadows Allotment. This is because the stated failure
4 is not related to or because of Estill's authorized livestock
5 use. This is due to the following:

6 a. As to Mahogany Creek, most of stream is
7 enclosed within Mahogany Creek Enclosure,
8 which has been excluded from livestock use
9 for at least 25 years. The remainder of
10 the stream is within the Stanley Camp
11 Pasture, which has not been grazed by
12 livestock since 1994, pending BLM's
13 construction of a fence to divide Idaho
14 Canyon Pasture from Stanley Camp Pasture,
15 per BLM's 1994 FMUD.

16 b. As to Summer Camp Creek, the stream is
17 within the Stanley Camp Pasture, which has
18 not been grazed by livestock since 1994,
19 pending BLM's construction of a fence to
20 divide Idaho Canyon Pasture from Stanley
21 Camp Pasture, per BLM's 1994 FMUD.

22 15. BLM's 2003 AE (Exhibit "D") and BLM's 2003 MASR
23 (Exhibit "E") reached the conclusion that no Rangeland Health
24 Standards (RHS) were UNEQUIVOCALLY NOT MET.

25 16. No justification exists to change/modify Estill's
26 Grazing Permit and related management practices within the
27 Soldier Meadows Allotment based upon "RHS" (see para. 15), since
28 BLM reached a conclusion that no "RHS" were UNEQUIVOCALLY NOT
MET.

ALLOTMENT OBJECTIVES AND RANGELAND HEALTH STANDARDS
WHICH BLM DETERMINED WERE EQUIVOCALLY (PARTIALLY) MET

17. BLM's 2003 AE (Exhibit "D") reported BLM's conclusion
that some Allotment-Wide Management Objectives ("Objectives")
were EQUIVOCALLY (PARTIALLY) MET. In addition, BLM's 2003 AE
(Exhibit "D") and BLM's 2003 MASR (Exhibit "E") reported that
some Rangeland Health Standards ("RHS") were EQUIVOCALLY
(PARTIALLY) MET. In other words, BLM concluded that some
"Objectives" and some "RHS": (a) were met on parts of the
Soldier Meadows Allotment, but not met on other parts of the
Allotment; (b) were met on the areas to which the "Objective"
and/or "RHS" pertain part of the evaluation period, but not met
in other parts of the evaluation period. These "Objectives" and
"RHS" were:

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Schweigert Affidavit - 9

a. Stubble height requirements on meadows
surrounding desert dace. Exhibit "D", p.
45. (UTILIZATION OBJECTIVES, Riparian/Wet
Meadow #1). However, see paragraphs 18-20.

b. Riparian wet meadow (grasses,
grass-like, and forb) utilization. Exhibit
"D", p. 45. (UTILIZATION OBJECTIVES,
Riparian/Wet Meadow #2). However, see
paragraphs 21-23.

c. Upland grass utilization by the end of
the livestock use period, exclusive of
Black Rock Pasture. Exhibit "D", p. 45.
(UTILIZATION OBJECTIVES, Upland Grass/Dry
Meadows #1). However, see paragraphs
24-30.

d. Upland browse utilization by livestock.
Exhibit "D", p. 46. (UTILIZATION
OBJECTIVES, Upland Browse #1). However,
see paragraphs 31-35.

e. Water Quality for watering of livestock,
coldwater aquatic life propagation, water
contact recreation and wildlife propagation
(Donnelly Creek and Colman Creek). Exhibit
"D", p. 47. (WATER QUALITY OBJECTIVES
#3.A.). However, see paragraphs 36-44.

f. Riparian Condition Class, Slungullion
Creek. Exhibit "D", p. 48. (VEGETATION
OBJECTIVES, Riparian Objectives #6).
However, see paragraphs 45-48.

g. RHS #1. Soil processes appropriate to
soil type, climate, and land form. Exhibit
"D", p. 49. (VEGETATION OBJECTIVES D.1); see
also Exhibit "E", pp. 20-21). However, see
paragraphs 49-64.

h. RHS #2. Riparian/wetland systems are in
properly functioning condition. Exhibit
"D", pp. 49-50. (VEGETATION OBJECTIVES D.2);
see also Exhibit "E", p. 21. However, see
paragraphs 65-75.

i. RHS #3. Water quality criteria in Nevada
State Law shall be achieved or maintained.
Exhibit "D", p. 50. (VEGETATION OBJECTIVES
D.3); see also Exhibit "E", p. 21-22.
However, see paragraphs 36-44.

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j. RHS #4. Populations and communities of
native plant species and habitats for
native animal species are healthy,
productive and diverse. Exhibit "D", p. 51
(VEGETATION OBJECTIVES D.4); see also
Exhibit "E", p. 22). However, see
paragraphs 49-64.

k. RHS #5. Habitat conditions meet the life
cycle requirements of special status
species as related to bats (Exhibit "D",
pp. 54-55; see also Exhibit "E", p. 26);
Nevada Viceroy (Exhibit "D", pp. 56-57
(VEGETATION OBJECTIVES D.5); see also
Exhibit "E", p. 28). However, see
paragraphs 76-81.

I discuss each of these "Objectives" and "RHS" separately below.

a. Stubble height requirements on meadows
surrounding desert dace

18. BLM's 2003 AE (Exhibit "D") reported that the
Allotment-Wide Management Objective ("Objective") regarding
Stubble height requirements on meadows surrounding desert dace
was partially met. Exhibit "D", p. 45. (UTILIZATION OBJECTIVES,
Riparian/Wet Meadow #1).

19. BLM's 2003 AE reported that the "Objective" was met on
all meadows surrounding dace hot springs all years, except that
it was not met on "some" sites in 2000. Exhibit "D", p. 45.

20. Though the conclusion stated in paragraph 19, herein,
suggests a need for a change/modification in Estill's Grazing
Permit, no justification exists to change/modify Estill's
Grazing Permit and related management practices within the
Soldier Meadows Allotment, as appealed. This is because:

a. BLM erred in interpreting the data or in
reaching a conclusion. A single occurrence
of (purported) non-attainment of this
"Objective" does not warrant the overall
non-achievement of this "Objective".
According to BLM, this "Objective" was met
during the entire evaluation period, except
for only 1 year.

b. BLM erred in interpreting the data or in
reaching a conclusion. The area where
stubble heights were stated to be exceeded
is in an area used year-round by wild
horses, and only used in the late fall and

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winter by Estill under the management
prescribed by the 1994 FMUD. Late fall and
winter use on a meadow area allows full and
complete growing season rest from livestock
use.

c. Regardless of BLM's conclusion, the
stated failure will be abated by Range
Improvement Project #3 (i.e. Desert Dace
Protective Fence) authorized by the FMUD
(Exhibit "A", p. 14), which Estill did not
appeal per se.

b. Riparian wet meadow (grasses, grass-like, and
forb) utilization

21. BLM's 2003 AE (Exhibit "D") reported that the
Allotment-Wide Management Objective ("Objective") regarding
Riparian wet meadow (grasses, grass-like, and forb) utilization
was partially met. Exhibit "D", p. 45. (UTILIZATION OBJECTIVES,
Riparian/Wet Meadow #2).

22. BLM's 2003 AE reported that the "Objective" was met on
all wet meadows throughout the Soldier Meadows Allotment in all
years, except for wet meadows at Rock Spring and Clear Spring
in 1995, 1997, and 1999. Exhibit "D", p. 45.

23. Though the conclusion stated in paragraph 22, herein,
suggests a need for a change/modification in Estill's Grazing
Permit, no justification exists to change/modify Estill's
Grazing Permit and related management practices within the
Soldier Meadows Allotment, as appealed. This is because BLM
erred in interpreting the data or in reaching a conclusion
relative to this "Objective". This is because the meadows at
Rock Spring and Clear Spring are not "wet" meadows, but are "dry
meadows" to which this objective does not apply.

c. Upland grass utilization by the end of the
livestock use period, exclusive of the Black Rock Pasture

24. BLM's 2003 AE (Exhibit "D") reported that the
Allotment-Wide Management Objective ("Objective") regarding
Upland grass utilization by the end of livestock use period,
exclusive of Black Rock Pasture, was partially met. Exhibit "D",
p. 45. (UTILIZATION OBJECTIVES, Upland Grass/Dry Meadows #1).

25. BLM's 2003 AE reported that the "Objective" was met on
uplands and dry meadows in all years throughout Soldier Meadows
Allotment, except at Rock Spring and Clear Spring in 1995, 1997,
and 1999. Exhibit "D", p. 45.

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26. Though the conclusion stated in paragraph 25, herein, suggests a need for a change/modification in Estill's Grazing Permit, no justification exists to change/modify Estill's Grazing Permit and related management practices within the Soldier Meadows Allotment, as appealed. This is because BLM erred in interpreting the data or in reaching a conclusion relative to this "Objective" for the reasons stated in paragraphs 27-30, herein.

27. As to utilization of dry meadows, Rock Spring and Clear Spring are developed livestock water facilities, with livestock water troughs on or near the dry meadows, and the "Objective" is inappropriately and unreasonably applied to areas near livestock water troughs, also used by wild horses and wildlife. Rock Spring and Clear Spring are isolated water sources critical to livestock, wild horses and wildlife in the Warm Springs Pasture.

28. As to upland utilization in 1995:

a. BLM did not collect any utilization transect data in 1995 which show that the dry meadow or upland utilization "Objective" was exceeded within the Warm Springs Pasture. Attached hereto as EXHIBIT 2 is BLM's report of utilization monitoring that BLM conducted within the Warm Springs Pasture in 1995.

In addition, EXHIBIT 2 shows that in 1995, BLM did not collect any utilization data at Rock Spring or Clear Spring so as to determine whether the dry meadow or upland utilization objective was exceeded. BLM conducted utilization transects T-1 at Black Buttes; T-2 at Warm Springs Canyon; T-3 at Bear Buttes Key Area; T-4 at South side of 5 mi. rd, north of Bear Buttes; and T-5 at Five Mile Flat. None of these locations is in the proximity of Rock Spring or Clear Spring. Transect T-2 was the closest transect to Clear Spring, located approximately 2 miles from Clear Spring. BLM found slight utilization of Squirreltail (SIHY - 20%) and bluegrass (POA - 14%), and light utilization of Thurber needlegrass (STTH2 - 21%). Transect T-3 was the closest transect to Rock Spring, located approximately 3 miles from Rock Spring. BLM found slight utilization of Squirreltail (SIHY - 10%) and bluegrass (POA - 8%), and no

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utilization of the key shrub species bitterbrush (PUTR2 - 0%). See Exhibit 2.

b. BLM did collect utilization pattern map ("UPM") data in 1995, within the Warm Springs Pasture. This UPM showed that, of 37,423 acres mapped for utilization in 1995, in Warm Springs Pasture, only 568 acres (1.5%) - around Rock Spring and Clear Spring - exceeded the desired utilization objective; 6,004 acres (16%) were at the desired utilization objective; and, 30,851 acres (82.5%) were below the desired utilization objective. Exhibit "D", APPENDIX I. See also EXHIBIT 1, UPM.

However, this purported exceedance upon 568 acres cannot be reasonably attributed to Estill's authorized livestock use in 1995, but instead to wild horse use. In 1995, wild horse numbers were approximately 412 head, which used approximately 4,944 AUMs. As compared to livestock use of 3,379 AUMs (Exhibit "D", p. 9), wild horses were responsible for most of the use, and yearlong use, as opposed to Estill's after-seedripen use.

Related thereto, the purported exceedance of the desired utilization objective occurred on 568 acres of the 327,739 acres allotment, that is, only 0.17% of the allotment acreage.

29. As to upland utilization in 1997:

a. BLM did not collect any utilization transect data in 1997 which show that the dry meadow or upland utilization "Objective" was exceeded within the Warm Springs Pasture. Attached hereto as EXHIBIT 3 is BLM's report of utilization monitoring conducted in 1997.

In addition, EXHIBIT 3 shows that, in 1997, BLM did not collect any utilization transect data at Clear Spring so as to determine whether the "Objective" was exceeded, but did collect utilization transect data at Rock Spring. BLM conducted utilization transects T-1 East of Black Buttes; T-2 at Warm Springs Canyon;

T-3 North of Bear Buttes; T-4 at Rock Springs; and T-5 at Five Mile Flat. Transect T-1 was the closest transect to Clear Spring, located approximately 2 miles from Clear Spring, and utilization was slight (1-20%). On transect T-4, at Rock Spring, BLM found light utilization of bluegrass (POA - 23%) and slight utilization of Thurber needlegrass (STTH2 - 19%) and the shrub bitterbrush (PUTR - 2%). Transect T-4 therefore refutes BLM's UPM as it relates to "heavy" utilization at Rock Spring. EXHIBIT 3.

b. BLM did collect utilization pattern map ("UPM") data in 1997, within the Warm Springs Pasture. Specifically, EXHIBIT 3 shows that, of 32,301 acres mapped for utilization in 1997, in Warm Springs Pasture, only 327 acres (1%) - at Rock Spring and Clear Spring - exceeded the desired utilization objective; 2,261 acres (7%) were at the desired utilization objective; and 29,713 acres (92%) were below the desired utilization objective. Exhibit "D", APPENDIX I.

However, as stated, BLM's monitoring at Rock Spring refutes the accuracy of their characterization of the utilization upon BLM's UPM relative to Rock Springs.

In addition, the purported exceedance upon 327 acres cannot be reasonably attributed to Estill's authorized livestock use in 1997, but instead to wild horse use. In 1997, wild horse numbers were 207 (Exhibit "D", p. 10), which used approximately 2,484 AUMs. As compared to livestock use of 3,379 AUMs (Exhibit "D", p. 9), wild horses were responsible for a significant yearlong portion of the use, as opposed to Estill's after-seedripen use.

Related thereto, the purported exceedance of the desired utilization objective occurred on just 327 acres of the 327,739 acre allotment - that is, just 0.10% of the allotment acreage.

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30. As to upland utilization in 1999:

a. BLM did not collect any utilization transect data in 1999 which show that the dry meadow or upland utilization "Objective" was exceeded within the Warm Springs Pasture. Attached hereto as EXHIBIT 4 is BLM's report of utilization monitoring conducted in 1999.

In addition, EXHIBIT 4 shows that in 1999, BLM did not collect any utilization data at Rock Spring or Clear Spring so as to determine whether the utilization objective was exceeded. BLM conducted utilization transects T-1 one mile east of Black Buttes; T-2 at 1.5 miles north of Clear Springs; T-3 at Bear Buttes Trend Site; T-4 at Intersection of Bear Butte & N. Reservoir; and T-5 at Five Mile Flat. None of these locations is in the proximity of Rock Spring or Clear Spring. Transect T-2 was the closest transect to Clear Spring, located approximately 1.5 miles from Clear Spring. At transect T-2, BLM found slight utilization of the shrub bitterbrush (PUTR - 1%), light utilization of Thurber needlegrass (STTH2 - 30%), and light utilization of bluegrass (POA - 23%). Transect T-4 was the closest transect to Rock Spring, located approximately 2 miles from Rock Spring. At transect T-4, BLM found slight utilization of the shrub bitterbrush (PUTR2 - 4%), slight utilization of Thurber needlegrass (STTH2 - 15%), and slight utilization of the Squirreltail (SIHY - 13%). EXHIBIT 4.

b. BLM did collect utilization pattern map ("UPM") data in 1999, within the Warm Springs Pasture. This UPM shows that, of 36,273 acres mapped for utilization in 1999, in Warm Springs Pasture, only 696 acres (1.9%) - at Rock Spring and Clear Spring - exceeded the desired utilization objective; 3,311 acres (9.1%) were at the desired utilization objective; and 32,226 acres (89.0%) were below the desired utilization objective. Exhibit "D", APPENDIX I. See also EXHIBIT 4.

1 However, this purported exceedance upon 696
2 acres cannot be reasonable attributed to
3 Estill's authorized livestock use in 1999,
4 but instead to wild horse use. In 1999,
5 wild horse numbers were 274, which used
6 3,288 AUMs. As compared to livestock use
7 of 3,379 AUMs (Exhibit "D", p. 9), wild
8 horses were responsible for a significant,
9 yearlong portion of the use, as opposed to
10 Estill's after-seedriple use.

11 Related thereto, the purported exceedance
12 of the desired utilization objective
13 occurred on only 696 acres of the 327,739
14 acres allotment - that is, just 0.2% of the
15 allotment acreage.

16 d. Upland browse utilization by livestock

17 31. BLM's 2003 AE (Exhibit "D") reported that the
18 Allotment-Wide Management Objective ("Objective") regarding
19 Upland browse utilization by livestock was partially met.
20 Exhibit "D", p. 46. (UTILIZATION OBJECTIVES, Upland Browse #1).

21 32. The "Objective" is "Livestock vegetative utilization
22 shall not exceed 50% [for key browse species] by the end of the
23 livestock grazing use period." Exhibit "D", p. 46.

24 33. BLM's 2003 AE concluded that the "Objective" was met
25 for the Soldier Meadows Allotment, except that

26 "this objective was not accomplished at
27 Rock and Clear springs areas in the Warm
28 Springs Pasture, utilization levels were
exceeded in 1995, 1997, and 1999."

29 Exhibit "D", p. 46.

30 34. Though the conclusion stated in paragraph 33, herein,
31 suggests a need for a change/modification in Estill's Grazing
32 Permit, no justification exists to change/modify Estill's
33 Grazing Permit and related management practices within the
34 Soldier Meadows Allotment, as appealed. This is because BLM
35 erred in interpreting the data or in reaching a conclusion
relative to this "Objective" for the reasons stated in paragraph
36 35, herein. BLM's own data demonstrates that the shrub
37 utilization "Objective" was met, including at Rock Spring and
38 Clear Spring. See also paragraphs 28-30 herein.

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1 35. The actual utilization monitoring of browse species
2 collected by BLM demonstrates the following:

3 a. 1995. BLM did not collect browse
4 utilization at Clear Spring and Rock Spring
5 in 1995. Rather, BLM monitored utilization
6 of browse in 1995 at two locations called
7 "Bear Buttes Trend Site" and "South Side of
8 5 mi. rd - north of Bear Buttes". At "Bear
9 Buttes Trend Site", BLM determined
10 utilization of the shrub species
11 bitterbrush (*Purshia tridentata* or "PUTR"
12 or "PUTR2") to have been 0%. At "South
13 Side of 5 mi. rd - north of Bear Buttes",
14 BLM determined utilization of bitterbrush
15 to have been <1% ("less than 1%"). These
16 are "slight" (1-20%) utilization levels,
17 well below the desired utilization
18 objective for browse. See EXHIBIT 2.

19 b. 1997. As to Clear Spring, BLM did not
20 collect browse utilization. Rather, BLM
21 purportedly monitored utilization of browse
22 in 1997 at a location called "North of Bear
23 Buttes". However, at "North of Bear
24 Buttes", BLM did not determine any
25 utilization of the shrub species
26 bitterbrush. As to Rock Spring, BLM did
27 collect browse utilization and determined
28 utilization of bitterbrush (PUTR) to have
been 10%; this is "slight" (1-20%)
utilization, well below the desired
utilization objective for browse. See
EXHIBIT 3.

29 c. 1999. BLM did not collect browse
30 utilization at Clear Spring and Rock Spring
31 in 1999. Rather, BLM monitored utilization
32 of browse in 1999 at two locations called
33 "Bear Buttes Trend Site", and at
34 "Intersection of Bear Butte & N.
35 Reservoir". At "Bear Buttes Trend Site",
36 BLM determined utilization of the shrub
37 species bitterbrush (PUTR) to have been 1%.
38 At "Intersection of Bear Butte & N.
39 Reservoir", BLM determined utilization of
bitterbrush to have been 4%. These are
"slight" (1-20%) utilization levels, well
below the desired utilization objective.
See EXHIBIT 4.

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1 e. Water Quality for watering of livestock, coldwater
2 aquatic life propagation, water contact recreation
3 and wildlife propagation (Donnelly Creek and Colman Creek)
4 and
5 i. RHS #3. Water quality criteria in Nevada State Law
6 shall be achieved or maintained

7 36. BLM's 2003 AE (Exhibit "D") reported that the
8 Allotment-Wide Management Objective ("Objective") regarding
9 Water Quality for watering of livestock, coldwater aquatic life
10 propagation, water contact recreation and wildlife propagation on
11 Donnelly Creek and Colman Creek was partially met. Exhibit
12 "D", p. 47 (WATER QUALITY OBJECTIVES #3.A.). In addition, BLM's
13 2003 AE and BLM's 2003 MASR (Exhibit "E") reported that
14 Rangeland Health Standard #3 (water quality) for Donnelly Creek
15 and Colman Creek was partially met. Exhibit "D" (VEGETATION
16 OBJECTIVES D.3, p. 50; Exhibit "E", pp. 21-22).

17 37. RHS #3 is "Water quality criteria in Nevada State Law
18 shall be achieved or maintained."

19 38. As to Donnelly Creek, BLM's 2003 AE concluded that the
20 "Objective" was met, and that RHS #3 was met.

21 39. As to Colman Creek, BLM's 2003 AE concluded that the
22 "Objective" was met and that RHS #3 was met, except for one
23 turbidity measurement in 2002.

24 40. Though the conclusion stated in paragraph 39, herein,
25 suggests a need for a change/modification in Estill's Grazing
26 Permit, no justification exists to change/modify Estill's
27 Grazing Permit and related management practices within the
28 Soldier Meadows Allotment, as appealed. This is because BLM
erred in interpreting the data or in reaching a conclusion
relative to this "Objective" for the reasons stated in
paragraphs 41-44, herein.

29 41. BLM's 2003 EA discussed water quality at pages 20-23.
30 EXHIBIT 5, attached hereto. Page 23 of the document reports
31 that BLM measured turbidity at three times during 2002 on Colman
32 Creek. The first of these measurements occurred on May 14,
33 2002, during a time at which spring run-off is occurring (See
34 EXHIBIT 5, p. 20). The second measurement occurred on August
35 12, 2002, and the third measurement occurred on October 15,
36 2002. It was the first of the three measurement, during spring
37 runoff, when turbidity is naturally high, that the State of
38 Nevada standard of 4.3 NTU was exceeded. In the last two
39 measurements, during "base flow" (EXHIBIT 4, p. 20), or normal
40 flow periods, the standard was not exceeded, and in fact the
41 turbidity levels were well below the standard (i.e. 0.85 NTU and
42 0.0 NTU, respectively, as compared to the standard of 4.3 NTU).

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1 42. The State of Nevada does not consider an exceedance,
2 and particularly a single exceedance during spring runoff, to
3 constitute a violation of the Water Quality of the State of
4 Nevada. See Affidavit of Jake T. Porta in a water quality case
5 in the U.S. District Court of Nevada, attached hereto as EXHIBIT
6 6, wherein Mr. Porta, who is Chief of the Bureau of Water
7 Quality Planning, Nevada Division of Environmental Protection,
8 stated in paragraph 4:

9 "... the mere fact that a standard may have
10 been exceeded does not mean that a
11 "violation" has occurred, and "according
12 to Nevada Administrative Code 445A.121(8),
13 standards are not considered violated when
14 the natural conditions are outside the
15 established limits of the standards."

16 43. NAC 444A.121(8), which is attached hereto as EXHIBIT 7,
17 states:

18 "The specified standards are not considered
19 violated when the natural conditions of the
20 receiving water are outside the established
21 limits, including periods of extreme high
22 or low flow."

23 44. Here, the only one of BLM's measurements which exceeded
24 the standard for Colman Creek occurred during what BLM's 2003
25 EA acknowledges is a time of extreme high flow, i.e. the spring
26 run-off period which occurs during snowmelt. See also EXHIBIT
27 5, page 20, Figure 1, which is a hydrograph showing the extreme
28 high flow periods in May and June. BLM's measurements during
29 the normal flow conditions, or "base flow periods" for Colman
30 Creek did not exceed the State standard.

31 f. Riparian Condition Class, Slungullion Creek

32 45. BLM's 2003 AE concluded that the Riparian Condition
33 Class "Objective" for Slungullion Creek (to improve from 48% in
34 1990, to 63% by 2001) was partially met. Exhibit "D", p. 48
35 (VEGETATION OBJECTIVES, Riparian Objectives #6.). The basis for
36 BLM's 2003 AE conclusion was that the Riparian Condition Class
37 was 74% in 1990, and 61.3% in 1999. Exhibit "D", p. 48.

38 46. It should be noted that the above paragraph is not a
39 typographical error. BLM's 1994 FMUD is correctly re-iterated
40 in BLM's 2003 AE. However, the "Objective" and conclusion are
41 either not capable of analysis, or do not otherwise justify a
42 change/modification to Estill's Permit, under any of the
43 following possible interpretations of the apparent self
44 contradiction:

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1 a. If BLM relied upon a stream survey that
2 reported the 1990 Riparian Condition Class
3 was 48%, then it could not simultaneously
4 have been 74% in the same year. Further,
5 if the Riparian Condition Class was 48% in
6 1990 and 61.3% in 1999, then the reasonable
7 conclusion is that significant progress was
8 being made toward achieving the
9 "Objective". Such significant progress in
10 attaining the "Objective" between 1990 and
11 1999 cannot serve as a basis for a
12 change/modification to Estill's Permit,
13 especially in light of the fact that the
14 "deadline" for assessing the "Objective"
15 was 2001, not 1999.

16 b. On the other hand, if BLM relied upon a
17 stream survey which reported that the 1990
18 Riparian Condition Class was 74% in 1990,
19 then the objective to attain 63% by 2001
20 cannot serve as a basis to change/modify
21 Estill's Grazing Permit, because BLM's
22 objective on its face was to achieve a
23 downward trend in the Riparian Condition
24 Class.

25 c. A third possibility is that BLM's
26 objective is simply erroneously stated, in
27 which case there exists no valid objective
28 to evaluate.

1 d. In this case, NDOW's stream survey data
2 upon which BLM relies state that the
3 Riparian Condition Class was 74% in 1990,
4 and was 61.3% in 1999. Therefore, assuming
5 BLM did not intend to write an objective
6 prescribing downward trend, then there
7 exists no valid objective against which the
8 data can be assessed.

9 47. Assuming for argument that the "Objective" was intended
10 to maintain the 1990 Riparian Condition Class, the NDOW
11 information discussed in paragraph 46 herein suggests a need for
12 a change/modification in Estill's Grazing Permit. However, no
13 justification exists to change/modify Estill's Grazing Permit and
14 related management practices within the Soldier Meadows
15 Allotment, as appealed. This is because BLM erred in collecting
16 the data, interpreting the data, and/or in reaching a conclusion
17 relative to this "Objective", for the reasons stated in
18 paragraph 48.

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1 48. It is unreasonable to conclude a need to change/modify
2 Estill's Permit based upon the NDOW stream survey data relating
3 to Slumgullion Creek, for the following two reasons.

4 a. First, NDOW's 1999 report concluded that
5 "wild horses, especially in the headwaters,
6 are responsible for much of the damage to
7 this stream."

8 b. Second, Slumgullion Creek lies in a
9 portion of the Soldier Meadows Allotment
10 which the 1994 FMUD authorized for
11 livestock use during the month of April
12 only. Such early season livestock use is
13 one of many livestock management practices
14 which are consistent with sound riparian
15 management, and cattle grazing in such
16 season of use cannot reasonably be
17 concluded to have resulted in a decline in
18 the Riparian Condition of Slumgullion
19 Creek, because "cool season grazing" is one
20 of the Best Management Practices" for
21 riparian management, as opposed to the
22 significant yearlong use made by wild
23 horses.

24 g. RHS #1. Soil processes are appropriate to soil type,
25 climate, and land form
26 and

27 i. RHS #4. Populations and communities of native plant
28 species and habitats for native animal species are
healthy, productive and diverse.

1 49. BLM's 2003 AE (Exhibit "D") and BLM's 2003 MASR
2 (Exhibit "E") reported that Rangeland Health Standards #1
3 regarding soils, and #4, regarding plant and animal habitat,
4 were partially met. As to RHS #1, see Exhibit "D", p. 49.
5 (VEGETATION OBJECTIVES D.1); see also Exhibit "E", p. 20-21.
6 As to RHS #4, see Exhibit "D", p. 51 (VEGETATION OBJECTIVES
7 D.4); see also Exhibit "E", p. 22.

8 50. BLM's 2003 AE concluded that Rangeland Health Standards
9 ("RHS") #1 (soils) and #4 (plant and animal habitat) were met
10 throughout the Soldier Creek Allotment, except for some sites
11 in the Warm Springs Pasture "near Rock and Clear Springs."

12 51. The sole basis for the conclusion as to both of these
13 RHS was the purported utilization around the spring areas. As
14 to RHS #1, see Exhibit "D", p. 49. (VEGETATION OBJECTIVES D.1);
15 see also Exhibit "E", p. 20-21. As to RHS #4, see Exhibit "D",
16 p. 51 (VEGETATION OBJECTIVES D.4); see also Exhibit "E", p. 22.

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1 52. Though the conclusion stated in paragraphs 50-51,
2 herein, suggests a need for a change/modification in Estill's
3 Grazing Permit, no justification exists to change/modify
4 Estill's Grazing Permit and related management practices within
5 the Soldier Meadows Allotment, as appealed. This is because BLM
6 erred in collecting the data, interpreting the data, and/or in
7 reaching a conclusion relative to this "RHS" for the reasons
8 stated in paragraphs 53-64, herein.

9 53. BLM did not rely upon the appropriate approved
10 indicators of rangeland health for the RHS, and BLM did not
11 follow its manualized procedures in formulating the conclusion
12 stated in the Exhibit "D" relative to the areas around Rock
13 Spring and Clear Spring.

14 54. BLM is bound by two documents regarding the Standards
15 for Rangeland Health.

16 a. The first document is the Standards and
17 Guidelines for the appropriate area within
18 Nevada. The Soldier Meadows Allotment is
19 situated in the portion of Nevada to which
20 the Standards and Guidelines for the Sierra
21 Front/Northwestern Great Basin Area apply.
22 The applicable Standards and Guidelines are
23 attached hereto as EXHIBIT 8.

24 b. The second document is BLM Manual
25 "H-4180-1 - RANGELAND HEALTH STANDARDS",
26 excerpts of which are attached hereto as
27 EXHIBIT 9.

28 55. EXHIBIT 8 lists the appropriate "indicators" to be
1 measured or observed in the field in the process of making
2 assessments of rangeland health. EXHIBIT 8 defines
3 "indicators":

4 "Observations or measurements of physical,
5 chemical or biological factors that should
6 be used to evaluate site conditions or
7 trends, appropriate to the potential of the
8 site. Indicators assist in determining
9 whether Standards are met or Guidelines
10 followed."

11 EXHIBIT 9 provides a similar definition of "indicator":

12 "Indicators: Components of a system whose
13 characteristics (presence of absence,
14 quantity, distribution) are used as an
15 index of an attribute (range health
16 attribute) that are too difficult,
17 inconvenient, or expensive to measure

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1 (Interagency Technical Reference 1734-8,
2 2000)."

3 56. EXHIBIT 8 identifies the Rangeland Health Standard for
4 soils:

5 "STANDARD 1: SOILS. Soil processes will be
6 appropriate to soil types, climate and land
7 form".

8 And, the approved "indicators" for the Standard are:

9 "As indicated by:

10 Surface litter is appropriate to the
11 potential of the site;

12 Soil crusting formations in shrub
13 interspaces, and soil compaction are
14 minimal or

15 not in evidence, allowing for appropriate
16 infiltration of water;

17 hydrologic cycle, nutrient cycle and energy
18 flow are adequate for the vegetative
19 communities;

20 Plant communities are diverse and vigorous,
21 and there is evidence of recruitment;

22 Basal and canopy cover (vegetative) is
23 appropriate for site potential."

24 57. EXHIBIT 8 also identifies the Rangeland Health Standard
25 for plant and animal habitat:

26 "STANDARD 4: PLANT AND ANIMAL HABITAT.
27 Populations and communities of native plant
28 species and habitats for native animal
species are healthy, productive and
diverse."

And, the approved "indicators" for the Standard are:

"As indicated by:

Good representation of life forms and
numbers of species;

Good diversity of height, size, and
distribution of plants;

28 Schweigert Affidavit - 23

1 Number of wood stalks, seed stalks, and
2 seed production adequate for stand
3 maintenance;
4 Vegetative mosaic, vegetative corridors for
5 wildlife, and minimal habitat
6 fragmentation."
7 58. Page I-10 of EXHIBIT 9 shows the process flow chart
8 required to be followed by BLM, specifically requiring that an
9 in-the-field Assessment be conducted, using some or all of the
10 indicators specified by the Resource Advisory Council ("RAC");
11 requiring that the field Assessment then be Evaluated; and
12 requiring that a Determination then be made; and finally
13 requiring that changes be implemented or not, depending upon the
14 first three stages. "Assessment", "Evaluation", and
15 "Determination" are all defined in EXHIBIT 9. See EXHIBIT 9, pp.
16 I-2 and I-3.
17 59. Additionally, EXHIBIT 9 requires that "During the
18 assessment phase, select from the indicators developed with each
19 Standard." See Exhibit 9, p. III-6
20 60. Here, contrary to the explicit instructions contained
21 within EXHIBIT 9, BLM did not collect, monitor, measure,
22 observe, or report the appropriate approved indicators of RHS
23 #1 (soils) approved by Exhibit 8 (i.e., surface litter; soil
24 crusting formations and soil compaction; the hydrologic,
25 nutrient or energy cycles; diversity and recruitment of the
26 plant communities; or vegetative basal and canopy cover) which
27 are the only Indicators for the Standard. Instead, BLM used
28 purported utilization around the spring sources to form its
29 conclusions stated in Exhibit "D". However, utilization is not
30 one of the appropriate approved indicators of the soils
31 Standard.
32 61. Likewise, contrary to the explicit instructions
33 contained within EXHIBIT 9, BLM did not collect, monitor,
34 measure, observe, or report the appropriate approved indicators
35 of RHS #4 (plant and animal habitat) approved by EXHIBIT 8 (i.e.
36 number of life forms and numbers of species; diversity of
37 height, size, and distribution of plants; number of wood stalks,
38 seed stalks, and seed production adequate for stand maintenance;
39 or vegetative mosaic, vegetative corridors for wildlife, and
40 minimal habitat fragmentation) which are the only Indicators for
41 the Standard. Instead, BLM used purported utilization around
42 the spring sources to form its conclusions stated in Exhibit
43 "D". However, utilization is not one of the appropriate
44 approved indicators of the plant and animal Standard.
45 62. Additionally, BLM did not conduct a field Assessment
46 using ANY of the approved Indicators. Having failed to conduct
47
48 Schweigert Affidavit - 24

0000 34-107

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1 67. Though the conclusion stated in paragraph 66, herein,
2 suggests a need for a change/modification in Estill's Grazing
3 Permit, no justification exists to change/modify Estill's
4 Grazing Permit and related management practices within the
5 Soldier Meadows Allotment, as appealed. This is because BLM
6 erred in the collection of the data, in interpreting the data,
7 and/or in reaching a conclusion relative to this "RHS".
8 68. BLM did not collect the riparian functionality data in
9 accordance with manualized standards, as follows:
10 69. EXHIBIT 9 reports at page I-6 that "For riparian areas,
11 the process of determining function is described in the BLM
12 Technical Reference TR 1737-9." In turn, BLM Technical
13 Reference 1737-9, an excerpted copy of which is attached hereto
14 as EXHIBIT 10, provides:
15 "Since natural riparian-wetland areas are
16 characterized by the interactions of
17 vegetation, soils, and hydrology, the
18 process of assessing whether a
19 riparian-wetland area is functioning
20 properly requires an interdisciplinary (ID)
21 team. The team should include specialists
22 in vegetation, soils, and hydrology. A
23 biologist also needs to be involved because
24 of the high fish and wildlife values
25 associated with riparian-wetland areas."
26 EXHIBIT 10, p. 2. Emphasis part of original.
27 70. Contrary to the emphasis placed by BLM itself that a
28 multi-disciplinary team must conduct the riparian functional
29 assessment, Winnemucca Field Office did not do so before
30 formulating its conclusions as to riparian functional condition.
31 Copies of the riparian functionality assessments for Cherry
32 Creek, Soldier Creek, Slumgullion Creek, and Colman Creek are
33 attached as EXHIBIT 11 (copies for Donnelly Creek were not
34 available in the Winnemucca Field Office).
35 EXHIBIT 11 demonstrates that the riparian functional
36 assessment for some of the streams was conducted by two
37 individuals, "Zeilinski and Berglund", and for some of the
38 streams was conducted by one individual, "Zeilinski". Mr.
39 Zeilinski and Mr. Berglund are both known to me personally, and
40 I am aware of their educational and vocational backgrounds. Mr.
41 Zeilinski is a Soil Scientist, and Mr. Berglund is a Fisheries
42 Biologist.
43 On no occasion did BLM include a vegetation specialist
44 (i.e. a Rangeland Management Specialist or Botanist), or a
45 Hydrologist in making their field determinations of riparian
46
47
48 Schweigert Affidavit - 26

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1 any field Assessment, BLM also failed to Evaluate such
2 Assessment and to make and issue a proper Determination
3 document.
4 63. BLM did not follow their manualized procedures for
5 making any determination of SRH #1 and #4, because BLM relied
6 upon a single form of data -- utilization -- which is not one
7 of the approved Indicators, and because their determination on
8 a "micro-scale" is not appropriate under the approved
9 methodology.
10 BLM further compounded their error by relying upon a single
11 type of information to make conclusions regarding more than one
12 Standard. EXHIBIT 9 provides that BLM is to "[s]elect a number
13 of indicators that will adequately document or explain any
14 findings. Try to use dissimilar indicators for each standard
15 rather than similar indicators that are looking at the same
16 thing." EXHIBIT 9, p. III-6.
17 EXHIBIT 9 further provides that Assessments, Evaluations,
18 and Determinations are to be made at a larger, landscape level,
19 and not limited to isolated "spots" on a map or on the
20 landscape. See EXHIBIT 9, pp. I-2 and I-3 which states that an
21 Assessment, Evaluation, and Determination are to be carried out
22 for a "specified geographic area (preferably a watershed or
23 group of contiguous watersheds)." It is therefore clear that
24 the intent of EXHIBIT 9 is not to make such Assessments,
25 Evaluations, and Determinations on a "micro-level" around such
26 occurrences as two isolated springs within a 327,000+ acre
27 Allotment.
28 64. Even the inappropriate surrogate "indicator" used by
29 BLM does not support such conclusion, because BLM either did not
30 conduct utilization monitoring within the purported zones of
31 utilization exceedence, or where they did so, the data does not
32 support the utilization level which BLM mapped. See paragraphs
33 24-30, herein.
34 h. RHS #2. Riparian/wetland systems are in
35 properly functioning condition
36 65. Rangeland Health Standard ("RHS") #2 states:
37 "Riparian/wetland systems are in properly functioning
38 condition." Exhibit "D", VEGETATION OBJECTIVES D.2, p. 49-50;
39 see also Exhibit "E", p. 21.
40 66. BLM's 2003 AE (Exhibit "D") and BLM's 2003 MASR
41 (Exhibit "E") reported that Rangeland Health Standard #2
42 regarding proper functioning condition of riparian areas, was
43 partially met.
44
45
46 Schweigert Affidavit - 25

1 functional assessment for streams within the Soldier Meadows
2 Allotment. See EXHIBIT 11.
3 71. BLM erred in interpreting their data and/or in making
4 their conclusion, as follows:
5 72. BLM's 2003 AE (EXHIBIT "D") reported the RHS was:
6 a. Wholly met for Mahogany Creek.
7 b. Wholly met for Stanley Camp Creek.
8 c. Not met for Snow Creek, but the reason
9 was unrelated to livestock and was caused
10 by wild horse damage.
11 d. Met for Colman Creek, except for one
12 reach with naturally high erosive channel
13 and vertical instability, related to the
14 geomorphology of the area through which the
15 stream flows, and one reach where naturally
16 erosive uplands are the cause for the
17 ratings. However, these factors cannot be
18 used to conclude that livestock is the
19 significant cause of the ratings, as they
20 are natural conditions of the area.
21 e. Met for Slumgullion Creek, except for
22 one reach where mechanical damage by wild
23 horses is the cause for non-achievement.
24 f. Met for Donnelly Creek, except for one
25 reach where the channel is braided, and
26 except for another reach where the stream
27 is "channeled". However, both of these
28 features are the result of natural
29 conditions unrelated to livestock grazing.
30 g. Not met for Soldiers Creek, due to lack
31 of vegetation and unstable banks. However,
32 these features are the result of natural
33 conditions unrelated to livestock grazing.
34 73. Based upon paragraph 72, BLM's 2003 AE reported that
35 the RHS was met, or where not met, the non-achievement is either
36 due to natural conditions, such as the geomorphology of the
37 area; the result of past downcutting before the beginning of the
38 evaluation period; or the result of damage caused by wild
39 horses. Therefore, no justification exists to change/modify
40 Estill's Grazing Permit and related management practices within
41 the Soldier Meadows Allotment, as appealed.
42
43
44 Schweigert Affidavit - 27

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74. BLM erred in interpreting their data and/or in making their conclusion because a more accurate survey existed.

75. BLM's 2003 AE reported a demonstrably more accurate survey upon which to rely for conclusions as to the condition of the streams upon the Soldier Meadows Allotment; namely the riparian habitat condition class from stream survey data, which BLM's 2003 AE reported. BLM's 2003 AE reported:

a. A decline in the riparian condition class of Mahogany Creek, from 68% of optimum in 1992, to 66.6% in 1997. Exhibit "D", p. 47. Whatever the significance or non-significance of such decline, it is not attributable to Estill's livestock use, since no livestock grazing has occurred on a portion of the stream excluded from livestock use for the last 25 years, and the remainder of the stream since 1994. It is likely that the stream riparian condition has reached an equilibrium, around which some year-to-year fluctuation is likely to occur.

b. An improvement in the riparian condition class of Summer Camp Creek, from 60% of optimum in 1990, to 64.5% in 1997. Exhibit "D", p. 47.

c. An improvement in the riparian condition class of Snow Creek, from 60% of optimum in 1990, to 71.5%. Exhibit "D", p. 47-48.

d. An improvement in the riparian condition class of Donnelly Creek, from 52% of optimum in 1990, to 71.3%. Exhibit "D", p. 48.

e. An improvement in the riparian condition class of Colman Creek, from 44% of optimum in 1991, to 66.6%. Exhibit "D", p. 48.

f. An improvement in the riparian condition class of Slumgullion Creek, from 48% of optimum in 1990, to 61.3% in 1999. Exhibit "D", p. 48.

Therefore, the evidence is that the streams within the Soldier Meadows Allotment have been and continue to be in an improving trend in condition under authorized use within Estill's Grazing Permit.

Schweigert Affidavit - 28

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k. RHS #5. Habitat conditions meet the life cycle requirements of special status species as related to bats and as related to Nevada Viceroy.

76. BLM's 2003 AE (Exhibit "D") and BLM's 2003 MASR (Exhibit "E") reported that Rangeland Health Standard ("RHS") #5, regarding life cycle requirements of special status species, was partially met, as related to bats (Exhibit "D", p. 54-55; see also Exhibit "E", p. 26) and as related to Nevada Viceroy (Exhibit "D", (VEGETATION OBJECTIVES D.5, p. 56-57; see also Exhibit "E", p. 28).

77. As to bat species, BLM's 2003 AE concluded that the RHS is "partially met" for Pale Townsend's big eared bat; Pacific Townsend's big-eared bat; Spotted bat; Small-footed myotis; Long-eared myotis; Fringed myotis; Long-legged myotis; and Yuma myotis.

78. As to Nevada Viceroy, BLM's 2003 AE concluded that the Standard is "partially met".

79. Though the conclusion stated in paragraph 77-78, herein, suggests a need for a change/modification in Estill's Grazing Permit, no justification exists to change/modify Estill's Grazing Permit and related management practices within the Soldier Meadows Allotment, as appealed. This is because BLM erred in interpreting the data and/or in reaching a conclusion relative to this "RHS".

80. As to bats, no basis exists for a "partially met" conclusion regarding these bat species, because:

a. BLM's 2003 AE first admits that BLM has no data or surveys concluding that the species exist on the Soldier Meadows Allotment, stating that "there exists no specific information related to breeding colonies of any of these species within the allotment". BLM, however, believes only that "potential" breeding and hibernating habitat is considered common in the mountainous and rocky areas.

b. BLM's 2003 AE provides absolutely no rationale for the "partially met" finding, except that potential high quality foraging habitat, which BLM assumes would occur near marshlands and wet meadows, is limited to less than one percent of the Allotment.

c. However, BLM's 2003 AE made no finding relative to livestock grazing affecting

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such habitats, and the fact that there naturally exists very little marshland and wet meadow "potential habitat" within the Allotment is irrelevant to the livestock use and related management practices.

d. To the extent that BLM concluded at page 45 of their 2003 AE that the utilization objective for "wet meadows" at Rock Spring and Clear Spring was not met, see paragraphs 21-23. No wet meadows occur at Rock Spring and Clear Spring.

81. As to Nevada Viceroy, no basis exists for a "partially met" conclusion regarding this butterfly species, because:

a. BLM's 2003 AE based its conclusion for the species upon a mere assumption that the "condition of these habitats is assumed to be commensurate with that of the riparian functionality data", and ties the "partially met" conclusion to the degree of achievement of "riparian functionality". Further, BLM's 2003 AE concluded only that the habitat needs "may not" be in order in areas which are Functional at risk or Non-functional. However, BLM cites absolutely no authority in making the assumption that the species's habitat needs are directly (or even indirectly) related to the riparian functionality checklist. In fact, riparian functionality checklists relate to hydrologic functioning only, not to species habitat needs. Even had BLM properly conducted its riparian functionality determinations, there is no demonstrated correlation between hydrologic functionality and the specific habitat needs of the Nevada Viceroy butterfly. See also paragraphs 67 through 74, regarding BLM's riparian functionality, which was not determined following proper BLM manualized procedures, and which show that a demonstrably more accurate survey concludes improvement in the habitat.

b. BLM's 2003 AE stated that this species of butterfly utilizes willows and aspen as host plants, and that the habitat for the species includes riparian areas, meadows and aspen wood edges. Therefore, the more reasonable conclusion is that as the

Schweigert Affidavit - 30

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Colorado Springs, CO 80901

riparian condition class goes, so goes the habitat of the Nevada Viceroy, since BLM's 2003 AE recognizes the species dependence upon the condition of willows and aspen occupying the streambanks.

c. The evidence is that the condition of the riparian areas has improved and continues to improve on the Soldier Meadows Allotment. See paragraph 73, herein. See also Exhibit "D", pp. 47-48. Therefore, the conclusion is that habitat for the Nevada Viceroy is in an improving trend in condition, and that RHS #5 as it relates to this species, is MET.

QUANTIFICATION OF GRAZING CAPACITY

82. BLM's 2004 FMUD is not reasonable in its stated quantification of grazing capacity, and sufficient forage is available to sustain at least all of Estill's Active Use AUMs, including Estill's Suspended Use AUMs (and beyond). For the reasons discussed below, there exists no reasonable basis for the FMUD to fail to immediately authorize 4,481 AUMs of Estill's "Not Scheduled" active use, and to even schedule activation of Estill's Suspended Use AUMs.

83. BLM's 1994 FMUD determined the grazing capacity allocated to livestock to be 12,168 AUMs within the Soldier Meadows Allotment. See Exhibit "C", p. 21. BLM's 2004 FMUD and related documents provide no data or conclusions that at least the same amount of forage should not be authorized. In fact, BLM's 2003 AE contains information to the contrary.

84. Exhibit "D" reports BLM's grazing capacity monitoring conducted between 1994 and 2003, which demonstrates that the available grazing capacity is more than 12,168 AUMs, as follows (all pasture names relate to pastures designated in 1994):

a. Calico Spring Pasture grazing capacity was determined in 1994 to be 5,236 AUMs. Exhibit "D", Appendix I.

b. Warm Springs Summer Pasture grazing capacity was determined in 1995 to be 23,988 AUMs; was determined in 1997 to be 18,510 AUMs; was determined in 1998 to be 17,184 AUMs, and; was determined in 1999 to be 20,279 AUMs. Exhibit "D", Appendix I. The average of these determinations is $(23,988 + 18,510 + 17,184 + 20,279) / 4 = 79,966 / 4 = 19,990$ AUMs.

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1 c. Soldier Meadows Spring Pasture grazing
2 capacity was determined in 1996 to be 5,009
AUMs. Exhibit "D", Appendix I.

3 d. Black Rock Winter Pasture grazing
4 capacity was determined in 1996 to be 1,480
AUMs. Exhibit "D", Appendix I.

5 85. Without even adding the Summit Lake Pasture into the
6 Allotment grazing capacity, the grazing capacity of the Soldier
Meadows Allotment is at least:

| | | |
|---|-----------------------------------|-------------|
| 7 | Calico Spring Pasture: | 5,236 AUMs |
| 8 | Warm Springs Pasture: | 19,990 AUMs |
| 9 | Soldier Meadows Spring Pasture: | 5,009 AUMs |
| | Black Rock Winter Pasture: | 1,480 AUMs |
| | Total (not including Summit Lake) | 31,715 AUMs |

10 86. After subtracting the total wildlife demand of 1,479
11 AUMs (Exhibit "A", p. 20), and the upper amount of AML demand
by wild horses and burros of (1116 + 2100 + 780 + 288 =) 4,284
12 AUMs (Exhibit "A", p. 19), there remains more than 27,431 AUMs
of available forage for use by Estill's livestock within the
13 Soldier Meadows Allotment. When one considers the available
forage within the remaining approximate 1/3 of the Allotment not
14 considered above (the Summit Lake Pasture), the number will
logically be even greater.

15 *Robert N. Schweigert*
16 Robert N. Schweigert

17 Subscribed and sworn to before me this 10th day of June,
18 2004.

19 *Elaine E. Anderson*
20 Notary Public in and
for the State of Idaho.
21 Residing at Boise, Idaho.
My. Comm. Exp. 12/24/2009



000 34-1827

PROFESSIONAL QUALIFICATIONS

Robert N. Schweigert

EDUCATIONAL BACKGROUND

- Bachelor of Science: Range Management, Wildlife Habitat Management Emphasis. 1977. Washington State University.
- Master of Science: Forest and Range Management, Wildlife Habitat Management Emphasis. 1980. Washington State University.
- Thesis: "Estimating Herbage Production and Protein Content as Affected by Shade and Season: Management Implications for Summer Elk Diet."
- Additional educational emphasis in Agricultural Education.
- Continuing Education: 1986 Pacific Northwest Range Management Short Course: Fire Management. Washington State University.
- 1987 Pacific Northwest Range Management Short Course: Developing Profitable Resource-Based Recreation on Private Land. Oregon State University. January 20-22, 1987.
- 1988 Pacific Northwest Range Management Short Course: Integrated Watershed Management. University of Idaho, January 19-21, 1988.
- Wildlife Disease Workshops of the Western United States. Sponsored by U.S. Fish & Wildlife Service. Washington State University. June 6-7, 1988.
- Riparian Resource Management Workshop. Sponsored by Montana Chapter American Fisheries Society, Bureau of Land Management, Western Division American Fisheries Society, Forest Service, Society for Range Management, Montana Riparian Association, & U.S. Fish and Wildlife Service. Billings, Montana. May 8-11, 1989.
- Lentic Riparian Functionality Checklist Development. Bureau of Land Management, Winnemucca, Nevada, June, 1994.

EXHIBIT 1

Riparian Plant Identification. University of Nevada at Reno. June, 1994.

Riparian Functional Assessment Seminar (Lentic and Lotic Systems). Bureau of Land Management, Susanville, California. April 26-27, 1995.

Periodic annual review of research and publications of Journal of Range Management, Journal of Wildlife Management, Transactions of the North American Wildlife and Natural Resources Conference, Transactions of the Desert Bighorn Council, Proceedings of the Northern Wild Sheep and Goat Council, Journal of Wildlife Diseases, Journal of the American Veterinary Medical Association, Veterinary Microbiology, Veterinary Record, and other veterinary publications. Washington State University Agriculture Library, Science Library, and Veterinary Library System; and University of Nevada at Reno (UNR) Agriculture Library. 1984 to present.

PROFESSIONAL EXPERIENCE

1984 To Present:

Owner of Intermountain Range Consultants, a natural resources management consulting firm. Primary business emphasis is on range monitoring studies, including utilization, utilization pattern mapping, condition, trend, actual use, climatic studies, and riparian monitoring. Primary clientele include private ranches holding grazing permits on the public range.

Other facets of the business include analysis of available data bases, and advising clients of management options involving grazing use of rangeland.

Mr. Schweigert has designed and surveyed in fences, spring developments, stockwater pipeline systems, and vegetation manipulation projects. Mr. Schweigert has written Environmental Assessments concerning such projects under National Environmental Policy Act compliance.

Mr. Schweigert has developed livestock grazing management systems and Allotment Management Plans for implementation on the public range of various grazing allotments.

1980 To 1984:

Mr. Schweigert has a knowledge of the Code of Federal Regulations which govern management by the Bureau of Land Management and U.S. Forest Service, as well as policies and planning processes and requirements developed in various states and districts.

Mr. Schweigert wrote the current Natural Resources Management Plan for the Umatilla Army Depot, Umatilla, Oregon. The plan includes management plans for range and wildlife, landscaping, pest control, munitions storage, recreational facilities, drainage, erosion control, noxious weed control, security-compatible vegetation management, and revegetation of disturbed fragile sites.

Mr. Schweigert co-authored "Resource Assessment and Management Plan: Coyote and Little Jack Basins, Elko County, Nevada" (co-authors Dr. William Platts and Sherman Jensen). This is a coordinated resource management plan concerning "Humboldt strain" of the Lahontan Cutthroat Trout, riparian habitat, vegetation management of associated annual-species-dominated rangelands, and ranch grazing strategies and implementation.

Range Conservationist/Monitoring Specialist, Bureau of Land Management, Paradise-Denio Resource Area, Winnemucca District, Winnemucca, Nevada.

As Monitoring Specialist, duties included range studies coordination of personnel in the Paradise-Denio Resource Area, an area of approximately 4.0 million acres; and conducting and analyzing range studies, which included utilization, utilization pattern mapping, actual use, climatic, condition, trend, and wildlife habitat studies.

As Range Conservationist, duties included conducting range monitoring studies on allotments assigned, range administration, drafting of numerous Environmental Assessments and one Grazing Environmental Impact Statement, writing District Manager's decisions, range improvement design and lay-out, planning and conducting of range vegetation manipulation and revegetation projects, grazing compliance, Allotment Management Plan development and revisions, and developing and implementing of range grazing systems.

Duties required working knowledge of livestock operations, management systems, BLM regulations, state and district BLM policies, NEPA requirements, wildlife habitat management and monitoring requirements, and the planning process and requirements. Duties also included coordination of the permittee, BLM, and Nevada Division of Wildlife management concerns.

1977 and 1980:

Civil Service Qualified both as a Range Conservationist and as a Wildlife Habitat Biologist.

1976:

Range Technician, U.S. Forest Service, Ennis Montana. Duties included monitoring of range utilization, conducting trend studies, and supervision of permittees grazing sheep in high mountain habitats. June-September.

BACKGROUND EXPERIENCE

1984 To 1986:

Mr. Schweigert owned and operated in partnership Magnum Hunting Club and Fowl Vacations, a hunting club and guide service in Washington and Oregon.

1973 To 1980:

While attending college, Mr. Schweigert ranched in northeast Washington on a cattle and hay ranch. This job entailed all facets of hay farming, pasture, range, and forested-range management; care, maintenance, and marketing of approximately 100 head of cattle on range, forested range, irrigated meadow, pasture, and feedlot situations.

1968 To 1973:

Farm and ranch hand on several North Dakota and Wisconsin farms, ranches, and dairies (summer).

PUBLICATIONS AND PROFESSIONAL AFFILIATIONS

Schweigert, Bob. 1987. The Business Side of Recreation Enterprises - Types of Hunting Enterprises in Proceedings of the the 1987 Pacific Northwest Range Management Short Course: Developing Profitable Resource-Based Recreation on Private Land. Oregon State University, Corvallis. pp. 131-132.

Member, Society of Range Management (national organization)
Member, Society of Range Management (Nevada Chapter)
Member, Society of Range Management (Pacific Northwest Chapter)
Member, Wildlife Society
Member, Lahonton Cutthroat Trout Recovery Team

October 05, 1995

Memorandum

To: Soldier Meadows Monitoring File

From: Ron Pearson, RMS

Subject: Utilization Studies

On October 5, 1995, I conducted utilization monitoring in the Warm Springs Pasture of the Soldier Meadows Allotment. I stopped at several locations and ran transects using the Key Forage Method, refer to site write ups.

WARM SPRINGS PAST.
 10-5-95

Driving from south to north within the summer pasture I observed no use to heavy use on the key species, refer to the attached site write ups and utilization map. The key species monitored were bluegrass, bottlebrush squirreltail, stipa, wild rye and bitterbrush. The areas that received heavy use were those sites associated with water sources at Rock Springs and Clear Springs, refer to utilization map.

SLIGHT - 23290
 MIGHT - 7561
 MOD - 6004
 HEAVY - 568
 37423

I observed 30-40 head of wild horses at the Butes.

Based upon this monitoring of the Warm Springs Pasture it appears that the allotment objectives are being achieved except for those sites at Rock and Clear Springs. The Five Mile Flat area is used season long by cattle and wild horses.

23290 x .10 = 2329
 7561 x .30 = 2268
 6004 x .50 = 3002

Ron
 R. Pearson
 Ran 568 x .70 = 398
 37423 7997 = .21
 37423

EXHIBIT 2

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 Winnemucca Field Office
 5100 East Winnemucca Boulevard
 Winnemucca, Nevada 89445
 775-623-1500

In Reply Refer To:
 (NV-022.15)

October 05, 1995

Memorandum

To: Soldier Meadows Monitoring File

From: Ron Pearson, RMS

Subject: Utilization Studies

On October 5, 1995, I conducted utilization monitoring in the Warm Springs Pasture of the Soldier Meadows Allotment. I stopped at several locations and ran transects using the Key Forage Method, refer to site write ups.

Driving from south to north within the summer pasture I observed no use to heavy use on the key species, refer to the attached site write ups and utilization map. The key species monitored were bluegrass, bottlebrush squirreltail, stipa, wild rye and bitterbrush. The areas that received heavy use were those sites associated with water sources at Rock Springs and Clear Springs, refer to utilization map.

I observed 30-40 head of wild horses at the mouth of Chukar Gulch and 20-30 head near Bear Butes.

Based upon this monitoring of the Warm Springs Pasture it appears that the allotment objectives are being achieved except for those sites at Rock and Clear Springs. The Five Mile Flat area is used season long by cattle and wild horses.

Ron Pearson
 R. Pearson
 Rangeland Mgt. Specialist

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 Range Utilization
 Key Forage Plant Method

T-1

| | | | |
|-----------------|--------------------------------|---|-----------------------|
| District | (2) Date | (3) Observer | (7) Field Name or No. |
| NV | 10-5-95 | R. Pearson | Warm Springs |
| Inventory Area | (5) Allotment | (6) Operator/Allotment | |
| | Soldier M. | R.C. Roberts | |
| Vegetation Type | (9) Range Site | (10) Kind(s) & Class(es) of Grazing Animal(s) | |
| | | | |
| Use Period | (12) Grazing Management System | | |
| | | | |

| Transect Location/Key Area No. | Use Rating of 1-5 | SIHY Key Species | | POM Key Species | | Key Species | |
|---|-------------------|------------------|-----------|-----------------|-----------|---------------|-----------|
| | | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) |
| 0 | | | | | | | |
| 10 | 2 | 140 | 1400 | 180 | 1800 | | |
| 30 | 7 | 190 | 5700 | 60 | 1800 | | |
| 50 | | | | | | | |
| 70 | | | | | | | |
| 90 | | | | | | | |
| TOTAL | | 20 | 3300 | 20 | 1800 | | |
| Average Utilization = $\frac{\sum f^2}{\sum f}$ | | 17% | | 12% | | | |

REMARKS (Use back of sheet)
 * Where f = the frequency or number of observations within each class interval (f column),
 x = the class interval midpoint (x column), and E = the summation symbol.

Range Utilization
Key Forage Plant Method

-2

(1) Date: 10-5-95
(2) Observer: R. Pearson
(3) Allotment: Soldier M.
(4) Operator/Allottee: R.C. Roberts
(5) Field Name or No.: Warm Springs
(6) Range Site: (7) Kind(s) & Class(es) of Grazing Animal(s):
(8) Grazing Management System:

Location/Key Area No.: WARM SPRINGS CANYON

| Rating of Year's Growth | Mid-Point (x) | SIYH Key Species Frequency (f) | SIYH Key Species (f) X (x) | STH2 Key Species Frequency (f) | STH2 Key Species (f) X (x) | POA Key Species Frequency (f) | POA Key Species (f) X (x) |
|-------------------------|---------------|--------------------------------|----------------------------|--------------------------------|----------------------------|-------------------------------|---------------------------|
| 0 | 0 | | | | | | |
| 10 | 10 | 100 | 1000 | 7 | 70 | 110 | 1100 |
| 30 | 30 | 300 | 9000 | 210 | 6300 | 90 | 2700 |
| 50 | 50 | | | | | | |
| 70 | 70 | | | | | | |
| 90 | 90 | | | | | | |
| TOTAL | | 20 | 400 | 13 | 270 | 14 | 200 |

Average Utilization = $\frac{\sum fx}{\sum f} = \frac{2090}{20} = 104.5\%$

Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.

Range Utilization
Key Forage Plant Method

F-H

(1) Date: 10-5-95
(2) Observer: R. Pearson
(3) Allotment: Soldier M.
(4) Operator/Allottee: R.C. Roberts
(5) Field Name or No.: Warm Springs
(6) Range Site: (7) Kind(s) & Class(es) of Grazing Animal(s):
(8) Grazing Management System:

Location/Key Area No.: side of 5 mi. rd - north of Bear Buttes - Cowi Hase 300 13/2 W.H. 13 mi. SW

| Rating of Year's Growth | Mid-Point (x) | POA Key Species Frequency (f) | POA Key Species (f) X (x) | STH4 Key Species Frequency (f) | STH4 Key Species (f) X (x) | PATR2 Key Species Frequency (f) | PATR2 Key Species (f) X (x) |
|-------------------------|---------------|-------------------------------|---------------------------|--------------------------------|----------------------------|---------------------------------|-----------------------------|
| 0 | 0 | | | | | | |
| 10 | 10 | 100 | 1000 | 2 | 20 | 50 | 500 |
| 30 | 30 | 180 | 5400 | 7 | 210 | 180 | 5400 |
| 50 | 50 | | | | | | |
| 70 | 70 | | | | | | |
| 90 | 90 | | | | | | |
| TOTAL | | 20 | 280 | 14 | 230 | 12 | 10 |

Average Utilization = $\frac{\sum fx}{\sum f} = \frac{1490}{20} = 74.5\%$

Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.

101 = SIDE TRACT
2 = loader on 21 plot
3 = " " on 21 " "
4 = Along Tract look NE

Range Utilization
Key Forage Plant Method

(1) Date: 10-5-95
(2) Observer: R. Pearson
(3) Allotment: Soldier M.
(4) Operator/Allottee: R.C. Roberts
(5) Field Name or No.: Warm Springs
(6) Range Site: (7) Kind(s) & Class(es) of Grazing Animal(s):
(8) Grazing Management System:

Location/Key Area No.: Bear Buttes Key Area Hase / cow sign down of site

| Rating of Year's Growth | Mid-Point (x) | SIYH Key Species Frequency (f) | SIYH Key Species (f) X (x) | STH2 Key Species Frequency (f) | STH2 Key Species (f) X (x) | POA Key Species Frequency (f) | POA Key Species (f) X (x) |
|-------------------------|---------------|--------------------------------|----------------------------|--------------------------------|----------------------------|-------------------------------|---------------------------|
| 0 | 0 | | | | | | |
| 10 | 10 | 70 | 700 | 1 | 10 | 50 | 500 |
| 30 | 30 | 90 | 2700 | | | 90 | 2700 |
| 50 | 50 | | | | | | |
| 70 | 70 | | | | | | |
| 90 | 90 | | | | | | |
| TOTAL | | 20 | 160 | 14 | 140 | 10 | 900 |

Average Utilization = $\frac{\sum fx}{\sum f} = \frac{890}{20} = 44.5\%$

Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.

Range Utilization
Key Forage Plant Method

(1) Date: 10-5-95
(2) Observer: R. Pearson
(3) Allotment: Soldier M.
(4) Operator/Allottee: R.C. Roberts
(5) Field Name or No.: Warm Springs
(6) Range Site: (7) Kind(s) & Class(es) of Grazing Animal(s):
(8) Grazing Management System:

Location/Key Area No.: FIVE MILE FLAT

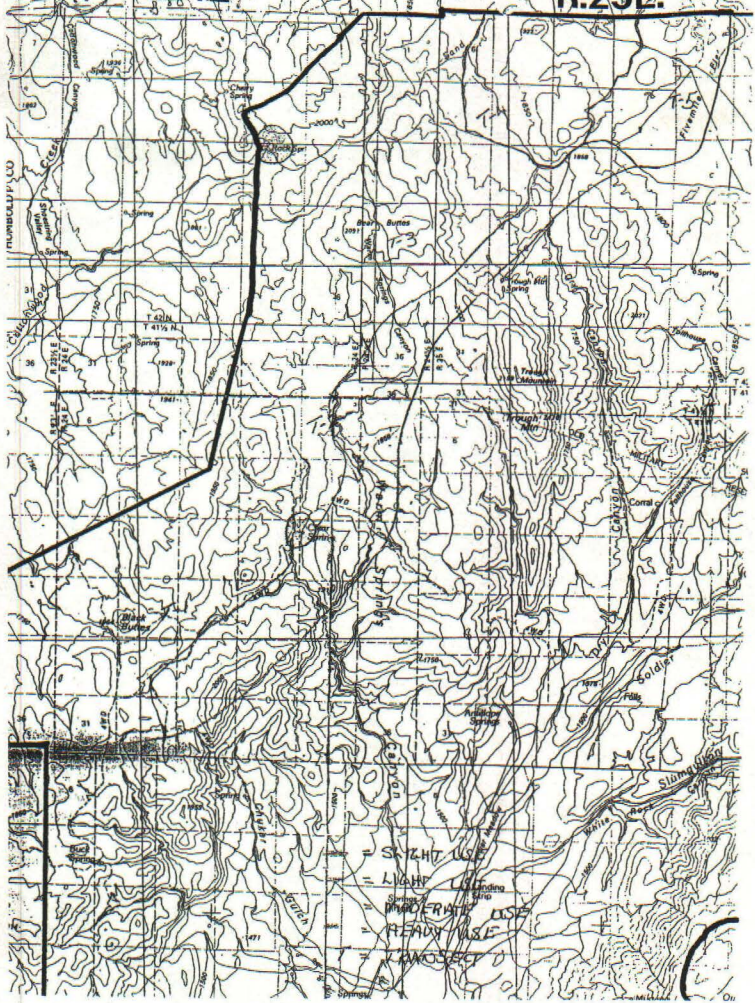
| Rating of Year's Growth | Mid-Point (x) | SIYH Key Species Frequency (f) | SIYH Key Species (f) X (x) | STH4 Key Species Frequency (f) | STH4 Key Species (f) X (x) | POA Key Species Frequency (f) | POA Key Species (f) X (x) |
|-------------------------|---------------|--------------------------------|----------------------------|--------------------------------|----------------------------|-------------------------------|---------------------------|
| 0 | 0 | | | | | | |
| 10 | 10 | | | | | | |
| 30 | 30 | 120 | 3600 | 60 | 1800 | 90 | 2700 |
| 50 | 50 | 500 | 15000 | 7 | 210 | 300 | 9000 |
| 70 | 70 | 140 | 4200 | 70 | 2100 | | |
| 90 | 90 | | | | | | |
| TOTAL | | 16 | 760 | 9 | 430 | 8 | 340 |

Average Utilization = $\frac{\sum fx}{\sum f} = \frac{4890}{20} = 244.5\%$

Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.

R.24E

R.25E



November 04, 1997

Memorandum

To: Soldier Meadows Monitoring I **WARM SPRINGS PASTURE**
From: Ron Pearson, RMS **11-04-97**
Subject: Utilization Studies

On November 4, 1997, I conducted utilization monitoring in the Warm Springs Pasture of the Soldier Meadows Allotment. I stopped at several locations and ran transects using the Key Forage Method, refer to site write ups.

Driving from south to north within the summer pasture I observed no use to heavy use on the key species, refer to the attached site write ups and utilization map. The key species monitored were bluegrass, bottlebrush squirreltail, stipa and bitterbrush. The areas that received heavy use were those sites associated with water sources at Rock Springs and Clear Springs, refer to utilization map.

I observed 50-60 head of wild horses on the toe slopes west of the mouth of Chukar Gulch.

Based upon this monitoring of the Warm Springs Pasture it appears that the allotment objectives are being achieved except for those sites at spring sources.

| | | |
|--------|-------|-------------------|
| SLIGHT | - | 14455 |
| MID | - | 15258 |
| MOD | - | 2261 |
| HEAVY | - | 327 |
| | | <u>32301</u> |
| 14455 | X .10 | = 1446 |
| 15258 | X .30 | = 4577 |
| 2261 | X .50 | = 1131 |
| 327 | X .70 | = 229 |
| 32301 | | <u>7383</u> = .23 |
| | | 32301 |

EXHIBIT 3

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Winnemucca Field Office
5100 East Winnemucca Boulevard
Winnemucca, Nevada 89445
775-623-1500

In Reply Refer To:
(NV-022.15)

November 04, 1997

Memorandum

To: Soldier Meadows Monitoring File
From: Ron Pearson, RMS
Subject: Utilization Studies

On November 4, 1997, I conducted utilization monitoring in the Warm Springs Pasture of the Soldier Meadows Allotment. I stopped at several locations and ran transects using the Key Forage Method, refer to site write ups.

Driving from south to north within the summer pasture I observed no use to heavy use on the key species, refer to the attached site write ups and utilization map. The key species monitored were bluegrass, bottlebrush squirreltail, stipa and bitterbrush. The areas that received heavy use were those sites associated with water sources at Rock Springs and Clear Springs, refer to utilization map.

I observed 50-60 head of wild horses on the toe slopes west of the mouth of Chukar Gulch.

Based upon this monitoring of the Warm Springs Pasture it appears that the allotment objectives are being achieved except for those sites at spring sources.

Ron Pearson
R. Pearson
Rangeland Mgt. Specialist

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Range Utilization
Key Forage Plant Method

| | | |
|--|--|---------------------------------------|
| (1) District WV | (2) Date 11-04-97 | (3) Observer R. Pearson |
| (4) Resource Area Soldier M. | (5) Allotment Est 1 | (6) Operator/Allottee Est 1 |
| (8) Vegetation Type (9) Range Site | (7) Field Name or No. Warm Springs | |
| (11) Use Period | (12) Grazing Management System | |
| (13) Transect Location/Key Area No. EAST OF BLACK BUTTES | | |

| (14) Use Rating of Current Year's Growth | Mid-Point (x) | Key Species Frequency | | Key Species Frequency | | Key Species Frequency | |
|--|---------------|-------------------------------------|-----------|-------------------------------------|-----------|-----------------------|-----------|
| | | (f) | (f) X (x) | (f) | (f) X (x) | (f) | (f) X (x) |
| 10 | 10 | <input checked="" type="checkbox"/> | 120 | <input type="checkbox"/> | 80 | | |
| 30 | 30 | <input type="checkbox"/> | 240 | <input checked="" type="checkbox"/> | 300 | | |
| 50 | 50 | | | | | | |
| 70 | 70 | | | | | | |
| 90 | 90 | | | | | | |
| TOTAL | | 20 | 360 | 18 | 380 | | |

Average Utilization = $\frac{\sum fx}{\sum f} = \frac{1890}{100} = 18.9\%$

REMARKS (Use back of sheet)

* Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.
NV 4400-12 (January 1991)

Range Utilization
Key Forage Plant Method

2

File # 11-04-97 (2) Date
Observer R. PEARSON (3) Observer
Resource Area Soliter M. (4) Allotment
Operator/Allottee ESTILL (6) Operator/Allottee
Field Name or No. WARM SPRINGS (7) Field Name or No.
Range Site (9) Range Site
Kind(s) & Class(es) of Grazing Animal(s) (10) Kind(s) & Class(es) of Grazing Animal(s)
Grazing Management System (12) Grazing Management System

Transect Location/Key Area No. WARM SPRINGS CANYON

| Use Rating of Year's Growth | Mid-Point (x) | SIH2 Key Species | | POA Key Species | | STH2 Key Species | |
|--|---------------|------------------|-----------|-----------------|-----------|------------------|-----------|
| | | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) |
| 0 | | | | | | | |
| 10 | | 10 | 110 | 150 | 120 | | |
| 30 | | 30 | 30 | 60 | | | |
| 50 | | | | | | | |
| 70 | | | | | | | |
| 90 | | | | | | | |
| TOTAL | | 12 | 140 | 16 | 180 | 14 | 180 |
| Range Utilization = $\frac{\sum fx}{\sum f}$ | | 12% | | 11% | | 13% | |

Where f = the frequency or number of observations within each class interval (f column),
x = the class interval midpoint (x column), and Σ = the summation symbol.
NV 4400-12 (January 1982)

Range Utilization
Key Forage Plant Method

7-4

File # 11-04-00 (2) Date
Observer R. PEARSON (3) Observer
Resource Area Soliter M. (4) Allotment
Operator/Allottee ESTILL (6) Operator/Allottee
Field Name or No. WARM SPRINGS (7) Field Name or No.
Range Site (9) Range Site
Kind(s) & Class(es) of Grazing Animal(s) (10) Kind(s) & Class(es) of Grazing Animal(s)
Grazing Management System (12) Grazing Management System

Transect Location/Key Area No. ROCK SPRINGS

| Use Rating of Year's Growth | Mid-Point (x) | POA Key Species | | STH2 Key Species | | PLTR Key Species | |
|--|---------------|-----------------|-----------|------------------|-----------|------------------|-----------|
| | | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) |
| 0 | | | | | | | |
| 10 | | 10 | 80 | 80 | 20 | | |
| 30 | | 30 | 330 | 210 | | | |
| 50 | | 50 | 50 | | | | |
| 70 | | | | | | | |
| 90 | | | | | | | |
| TOTAL | | 20 | 460 | 15 | 290 | 2 | 20 |
| Range Utilization = $\frac{\sum fx}{\sum f}$ | | 23% | | 19% | | 10% | |

Where f = the frequency or number of observations within each class interval (f column),
x = the class interval midpoint (x column), and Σ = the summation symbol.
NV 4400-12 (January 1982)

Range Utilization
Key Forage Plant Method

7-3

File # 11-04-00 (2) Date
Observer R. PEARSON (3) Observer
Resource Area Soliter M. (4) Allotment
Operator/Allottee ESTILL (6) Operator/Allottee
Field Name or No. WARM SPRINGS (7) Field Name or No.
Range Site (9) Range Site
Kind(s) & Class(es) of Grazing Animal(s) (10) Kind(s) & Class(es) of Grazing Animal(s)
Grazing Management System (12) Grazing Management System

Transect Location/Key Area No. NORTH OF BEAR BUTTES

| Use Rating of Year's Growth | Mid-Point (x) | STH2 Key Species | | POA Key Species | | PLTR Key Species | |
|--|---------------|------------------|-----------|-----------------|-----------|------------------|-----------|
| | | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) |
| 0 | | | | | | | |
| 10 | | 10 | 20 | 50 | | | |
| 30 | | 30 | 420 | 360 | | | |
| 50 | | 50 | 200 | 50 | | | |
| 70 | | | | | | | |
| 90 | | | | | | | |
| TOTAL | | 20 | 640 | 18 | | | |
| Range Utilization = $\frac{\sum fx}{\sum f}$ | | 32% | | 26% | | | |

Where f = the frequency or number of observations within each class interval (f column),
x = the class interval midpoint (x column), and Σ = the summation symbol.
NV 4400-12 (January 1982)

Range Utilization
Key Forage Plant Method

7-5

File # 11-04-00 (2) Date
Observer R. PEARSON (3) Observer
Resource Area Soliter M. (4) Allotment
Operator/Allottee ESTILL (6) Operator/Allottee
Field Name or No. WARM SPRINGS (7) Field Name or No.
Range Site (9) Range Site
Kind(s) & Class(es) of Grazing Animal(s) (10) Kind(s) & Class(es) of Grazing Animal(s)
Grazing Management System (12) Grazing Management System

Transect Location/Key Area No. FIVE MILE FLAT

| Use Rating of Year's Growth | Mid-Point (x) | STH2 Key Species | | POA Key Species | | Key Species | |
|--|---------------|------------------|-----------|-----------------|-----------|---------------|-----------|
| | | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) |
| 0 | | | | | | | |
| 10 | | 10 | | 10 | | | |
| 30 | | 30 | 150 | 60 | | | |
| 50 | | 50 | 550 | 400 | | | |
| 70 | | 70 | 70 | | | | |
| 90 | | | | | | | |
| TOTAL | | 17 | 770 | 11 | 470 | | |
| Range Utilization = $\frac{\sum fx}{\sum f}$ | | 45% | | 43% | | | |

Where f = the frequency or number of observations within each class interval (f column),
x = the class interval midpoint (x column), and Σ = the summation symbol.
NV 4400-12 (January 1982)

R.24E

R.25E



In Reply Refer To:
 (NV-022.15)

October 07, 1999

Memorandum

To: Soldier Meadows Monitoring File

From: Ron Pearson, RMS

WARD, SPRINGS 10/7/99

Subject: Utilization Studies

On October 7, 1999, Arn Berglund and I conducted utilization monitoring in the Warm Springs Pasture of the Soldier Meadows Allotment. We stopped at several locations and ran transects using the Key Forage Method, refer to site write ups and utilization map.

3286, 3335 - 3311
 9390, 9464 - 9427
 321, 325 - 323
 370, 375 - 373
 23479, 23570 - 23535 - 696
 22839

Driving from south to north within the summer pasture, refer to the attached site write ups and utilization map. The key species monitored were bluegrass, bottlebrush squirreltail, stipa, wild rye and bitterbrush. The areas that received heavy use were those sites associated with water sources at Rock Springs and Clear Springs, refer to utilization map.

Based upon this monitoring of the Warm Springs Pasture it appears that the allotment objectives are being achieved except for those sites at Rock Springs and Clear Springs. The Five Mile Flat area has received moderate use and is used season long by cattle.

9427 X .10 = 943
 22839 X .30 = 6852
 3311 X .50 = 1656
 696 X .70 = 487
 Ron Pear 36273 9938 .27
 R. L. Rangelan 36273

EXHIBIT 4

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 Winnemucca Field Office
 5100 East Winnemucca Boulevard
 Winnemucca, Nevada 89445
 775-623-1500

In Reply Refer To:
 (NV-022.15)

October 07, 1999

Memorandum

To: Soldier Meadows Monitoring File

From: Ron Pearson, RMS

Subject: Utilization Studies

On October 7, 1999, Arn Berglund and I conducted utilization monitoring in the Warm Springs Pasture of the Soldier Meadows Allotment. We stopped at several locations and ran transects using the Key Forage Method, refer to site write ups and utilization map.

Driving from south to north within the summer pasture I observed no use to heavy use on the key species, refer to the attached site write ups and utilization map. The key species monitored were bluegrass, bottlebrush squirreltail, stipa, wild rye and bitterbrush. The areas that received heavy use were those sites associated with water sources at Rock Springs and Clear Springs, refer to utilization map.

Based upon this monitoring of the Warm Springs Pasture it appears that the allotment objectives are being achieved except for those sites at Rock and Clear Springs. The Five Mile Flat area has received moderate use and is used season long by cattle and wild horses.

Ron Pearson
 R. L. Pearson
 Rangeland Mgt. Specialist

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 Range Utilization
 Key Forage Plant Method

| | | | | | | |
|--|--------------------------------|---|-----------------------|---|--|--|
| (1) District | (2) Date | (3) Observer | (7) Field Name or No. | | | |
| WVAV | 76-7-99 | BERGLUND / PEARSON | WARM SPRINGS | | | |
| (4) Resource Area | (5) Allotment | (6) Operator/Allottee | (7) Field Name or No. | | | |
| Soldier M. | ESTILL | | WARM SPRINGS | | | |
| (8) Vegetation Type | (9) Range Site | (10) Kind(s) & Class(es) of Grazing Animal(s) | | | | |
| | | | | | | |
| (11) Use Period | (12) Grazing Management System | | | | | |
| | | | | | | |
| (13) Transect Location/Key Area No. | | | | | | |
| 1 mile east of Black Buttes T-1 | | | | | | |
| UHT 4H | Mid-Point (x) | S1H4 Key Species Frequency (f) (f) X (x) | | POA Key Species Frequency (f) (f) X (x) | | |
| (14) Use Rating of Current Year's Growth | | | | | | |
| 0 | | | | | | |
| 10 | | 20 | | 30 | | |
| 30 | | 150 | | 120 | | |
| 50 | | 150 | | 150 | | |
| 70 | | | | | | |
| 90 | | | | | | |
| TOTAL | 10 | 320 | 10 | 300 | | |
| Average Utilization = $\frac{\sum fx}{\sum f}$ = 32% 30% | | | | | | |
| REMARKS (Use back of sheet) | | | | | | |

* Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.

Range Utilization
Key Forage Plant Method

District: WJN Date: 10/7/99 Observer: BERGLUND / PEARSON
Resource Area: Soldier M. Allotment: ESTILL Field Name or No.: WARM SPRINGS
Vegetation Type: (9) Range Site (10) Kind(s) & Class(es) of Grazing Animal(s):
Use Period: (11) Use Period (12) Grazing Management System

Transect Location/Key Area No.: 1.5 mile North of Clear Springs T-2

| Use Rating of Current Year's Growth | Mid-Point (x) | SIHY Key Species | | POA Key Species | | STH2 Key Species | |
|-------------------------------------|---------------|------------------|-----------|-----------------|-----------|------------------|-----------|
| | | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) |
| 0 | | | | | | | |
| 10 | | 20 | 200 | 30 | 300 | 20 | 200 |
| 30 | | 180 | 5400 | 150 | 4500 | 150 | 4500 |
| 50 | | 100 | 3000 | 100 | 3000 | 100 | 3000 |
| 70 | | | | | | | |
| 90 | | | | | | | |
| TOTAL | | 10 | 300 | 10 | 280 | 9 | 270 |

Average Utilization = $\frac{\sum fx}{\sum f} = \frac{3090}{10} = 309\%$

REMARKS (Use back of sheet)

* Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.

Range Utilization
Key Forage Plant Method

District: WJN Date: 10/7/99 Observer: BERGLUND / PEARSON
Resource Area: Soldier M. Allotment: ESTILL Field Name or No.: WARM SPRINGS
Vegetation Type: (9) Range Site (10) Kind(s) & Class(es) of Grazing Animal(s):
Use Period: (11) Use Period (12) Grazing Management System

Transect Location/Key Area No.: Bear Butte & N. Resource KEY T-4

| Use Rating of Current Year's Growth | Mid-Point (x) | PLTR2 Key Species | | SIHY Key Species | | STH2 Key Species | |
|-------------------------------------|---------------|-------------------|-----------|------------------|-----------|------------------|-----------|
| | | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) |
| 0 | | 7 | 0 | | 0 | | 0 |
| 10 | | 40 | 400 | 60 | 600 | 60 | 600 |
| 30 | | | | 60 | 1800 | 60 | 1800 |
| 50 | | | | | | | |
| 70 | | | | | | | |
| 90 | | | | | | | |
| TOTAL | | 10 | 400 | 9 | 1200 | 8 | 1200 |

Average Utilization = $\frac{\sum fx}{\sum f} = \frac{490}{10} = 49\%$

REMARKS (Use back of sheet)

* Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.

District: WJN Date: 10/7/99 Observer: BERGLUND / PEARSON
Resource Area: Soldier M. Allotment: ESTILL Field Name or No.: WARM SPRINGS
Vegetation Type: (9) Range Site (10) Kind(s) & Class(es) of Grazing Animal(s):
Use Period: (11) Use Period (12) Grazing Management System

Transect Location/Key Area No.: Bear Butte Tread Site KEY T-3

| Use Rating of Current Year's Growth | Mid-Point (x) | PLTR Key Species | | STH2 Key Species | | POA Key Species | |
|-------------------------------------|---------------|------------------|-----------|------------------|-----------|-----------------|-----------|
| | | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) |
| 0 | | 1 | 0 | | 0 | | 0 |
| 10 | | 10 | 100 | 20 | 200 | 30 | 300 |
| 30 | | | | 150 | 4500 | 180 | 5400 |
| 50 | | | | 100 | 3000 | | |
| 70 | | | | | | | |
| 90 | | | | | | | |
| TOTAL | | 10 | 100 | 9 | 2700 | 9 | 2700 |

Average Utilization = $\frac{\sum fx}{\sum f} = \frac{190}{10} = 19\%$

REMARKS (Use back of sheet)

* Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.

Range Utilization
Key Forage Plant Method

District: WJN Date: 10/7/99 Observer: BERGLUND / PEARSON
Resource Area: Soldier M. Allotment: ESTILL Field Name or No.: WARM SPRINGS
Vegetation Type: (9) Range Site (10) Kind(s) & Class(es) of Grazing Animal(s):
Use Period: (11) Use Period (12) Grazing Management System

Transect Location/Key Area No.: FIVE MILE FLAT KEY T-5

| Use Rating of Current Year's Growth | Mid-Point (x) | SIHY Key Species | | FLC12 Key Species | | POA Key Species | |
|-------------------------------------|---------------|------------------|-----------|-------------------|-----------|-----------------|-----------|
| | | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) | Frequency (f) | (f) X (x) |
| 0 | | | | | | | |
| 10 | | | | | | | |
| 30 | | | | 60 | 1800 | | |
| 50 | | | | 250 | 7500 | 300 | 9000 |
| 70 | | | | 350 | 10500 | 280 | 8400 |
| 90 | | | | | | | |
| TOTAL | | 10 | 600 | 2 | 60 | 10 | 840 |

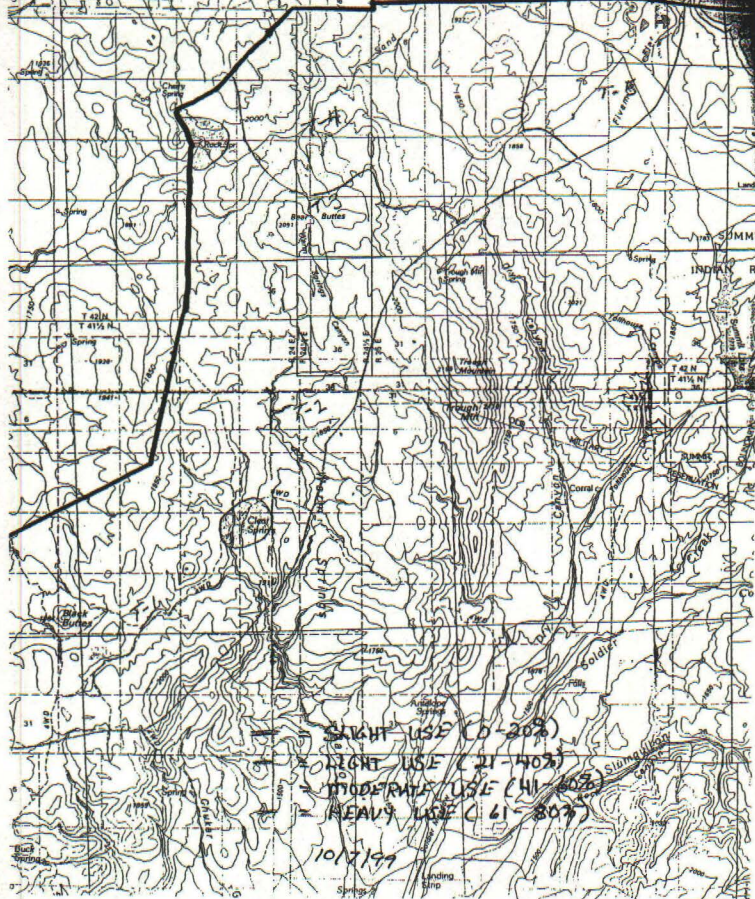
Average Utilization = $\frac{\sum fx}{\sum f} = \frac{607}{10} = 607\%$

REMARKS (Use back of sheet)

* Where f = the frequency or number of observations within each class interval (f column), x = the class interval midpoint (x column), and Σ = the summation symbol.

R.24E.

R.25E.



SLIGHT USE (D-203)
LIGHT USE (21-403)
MODERATE USE (41-803)
HEAVY USE (61-803)

10/2/99



BUREAU OF LAND MANAGEMENT
Winnemucca Field Office
5100 East Winnemucca Boulevard
Winnemucca, Nevada 89445
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In Reply Refer To:
4120
(NV-022.18)

March 10, 2003

Dear Interested Public:

On March 3, 2003, I issued the Final Allotment Re-Evaluation for the Soldier/Paiute Meadows Allotments along with a Determination/Management Action Selection Report. At that time, I stated that the Environmental Assessment for these two allotment would be forth coming.

Please find the Environmental Assessment for the Soldier Meadows Allotment. Please review and provide comments back to me at the above address by March 28, 2003.

If you have any questions, please contact Matt Varner at (775) 623-1500.

Sincerely,

Les W. Boni
Assistant Field Manager
Renewable Resources

Enclosure - Environmental Assessment Soldier Meadows Allotment

EXHIBIT 5

SOLDIER MEADOWS MULTIPLE USE MANAGEMENT ENVIRONMENTAL ASSESSMENT

E.A. NO. NV-020-03-09



MARCH 10, 2003

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1 BACKGROUND

1.1 Introduction

The Draft Soldier/Paiute Meadows Allotments Re-evaluation (AE) was mailed to the interested publics and permittees on December 7, 2001. The final AE was sent to the interested publics and permittees on March 3, 2003 along with BLMs "Determination/Management Action Selection Report" (MASR), which was also signed on March 3, 2003. The purpose of the Draft AE was to obtain data to evaluate if present livestock and wild horse and burro management was meeting allotment specific objectives and the Standards for Rangeland Health. The Draft AE also provided technical recommendations for management of livestock, wild horse and burros, and wildlife that would result in achievement and/or maintaining objectives and standards.

The Draft AE identified six livestock management technical recommendations for the SMA. However, it did not recommend any change in management of wild horses and burros or for wildlife.

The Soldier Meadows Allotment (SMA) MASR concluded that some of the Allotment Objectives and the Standards for Rangeland Health were not being met or achieved, and existing livestock and wild horse and burro management were contributing to the non-attainment. The areas not meeting objectives and/or standards include: exceeding upland and riparian herbaceous vegetative utilization levels, exceeding stubble height criteria and not improving the riparian condition.

The Final AE and MASR identified one livestock management action from the six technical recommendations identified in the Draft AE. Neither of these documents recommended changes in the management of wild horses and burros or for wildlife.

Based on the technical recommendations, livestock management alternatives were developed and analyzed in this Environmental Assessment (EA). Other than the Alternative 2 (No Action), the alternatives would achieve allotment specific Objectives, Terms/Conditions and the Standards for Rangeland Health. This EA evaluates impacts on the natural, cultural and human environment resulting from livestock grazing management throughout the SMA. A separate EA will be prepared for the Paiute Meadows Allotment.

1.2 Purpose/Need:

The purpose for this EA is to develop and analyze grazing management alternatives including the proposed action that would result in achieving site specific Allotment Objectives and the Standards for Rangeland health. On March 3, 2003 a MASR was issued by BLM, which established the need for change in livestock management for the SMA.

1.3 Decisions To Be Made:

This EA would be utilized by the Authorized Officer to determine livestock management for the allotment and would be used to identify and develop stipulations and mitigation measures. In addition, the EA would be used to determine if there are significant impacts generated from the

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September or October, and then they tend to rebound slightly as transpiration in the riparian zone slows and evaporation is at a minimum. The magnitude and duration of flow events differ for all of the above listed streams, yet the annual flow behavior of each is similar. This behavior is typical of streams within this region and is graphically illustrated above in the 1999 hydrograph for Mahogany Creek (Figure 1).

The quality of Soldier Meadows' water resources has been measured since 1995. The analysis has included continuous temperature monitoring, chemical constituent sampling, and physical habitat assessment. The temperature monitoring and physical habitat condition assessment are addressed in the Fisheries/Aquatic Resources section. The following sections describe the chemical water quality for those constituents that were analyzed.

3.1.1 Water Quality of the Desert Dace Habitat Area

In 1999, the Winnemucca Field Office commissioned the University of Nevada-Reno to conduct a water quality investigation of the Soldier Meadows hot springs complex. More specifically, the analysis was conducted to determine what level of impact was occurring to the Desert Dace habitat as a result of grazing and recreation. The shaded values represent measurements that exceed either the standard or the EPA recommendations.

Table 1. Desert dace water quality data

| Reach/Point | Flow (cfs) | Temperature (°C) | pH | Dissolved Oxygen (mg/L) | Total Dissolved Solids (mg/L) | Ammonia Nitrogen (mg/L) | Total Nitrogen (mg/L) | Total Phosphorus (mg/L) | Conductivity (µmhos/cm) | Water Temperature (°C) | Water Temperature (°F) | Dissolved Oxygen (mg/L) | |
|-------------|------------------|------------------|------------------|-------------------------|-------------------------------|-------------------------|-----------------------|-------------------------|-------------------------|------------------------|------------------------|-------------------------|------------------|
| Reach 1 | 500 ¹ | 4.3 ² | 228 ³ | .30 ¹ | | | | | | | | 6.5-8.5 ¹ | 5.0 ¹ |
| Site 1 | 222-246 | 0.4-1 | <1-<1 | .03-.04 | 2-<2 | 34.9-39.0 | 293-350 | | | | | | 5.16-6.44 |
| Site 2 | 235-255 | .8-2.3 | <1-<1 | .03-.05 | 3-<2 | 18-29.8 | 298-347 | | | | | | 6.03-7.66 |
| Site 3 | 232-249 | 7-2.5 | <1-<1 | .03-.05 | 2-<2 | 21.3-29.0 | 296-348 | | | | | | 5.88-7.15 |
| Site 4 | 202-214 | | <1-<1 | .03-.07 | 5-<2 | 24.1-27.5 | 176-276 | | | | | 7.1-7.9 | 3.89-5.82 |
| Site 5 | 201-212 | 2-5 | <1-<1 | .04-.04 | 2-<2 | 26.0-27.0 | 235-287 | | | | | 6.9-7.6 | 4.29-4.68 |
| Site 6 | 189-206 | 3-1.6 | <1-<1 | .04-.05 | 1-<2 | 24.6-27.5 | 241-286 | | | | | | 4.4-6.4 |
| Site 7 | 198-220 | | <1-<1 | .03-.13 | 6-<2 | 22.1-29.2 | 215-283 | | | | | | 5.77-9.78 |

¹ Adopted from NAC 445A.124-Commonly referred to as Nevada's Class A standards

² EPA 2000

³ This benchmark, as taken from the Environmental Protection Agency's document EPA 822-B-00-016, is for Total Kjeldahl Nitrogen (TKN). TKN is a measure of both organic nitrogen and Ammonia. Therefore, if the ammonia results are exceeding the recommendation for TKN, there is a high likelihood that livestock or human activities are unduly influencing the water source.

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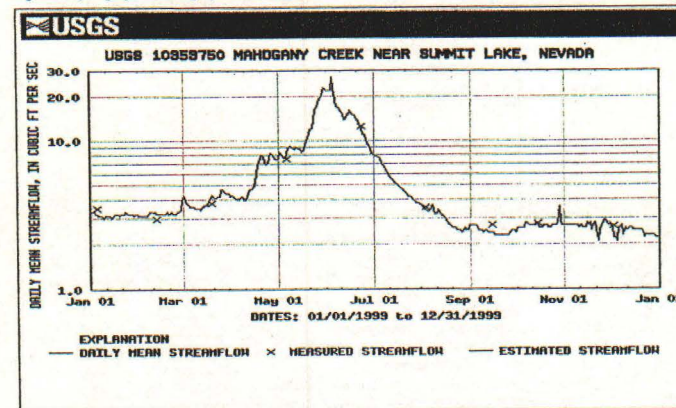
3 AFFECTED ENVIRONMENT

3.1 Water Resources

The SMA contains numerous surface water resources, including: perennial, intermittent and ephemeral streams, cold springs, wet meadows, thermal springs and a reservoir. The area is unique because it generates a high level of public and regulatory interest due to the cultural, recreational and biological diversity. This diversity is intrinsically linked to the water resources of the allotment.

Precipitation within the allotment is spatially variable and orographically influenced with annual estimates ranging from 5 inches on the valley bottoms to 20-24 inches at the upper elevations. Climate patterns are typical of the Great Basin physiographic province with hot, dry summers and cold, moist winters. The hydrography of the area follows this same pattern with north/south trending mountain ranges with primary drainage perpendicular to the ranges, running towards the axis of the valleys.

Figure 1. Hydrograph of Mahogany Creek (1999)



The perennial stream reaches are located in the primary drainage features. The majority of the perennial stream reaches are found within the Colman Creek, Donnelly Creek, Slungullion Creek, Snow Creek, Mahogany Creek, and Summer Camp Creek (a tributary of Mahogany) watersheds. They tend to have a runoff flow event in the months of March through May or June at which time they quickly retreat to a baseflow condition extending from July through

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The study included seven sample points within the desert dace habitat area (see Appendix 19). Of the seven sites four were sampled six times and three were sampled five times. Table 1 depicts the range of results across all sampling events. As stated in the report, and can be seen in the table, the resulting water quality was good to excellent. The report did note that there were slight increases in total dissolved solids and conductivity following Memorial and Labor Day weekends which was most likely associated with recreational bathing in the spring pools. The report further noted that sites four and seven showed increases in turbidity and site seven also demonstrated one elevated result for phosphorous which the authors attributed to livestock grazing (Peacock et al. 2001).

It is also important to note, when evaluating water quality, that the quality of a specific water resource must take into consideration the quality that the source is capable of producing. There are many instances where, due to natural degradation, a water source may not be capable of meeting standards or resource objectives where standards are not established.

3.1.2 Water Quality of the Perennial Stream Reaches

The water quality of the perennial stream reaches was sampled during 2001 and 2002. The sampling was conducted to obtain data to determine whether or not the Standards for Rangeland Health, specific to water quality, were being achieved. As such, the analysis was limited to those constituents that are most readily influenced by livestock grazing. The monitoring events included three discreet samples to correspond with the three flow periods described previously.

The benchmarks (located in Tables 1 and 2) are for reference purposes only. They have been derived from the Environmental Protection Agency's document EPA 822-B-00-016 *Ambient Water Quality Criteria Recommendations*, and the State of Nevada's Class A standards (NAC 445A.124 Appendix 12). The EPA recommendations have only been incorporated where Nevada's Class A standards are silent. The majority of water sources within the SMA have not been evaluated by the Nevada Division of Environmental Protection (NDEP), Bureau of Water Quality Planning (BWQP) and consequently, have no specific water quality standards. This holds true for all sources except for the tributaries of Summit Lake.

Mahogany Creek and, by virtue of the tributary rule, Summer Camp Creek have been designated as Class A waters by BWQP. The designation extends from the headwaters to Summit Lake. Summit Lake is designated as a Class B water. Snow Creek, which has not been specifically designated, is considered to be a Class B water since it is directly tributary to Summit Lake.

The shaded values represent measurements that exceed either the standard or the EPA recommendations.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FOREST GUARDIANS, et al.
Plaintiff,
v.
UNITED STATES BUREAU OF LAND
MANAGEMENT,
Defendant.

Case No. CV-N-02-0561-HDM(VPC)

DECLARATION OF JAKE T. PORTA

I, Jake T. Porta, declare as follows:

1. I am employed as Chief, Bureau of Water Quality Planning, Nevada Division of Environmental Protection ("NDEP"). Under Nevada law, NRS 445A.440, NDEP is designated as the state water pollution control agency for Nevada "for all purposes of federal water pollution control legislation" (except for the promulgation of rules and regulations not relevant here). NDEP is also authorized to take all action necessary and appropriate to secure all the benefits of such federal legislation.
2. I have reviewed the partial summary judgment brief filed by the Plaintiffs in the above case. That brief represents to the Court that "water quality violations" have been documented in the Carico Lake Allotment. See Plaintiffs' brief at 9. I have also reviewed BLM's "Surface Water Analysis and Management Recommendations for the Carico Lake Allotment" (the "2000 Report"). That report contains a number of statements by the U.S. Bureau of Land Management ("BLM") that could be misinterpreted as supporting Plaintiffs'

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EXHIBIT 6

above representation. In particular, the report might be read as conveying the impression that the State of Nevada believes that violations of State of Nevada water quality standards have been documented in the Carico Lake Allotment. The primary purpose of this declaration is to affirm that the State of Nevada does not agree that any violations of its water quality standards have been documented in waterbodies located on the Carico Lake Allotment. BLM, a federal land management agency, is not empowered to make legal findings concerning violations of State water quality standards.

3. From my reading of the 2000 Report, my understanding is that BLM's intent was not to make such legal findings, but merely to offer BLM's general assessment of overall water quality and offer BLM's "interpretation" of various State provisions. See 2000 Report at 8. In that vein, as suggested in the report, only a portion of the waters in the Carico Lake Allotment are considered even to have State numeric water quality standards. BLM was in error to the extent it stated in the Report that certain numeric standards apply to the non-classified and non-designated waters in the Allotment. Based upon my analysis, the waters in the allotment with and without standards are presented in Attachment A. Attachment B, which includes a table summarizing the data, explains the basis for the State of Nevada's conclusions concerning the water quality violations that Plaintiffs allege, as well as the basis for our conclusions that the Allotment's waterbodies have not been shown to be impaired.

4. For example, many of the waters discussed in Plaintiffs summary judgment memorandum neither have assigned numeric standards nor status as "tributaries" to waters that have such assigned standards. Also, a well cannot be considered a tributary to a surface water body. Additionally, surface water quality standards do not apply to groundwater. Further, none of the Allotment waterbodies that were sampled have "turbidity" or "total suspended solids standards." Also, even where sampling revealed an "exceedance" of a state water quality standard, for a number of reasons the State of Nevada disagrees that any "violation" of such standard has been documented. First, the mere fact that a standard may have been exceeded does not mean that a "violation" has occurred. Many of the alleged exceedances here were attributable to naturally occurring conditions; according to Nevada

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Administrative Code 445A.121(8), standards are not considered violated when the natural conditions are outside the established limits of the standards. Flows also need to be considered in evaluating water quality data. It is difficult to apply numeric criteria during extreme low flow (drought) conditions and samples taken in standing pooled water (because the river itself is dry) are not probative of the water quality in the river when it does flow. Also, the pH standard currently in the Nevada Administrative Code for the Class Waters is outdated. NDEP is in the process of revising these pH standards to range from 6.5 to 9.0. Only one sample exceeded this range. In the small number of instances where an "exceedance" of a water quality standard may exist, the number, timing and locations of the samples submitted in this case are grossly insufficient to prove "violations" of state water quality standards. Finally, none of the waters cited in Plaintiffs' motion qualified for placement on Nevada's 2002 CWA section 303(d) list of "impaired waters."

5. Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Carson City, Nevada, on October 3rd, 2003.



JAKE T. PORTA

FOOTNOTES AND REFERENCES

- < means less than
- > means greater than
- x means a specific recommendation has not been developed.
- y means the cited reference recommended no value be established.

(1) Based on a minimum of five samples taken over a 30-day period, the fecal coliform bacterial level must not exceed a log mean of 200 per 100 ml nor may more than 10 percent of the total samples taken during any 30-day period exceed 400 per 100 ml.

(2) The table is not all-inclusive. As the need arises and data becomes available, appropriate revisions and additions will be made.

- a. National Academy of Sciences, Water Quality Criteria (Blue Book) (1972).
- b. U.S. Environmental Protection Agency, Pub. No. EPA 440/9-76-023, Quality Criteria for Water (1976). Office of Water and Hazardous Materials, Washington, D.C.
- c. Nevada Division of Health, Water Supply Regulation, Part I, Water Quality Standards, Monitoring, Record Keeping and Reporting (1977). State Board of Health, Carson City, Nevada.
- d. Report of the Commission on Water Quality Criteria (FWPCA) (Green Book) (1968).
- e. American Fisheries Society, Water Quality Section, A Review of the EPA Red Book; Quality Criteria for Water (1979).
- f. McKee and Wolf, California State Water Resources Control Board, Water Quality Criteria (1963).

[Environmental Comm'n, Water Pollution Control Reg. § 4.1.4, eff. 9-15-80]—(NAC A 7-27-82; 12-3-84; 9-25-90)—(Substituted in revision for NAC 445.117)

NAC 445A.120 Applicability.

1. NAC 445A.120 to 445A.213, inclusive, apply to all natural streams and lakes, reservoirs or impoundments on natural streams and other specified waterways, unless excepted on the basis of existing irreparable conditions which preclude such use. Man-made waterways, unless otherwise specified, must be protected for public health and the use for which the waterways were developed.

2. The quality of any waters receiving waste discharges must be such that no impairment of the beneficial usage of water occurs as the result of the discharge. Natural water conditions may, on occasion, be outside the limits established by standards. The standards adopted in NAC 445A.120 to 445A.213, inclusive, relate to the condition of waters as affected by discharges relating to the activities of man.

[Environmental Comm'n, Water Pollution Control Reg. § 4.1, eff. 5-2-78]—(NAC A 12-3-84)—(Substituted in revision for NAC 445.118)

NAC 445A.121 Standards applicable to all waters. The following standards are applicable to all waters of the state:

1. Waters must be free from substances attributable to domestic or industrial waste or other controllable sources that will settle to form sludge or bottom deposits in amounts sufficient to be unsightly, putrescent or odorous or in amounts sufficient to interfere with any beneficial use of the water.

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2. Waters must be free from floating debris, oil, grease, scum and other floating materials attributable to domestic or industrial waste or other controllable sources in amounts sufficient to be unsightly or in amounts sufficient to interfere with any beneficial use of the water.

3. Waters must be free from materials attributable to domestic or industrial waste or other controllable sources in amounts sufficient to produce taste or odor in the water or detectable off-flavor in the flesh of fish or in amounts sufficient to change the existing color, turbidity or other conditions in the receiving stream to such a degree as to create a public nuisance or in amounts sufficient to interfere with any beneficial use of the water.

4. Waters must be free from high temperature, biocides, organisms pathogenic to human beings, toxic, corrosive or other deleterious substances attributable to domestic or industrial waste or other controllable sources at levels or combinations sufficient to be toxic to human, animal, plant or aquatic life or in amounts sufficient to interfere with any beneficial use of the water. Compliance with the provisions of this subsection may be determined in accordance with methods of testing prescribed by the department. If used as an indicator, survival of test organisms must not be significantly less in test water than in control water.

5. If toxic materials are known or suspected by the department to be present in a water, testing for toxicity may be required to determine compliance with the provisions of this section and effluent limitations. The department may specify the method of testing to be used. The failure to determine the presence of toxic materials by testing does not preclude a determination by the department, on the basis of other criteria or methods, that excessive levels of toxic materials are present.

6. Radioactive materials attributable to municipal, industrial or other controllable sources must be the minimum concentrations which are physically and economically feasible to achieve. In no case must materials exceed the limits established in the 1962 Public Health Service Drinking Water Standards (or later amendments) or 1/30th of the MPC values given for continuous occupational exposure in the "National Bureau of Standards Handbook No. 69." The concentrations in water must not result in accumulation of radioactivity in plants or animals that result in a hazard to humans or harm to aquatic life.

7. Wastes from municipal, industrial or other controllable sources containing arsenic, barium, boron, cadmium, chromium, cyanide, fluoride, lead, selenium, silver, copper and zinc that are reasonably amenable to treatment or control must not be discharged untreated or uncontrolled into the waters of Nevada. In addition, the limits for concentrations of the chemical constituents must provide water quality consistent with the mandatory requirements of the 1962 Public Health Service Drinking Water Standards.

8. The specified standards are not considered violated when the natural conditions of the receiving water are outside the established limits, including periods of extreme high or low flow. Where effluents are discharged to such waters, the discharges are not considered a contributor to substandard conditions provided maximum treatment in compliance with permit requirements is maintained.

[Environmental Comm'n, Water Pollution Control Reg. § 4.1.2 subsecs. a-g, eff. 5-2-78]—(NAC A 9-26-90)—(Substituted in revision for NAC 445.119)

NAC 445A.122 Standards applicable to beneficial uses.

1. The following standards are intended to protect both existing and designated beneficial uses and must not be used to prohibit the use of the water as authorized under Title 48 of NRS:

(a) Watering of livestock. The water must be suitable for the watering of livestock without treatment.

(b) Irrigation. The water must be suitable for irrigation without treatment.

(c) Aquatic life. The water must be suitable as a habitat for fish and other aquatic life existing in a body of water. This does not preclude the reestablishment of other fish or aquatic life.

(d) Recreation involving contact with the water. There must be no evidence of manmade pollution, floating debris, sludge accumulation or similar pollutants.

(e) Recreation not involving contact with the water. The water must be free from:

SIERRA FRONT-NORTHWESTERN GREAT BASIN AREA

PREAMBLE

The Standards and Guidelines for livestock grazing on Bureau of Land Management lands are written to accomplish the four fundamentals of rangeland health, insofar as they are affected by livestock grazing practices. Those fundamentals are:

- Watersheds are properly functioning;
- Ecological processes are in order;
- Water quality complies with state standards; and
- Habitats of protected species are in order.

Other uses can affect the health of the land, and guidelines for these currently exist or will be developed as needed. In addition, implementation of livestock grazing guidelines must be coordinated with other uses of the land, and collectively these uses should not detract from the goal of achieving public land health.

Standards, indicators and guidelines will be implemented through standard public land management practices as defined in the Nevada Rangeland Monitoring Handbook and the other documents listed in Appendix A [of this appendix].

Standards: The goal to be achieved.

Indicators: Indicators are observations or measurements of physical, chemical or biological factors that should be used to evaluate site conditions or trends, appropriate to the potential of the site. Indicators assist in determining whether Standards are met or Guidelines followed.

Guidelines: Guidelines are livestock management practices (e.g. tools, methods, strategies and techniques) designed to achieve healthy public lands as defined by Standards and portrayed by Indicators. Guidelines are designed to provide direction, yet offer flexibility for local implementation through activity plans and grazing permits. Activity plans may add specificity to the Guidelines based on local goals and objectives as provided for in adopted manuals, handbooks and policy. Not all Guidelines fit all circumstances. Monitoring and site specific evaluation will determine if the Standards are being met or the trend on a particular site is toward desired objectives, and if the correct Guidelines are being applied. The BLM Authorized Officer, in consultation with public land users, will identify and document acceptable or unavoidable exceptions on a case-by-case basis.

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STANDARDS FOR RANGELAND HEALTH

STANDARD 1. SOILS:

Soil processes will be appropriate to soil types, climate and land form.

As indicated by:

- Surface litter is appropriate to the potential of the site;
- Soil crusting formations in shrub interspaces, and soil compaction are minimal or not in evidence, allowing for appropriate infiltration of water;
- Hydrologic cycle, nutrient cycle and energy flow are adequate for the vegetative communities;
- Plant communities are diverse and vigorous, and there is evidence of recruitment; and
- Basal and canopy cover (vegetative) is appropriate for site potential.

STANDARD 2. RIPARIAN/WETLANDS:

Riparian/Wetland systems are in properly functioning condition.

As indicated by:

- Sinuosity, width/depth ratio and gradient are adequate to dissipate streamflow without excessive erosion or deposition;
- Riparian vegetation is adequate to dissipate high flow energy and protect banks from excessive erosion; and
- Plant species diversity is appropriate to riparian-wetland systems.

STANDARD 3. WATER QUALITY:

Water quality criteria in Nevada or California State Law shall be achieved or maintained.

As indicated by:

- Chemical constituents do not exceed the water quality standards;
- Physical constituents do not exceed the water quality standards;
- Biological constituents do not exceed the water quality standards; and

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- The water quality of all water bodies, including ground water located on or influenced by BLM lands will meet or exceed the applicable Nevada or California water quality standards. Water quality Standards for surface and ground waters include the designated beneficial uses, numeric criteria, narrative criteria, and antidegradation requirements set forth under State law, and as found in Section 303(c) of the Clean Water Act.

STANDARD 4. PLANT AND ANIMAL HABITAT:

Populations and communities of native plant species and habitats for native animal species are healthy, productive and diverse.

As indicated by:

- Good representation of life forms and numbers of species;
- Good diversity of height, size, and distribution of plants;
- Number of wood stalks, seed stalks, and seed production adequate for stand maintenance; and
- Vegetative mosaic, vegetative corridors for wildlife, and minimal habitat fragmentation.

STANDARD 5. SPECIAL STATUS SPECIES HABITAT:

Habitat conditions meet the life cycle requirements of special status species.

As indicated by:

- Habitat areas are large enough to support viable populations of special status species;
- Special status plant and animal numbers and ages appear to ensure stable populations;
- Good diversity of height, size, and distribution of plants;
- Number of wood stalks, seed stalks, and seed production adequate for stand maintenance; and
- Vegetative mosaic, vegetative corridors for wildlife, and minimal habitat fragmentation.

GUIDELINES FOR GRAZING MANAGEMENT:

1. Waters must be free from high temperature, biocides, organisms pathogenic to human beings, toxic, corrosive or other deleterious substances attributable to domestic or industrial waste or other controllable sources at levels or combinations to interfere with any beneficial use of the water. Compliance with the provisions of this subsection may be

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- determined in accordance with methods of testing prescribed by the State. If used as an indicator, survival of test organisms must not be significantly less in test water than in control water.
2. Grazing management practices should be planned and implemented to meet water quality provisions in either California State water law or Nevada Administrative Code Section 445A.120-1.21 as applicable.
 3. Management practices within allotments will maintain or promote stream channel morphology, appropriate soil organisms; adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils; and the hydrologic cycle, nutrient cycle and energy flow.
 4. After a range fire or other natural catastrophic event, vegetation should be returned to the native species as rapidly as possible, to afford forage and habitat for native animals. If a nurse crop is needed to protect the land from erosion, all native nurse crops should be used first.
 5. Treated areas will be rested from livestock grazing for two growing seasons or until seedlings are established or the vegetative response has achieved objective levels. Wild horse and burros removed from Herd Management Areas will be restored after rehabilitation objectives have been met.
 6. Alternative solutions (e.g. reseeding, funding, labor, equipment use or rental) to facilitate fire rehabilitation, may be included in cooperative agreements involving qualified groups and individuals who want to participate.
 7. Appropriate livestock grazing treatments will be implemented to control the frequency, duration, and level of grazing use. Where livestock grazing is authorized, grazing systems will provide within any one grazing year one or more of the following treatments:
 - a. Rest or deferral from livestock grazing on a specified area as appropriate to meet Standards.
 - b. Systematic rotation of deferred use and/or rest from livestock grazing among two or more units.
 - c. Continuous, season-long use where it has been demonstrated to be consistent with achieving identified standards. Once season long use is determined to be unacceptable, an alternative system will be developed and implemented before termination of season long use, prior to the next grazing season.
 - d. Excluding further livestock grazing within the affected use area through appropriate techniques when utilization objectives are reached.

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20. The utilization, monitoring and evaluation process will be used as a tool to promote healthy rangelands and achieve standards.
21. Implement grazing management practices that sustain biological diversity across the landscape.
22. To prevent transmission of disease between domestic and bighorn sheep, adopt and implement the "Guidelines for Domestic Sheep Management in Bighorn Sheep Habitats" contained in Mountain Sheep Ecosystem Management Strategy in the 11 Western States and Alaska.
23. Rangeland management plans will consider listings of known historic properties and new eligible properties as they become known.

APPENDIX A

Nevada Rangeland Monitoring Handbook, 1984
Mountain Sheep Ecosystem Management Strategy in 11 Western States and Alaska, 1995
Riparian Area Management Technical Reference 1737-9, 1993
BLM Riparian-Wetland Initiative for the 1990's
Riparian Area Management Technical Reference 1737-11, 1994
 "National Environmental Policy Act Quarterly Update", Volume 1, Number 2
 "Programmatic Agreement Among BLM, SHPO and ACHP", August 24, 1990

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8. Conservation of Federal threatened or endangered, proposed, species of concern (formally Category One and Two) and other special status species is promoted by the restoration and maintenance of their habitats.
9. Salt and/or supplements will be placed at least ¼ mile from live waters (springs/streams) and outside of associated riparian areas, permanent livestock watering facilities, wet or dry meadows, and aspen stands. Also salt should not be placed in known historic properties.
10. Night bedding of sheep will be located at least ¼ mile from live waters, streams, springs, seeps, associated riparian areas, wet or dry meadows, and aspen stands.
11. Encourage the use of prescribed and natural fires, meeting prescription objectives, for the restoration and maintenance of healthy rangelands.
12. Departure from traditional grazing management practices may be authorized by BLM to achieve Standards on a case by case experimental basis for rangeland restoration and rehabilitation.
13. The best available science and technology will be utilized in monitoring and assessing the condition of rangelands from the pasture to the BLM District level.
14. Recognizing State Water Law requirements, wildlife and wild horses/burros within their herd areas will have access to surface water they customarily use.
15. Design of water facilities will incorporate features to insure safe access and escape for small animals and birds.
16. The development of springs and seeps or other projects affecting water and associated resources shall be designed to maintain the associated riparian area and assure the attainment of Standards.
17. Grazing management practices shall be planned and implemented to allow for habitat requirements of wildlife and wild horses and burros within Herd Management Areas.
18. Implement aggressive action to reduce the invasion of exotic plant species into native plant communities. Control the spread of noxious weeds through various methods such as, grazing management, fire management and other vegetative management practices.
19. Riparian structural developments (i.e., gabions, dams, etc.) designed to achieve improvement in riparian and wetland conditions shall only be implemented in conjunction with changes in existing grazing management practices, where grazing is a significant factor contributing to a riparian condition needing such attention. Where grazing is not a significant factor causing a riparian condition needing attention, structural developments designed to achieve improvement in riparian and wetland conditions may be implemented independent of changes in existing grazing management practices.

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 Chapter I - Introduction

CHAPTER I - INTRODUCTION

The mission of the Bureau of Land Management is to sustain the health, diversity, and productivity of our public lands for the use and enjoyment of present and future generations.

The goal of the Bureau's Healthy Rangelands Initiative is to make a difference on the land by working with permit holders, lessees, tribes, and the public to achieve Rangeland Health Standards.

The purpose of the standards and guidelines at Title 43 Code of Federal Regulations (CFR) § 4180 is to provide a measure (Standard) to determine land health, and methods (guidelines) to improve the health of the public rangelands. Success will be measured in concrete outcomes on the ground where land health standards are not being achieved. The standards are intended to help the Bureau, public land users and others focus on a common understanding of acceptable resource conditions and the guidelines provide a basis for working together to achieve that vision. The standards are used to communicate current and desired resource conditions amongst the various groups, and guidelines are used to describe or communicate techniques for managing activities to achieve those desired conditions.

Four fundamentals of rangeland health are listed in Title 43 CFR § 4180.1. They combine the basic precepts of physical function and biological health with elements of law relating to water quality and plant and animal populations and communities. The fundamentals provide the basis for the development and implementation of the standards for land health.

- A. Purpose. This handbook section gives specific direction for implementing the policies listed in the 4180 Manual Section in accordance with the authorities listed in the same Manual. Direction for implementing the Bureau's Healthy Rangelands Initiative are provided.
- B. Objectives. The Bureau's objectives are to carry out the intent of the Taylor Grazing Act of 1934, as amended and supplemented, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978. This is: 1) to periodically and systematically inventory public lands and their resources and their present and future use projected through land use planning processes; 2) to manage public lands on the basis of multiple use and sustained yield; 3) to manage public lands in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; 4) where appropriate, to preserve and protect certain public lands in their natural

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 Chapter I - Introduction

condition; 5) to provide food and habitat for fish and wildlife and domestic animals; 6) to provide for outdoor recreation and human occupancy and use; and 7) to manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process.

The objective of the Healthy Rangelands Initiative is to implement the intent of the legislative authorities to promote healthy, sustainable rangeland ecosystems; to accelerate restoration and improvement of public lands to properly functioning conditions; and to provide for the sustainability of the variety of uses and the communities that are dependent upon productive, healthy public lands.

C. Definitions

Allotment: An area of land designated and managed for livestock grazing (43 CFR § 4100.0-5).

Assessment: The estimation or judgement of the status of ecosystem structures, functions, or processes, within a specified geographic area (preferably a watershed or a group of contiguous watersheds) at a specific time. An assessment is conducted by gathering, synthesizing, and interpreting information, from observations or data from inventories and monitoring. An assessment characterizes the status of resource conditions so that the status can be evaluated (see definition of evaluation) relative to land health standards. An assessment sets the stage for an evaluation. An assessment is not a decision.

Appropriate Action: (1) Action taken pursuant to Title 43 CFR § 4110, 4120, 4130, and 4160 that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. 43 CFR § 4180.2(c). (2) Implementing and issuing a final decision pursuant to 43 CFR § 4110, 4120, 4130, and 4160 upon determining that existing grazing management needs to be modified to ensure that the Fundamentals of Rangeland Health exist (43 CFR § 4180.1).

Biological Assessment: Document prepared by an agency for the purpose of identifying any endangered species or threatened species which is likely to be affected by action proposed to be authorized, funded, or carried out by such agency (Endangered Species Act § 7(c)2, 16 U.S.C. § 1536(c)(1)).

Capability: The highest ecological status a site can attain given certain social or economic constraints, which are often referred to as limiting factors. These constraints are established for public lands through the land use planning process, which provides management direction for resource uses on public land. For example, constraints might include riparian areas permanently occupied by a highway or railroad bed that prevent the stream's full access to its original flood plain. If such constraints are removed, the site might move toward its potential.

Determination: Document recording the authorized officer's finding that existing grazing management practices or levels of grazing use on public lands grazing either are or are not significant factors in failing to achieve the standards and conform with the guidelines within a specified geographic area (preferably watershed or a group of contiguous watersheds).

Ecological Reference Area: A landscape unit in which ecological processes are functioning within a normal range of variability (see definition for normal range of variability) and the plant community has adequate resistance to and resiliency from most disturbances. These areas do not need to be pristine, historically unused lands (e.g. climax plant communities or relict areas) (Pellant et al. 2000). Ecological reference areas are lands that best represent the potential of a specific ecological site in both physical function and biological health. In many instances potential ecological reference areas are identified in Ecological Site Descriptions and are referred to as "type locations". In the absence of suitable ecological reference areas, the establishment of a "baseline" for site evaluations should be made by an interdisciplinary team of experienced, trained professionals.

Evaluation: An evaluation is conducted to arrive at 2 outcomes. Firstly, an evaluation conducts an analysis and interpretation of the findings resulting from the assessment, relative to land health standards, to evaluate the degree of achievement of land health standards. Secondly, an evaluation conducts an analysis and interpretation of information—be it observations or data from inventories and monitoring—on the causal factors for not achieving a land health standard. An evaluation of the causal factors provides the foundation for a determination (see definition for determination).

An evaluation goes further than an assessment because an evaluation takes what the assessment provides—which is the status of resource conditions characterized by the appropriate indicators—and evaluates them according to land health standards. Then, this leads to a prognosis of: land health standard achieved; making significant progress toward achieving a land health standard; or land health standard not achieved. If the land health standard is not achieved, the evaluation of the causal factors allows a determination to be made. In summary, an evaluation builds on the assessment, and the evaluation sets the stage for a determination.

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Inventory: Gathering of baseline information (including quantitative data, cultural knowledge, and qualitative observations) about condition of resources. Examples of inventory are Ecological Site Inventory, and Population Counts of Threatened or Endangered Species.

Land Health: Degree to which the integrity of the soil and the ecological processes of ecosystems are sustained.

Land Use Plan: A resource management plan, developed under the provisions of 43 CFR § 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and establish management direction for resource uses of public lands (43 CFR § 4100.0-5).

Monitoring: Regular collection of data to evaluate: 1) whether objectives or land health standards are being achieved; 2) effectiveness of management actions.

Native plant and animal populations and communities: Populations and communities of all species of plants and animals naturally occurring, other than as a result of an introduction, either presently or historically in an ecosystem. For further reference, see BLM Manual Section 1745 - Introduction, Transplant, Augmentation, and Reestablishment of Fish, Wildlife and Plants.

Nonfunctioning Condition: (1) Condition in which vegetation and ground cover are not maintaining soil conditions that can sustain natural biotic communities. FEIS at 25. (2) Riparian-wetland areas are considered to be in nonfunctioning condition when they don't provide adequate vegetation, landform, or large woody debris to dissipate stream energy associated with high flows and thus are not reducing erosion, improving water quality, or other normal characteristics of riparian areas. The absence of a floodplain may be an indicator of nonfunctioning condition (DEIS Glossary). SEE ALSO Properly Functioning Condition and Functioning at Risk.

Normal Range of Variability: The deviation of characteristics of biotic communities and their environment that can be expected given natural variability in climate and disturbance regimes (Pellant et al. 2000).

Objective: A description of a desired future resource condition to be achieved in a specified time frame to meet land use plan goals.

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Functioning at Risk: (1) Condition in which vegetation and soil are susceptible to losing their ability to sustain naturally functioning biotic communities. Human activities, past or present, may increase the risks. Rangeland Reform Final Environmental Impact Statement (FEIS) at 26. (2) Uplands or riparian-wetland areas that are properly functioning, but a soil, water, or vegetation attribute makes them susceptible to degradation and lessens their ability to sustain natural biotic communities. Uplands are particularly at risk if their soils are susceptible to degradation. Human activities, past or present, may increase the risks (Rangeland Reform Draft Environmental Impact Statement (DEIS) Glossary). SEE ALSO Properly Functioning Condition and Nonfunctioning Condition.

Fundamentals of Rangeland Health: Overarching principles of rangeland health, listed at 43 CFR § 4180.1, which establish the Department's policy of managing for healthy rangelands (60 Federal Register (FR) at 9954). State or regional standards and guidelines must provide for conformance with the Fundamentals of Rangeland Health (43 CFR § 4180.2(b)).

Guideline: A practice, method or technique determined to be appropriate to ensure that standards can be met or that significant progress can be made toward meeting the standard. Guidelines are tools such as grazing systems, vegetative treatments, or improvement projects that help managers and permittees achieve standards. Guidelines may be adapted or modified when monitoring or other information indicates the guideline is not effective, or a better means of achieving the applicable standard becomes appropriate.

Indicators: Components of a system whose characteristics (presence or absence, quantity, distribution) are used as an index of an attribute (e.g., rangeland health attribute) that are too difficult, inconvenient, or expensive to measure (Interagency Technical Reference 1734-8, 2000).

Interdisciplinary Team: Staff specialists representing identified skill and knowledge needs working together to resolve issues and provide recommendations to an authorized officer.

Interested Public: An individual, group or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision making process for the management of livestock grazing on specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment (43 CFR § 4100.0-5).

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Permitted Use: The forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease, and is expressed in Animal Unit Months (AUMs) (43 CFR § 4100.0-5).

Potential: The highest ecological status a site can attain given no social or economic constraints.

Potential Natural Community (PNC): The stable biotic community that would become established on an ecological site if all successional stages were completed without human interference under present environmental conditions (DEIS Glossary).

Properly Functioning Condition: (1) An element of the Fundamental of Rangeland Health for watersheds, and therefore a required element of State or regional standard and guidelines under 43 CFR § 4180.2(b). (2) Condition in which vegetation and ground cover maintain soil conditions that can sustain natural biotic communities. For riparian areas, the process of determining function is described in the BLM Technical Reference TR 1737-9. FEIS at 26, 72. (3) Riparian-wetland areas are functioning properly when adequate vegetation, landform, or large woody debris is present to dissipate stream energy associated with high waterflows, thereby reducing erosion and improving water quality; filter sediment, capture bedload, and aid floodplain development; improve floodwater retention and groundwater recharge; develop root masses that stabilize streambanks against cutting action; develop diverse ponding and channel characteristics to provide the habitat and the water depth, duration, and temperature necessary for fish production, waterfowl breeding, and other uses; and support greater biodiversity. The functioning condition of riparian-wetland areas is influenced by geomorphic features, soil, water, and vegetation (DEIS Glossary). (4) Uplands function properly when the existing vegetation and ground cover maintain soil conditions capable of sustaining natural biotic communities. The functioning condition of uplands is influenced by geomorphic features, soil, water, and vegetation (DEIS Glossary). SEE ALSO Nonfunctioning Condition and Functioning at Risk.

Range Improvement: An authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to structures, treatment projects and use of mechanical devices or modifications achieved through mechanical means (43 CFR § 4100.0-5).

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Rangeland: A kind of land on which the native vegetation, climax or natural potential consists predominantly of grasses, grasslike plants, forbs, or shrubs. Rangeland includes lands revegetated naturally or artificially to provide a non-crop plant cover that is managed like native vegetation. Rangeland may consist of natural grasslands, savannas, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

Rangeland Health: The degree to which the integrity of the soil and ecological processes of rangeland ecosystems are sustained. Rangeland health exists when ecological processes are functioning properly to maintain the structure, organization and activity of the system over time (FEIS at 72).

Reference Condition: In the context of an ecological site, reference condition is the condition which meets, or comes close to meeting, all relevant land health standards. In addition, the reference condition provides a set of indicators (and their appropriate range of values) to be used for the assessment of an equivalent ecological site (which will not necessarily be in reference condition). Reference conditions are provided in published Ecological Site Descriptions or in the records of Ecological Site Inventories and Soil Surveys.

In a more general multi-scale context, a reference condition will reflect and lie within the historic range of variability for environmental conditions, processes and functions, generally considered to have operated during the 1,000 year period immediately preceding Euro-American settlement. These environmental conditions, processes, and functions can be operative at different scales, from the fine-scale (e.g. organic matter content at the site-specific scale) to the large-scale (e.g. plant community composition at the watershed or subbasin scale).

Significant Factor: Principal causal factor in the failure to achieve the land health standard(s) and conform with the guidelines. A significant factor would typically be a use that, if modified, would enable an area to achieve or make significant progress toward achieving the land health standard(s). To be a significant factor, a use may be one of several causal factors contributing to less-than-healthy conditions; it need not be the sole causal factor inhibiting progress towards the standards.

Significant Progress: Movement toward meeting standards and conforming to guidelines that is acceptable in terms of rate and magnitude. Acceptable levels of rate and magnitude must be realistic in terms of the capability of the resource, but must also be as expeditious and effective as practical.

Watershed: The 5th level of the hydrologic unit delineation system. A watershed is coded with 10 numerical digits, and watersheds range in size from 40,000 to 250,000 acres (Subcommittee on Spatial Water Data, 2000).

Special Status Species: includes:
proposed species - species that have been officially proposed for listing as threatened or endangered by the Secretary of the Interior. A proposed rule has been published in the Federal Register.

listed species - species officially listed as threatened or endangered by the Secretary of the Interior under the provisions of the Endangered Species Act (ESA). A final rule for the listing has been published in the Federal Register.

endangered species - any species which is in danger of extinction throughout all or a significant portion of its range.

threatened species - any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

candidate species - species designated as candidates for listing as threatened or endangered by the Fish and Wildlife Service (FWS), and/or National Marine Fisheries Service (NMFS).

state listed species - species listed by a State in a category implying but not limited to potential endangerment or extinction. Listing is either by legislation or regulation.

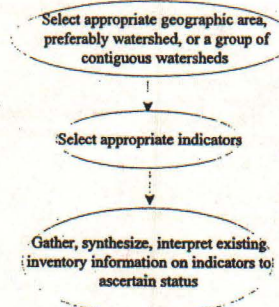
sensitive species - those designated by a State Director, usually in cooperation with the State agency responsible for managing the species and State Natural Heritage programs, as sensitive. They are those species that: (1) could easily become endangered or extinct in a State, (2) are under status review by the FWS and/or NMFS, (3) are undergoing significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution, (4) are undergoing significant current or predicted downward trends in population or density such that Federal listed, proposed, or candidate status may become necessary, (5) typically have small and widely dispersed populations, (6) inhabit ecological refugia or other specialized or unique habitats, (7) are State listed but which may be better conserved through application of BLM sensitive species status.

Standard: Standards of land health are expressions of levels of physical and biological condition or degree of function required for healthy lands and sustainable uses, and define minimum resource conditions that must be achieved and maintained.

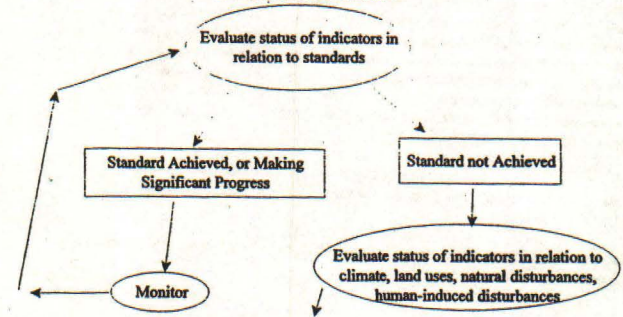
Terms and Conditions: Mandatory and optional provisions of a grazing permit or lease specified by an authorized officer pursuant to 43 CFR § 4130.

D. Process Flow Chart

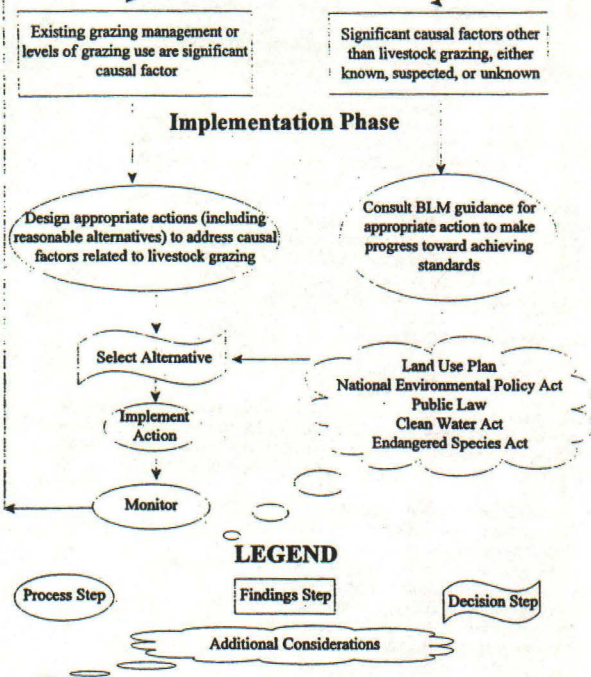
PROCESS FLOW CHART
Assessment Phase



Evaluation Phase



Determination Phase



CHAPTER III - ASSESSING RESOURCE CONDITIONS & EVALUATING RANGELAND HEALTH STANDARDS

An evaluation is not a decision document but a stand alone report that clearly records all aspects of the evaluation and analysis and interpretation of available information, including inventory and monitoring data. Each evaluation report should be officially filed and readily available to help guide management and should include the following:

- Documentation of the thought process and logic track used to determine the evaluation process, including the procedural steps, and all conclusions that are reached. The document needs to include:
 - Selection of the area to be evaluated
 - Selection of Indicators
 - collection of inventory, monitoring data
 - analysis of the data and interpreting the indicators
- Identification of types and general locations of land health problems
- Description of the existing conditions. This information will be used later if National Environmental Policy Act (NEPA) analysis of proposed action and alternatives is needed. The description needs to be adequate to develop a reasonable range of alternatives to be analyzed through the NEPA process.
- Status of each unit evaluated, reported by appropriate unit (watershed, acreage, allotment) with respect to each of the applicable land health standards.
- Reference to information collected through each assessment. This information should be entered into a shared data base that is compatible with a Geographic Information System (GIS) and accessible to all office resource specialists. Minimum content should include location identifier of the data collection site, date assessed, and a column for each health standard to indicate whether or not the location is achieving applicable standards.

A. Prepare for an Assessment and Evaluation

1. Assemble Interdisciplinary (ID) Team

The assessment team should consist of resource specialists who can provide professional interpretations of the status of resource conditions—as indicated by the

appropriate indicators—with a defensible logic trail. The evaluation team should consist of resource specialists who can provide professional interpretations of the degree of departure of these resource conditions and indicators from the land health standards. Using resource specialists this way allows you to “leverage” the professional knowledge and capture years of experience on the District or Field Office. Skills represented on the ID Team may include soils/geology, vegetation/ecology, wildlife/fisheries, hydrology/watershed, riparian, water quality and fire management. During the evaluation phase (see Process Flow Chart), staff with knowledge of impacts of various activities, including mining, recreation, livestock grazing will be needed to help identify significant causal factors if Land Health Standards are not achieved.

2. Criteria for Selecting Assessment and Evaluation Areas

Use watershed (Fifth level, ten digit Hydrologic Unit Code (HUC)) boundaries; (Subcommittee on Spatial Water Data, 2000) when conducting assessments of status of resource conditions, and when conducting evaluations of land health standards, **except** when compelling issues dictate that an administrative or other ecosystem-based boundary take precedence. The Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management calls for the use of watershed, not administrative, boundaries when conducting local assessments. Give a brief statement of the rationale for not using a watershed boundary as part of the assessment and the evaluation. For example, if a portion of an allotment extends outside of a watershed boundary, that portion can be included in the assessment area and the evaluation area. An evaluation of a watershed for Land Health Standards may not include all the processes in BLM Technical Note 405 (McCammon et al. 1998), but if a watershed assessment is completed, it can, and should, meet all of the requirements for evaluating Land Health Standards within that watershed. Because an assessment of the status of resource conditions feeds into an evaluation of Land Health Standards (see definitions for assessment and evaluation, and Process Flow Chart), it is recommended that the assessment and evaluation be conducted on the same geographic area.

a. Apportion all BLM lands managed by a Field Office into Assessment and Evaluation Areas considering:

- (1) **Size.** All assessments and evaluations must be completed in a reasonable time frame. An assessment area and evaluation area may include several watersheds or other management units in order to complete assessments and evaluations in a

reasonable time frame. Generally, each Authorized Officer should ensure that an average of ten percent of the public lands under their jurisdiction are assessed and evaluated each year until the initial round of assessments and evaluations are complete. All high priority watersheds must be assessed and evaluated within the ten year time frame. Consider assessing and evaluating larger units (such as multiple watersheds or subbasins) where watersheds are small and have similar issues.

- (2) **Compatibility.** Are other required assessments and evaluations being conducted whose purpose and information needs are significantly similar to the proposed assessment and evaluation for land health standards? For example, areas encompassed by the Northwest Forest Plan and the Interior Columbia Basin Ecosystem Management Project (ICBEMP) have additional analysis requirements at the watershed scale (Regional Interagency Executive Committee and Intergovernmental Advisory Committee: 1995) and review requirements at the subbasin scale (USDA and USDI 1999). Are Total Maximum Daily Load (TMDL) assessments planned? Are Biological Assessments planned? With limited time, funding, and personnel, it is important that any assessment or evaluation produce the most useful information for meeting all of these needs in the most efficient manner possible.

- (3) **Continuity of area.** Can adjoining areas with similar issues be assessed together and evaluated together? Consider making effective use of labor and material resources by assessing and evaluating more than one watershed where there are similar issues. This will also provide assessments and evaluations over a larger landscape.

- (4) **Appropriate Scale.** Is the area large enough to address the issues and to generate an appropriate assessment of resource conditions and evaluation of land health standards? While the watershed is the preferred geographic area, there may be compelling reasons to consider other geographic areas (smaller or larger). Consider appropriate geographic boundaries—the geographic area selected should have common resource characteristics at a scale appropriate to the complexity of the issues (e.g. a subwatershed or a mountain range would be preferred to widely separated allotments linked only by an expiring grazing permit).

3. Prioritize Assessment and Evaluation Areas

Authorized Officers are responsible for determining the priority for conducting assessments and evaluations. The process for prioritizing areas must reflect the full

range of physical and biological factors addressed by the land health standards. While watersheds are the primary geographic area for assessments and evaluations, previous allotment selective management categorization (Maintain, Improve, Custodial) may be useful in developing priorities. In most cases, however, the allotment categorization process did not fully consider indicators of health and ecosystem function, and did not consider adjoining areas. The reasons for assigning an allotment to a selective management category will be more useful in setting watershed priorities than just knowing the categories of the allotments in that watershed.

Authorized officers are also responsible for ensuring that assessments and evaluations are conducted in a reasonable period of time. Set a schedule listing the areas to be assessed and evaluated and proposed dates for assessment and evaluation. Review the schedule at least every other year to assure that changing issues are considered in the assessment and evaluation schedule.

Strive to involve affected permittees and lessees, other landowners in the assessment and evaluation area, holders of liens, interested publics, RACs, other federal, local and state agencies, and Tribal governments throughout the assessment and evaluation process, including activities associated with prioritizing areas.

- a. In setting priorities for land health assessments and evaluations, areas with land health issues take precedence. Use authorizations should not be considered the driving factor for setting priorities. Assign high priority to areas believed to be at risk—in degraded condition or downward trend and in danger of losing capability. As an example, the following criteria should be considered when prioritizing areas to complete early in the assessment and evaluation schedule:

1. Terrestrial Habitats (including riparian) that have declined substantially from historical geographic extent, (these areas may be associated with special status species as defined above);
2. Impaired streams listed on the State 303(d) list, (considering the schedule for TMDL development) or streams that have been dropped from the 303(d) list for lack of sufficient and credible data, Unified Watershed Assessment category I watersheds, or areas with known water quality issues;
3. Areas with special designation (e.g. Wilderness, Wilderness Study Areas, Areas of Critical Environmental Concern, Monuments, Wild and Scenic Rivers, National Conservation Areas);
4. Large contiguous holdings of BLM administered lands within the specified geographic area, rather than small or "scattered" pattern of BLM administered

lands. For example in the ICBEMP plan area, subbasins that had less than 5% BLM/FS administered lands were excluded from the subbasin review (USDA and USDI 1999) requirement;

5. All areas with habitat for known threatened, endangered, or other special status species;
 6. Areas with pending application(s) for high disturbance activities.
 7. Areas with highly conflicting uses.
- b. The renewal or transfer of a permit or lease for any activity may be an opportune time to conduct an assessment of resource conditions and an evaluation of Land Health Standards and make any needed changes in the terms and conditions, but should not be the sole factor of consideration for assessing and evaluating an area.
- c. Determine if regional scale assessment and evaluation areas are needed to evaluate some of the Standards. Regional or subbasin scale assessments, consisting of several to many watersheds, using watershed level indicators is probably more appropriate to evaluate whether or not some Standards are being achieved. For example, the wildlife habitat standard, as written by most States, lends itself well to performing a landscape-scale assessment and evaluation.

B. Conduct Assessments and Evaluations

1. Subdivide the Assessment and Evaluation Area

If needed to effectively collect information for the assessment of resource conditions, and the evaluation for achievement of land health standards, subdivide the area to be assessed and evaluated into reasonably representative homogeneous units based on the complexity of the landscape. Consider the following factors:

- a. Variability of vegetation, soils, geology, ecological sites.
- b. Special Status species home range, and habitat for Threatened and Endangered plant and animal species.
- c. Feasibility—can the number of subdivisions be realistically assessed and evaluated in a reasonable amount of time?
- d. Can the information (existing or newly collected) from points in the subdivided unit be reasonably extrapolated to the whole unit?
- e. Multiple management units within the assessment and evaluation area (e.g., allotments) may be subdivided from one another.

2. Select Indicators

During the assessment phase, select from the indicators developed with each Standard (see Process Flow Chart). Criteria for selecting appropriate indicators and methods of measurement and observation include, but are not limited to: 1) the relationship between the attribute(s) being measured or observed and the land use plan or activity plan objectives; and 2) funds and workforce available to conduct the measurements or observations. Select a number of indicators that will adequately document or explain any findings. Try to use dissimilar indicators for each standard rather than similar indicators that are looking at the same thing.

The condition or degree of function of an identified area in relation to the Standards and the trend toward or away from any Standard is evaluated through the use of reliable and scientifically sound indicators. These indicators can be associated with the fine-scale and be site specific (such as percent plant cover) or be broad-scale and applicable to the watershed or larger geographic area (such as rangeland and forest cover type within a large geographic area). Indicators can be measured to show 1) change in rangeland and forest cover type composition over time within a large geographic area; 2) change in fire regime (frequency & severity) within a large geographic area; 3) change in invasive species (including legally designated noxious weeds) presence and composition (percent contribution of each exotic undesirable plant to the total amount of undesirable exotic plants) within a large geographic area; etc.. The consistent application of such indicators can provide an objective view of the condition and trend of the identified area when used by trained observers.

For example, the amount and distribution of ground cover can be used as one indicator to indicate that infiltration at the soil surface can take place as described in the Standard relating to upland watershed function. In applying this indicator, the specific levels of plant cover necessary to support infiltration in a particular soil would be identified using: 1) currently available information from ecological reference areas, if they exist; 2) technical sources like soil survey reports, Ecological Site Inventories, and Ecological Site Descriptions; or 3) from other existing reference materials.

The characteristics of good indicators are:

- a. Relevant: an indicator is a means to an end and must clearly identify the "end"
 1. Pertinent to Standard(s); adequately addresses questions posed by one or more standards.
 2. Responsive to management actions; changes in indicator due to management practices are detectable over a reasonable time period. Shorter time frames may be appropriate for site specific scales, and longer time frames for regional scale.
- b. Affordable: must be able to sustain monitoring and evaluation activities through normal budgetary cycles
- c. Contributes to a minimum suite of indicators that can answer evaluation questions
- d. Incorporates technology sensibly: do not use technology just because it is new or even available, but because it helps answer relevant questions more accurately/faster/economical.
- e. Takes advantage of all sources of existing information from both within BLM and from other agencies and organizations.
- f. Credible: must be acceptable and supportable by a diverse audience
- g. Has a generally accepted measurement method(s), sufficiently standardized to yield results that can be consistently repeated across administrative boundaries.
- h. Has accepted thresholds or criteria to distinguish between reportable classes (e.g. meets vs doesn't meet) OR it is reasonable to assume that such thresholds or criteria can be developed with existing knowledge.
- i. Inherent spatial and temporal variability can be managed through affordable means (such as a stratification (subdividing) process, selection of "representative areas" (key sites), application of climatic adjustment factors, repeating measurements during same seasonal period)

- j. Matches skills required with skills available; if technical skills and/or professional judgement is called for, it is reasonable to expect that experienced field crews are available and will be used.
- k. Understandable to a diverse audience; can be explained without highly technical terminology, bureaucratic jargon, and confusing acronyms.

3. Select Assessment and Evaluation Methods

Select the appropriate methods, factoring in the proper intensity of assessment and density of observation points needed to adequately represent average conditions within each unit. The following are points that should be considered when selecting methods:

- a. Determine what data and information are readily available. Inventories, monitoring data, planning documents, the Interior Columbia Basin Ecosystem Management Project (ICBEMP) database and science documents, completed assessments of adjacent watersheds, subbasin or regional assessments, and maps are all sources of information that can be used to identify useful indicators to supplement those already developed. Consider other sources of information that may be available locally. Document the sources of data and information used.
- b. Monitoring data collected in the recent past will often be an important source of information in conducting an assessment of resource conditions and an evaluation of Land Health Standards, but years of monitoring data are not necessarily required to complete an evaluation.
- c. Review adequacy of the existing data/information considering:
 1. age of the data;
 2. scale of the data relative to scale of the Standard(s)' comprehensiveness; and
 3. appropriateness for addressing the indicators.
 4. existing or potential resource issues and conflicts
- d. Determine what assessment methods have been used previously:
 1. Riparian PFC, BLM TR 1737-9. (Barrett et al. 1995)
 2. Interpreting Indicators of Rangeland Health, BLM TR 1734-8 (Pellant et al. 2000)

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- 3. Framework for Analyzing Hydrologic Condition, BLM TN 405 (McCammon et al. 1998).
- 4. Ecosystem Analysis at the Watershed Scale, Version 2.2 (Regional Interagency Executive Committee and Intergovernmental Advisory Committee 1995).
- 5. Other

- e. Use scientifically accepted methods if at all possible. Use methods outlined in BLM Technical References at a minimum.

4. Compile and Organize Information

Compile and organize information to develop an organized overview of the watershed's current physical and biological conditions and processes and the reference conditions. Assessments characterize the status of current resource conditions, which then allows the evaluation of the status in relation to land health standards. Evaluations will provide much of the information necessary to conduct NEPA analysis and identify resource restoration and monitoring needs.

- a. Assess current conditions: Methods used may range from a new examination of existing information to collection of new data in the field. Assessments should be conducted by interdisciplinary teams of journey-level specialists that adequately represent the resources involved.
- b. Assess reference conditions: Reference conditions help you understand the rate, direction, or magnitude of change occurring within a watershed. The known, or inferred, history of the landscape should be described in sufficient detail to determine what existed in the past and what changes have occurred that may affect current capabilities. These historic processes and elements provide a basis for identifying cause-effect relationships in the evaluation phase, and to understand the ability of the system to adjust to or recover from disturbances or adverse change. Significant changes in vegetation communities may indicate that a threshold has been exceeded, and that what was considered the Potential Natural Community for a particular ecological site is no longer achievable.

Because physical and biological systems are highly variable, reference conditions are best thought of in terms of ranges rather than absolute values. A common premise is that systems that are operating within the historic range

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of variability will have a high probability of being sustainable. However, care should be taken to avoid using an extreme of a variable's distribution as a benchmark for reference conditions. For example, while fire may have once burned 90 percent of a watershed, using 90 percent as a reference level is not reasonable even though this value is within the historic range of variability.

A description of reference conditions can be derived from many sources including literature, historic photos, verbal history, inferred data (e.g., fire scars, sediments), best professional judgement, extrapolation from surrogate watersheds, or a combination of all of these. Surrogate watersheds are watersheds with comparable geoclimatic features, and are either in near-pristine condition or have a documented disturbance history that is also comparable. Whatever your sources, they should all be clearly documented to allow the reader to further investigate or research details of interest. The reliability of the different sources varies considerably and must be clearly documented.

- c. Inevitably, you will not have all the data you need for every resource, but summarize what you do know and what you do not. Data may be available from existing non-BLM databases, such as: area of watershed, density of roads, and acres of disturbance (from events such as timber harvest, grazing, fire). Include professional judgement conclusions from individual team members in your analysis and write-up.
5. **Evaluate Data** Evaluate all the data for each subdivided unit to identify cause-effect relationships and draw conclusions about whether or not each standard is being met for the evaluation area as a whole. Use information from the assessment that may include quantitative data from monitoring and inventories, qualitative information, professional knowledge, and knowledge provided by State agencies, public land users and others. Include any information that identifies landscape risks, such as potential for surface erosion, mass wasting, or poor revegetation potential. Characterize the outcome of risks by describing the expected outcome in terms of magnitude, duration and intensity. Regardless of how you determine cause-effect relationships, logic tracking and documentation are critical. This information and data should be evaluated to identify the degree of achievement of each Land Health Standard. In many cases, due to the lack of quantifiable information, a great deal of professional judgement will need to be exercised to evaluate standards across multiple scales. Therefore, a critical step in the evaluation process is the use and documentation of sound professional judgement.

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- a. Consider the scale of assessment information that will be used in the evaluation. Assessments done at broad scales can provide the context for policy and the formulation of laws. Fine scale assessments provide the context for projects and can be used to evaluate site-specific impacts or effects. Mid-scale assessments provide the description and understanding of the evaluation unit (eg. watershed, allotment grouping, individual allotments) conditions and capabilities and provide the context for management. There is no single scale that works in all cases.
- b. No single indicator fully describes a Standard. There may be apparent contradictory results due to variability within a unit or because the problems may be limited either in nature or spatially. Therefore, use convergent lines of evidence or a preponderance of evidence approach to draw conclusions and extrapolate from data collection points to the entire subdivided unit.
- c. Significance of individual site conditions: Indicators of poor health in a small area (e.g., salting sites, water troughs, camping area) will not necessarily mean the entire subdivided unit area being evaluated is failing to meet the Standard(s). Exceptions to this conclusion would apply if the isolated area is of significant ecological importance (e.g., riparian/wetland areas, critical habitat for T&B species).
- d. Where possible, aggregate site level data to the landscape scale, or use landscape scale data to determine if problems exist at the landscape scale. Use this information to help draw conclusions about which subdivided units meet/don't meet the Standard(s).
- e. Set up a consistent, defensible approach to drawing conclusions; an approach that is logical and provides a pathway between data, indicator, Standard and conclusion.
- f. Identify the types of problems encountered for each subdivided unit that does not meet a Standard.
- g. Adequacy of data for drawing conclusions: If the ID team concludes that inadequate information is available to evaluate whether areas are meeting Standards and conforming to guidelines or making significant progress toward meeting Standards and conforming to guidelines, and cannot come to a conclusion using professional judgement, the manager should, without delay,

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initiate action necessary to gather the minimum information needed to complete the evaluation. If reliable indicators of land health demonstrate that evaluation areas are not meeting or not making significant progress toward meeting Standards, the authorized officer must take appropriate action as soon as practicable.

- h. Professional judgement may be used to draw conclusions where quantitative data does not lead to a hard conclusion. The reasoning for conclusions based on professional judgement need to be clearly documented, and may be used as an opportunity to communicate with all interested publics. Quantitative monitoring data are not always required to complete an evaluation nor to implement actions to improve management. It is inconsistent with regulations and policy to manage the public lands in a manner that allows an allotment or watershed to deteriorate while prolonged monitoring studies are conducted.

C. Identify Causal Factors

When one or more Standards is not achieved nor making significant progress toward achievement, or there is lack of conformance with guidelines, the causes for the deviation need to be identified.

1. For each subdivided unit that does not meet a Standard:

- List Standard(s) not achieved, reasons for not meeting, and indicator(s) used;
- Review ancillary data (grazing records, project records, local history, etc);
- List suspected significant causes for each subdivided unit; and
- Review possible landscape scale as well as site level causes.

2. A site-scale assessment can provide detailed information of the site, which can be useful in helping identify whether Standards are being achieved or not. However, if a Standard is not being achieved on a site, sole reliance on site-specific information may not result in a proper determination of the causal agents. There are instances where the driving causal agent(s) of the conditions observed at the site scale, operates at the landscape (watershed) scale instead (e.g., erosion occurring on lands not managed by BLM may affect siltation and water quality in stream segments flowing on public land; increases in invasive species due to landscape level disturbances). In this case, a landscape scale evaluation may illuminate the relationships between conditions and causes at the site-specific scale.

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This landscape level analysis allows for the recognition that certain site-specific actions, authorized by an existing statute or land use plan, may not meet Land Health Standards at the site level. In this case, mitigation actions should be analyzed and used appropriately to reduce impacts. In some cases, not meeting the Standard may be a temporary condition that will be remedied when the activity ceases. Remedies should be addressed in restoration plans that accompany the permitting of the activity.

3. Consider whether "natural" disturbances are the cause and whether the area is likely to recover on its own under existing management. Natural disturbance is common in most ecosystems, and not all points on the landscape were "undisturbed" by invaders, or physical processes (fire, flood, etc.), even before European settlement.

D. Make a Determination

Once the evaluation is complete, the determination that existing activity management is a significant causal factor for not achieving Standards (where they are not) must be documented. Because the Standards are developed to assure the conditions described in 43 CFR § 4180.1 exist, achievement of Standards would mean that the four fundamentals of rangeland health are "in or making significant progress toward" being met.

The determination document must include at a minimum:

- Statement of achievement or non-achievement for each Standard
- List of causal factors for not achieving Standards
- Statement of conformance or non-conformance with guidelines
- Date determination is made, and signature of authorized officer

Documentation of causal factors should clearly identify the evidence used to reach conclusions regarding whether a Standard is or is not being met, and which activities are causal factors for not achieving the Standard.

To determine which activity(ies) is/are significant factors resulting in failure to meet the Standards, use the best data and resource information available. This may include watershed assessments, quantitative data from monitoring and inventories, qualitative information, professional knowledge, and information provided by State agencies, public land users and others.

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The grazing related questions your team must answer as part of the determination process are listed below.

- Is it more likely than not that existing grazing management practices or levels of grazing use are significant factors in failing to achieve the Standards or conform with the guidelines? (YES/NO)
- Is it more likely than not that existing grazing management needs to be modified to ensure that the Fundamentals of rangeland health are met, or making significant progress toward being met? (YES/NO)

The authorized officer is responsible for making the determination based on the evaluation provided by the ID team, and information gathered from other sources. The determination document needs to be completed as soon as the evaluation is complete and any additional information is reviewed, normally no more than four months from completion of the evaluation.

If existing livestock grazing management or level of use is determined to be a significant causal factor for not achieving Standards or not making significant progress toward achieving a fundamental of rangeland health, the authorized officer must take appropriate action as soon as practicable but no later than the beginning of the next grazing year to bring grazing activities into conformance with grazing guidelines or to modify them so that significant progress can be made toward achieving Land Health Standards.

E. Develop a Plan

- The plan should address all Standards which were not achieved or conditions where fundamentals of rangeland health are not met or making significant progress toward being met. The team should use the results of the assessments and evaluation to prepare recommendations for modifications to existing use authorizations, restoration actions, and monitoring. Recommendations should have an overall goal in mind, such as to restore ecosystem processes that are impaired and to maintain those that are functioning satisfactorily. However, they may also be made to meet other types of goals, particularly land use plan objectives, or stepping down recommendations from a broader-scale analysis. Clearly state the goals for each recommendation. Recommendations should provide clear logic and rationale pointing to appropriate types of management actions needed to achieve objectives, given the existing and reference conditions of key resources.

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- If existing livestock grazing is determined to be a significant factor for not meeting one or more of the Land Health Standards in the watershed, work with the permittee(s)/leasees and other stakeholders to determine appropriate actions. Coordination should include proposals to modify the terms and conditions in the permit/lease and implementing restoration projects and range improvements. If changes are to be made in the terms and conditions in the permit, they must be in place before the start of the next grazing season. Any proposals to implement restoration and range improvement projects must take into consideration the ability to budget these projects and implement appropriate actions before the beginning of the next grazing season. If other necessary actions cannot be implemented right away, then interim adjustments will be made prior to the next grazing season, and a schedule for "final" changes must be developed and documented. Make sure that grazing terms and conditions are consistent with other adjustments that might be needed for other causal factors.

- If the Land Health Standards are not being achieved because of a causal factor other than current livestock grazing management, you must consult other program guidance for the appropriate steps to be taken to ensure that progress toward meeting Standards is made.

- Conflicts between existing objectives and the watershed's capability to meet these objectives may be identified through the evaluation process. If this occurs, it should be documented in the evaluation, in addition to any current regulatory or policy constraints that are in effect at the time of the evaluation.

- Develop a monitoring plan that includes studies or monitoring that will be needed to measure progress towards achieving the Standards. Identify the monitoring activities needed to address the issues in the evaluation. In particular, the monitoring strategy should link back to the indicators used in the evaluation and the causal factors for change and/or not meeting a Land Health Standard. Monitor only what is pertinent. Do not use qualitative assessments as a trend monitoring method.

F. Implement the Plan

Develop alternative actions for NEPA analysis which incorporate the information and recommendations developed in the evaluation. Reasonable alternatives to analyze must consider achievement of the Land Health Standards at the watershed scale. Use an appropriate level of NEPA analysis to select management actions designed to enhance or restore function and achieve the Standards. Implement actions or appropriate interim

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measures as soon as practicable, but, in the case of livestock grazing, no later than the beginning of the next grazing season. Evaluations will provide much of the information necessary to conduct NEPA analysis and identify resource restoration and monitoring needs.

1. Compare alternatives and discuss expected outcomes in the environmental analysis document.
2. Document desired future condition objectives both for monitoring, and for triggering management change (adaptive management).

G. Monitor Progress

Collect and evaluate inventory and monitoring data on a regular basis as needed to determine achievement of Land Health Standards, or progress toward achieving those Standards.

- Redesign existing monitoring programs to capture the data needed to complete future evaluations to determine achievement of or progress toward achieving standards.
- New monitoring needs to be sensitive enough and established at the appropriate location to detect deteriorating "achieving" areas, and improving "non-achieving" areas.
- Schedule data collection and evaluation to allow changes in the indicators to reflect changes in management of activities.

H. Report Results

Findings of the evaluation process will be reported electronically and posted to state websites for public access using the format shown in Illustration 2 (Reserved). Hard copies of all data collected and used for the evaluation and determination are to be kept in the appropriate Allotment Files as part of the Evaluation document.

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- Statement of achievement or non-achievement for each Standard
- List of causal factors for not achieving Standards
- Statement of conformance or non-conformance with guidelines
- Date determination is made, and signature of authorized officer

3. NEPA Analysis (if needed)

NEPA analysis is needed only if proposing an action and alternatives. For permitted activities, the proposal is either the application for the permitted use, or the proposal to change current management because of the findings in the Determination.

4. Decision document (if needed)

Decisions to adjust grazing management will be issued in accordance with Title 43 CFR § 4160. Decisions to adjust other activities will be made through the appropriate process or through a Decision Record subsequent to the NEPA analysis. Decisions requiring substantial change may require a Land Use Plan Revision or Amendment.

C. Storing/Accessing the Data

Hard copies of all data collected and used for the evaluation and determination are to be kept in the appropriate Allotment Files as part of the Evaluation document. Because most evaluations will be done on a watershed basis, a copy of each of the relevant watershed evaluations will be stored in the Allotment Files in the Evaluations section. A brief summary of the findings for the individual allotment is appropriate.

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CHAPTER IV - GUIDELINES FOR REPORTING

A. Purpose

Reporting will allow the Bureau to communicate the following items to the public and to other offices:

- findings from the evaluation,
- areas where Standards are achieved
- areas where Standards are not achieved, and the causal factors
- date the determination is signed
- the action taken to achieve Standards
- progress toward meeting Standards

The format for reporting allotment information is found in Illustration 2 (Reserved). This information will be filed electronically, and will be provided at state websites for access to the public.

B. Documents

Two documents will result from each evaluation: The Evaluation, and The Determination. Where Land Health Standards are not achieved, and there is no significant progress toward achieving them, there will be additional documentation: A NEPA analysis of alternative actions which will lead to making significant progress toward achieving the Standards, and the Decision document.

1. Evaluation

The evaluation will include identification of the area evaluated, a reference to data and information sources used in the evaluation, the list of Standards and/or objectives evaluated, the indicators used to evaluate the status of the Standards, and conclusions drawn by the ID team.

2. Determination

The Determination documents the findings based on the evaluation, whether or not each standard is achieved, and the causal factors if not achieved. The determination document must include at a minimum:

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Illustration 1 - 1

Evaluation Adequacy Checklist

This checklist provides a framework for documenting the process and insuring minimum levels of quality and consistency are met while allowing the field offices to have a maximum flexibility in the process.

Answers to all questions should be yes.

1. Is your assessment and evaluation area based on an issue or natural boundary (e.g. special designation, 303d listed stream, Special Status Species habitat, etc; watershed, mountain range, other contiguous landscape unit)? If other than a watershed, did you document why you chose another geographic unit for assessment and evaluation?
2. Is your assessment and evaluation area the appropriate size to effectively characterize the factors that influence health issues?
3. Have you considered all issues site specific and beyond, both big and small picture, upstream and downstream, etc, and planned to address both if needed? (e.g. migratory bird habitat vs. erosion at site specific levels)
4. Have you subdivided assessment and evaluation areas into relatively "like" (homogeneous) units that are under similar management?
5. Have you selected enough indicators to address each Standard?
6. Is your indicator measurement methodology repeatable—are you using a BLM approved method? (e.g. one of the methods described in the technical references listed in the Appendix)
7. If you are using existing data, does it adequately address your indicators?
8. Does your method adequately address the questions posed by the Standards?
9. Do you have enough observation/data points to represent the prevalent conditions in each of the subdivided units?
10. Do the data/observations you have reviewed support your conclusions?

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Process for Assessing Proper Functioning Condition



EXHIBIT 10



U.S. Department of the Interior
Bureau of Land Management

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Process for Assessing Proper Functioning Condition

I. Introduction

The Bureau of Land Management (BLM) has responsibility for 269 million acres of public lands (USDI, 1992) that sustain a variety and abundance of resources. These resources are prized for their recreation, fish and wildlife, cultural, and historic values, as well as their economic values, and for such uses as livestock production, timber harvest, and mineral extraction. Riparian-wetland areas, though they comprise less than 9 percent of the total land base, are the most productive and highly prized resources found on BLM lands.

Federal policy defines wetlands as *areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which, under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.* BLM Manual 1737, *Riparian-Wetland Area Management*, includes *marshes, shallow swamps, lakeshores, bogs, muskegs, wet meadows, estuaries, and riparian areas as wetlands.*

BLM's manual further defines riparian areas as *a form of wetland transition between permanently saturated wetlands and upland areas. These areas exhibit vegetation or physical characteristics reflective of permanent surface or subsurface water influence. Lands along, adjacent to, or contiguous with perennially and intermittently flowing rivers and streams, glacial potholes, and the shores of lakes and reservoirs with stable water levels are typical riparian areas. Excluded are such sites as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil.*

Riparian-wetland areas are grouped into two major categories: 1) lentic, which is standing water habitat such as lakes, ponds, seeps, bogs, and meadows, and 2) lotic, which is running water habitat such as rivers, streams, and springs.

A. Purpose

The Federal Land Policy and Management Act (FLPMA) of 1976 directs BLM to manage public lands in a manner that will provide for multiple use and at the same time protect natural resources for generations to come. In addition to FLPMA, numerous laws, regulations, policies, Executive orders, and Memorandums of Understanding (MOUs) direct BLM to manage its riparian-wetland areas for the benefit of the nation and its economy.

Under BLM's mandate of multiple-use management, a variety of activities such as livestock grazing, timber harvest, mineral extraction, recreation, and road and transportation corridor construction takes place on public lands. If not managed correctly, these activities can impact the quality of riparian-wetland areas.

In 1991, the BLM Director approved the *Riparian-Wetland Initiative for the 1990's*, which establishes national goals and objectives for managing riparian-wetland resources on public lands. One of the chief goals of this initiative is to restore and maintain riparian-wetland areas so that 75 percent or more are in proper functioning condition (PFC) by 1997. The overall objective of this goal is to achieve an advanced ecological status, except where resource management objectives, including PFC, would require an earlier successional stage, thus providing the widest variety of vegetation and habitat diversity for wildlife, fish, and watershed protection. This objective is important to remember because riparian-wetland areas will function properly long before they achieve an advanced ecological status. The *Riparian-Wetland Initiative for the 1990's* also includes a strategy to focus management on the entire watershed. Entire watershed condition is an important component in assessing whether a riparian-wetland area is functioning properly.

In the past, considerable effort has been expended to inventory, classify, restore, enhance, and protect riparian-wetland areas, but the effort has lacked consistency. The purpose of this document is to provide a thought process for assessing PFC for riparian-wetland areas on BLM-managed lands.

B. Approach

BLM depicts natural riparian-wetland areas as resources whose capability and potential is defined by the interaction of three components: 1) vegetation, 2) landform/soils, and 3) hydrology. A few resource specialists regard fish and wildlife as a fourth element because some wildlife species may alter a riparian-wetland area's capability and potential. However, most classifiers categorize fish and wildlife as a "user," but place wildlife species that can alter the capability and potential of a riparian-wetland site (i.e., beaver) as a special modifier under the hydrology component. BLM takes this approach in its inventory and classification system, Ecological Site Inventory (ESI).

Since natural riparian-wetland areas are characterized by the interactions of vegetation, soils, and hydrology, the process of assessing whether a riparian-wetland area is functioning properly requires an interdisciplinary (ID) team. The team should include specialists in vegetation, soils, and hydrology. A biologist also needs to be involved because of the high fish and wildlife values associated with riparian-wetland areas.

To initiate the process, in February 1992, the Director assembled an ID team of specialists to review existing Bureau definitions for PFC and to expand or develop new definitions as required. Appendix A provides the names of the specialists that were involved in this process. The ID team also developed a format for BLM to report functionality to Congress, which will include the table in Appendix B.

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In BLM's annual report to Congress, the following definitions are to be used when completing the table in Appendix B:

Proper Functioning Condition - Riparian-wetland areas are functioning properly when adequate vegetation, landform, or large woody debris is present to dissipate stream energy associated with high waterflows, thereby reducing erosion and improving water quality; filter sediment, capture bedload, and aid floodplain development; improve flood-water retention and ground-water recharge; develop root masses that stabilize streambanks against cutting action; develop diverse ponding and channel characteristics to provide the habitat and the water depth, duration, and temperature necessary for fish production, waterfowl breeding, and other uses; and support greater biodiversity. The functioning condition of riparian-wetland areas is a result of interaction among geology, soil, water, and vegetation.

Functional—At Risk - Riparian-wetland areas that are in functional condition but an existing soil, water, or vegetation attribute makes them susceptible to degradation.

Nonfunctional - Riparian-wetland areas that clearly are not providing adequate vegetation, landform, or large woody debris to dissipate stream energy associated with high flows and thus are not reducing erosion, improving water quality, etc., as listed above. The absence of certain physical attributes such as a floodplain where one should be are indicators of nonfunctioning conditions.

Unknown - Riparian-wetland areas that BLM lacks sufficient information on to make any form of determination.

II. Process

Most of the Bureau's riparian-wetland areas are found in Alaska and are considered functioning properly because they are in their natural state (USDI, 1991). This is not the case for BLM riparian-wetland areas in the 11 contiguous Western States, as well as small tracts in Alabama, Arkansas, Florida, Louisiana, Minnesota, Mississippi, and Oklahoma. Most of these riparian-wetland areas have been altered by human activities. However, the following process for determining whether an area is functioning properly is the same for Alaska as it is for the other states.

A. Review Existing Documents

To start the process, existing documents that provide a basis for assessing PFC should be reviewed. Technical Reference 1737-5, *Riparian and Wetland Classification Review* (Gebhardt et al., 1990), provides an excellent start as it reviews, in a like format, the more common procedures that are used to classify, inventory, and describe riparian-wetland areas. This document identifies ESI as being the most complete procedure because it provides a process for defining the capability of an area, its

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C. Definitions

The terms introduced in BLM's definition of riparian-wetlands are generally understood by resource specialists. However, some confusion still exists with the term ephemeral stream. A stream is a general term for a body of flowing water. In hydrology the term is generally applied to water flowing in a natural channel as distinct from a canal. Streams in natural channels are classified as being perennial, intermittent or seasonal, or ephemeral and are defined as follows (Meinzer, 1923):

Perennial - A stream that flows continuously. Perennial streams are generally associated with a water table in the localities through which they flow.

Intermittent or seasonal - A stream that flows only at certain times of the year when it receives water from springs or from some surface source such as melting snow in mountainous areas.

Ephemeral - A stream that flows only in direct response to precipitation, and whose channel is at all times above the water table.

These terms refer to the continuity of streamflow in time; they were developed by the U.S. Geological Survey in the early 1920's, have a long history of use, and are the standard definitions used by BLM resource specialists. Confusion over the distinction between intermittent and ephemeral streams may be minimized by applying Meinzer's (1923) suggestion that the term "intermittent" be arbitrarily restricted to streams that flow continuously for periods of at least 30 days and the term "ephemeral" be arbitrarily restricted to streams that do not flow continuously for at least 30 days. Also, the intermittent stream is to be distinguished from an interrupted stream, which is a stream with discontinuities in space. Intermittent or seasonal streams usually have visible vegetation or physical characteristics reflective of permanent water influence; for example, the presence of cottonwood.

To understand how riparian-wetland areas operate and to implement proper management practices, thus ensuring an area is functioning properly, the capability and potential of a riparian-wetland area must be understood. Assessing functionality is based upon an area's capability and potential. For the purpose of this document, capability and potential are defined as follows:

Capability - The highest ecological status a riparian-wetland area can attain given political, social, or economical constraints. These constraints are often referred to as limiting factors.

Potential - The highest ecological status an area can attain given no political, social, or economical constraints; often referred to as the "potential natural community" (PNC).

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potential, and how it functions. However, not all riparian-wetland areas will require the magnitude provided by ESI to assess functionality.

Technical Reference 1737-2, *The Use of Aerial Photography to Inventory and Monitor Riparian Areas* (Batson et al., 1987), Technical Reference 1737-3, *Inventory and Monitoring of Riparian Areas* (Myers, 1989), and Technical Reference 1737-7, *Procedures for Ecological Site Inventory—With Special Reference to Riparian-Wetland Sites* (Leonard et al., 1992), are three other documents that should be reviewed. These documents provide additional thought processes that will be useful in assessing functional status of riparian-wetland areas.

B. Analyze the Definition

Next, the definition of PFC must be analyzed. One way to do this is by breaking the definition down as follows:

"Riparian-wetland areas are functioning properly when adequate vegetation, landform, or large woody debris is present to:

- 1) dissipate stream energy associated with high waterflows, thereby reducing erosion and improving water quality;
- 2) filter sediment, capture bedload, and aid floodplain development;
- 3) improve flood-water retention and ground-water recharge;
- 4) develop root masses that stabilize streambanks against cutting action;
- 5) develop diverse ponding and channel characteristics to provide the habitat and the water depth, duration, and temperature necessary for fish production, waterfowl breeding, and other uses;
- 6) and support greater biodiversity."

Riparian areas are functioning properly when there is adequate structure present to provide the listed benefits applicable to a particular area. The analysis must be based on the riparian area's capability and potential. If, for example, the system does not have the potential to support fish habitat, that criteria would not be used in the assessment.

C. Assess Functionality

1. Attributes and Processes

The third aspect of assessing PFC involves understanding the attributes and processes occurring in a riparian-wetland area. Table 1 provides a list of attributes and processes that may occur in any given riparian-wetland area. When assessing PFC, attributes and processes for the area being evaluated need to be identified.

To understand these processes, an example of an alluvial/nongraded valley-bottom type riparian area in both a functional and nonfunctional condition is provided in Figure 1 (Jensen, 1992). Using the Bureau's definitions for PFC, State A represents

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Standard Checklist

Name of Riparian-Wetland Area: Slungullion
 Date: 6/17/98 Segment/Reach ID: #1
 Miles: 8.30 Acres: _____
 ID Team Observers: Zielinski, Prigoda

| Yes | No | N/A | HYDROLOGIC |
|-----|-------------------------------------|-------------------------------------|--|
| | <input checked="" type="checkbox"/> | | Floodplain inundated in "relatively frequent" events (1-3 years) |
| | | <input checked="" type="checkbox"/> | Active/stable beaver dams |
| | <input checked="" type="checkbox"/> | | Sinuosity, width/depth ratio, and gradient are in balance with the landscape setting (i.e., landform, geology, and bioclimatic region) |
| | <input checked="" type="checkbox"/> | | Riparian zone is widening |
| | <input checked="" type="checkbox"/> | | Upland watershed not contributing to riparian degradation - <u>Acroy horse</u> |

| Yes | No | N/A | VEGETATIVE |
|-----|-------------------------------------|-----|--|
| | <input checked="" type="checkbox"/> | | Diverse age structure of vegetation |
| | <input checked="" type="checkbox"/> | | Diverse composition of vegetation |
| | <input checked="" type="checkbox"/> | | Species present indicate maintenance of riparian soil moisture characteristics |
| | <input checked="" type="checkbox"/> | | Streambank vegetation is comprised of those plants or plant communities that have root masses capable of withstanding high streamflow events |
| | <input checked="" type="checkbox"/> | | Riparian plants exhibit high vigor |
| | <input checked="" type="checkbox"/> | | Adequate vegetative cover present to protect banks and dissipate energy during high flows |
| | <input checked="" type="checkbox"/> | | Plant communities in the riparian area are an adequate source of coarse and/or large woody debris |

| Yes | No | N/A | EROSION DEPOSITION |
|-----|-------------------------------------|-------------------------------------|---|
| | <input checked="" type="checkbox"/> | | Floodplain and channel characteristics (i.e., <u>rocks</u> coarse and/or large woody debris) adequate to dissipate energy |
| | | <input checked="" type="checkbox"/> | Point bars are revegetating |
| | <input checked="" type="checkbox"/> | | Lateral stream movement is associated with natural sinuosity |
| | <input checked="" type="checkbox"/> | | System is vertically stable |
| | <input checked="" type="checkbox"/> | | Stream is in balance with the water and sediment being supplied by the watershed (i.e., no excessive erosion or deposition) |

EXHIBIT 11

Remarks

numerous dead of beaver present numerous
live trails

Summary Determination

Functional Rating:

Proper Functioning Condition _____
 Functional - At Risk
 Nonfunctional _____
 Unknown _____

Trend for Functional - At Risk:

Upward _____
 Downward
 Not Apparent _____

Are factors contributing to unacceptable conditions outside BLM's control or management?

Yes _____
 No _____

If yes, what are those factors?

- ___ Flow regulations ___ Mining activities ___ Upstream channel conditions
- ___ Channelization ___ Road encroachment ___ Oil field water discharge
- ___ Augmented flows ___ Other (specify) _____

PFC

Standard Checklist

Name of Riparian-Wetland Area: Slungullion
 Date: 6/17/98 Segment/Reach ID: #2
 Miles: 1.09 Acres: _____
 ID Team Observers: Zielinski

| Yes | No | N/A | HYDROLOGIC |
|-----|-------------------------------------|-------------------------------------|--|
| | <input checked="" type="checkbox"/> | | Floodplain inundated in "relatively frequent" events (1-3 years) |
| | | <input checked="" type="checkbox"/> | Active/stable beaver dams |
| | <input checked="" type="checkbox"/> | | Sinuosity, width/depth ratio, and gradient are in balance with the landscape setting (i.e., landform, geology, and bioclimatic region) |
| | <input checked="" type="checkbox"/> | | Riparian zone is widening <u>at present</u> |
| | <input checked="" type="checkbox"/> | | Upland watershed not contributing to riparian degradation |

| Yes | No | N/A | VEGETATIVE |
|-------------------------------------|----|-----|--|
| <input checked="" type="checkbox"/> | | | Diverse age structure of vegetation |
| <input checked="" type="checkbox"/> | | | Diverse composition of vegetation |
| <input checked="" type="checkbox"/> | | | Species present indicate maintenance of riparian soil moisture characteristics |
| <input checked="" type="checkbox"/> | | | Streambank vegetation is comprised of those plants or plant communities that have root masses capable of withstanding high streamflow events |
| <input checked="" type="checkbox"/> | | | Riparian plants exhibit high vigor |
| <input checked="" type="checkbox"/> | | | Adequate vegetative cover present to protect banks and dissipate energy during high flows |
| <input checked="" type="checkbox"/> | | | Plant communities in the riparian area are an adequate source of coarse and/or large woody debris |

| Yes | No | N/A | EROSION DEPOSITION |
|-------------------------------------|----|-------------------------------------|---|
| <input checked="" type="checkbox"/> | | | Floodplain and channel characteristics (i.e., rocks, coarse and/or large woody debris) adequate to dissipate energy |
| | | <input checked="" type="checkbox"/> | Point bars are revegetating |
| <input checked="" type="checkbox"/> | | | Lateral stream movement is associated with natural sinuosity |
| <input checked="" type="checkbox"/> | | | System is vertically stable |
| <input checked="" type="checkbox"/> | | | Stream is in balance with the water and sediment being supplied by the watershed (i.e., no excessive erosion or deposition) |

Standard Checklist

Name of Riparian-Wetland Area: Slungellia
 Date: 6/17/98 Segment/Reach ID: #3
 Miles: 1.57 + 1.77 + 0.34 = 3.68 Acres: _____
 ID Team Observers: Zickachi, Berglund

| Yes | No | N/A | HYDROLOGIC |
|-------------------------------------|--------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Floodplain inundated in "relatively frequent" events (1-3 years) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Active/stable beaver dams |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sinuosity, width/depth ratio, and gradient are in balance with the landscape setting (i.e., landform, geology, and bioclimatic region) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Riparian zone is widening <u>not to potential</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Upland watershed not contributing to riparian degradation |

| Yes | No | N/A | VEGETATIVE |
|-------------------------------------|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Diverse age structure of vegetation - <u>mainly young</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Diverse composition of vegetation |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Species present indicate maintenance of riparian soil moisture characteristics |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Streambank vegetation is comprised of those plants or plant communities that have root masses capable of withstanding high streamflow events |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Riparian plants exhibit high vigor |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Adequate vegetative cover present to protect banks and dissipate energy during high flows |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Plant communities in the riparian area are an adequate source of coarse and/or large woody debris - <u>mainly young willows</u> |

| Yes | No | N/A | EROSION DEPOSITION |
|-------------------------------------|--------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Floodplain and channel characteristics (i.e., rocks, coarse and/or large woody debris) adequate to dissipate energy |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Point bars are revegetating |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Lateral stream movement is associated with natural sinuosity |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | System is vertically stable |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Stream is in balance with the water and sediment being supplied by the watershed (i.e., no excessive erosion or deposition) |

Remarks

Summary Determination

Functional Rating:

Proper Functioning Condition
 Functional—At Risk _____
 Nonfunctional _____
 Unknown _____

Trend for Functional—At Risk:

Upward _____
 Downward _____
 Not Apparent _____

Are factors contributing to unacceptable conditions outside BLM's control or management?

Yes _____
 No _____

If yes, what are those factors?

- ___ Flow regulations ___ Mining activities ___ Upstream channel conditions
- ___ Channelization ___ Road encroachment ___ Oil field water discharge
- ___ Augmented flows ___ Other (specify) _____

Remarks
incised channel, established floodplain

Summary Determination

Functional Rating:

Proper Functioning Condition
 Functional—At Risk _____
 Nonfunctional _____
 Unknown _____

Trend for Functional—At Risk:

Upward _____
 Downward _____
 Not Apparent _____

Are factors contributing to unacceptable conditions outside BLM's control or management?

Yes _____
 No _____

If yes, what are those factors?

- ___ Flow regulations ___ Mining activities ___ Upstream channel conditions
- ___ Channelization ___ Road encroachment ___ Oil field water discharge
- ___ Augmented flows ___ Other (specify) _____

Standard Checklist

Name of Riparian-Wetland Area: COLEMAN
 Date: 6-15-98 Segment/Reach ID: #1 UPPER
 Miles: 1.33 Acres: _____
 ID Team Observers: ZIRUNSKI-BERGWOLD

| Yes | No | N/A | HYDROLOGIC |
|-------------------------------------|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Floodplain inundated in "relatively frequent" events (1-3 years) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Active/stable beaver dams |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Sinuosity, width/depth ratio, and gradient are in balance with the landscape setting (i.e., landform, geology, and bioclimatic region) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Riparian zone is widening <u>(DELONCOE CHANNEL)</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Upland watershed not contributing to riparian degradation |

| Yes | No | N/A | VEGETATIVE |
|-------------------------------------|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Diverse age structure of vegetation |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Diverse composition of vegetation |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Species present indicate maintenance of riparian soil moisture characteristics |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Streambank vegetation is comprised of those plants or plant communities that have root masses capable of withstanding high streamflow events |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Riparian plants exhibit high vigor |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Adequate vegetative cover present to protect banks and dissipate energy during high flows |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Plant communities in the riparian area are an adequate source of coarse and/or large woody debris |

| Yes | No | N/A | EROSION DEPOSITION |
|--------------------------|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Floodplain and channel characteristics (i.e., rocks, coarse and/or large woody debris) adequate to dissipate energy |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Point bars are revegetating |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Lateral stream movement is associated with natural sinuosity |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | System is vertically stable |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Stream is in balance with the water and sediment being supplied by the watershed (i.e., no excessive erosion or deposition) |

Standard Checklist

Name of Riparian-Wetland Area: COLEMAN
Date: 6-15-98 Segment/Reach ID: #2 MID
Miles: 1.42 + 2.58 Acres:
ID Team Observers: ZIELINSKI - BERGLUND

| Yes | No | N/A | HYDROLOGIC |
|-------------------------------------|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | | | Floodplain inundated in "relatively frequent" events (1-3 years) |
| | | <input checked="" type="checkbox"/> | Active/stable beaver dams |
| <input checked="" type="checkbox"/> | | | Sinuosity, width/depth ratio, and gradient are in balance with the landscape setting (i.e., landform, geology, and bioclimatic region) |
| <input checked="" type="checkbox"/> | | | Riparian zone is widening (<u>NOT A POTENTIAL</u>) |
| | <input checked="" type="checkbox"/> | | Upland watershed not contributing to riparian degradation (<u>LIGHTLY ERODING SOILS</u>) |

| Yes | No | N/A | VEGETATIVE |
|-------------------------------------|-------------------------------------|-----|--|
| | <input checked="" type="checkbox"/> | | Diverse age structure of vegetation (<u>NOT AT POTENTIAL</u>) |
| | <input checked="" type="checkbox"/> | | Diverse composition of vegetation (<u>NOT AT POTENTIAL</u>) |
| <input checked="" type="checkbox"/> | | | Species present indicate maintenance of riparian soil moisture characteristics |
| <input checked="" type="checkbox"/> | | | Streambank vegetation is comprised of those plants or plant communities that have root masses capable of withstanding high streamflow events |
| | <input checked="" type="checkbox"/> | | Riparian plants exhibit high vigor |
| | <input checked="" type="checkbox"/> | | Adequate vegetative cover present to protect banks and dissipate energy during high flows (<u>NOT AT POTENTIAL SOME BANK BANKS</u>) |
| <input checked="" type="checkbox"/> | | | Plant communities in the riparian area are an adequate source of coarse and/or large woody debris (<u>WILLOW & ASPEN</u>) |

| Yes | No | N/A | EROSION DEPOSITION |
|-------------------------------------|-------------------------------------|-----|---|
| | <input checked="" type="checkbox"/> | | Floodplain and channel characteristics (i.e., rocks, coarse and/or large woody debris) adequate to dissipate energy |
| <input checked="" type="checkbox"/> | | | Point bars are revegetating |
| <input checked="" type="checkbox"/> | | | Lateral stream movement is associated with natural sinuosity |
| <input checked="" type="checkbox"/> | | | System is vertically stable |
| <input checked="" type="checkbox"/> | | | Stream is in balance with the water and sediment being supplied by the watershed (i.e., no excessive erosion or deposition) |

Remarks
DOWN CUT CHANNEL & EXCESSIVE HEADSCOTS ESTABLISHED AT HEADWATERS

Summary Determination

Functional Rating:

Proper Functioning Condition
Functional—At Risk
Nonfunctional
Unknown

Trend for Functional—At Risk:

Upward
Downward
Not Apparent

Are factors contributing to unacceptable conditions outside BLM's control or management?

Yes
No

If yes, what are those factors?

Flow regulations Mining activities Upstream channel conditions
 Channelization Road encroachment Oil field water discharge
 Augmented flows Other (specify)

Remarks
PAST CONDITIONS WAS POOR WITH DOWNCUTS AND LATERAL MOVEMENT STARTING TO GET INTO EQUILIBRIUM W/ FLOW & GEOMORPHOLOGY

Summary Determination

Functional Rating:

Proper Functioning Condition
Functional—At Risk
Nonfunctional
Unknown

Trend for Functional—At Risk:

Upward
Downward
Not Apparent

Are factors contributing to unacceptable conditions outside BLM's control or management?

Yes
No

If yes, what are those factors?

Flow regulations Mining activities Upstream channel conditions
 Channelization Road encroachment Oil field water discharge
 Augmented flows Other (specify)

Standard Checklist

Name of Riparian-Wetland Area: COLEMAN
Date: 6-15-98 Segment/Reach ID: #3 LOWER
Miles: 4.91 Acres:
ID Team Observers: ZIELINSKI - BERGLUND

| Yes | No | N/A | HYDROLOGIC |
|-------------------------------------|----|-------------------------------------|--|
| <input checked="" type="checkbox"/> | | | Floodplain inundated in "relatively frequent" events (1-3 years) |
| | | <input checked="" type="checkbox"/> | Active/stable beaver dams |
| <input checked="" type="checkbox"/> | | | Sinuosity, width/depth ratio, and gradient are in balance with the landscape setting (i.e., landform, geology, and bioclimatic region) |
| <input checked="" type="checkbox"/> | | | Riparian zone is widening |
| <input checked="" type="checkbox"/> | | | Upland watershed not contributing to riparian degradation |

| Yes | No | N/A | VEGETATIVE |
|-------------------------------------|----|-----|--|
| <input checked="" type="checkbox"/> | | | Diverse age structure of vegetation |
| <input checked="" type="checkbox"/> | | | Diverse composition of vegetation |
| <input checked="" type="checkbox"/> | | | Species present indicate maintenance of riparian soil moisture characteristics |
| <input checked="" type="checkbox"/> | | | Streambank vegetation is comprised of those plants or plant communities that have root masses capable of withstanding high streamflow events |
| <input checked="" type="checkbox"/> | | | Riparian plants exhibit high vigor |
| <input checked="" type="checkbox"/> | | | Adequate vegetative cover present to protect banks and dissipate energy during high flows |
| <input checked="" type="checkbox"/> | | | Plant communities in the riparian area are an adequate source of coarse and/or large woody debris |

| Yes | No | N/A | EROSION DEPOSITION |
|-------------------------------------|----|-----|---|
| <input checked="" type="checkbox"/> | | | Floodplain and channel characteristics (i.e., rocks, coarse and/or large woody debris) adequate to dissipate energy |
| <input checked="" type="checkbox"/> | | | Point bars are revegetating |
| <input checked="" type="checkbox"/> | | | Lateral stream movement is associated with natural sinuosity |
| <input checked="" type="checkbox"/> | | | System is vertically stable |
| <input checked="" type="checkbox"/> | | | Stream is in balance with the water and sediment being supplied by the watershed (i.e., no excessive erosion or deposition) |

NEW FLOODPLAIN REVEGETATED IN OLD BEAR INCISION

Remarks

Standard Checklist

FAR

Name of Riparian-Wetland Area: CHERRY CR.

Date: 6-15-98 Segment/Reach ID: # 1 UPPER

Miles: 3.01 Acres:

ID Team Observers: ZIELINSKI & BERGLUND

HELICOPTER

| Yes | No | N/A | HYDROLOGIC |
|-------------------------------------|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Floodplain inundated in "relatively frequent" events (1-3 years) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Active/stable beaver dams |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sinuosity, width/depth ratio, and gradient are in balance with the landscape setting (i.e., landform, geology, and bioclimatic region) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Riparian zone is widening (ENCROACH) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Upland watershed not contributing to riparian degradation |

| Yes | No | N/A | VEGETATIVE |
|-------------------------------------|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Diverse age structure of vegetation |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Diverse composition of vegetation |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Species present indicate maintenance of riparian soil moisture characteristics |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Streambank vegetation is comprised of those plants or plant communities that have root masses capable of withstanding high streamflow events (SUCCEDED QUANTITATIVE NOT QUANTITATIVE) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Riparian plants exhibit high vigor |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Adequate vegetative cover present to protect banks and dissipate energy during high flows |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Plant communities in the riparian area are an adequate source of coarse and/or large woody debris |

| Yes | No | N/A | EROSION DEPOSITION |
|-------------------------------------|--------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Floodplain and channel characteristics (i.e., rocks) coarse and/or large woody debris) adequate to dissipate energy |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Point bars are revegetating |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Lateral stream movement is associated with natural sinuosity |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | System is vertically stable |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Stream is in balance with the water and sediment being supplied by the watershed (i.e., no excessive erosion or deposition) |

Summary Determination

Functional Rating:

Proper Functioning Condition
 Functional—At Risk
 Nonfunctional
 Unknown

Trend for Functional—At Risk:

Upward
 Downward
 Not Apparent

Are factors contributing to unacceptable conditions outside BLM's control or management?

Yes
 No

If yes, what are those factors?

Flow regulations Mining activities Upstream channel conditions
 Channelization Road encroachment Oil field water discharge
 Augmented flows Other (specify)

Remarks

UPPER WATERSHED DEPLETED IN CHANNEL

Standard Checklist

PFC

Name of Riparian-Wetland Area: CHERRY CR.

Date: 6-15-98 Segment/Reach ID: # 2 LOWER

Miles: 1.73 Acres:

ID Team Observers: ZIELINSKI & BERGLUND

HELICOPTER

| Yes | No | N/A | HYDROLOGIC |
|-------------------------------------|--------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Floodplain inundated in "relatively frequent" events (1-3 years) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Active/stable beaver dams |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sinuosity, width/depth ratio, and gradient are in balance with the landscape setting (i.e., landform, geology, and bioclimatic region) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Riparian zone is widening (AT BEAST) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Upland watershed not contributing to riparian degradation |

| Yes | No | N/A | VEGETATIVE |
|-------------------------------------|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Diverse age structure of vegetation |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Diverse composition of vegetation |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Species present indicate maintenance of riparian soil moisture characteristics |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Streambank vegetation is comprised of those plants or plant communities that have root masses capable of withstanding high streamflow events |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Riparian plants exhibit high vigor |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Adequate vegetative cover present to protect banks and dissipate energy during high flows |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Plant communities in the riparian area are an adequate source of coarse and/or large woody debris (SOME WOOD) |

| Yes | No | N/A | EROSION DEPOSITION |
|-------------------------------------|--------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Floodplain and channel characteristics (i.e., rocks) coarse and/or large woody debris) adequate to dissipate energy |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Point bars are revegetating |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Lateral stream movement is associated with natural sinuosity |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | System is vertically stable |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Stream is in balance with the water and sediment being supplied by the watershed (i.e., no excessive erosion or deposition) |

Summary Determination

Functional Rating:

Proper Functioning Condition
 Functional—At Risk
 Nonfunctional
 Unknown

Trend for Functional—At Risk:

Upward
 Downward
 Not Apparent

Are factors contributing to unacceptable conditions outside BLM's control or management?

Yes
 No

If yes, what are those factors?

Flow regulations Mining activities Upstream channel conditions
 Channelization Road encroachment Oil field water discharge
 Augmented flows Other (specify)

Summary Determination

Functional Rating:

Proper Functioning Condition
 Functional—At Risk
 Nonfunctional
 Unknown

Trend for Functional—At Risk:

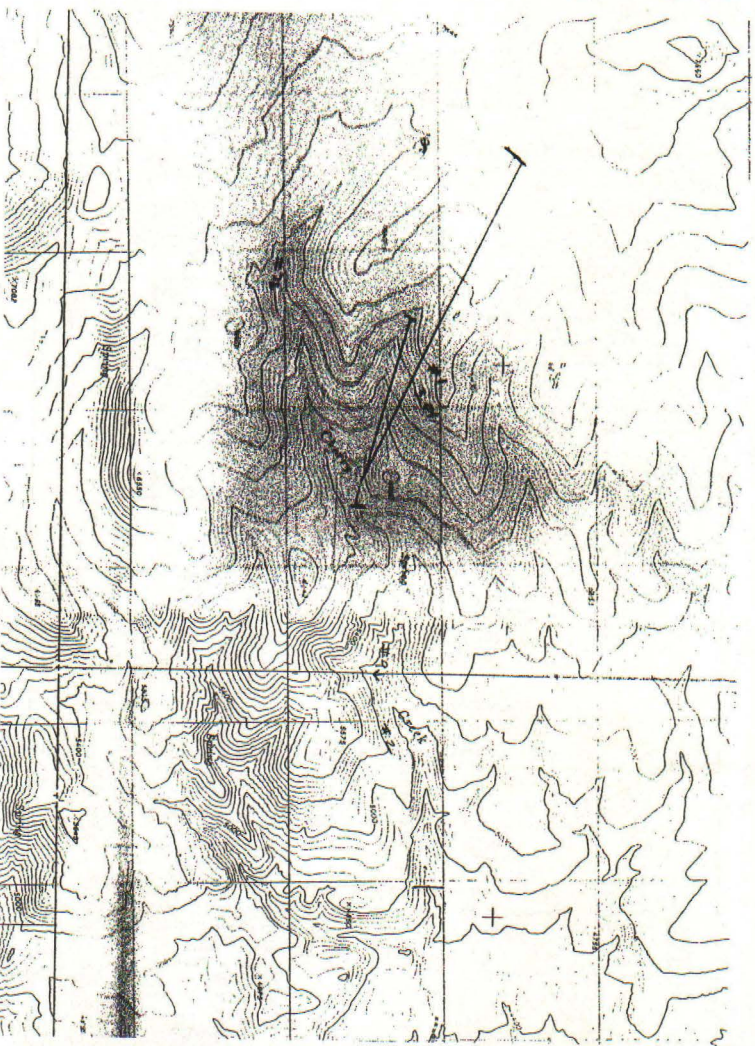
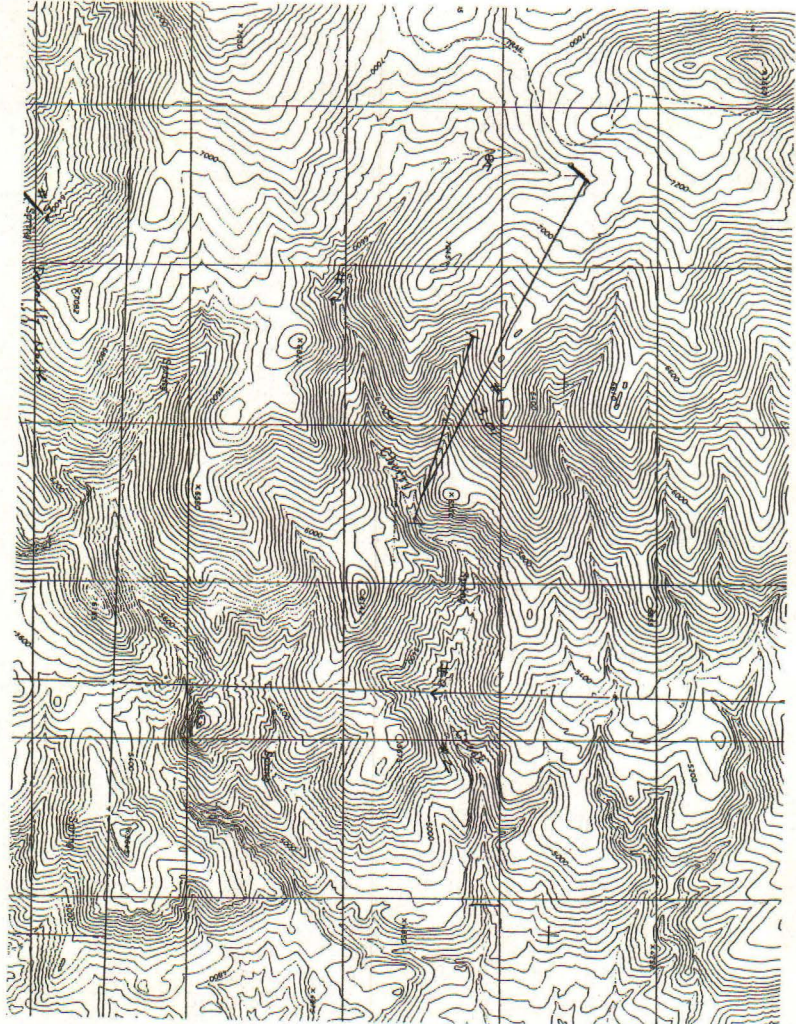
Upward
 Downward
 Not Apparent

Are factors contributing to unacceptable conditions outside BLM's control or management?

Yes
 No

If yes, what are those factors?

Flow regulations Mining activities Upstream channel conditions
 Channelization Road encroachment Oil field water discharge
 Augmented flows Other (specify) _____



Standard Checklist

FAR =

Name of Riparian-Wetland Area: SOLDIER CR.
 Date: 6-15-98 Segment/Reach ID: #1
 Miles: 3.42 Acres: _____
 ID Team Observers: ZIELENSKI - BERGLUND

Helicopter Invas. log

| Yes | No | N/A | HYDROLOGIC |
|-------------------------------------|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Floodplain inundated in "relatively frequent" events (1-3 years) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Active/stable beaver dams |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sinuosity, width/depth ratio, and gradient are in balance with the landscape setting (i.e., landform, geology, and bioclimatic region) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Riparian zone is widening |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Upland watershed not contributing to riparian degradation (#3 HORSE CREEKS) |

| Yes | No | N/A | VEGETATIVE |
|-------------------------------------|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Diverse age structure of vegetation (SOME INCISION) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Diverse composition of vegetation (LIMITED TO SOME WILLOWS & SEDGES) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Species present indicate maintenance of riparian soil moisture characteristics |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Streambank vegetation is comprised of those plants or plant communities that have root masses capable of withstanding high streamflow events |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Riparian plants exhibit high vigor |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Adequate vegetative cover present to protect banks and dissipate energy during high flows |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Plant communities in the riparian area are an adequate source of coarse and/or large woody debris |

| Yes | No | N/A | EROSION DEPOSITION |
|-------------------------------------|--------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Floodplain and channel characteristics (i.e., rocks) coarse and/or large woody debris adequate to dissipate energy |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Point bars are revegetating |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Lateral stream movement is associated with natural sinuosity |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | System is vertically stable |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Stream is in balance with the water and sediment being supplied by the watershed (i.e., no excessive erosion or deposition) |

Stream is incised AT LOWER FEND AT LOWER END w/ COVERED CE.

Series of horizontal lines for handwritten notes.

Summary Determination

Functional Rating:

Proper Functioning Condition
Functional - At Risk (checked)
Nonfunctional
Unknown

Trend for Functional - At Risk:

Upward
Downward (checked)
Not Apparent

Are factors contributing to unacceptable conditions outside BLM's control or management?

Yes
No

If yes, what are those factors?

- Flow regulations, Mining activities, Upstream channel conditions, Channelization, Road encroachment, Oil field water discharge, Augmented flows, Other (specify)

1 W. Alan Schroeder, Esq.
Schroeder & Lezamiz Law Offices, L.L.P.
2 P.O. Box 267
Boise, Idaho 83701-0267
3 Telephone: 208-384-1627, Ext. #2
Telecopy: 208-384-1833

4 the lawyer for *Estill Ranches, L.L.C.* - Appellant.

5
6
7 UNITED STATES DEPARTMENT OF INTERIOR
8 OFFICE OF HEARINGS AND APPEALS
9 HEARINGS DIVISION

10 ESTILL RANCHES, L.L.C.,) NV - _____
11)
Appellant,) Appeal from the Asst. Field
12) Manager's Decision dated
vs.) 5/5/04, Winnemucca Grazing
13) District, Nevada, relating
BUREAU OF LAND MANAGEMENT,) to the Soldier Meadows
14) Allotment.
Respondent.)

15 DECLARATION OF JOHN B. ESTILL

16 John B. Estill declares:

17 1. This declaration is prepared as related to *Estill*
18 *Ranches, L.L.C.* ("Estill") and as related to the Soldier Meadows
19 Allotment, in support of Estill's "Notice of Partial Appeal,
20 Statement of Reasons, and Petition for Partial Stay" dated June
21 10, 2004 ("NOA, SOR, PFS").

22 2. My address is P.O. Box 655, Eagleville, California
23 96110. My wife and I have three children, ages 13, 11, and 6.
24 I am 45 years old and have been in the ranching business my
25 entire life.

26 3. Estill is a Limited Liability Company authorized to do
27 business in Nevada, as well as California. The ownership
28

EXHIBIT "G"

Schroeder & Lezamiz Law Offices
P.O. Box 267
Boise, Idaho 83701
208-384-1627

1 interest of Estill resides in my mother, Jewell M. Estill
2 (56.49%), my wife, Lani L. Estill (5.08%), and myself (38.43%).

3 4. Estill owns approximately 9,000 acres of private land
4 ("Soldier Meadows Ranch", or "Ranch") within the boundary of the
5 Soldier Meadows Allotment (the "Allotment"), including other
6 private land and public land interests in adjacent areas.

7 5. Estill owns irrigation and/or livestock water rights on
8 Donnelly Creek, Mud Meadows Creek, Sheep Springs Creek, Soldier
9 Meadows Creek, Little High Rock Creek, Summer Camp Spring, Idaho
10 Canyon Springs, Double Hot Spring, and various other streams and
11 springs and below-ground water sources, with authorized points
12 of diversion and places of use on both public land and Estill's
13 private land located within the Allotment. These water rights
14 serve Estill's livestock operation and guest ranch & lodge.

15 6. Estill owns and operates the Soldier Meadows Guest Ranch
16 and Lodge, which is operated from the Soldier Meadows Ranch.
17 The clientele of the Guest Ranch & Lodge use the private land
18 of the ranch and the adjacent public land and waters of the
19 Soldier Meadows Allotment for many uses including: hunting;
20 fishing; wading; swimming; 4-wheeling; 2-wheeling; mountain
21 biking; hiking; horseback riding; desert and mountain touring;
22 picnicking and barbecuing; rock hounding; sightseeing; moving
23 of livestock; viewing of livestock; archeological, cultural,
24 prehistoric and historic interests; hot-spring spa-ing; and
25 general aesthetic enjoyment. The Soldier Meadows Ranch
26 headquarters is the site of the historic U.S. Cavalry Camp
27

1 McGary. The Guest Ranch & Lodge now experiences over 1,200
2 visitor days per year, including local, state, national, and
3 international visitors.

4 7. Estill owns a USDI Grazing Preference within the Soldier
5 Meadows Allotment (the "Grazing Preference"), Winnemucca Grazing
6 District, Nevada, to the extent of 16,070 Animal Unit Months
7 (AUMs). This Grazing Preference is authorized under a Grazing
8 Permit dated December 8, 1997, that is currently effective and
9 remains effective through December 15, 2007 (the "Grazing
10 Permit"). The Grazing Permit is attached as Exhibit "B" to
11 Estill's NOA, SOR, PFS. The Grazing Permit authorizes Estill to
12 graze cattle within the Allotment, as follows:

| | | | | | |
|-------|--------|-------|----|-------|--------------------------|
| 500 | cattle | 1/1 | to | 3/31 | 1,496 AUMs |
| 1117 | cattle | 4/1 | to | 4/30 | 1,102 AUMs |
| 1117 | cattle | 7/15 | to | 10/14 | 3,379 AUMs |
| 1117 | cattle | 11/16 | to | 12/31 | 1,689 AUMs |
| Total | | | | | 7,666 AUMs. ¹ |

16 Grazing must conform to the Final Multiple Use Decision ("1994
17 FMUD") dated January 24, 1994 (which is attached as Exhibit "C"
18 to Estill's NOA, SOR, PFS).

19 8. Estill entered into a lease/option-to-buy agreement in
20 1996, and exercised the option to buy the Soldier Meadows Ranch
21 in 1997. Soldier Meadows Ranch is the base property for the
22 USDI Grazing Preference and the associated Grazing Permit
23

24
25 ¹ The Grazing Permit authorizes 16,070 AUMs of permitted
26 use, which includes 3,902 AUMs of "suspended use" and 12,168
27 AUMs of "active use". 4,481 AUMs of the 12,168 AUMs of "active
28 use" is "Not Scheduled".

Schroeder & Lezamiz Law Offices
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208-384-1627

discussed above. Estill has held and controlled the Grazing Permit since 1997.

9. At the point in time that Estill acquired the base property and Grazing Permit, an administrative appeal by Estill's predecessor in interest was pending regarding certain facets of BLM's Final Grazing Decision dated January 24, 1994 ("1994 FMUD"). Estill entered into an informal agreement with BLM at that time to dismiss the pending appeal and to work cooperatively with BLM toward the development of a new grazing management decision which would continue to address resources within the Allotment and accommodate Estill's livestock operation. I believed at the time, based upon the representations of BLM, that such a new grazing management decision would be issued forthwith. However, this did not occur.

10. In the meantime, BLM collected some monitoring data upon the public land within the Soldier Meadows Allotment. BLM then evaluated the data

"in order to determine if current (livestock) management is attaining the allotment objectives and Standards for Rangeland Health (SRH) within the SMA (Soldier Meadows Allotment)."

NOA, SOR, PFS Exhibit "A", p. 1. This evaluation was documented in various "drafts", but ultimately issued as BLM's "Final Allotment Re-Evaluation Summary" dated March 3, 2003 ("2003 AE") and as BLM's "Determination/Management Action Selection Report"

Estill Declaration - 4

"Rangeland Heath Standards" that were purportedly wholly "not-met" (identified in the Schweigert Affidavit as "Unequivocally Not Met") and that were purportedly "partially not-met" (identified in the Schweigert Affidavit as "Equivocally (Partially) Met"). In other words, Estill and I deny BLM's findings relative to the "Objectives" and "Standards" that were purportedly wholly "not-met" and purportedly "partially not-met", but Estill was willing to accommodate BLM's purported findings should any new grazing decision not adversely affect Estill's livestock operation, and should any new grazing decision accommodate Estill's overall livestock operation, which included cattle grazing authorizations in adjacent areas and allotments; namely:

- Wall Canyon (East) Allotment which authorizes 656 head of cattle between 5/1 and 9/30;
- Red Rock Lake Allotment which authorizes 197 cattle between 6/15 and 6/30;
- Tuledad Allotment which authorizes 600 cattle between 4/1 - 7/15;
- Bare Allotment which authorizes 1,870 cattle between 3/1 and 6/30, 1,340 cattle between 7/1 and 10/31, and 670 cattle between 11/1 and 11/30;
- Hall Field Allotment which authorizes 36 cattle between 5/16 and 9/15;
- Bear Camp (Forest Service) Allotment which authorizes 600 cattle between 7/16 to 9/30;
- North Creek (Forest Service) Allotment which authorizes 73 cattle between 6/16 and 8/31.

Estill Declaration - 6

dated March 3, 2003 ("2003 MASR"). See NOA, SOR, PFS Exhibit "A", p. 1.

11. On March 3, 2003, BLM made public their 2003 AE and 2003 MASR. The 2003 AE and 2003 MASR disclosed certain findings relative to the "Allotment Objectives" and "Rangeland Health Standards". Though the 2003 AE and 2003 MASR did not group all of its findings into particular categories, these findings can be grouped into four (4) different categories, as discussed in Schweigert Affidavit (which is Exhibit "F" attached to Estill's NOA, SOR, PFS).

12. A few days later, on March 10, 2003, BLM issued the "Soldier Meadows Multiple Use Management Environmental Assessment" (EA NV-020-03-09) ("2003 EA").²

13. Before and after the 2003 AE, 2003 MASR, and 2003 EA were issued, BLM solicited and received comments from me, including my natural resources management consultant, Robert N. Schweigert. BLM also conducted several meetings with me, including with Mr. Schweigert.

14. Through comments to BLM and discussions with BLM, I submitted proposals to BLM. These proposals were made without respect to the merits of BLM's findings in their 2003 AE, 2003 MASR, and 2003 EA, but with respect to satisfying BLM's purported concerns relative to the "Allotment Objectives" and

² Note that the associated or dependent "Finding of No Significant Impact" for the 2003 EA was issued with the FMUD on May 5, 2004.

Estill Declaration - 5

Note that these authorizations in other Allotments are subject to their own terms and conditions. My objective was to maintain and enhance a stable cattle operation, which is no simple task. I have to plan a year in advance to accommodate the numbers of cattle (and sheep) that Estill's grazes on public and private land, balancing the forage available on such public and private land. Any imbalance on any one allotment or on any one area of private land causes an immediate ripple effect through the remaining other allotments and areas of private land. Any ripple causes immediate action, and often causes immediate and irreparable harm.

15. Notwithstanding my efforts, BLM rejected Estill's proposals. This rejection occurred on October 17, 2003, when BLM issued their "Proposed Multiple Use Decision Soldier Meadows Allotment" ("PMUD"); occurred again on May 5, 2004, when BLM issued their "Final Multiple Use Decision Soldier Meadows Allotment" ("FMUD"); and, even occurred again this week on June 7, 2004, when Estill requested, and BLM failed to make, changes in at least the "Interim Grazing System" to mitigate the immediate and irreparable harm expected to be caused upon Estill.

16. Having no choice, Estill was forced to file this appeal, seeking to set aside those provisions within the FMUD that changed the permitted use (as appealed); imposed the "Interim" season of use (as appealed); imposed the "Interim" and

Estill Declaration - 7

030-34-1627

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030-34-1627

1 "(Final)" Grazing Systems (as appealed); and, imposed the terms
2 and conditions (as appealed). See Estill's NOA, SOR, PFS.

3 17. Facing immediate and irreparable harm, Estill was also
4 forced to file this stay petition, seeking to stay the FMUD (as
5 appealed). The most immediate need for a stay is apparent when
6 examining the effects of the "Interim Grazing System" upon
7 Estill's present livestock operation as authorized in Estill's
8 Grazing Permit.

9 18. As discussed below, a stay is warranted for two (2)
10 general reasons. First, the "Interim Grazing System" only
11 authorizes 300 head of cattle in the Idaho Canyon Pasture
12 between July 15, 2004 and September 30, 2004, leaving no home
13 for 817 head of cattle as authorized in Estill's present Grazing
14 Permit between July 15, 2004 and September 30, 2004. Compare
15 NOA, SOR, PFS Exhibit "A", p. 9 and Exhibit "B". Second, the
16 "Interim Grazing System" creates a trespass trap in the Hot
17 Springs Pasture and in the Colman Pasture between October 1,
18 2004 and November 15, 2004, by scheduling livestock use in the
19 unfenced Warm Springs Pasture between October 1, 2004 and
20 November 15, 2004. See NOA, SOR, PFS Exhibit "A", pp. 9, 22.

21 19. As to the First reason, the immediate reduction of
22 cattle numbers permitted between July 15 and September 30
23 required by the FMUD is not supported by monitoring data
24 collected over time, and BLM's 2004 FMUD and supporting
25 documents give absolutely no rationale for such immediate and
26 irreparable reduction in livestock authorization. Nevertheless,

27
28 Estill Declaration - 8

1 costs which exceed returns, and due to impaired cattle
2 performance. Cattle performance would be impaired due to a
3 required immediate change in the cattle's diets. Cattle depend
4 upon bacteria in their rumen (stomachs) to digest the type of
5 feed they are consuming. Some types of bacteria dominate when
6 cattle are grazing primarily grasses, and other types of
7 bacteria dominate when cattle consume primarily browse or forbs.
8 The change in dominance of rumen bacteria normally occurs
9 gradually, because as the feed changes with the season, their
10 rumen bacteria have the time to adjust with the gradually
11 changing forage. Right now, the rumen bacteria of the cattle
12 is accustomed to the present feed they are grazing, i.e., green
13 grasses. Immediately placing the cattle on baled hay would
14 impair the mother cows' performance, because it takes several
15 weeks for the rumen bacteria to change, and an immediate change
16 in forage base would mean the dominant bacteria could not
17 adequately digest the baled hay, leading to weight loss of
18 mother cows, and poor performance, weight loss, and possible
19 mortality of their calves subjected to such radical change.

20 23. Left with nowhere to place or feed our livestock,
21 Estill will otherwise have to sell the 817 head of mother cows,
22 thereby not only losing the numbers of cattle and the income
23 from their, but also losing the herd of cows which knows and is
24 accustomed to the forage, waters, and topography of the Soldier
25 Meadows Allotment. Such knowledge in the mother herd takes

26
27
28 Estill Declaration - 10

1 the FMUD requires the immediate reduction by 817 head during the
2 subject time period.

3 20. Estill has nowhere to go with this number of cattle.
4 Estill's other BLM and Forest Grazing Permits are already
5 committed so the deficit created by the 2004 FMUD cannot be
6 taken up in other allotments in which Estill is permitted.

7 21. Estill presently has 150 head of cattle within the
8 Soldier Meadows Ranch, which are "Soldier Meadows Allotment"
9 cattle that are routinely grazed annually on the allotment, that
10 are staged to go onto the Allotment, and that must go on the
11 allotment, as the private meadows are insufficient to sustain
12 them through the time period. In addition, Estill has
13 approximately 350 cattle within the Wall Canyon Allotment.
14 Estill typically pulls these cattle off the Wall Canyon
15 Allotment to put on the Soldier Meadows Allotment on or around
16 July 15 annually, due to drying conditions on the Wall Canyon
17 Allotment at this time of year. Estill also has 600 cattle
18 within the Bare Allotment which must be removed on July 1.
19 These cattle are scheduled to go onto the Soldier Meadows
20 Allotment, as they normally have under the 1994 FMUD. The 600
21 cattle which would be removed from the Bare Allotment are cattle
22 which are "Soldier Meadows" cattle; that is, they are the mother
23 herd which Estill normally places on the Soldier Meadows
24 Allotment July 15, under operation of the 1994 FMUD.

25 22. It is not economically feasible to feed cattle during
26 the summer period, due to lack of area on which to feed, due to

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1 years and years to regain if a new herd of cattle is later
2 brought into the allotment.

3 24. Therefore, for all of the reasons set forth in
4 paragraphs 19-23, Estill is immediately and irreparably harmed
5 by the change in authorized livestock numbers.

6 25. As to the Second reason, the livestock grazing system
7 and rotation of cattle itself creates an immediate and
8 irreparable harm to Estill, by requiring use of the Warm Springs
9 Pasture, but prohibiting use of the Hot Springs and Colman
10 Pastures, between October 1 and November 15.

11 26. Between October 1 and November 15, the natural
12 propensity of the cattle is drift to lower elevations, i.e. from
13 the Warm Springs Pasture to the Hot Springs and/or Colman
14 Pastures. This natural propensity is exacerbated by the
15 occurrence of hunting season beginning in October, because the
16 presence of numerous hunters will disturb cattle grazing in the
17 Warm Springs Pasture, making the cattle more likely to drift to
18 lower elevations, i.e. from the Warm Springs Pasture to the Hot
19 Springs and/or Colman Pastures.

20 This drift is likely because there exist no fences or
21 natural boundaries which completely restrict the movement of
22 cattle between Warm Springs Pasture and Hot Springs Pasture.
23 The "division line" between the Warm Springs Pasture and Hot
24 Springs Pasture is in fact no more than a line on a map.
25 Likewise, the "division line" between Hot Springs Pasture and

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1 Colman Pasture is no more than the County Road, which does not
2 in any way serve as an impediment to cattle crossing the line.

3 While these general area divisions and use areas have been
4 helpful in planning general livestock movements and rotations
5 within the Allotment under the 1994 FMUD, the 2004 FMUD creates
6 untenable terms and conditions which change the general use
7 areas into areas of prohibited use.

8 27. Unless the "Interim Grazing System" is stayed, BLM
9 guarantees trespass claims when the FMUD included term and
10 condition #13, which states that "During the interim grazing
11 system, no livestock grazing is authorized east of the County
12 Road (Colman Use Area) between the Soldier Meadows Ranch and the
13 Summit Lake Indian Reservation until after November 15."
14 NOA, SOR, PFS Exhibit "A", p. 16. This term and condition,
15 combined with the season of use prescribed by the "Interim"
16 system, combined with the natural and exasperated propensity
17 of cattle to drift downhill in the fall when disturbed, combined
18 with the lack of physical barrier between the three pastures,
19 creates an immediate threat of trespass claims, including
20 jeopardy to Estill's livestock Grazing Permit.

21 28. Notwithstanding the lack of merit of BLM's FMUD and
22 "desires" to change the livestock management system, Estill
23 offered less onerous rotation of cattle which would alleviate
24 all of BLM's purported concerns in the "interim". Specifically,
25 Estill proposed to make use as follows in the "interim" (i.e.

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1 until a pasture division fence is constructed separating the Hot
2 Springs Pasture from the Colman Pasture):

3 a. Warm Springs Pasture in May, June, and early July,
4 when the natural propensity of the cattle is to drift
5 uphill to fresh forage, moving up-elevation with the
6 spring and early summer forage availability and
7 available water sources. The natural propensity of
8 the cattle, being to move uphill in the spring, would
9 mean that they are drifting uphill away from the
10 Colman "Pasture". They would also be close in
11 elevation to the next pasture to be used, Idaho
12 Canyon.

13 b. Idaho Canyon Pasture in late July, August, September,
14 and early October. Idaho Canyon is a high elevation
15 pasture with super-abundant forage and late-season
16 livestock water sources. To the extent the 1994 FMUD
17 permits use of the Stanley Camp Pasture, Estill
18 proposed to also use this pasture consistent with the
19 1994 FMUD, once the pasture fence between Stanley Camp
20 and Idaho Canyon was constructed.

21 Because the western boundary of the Idaho Canyon
22 Pasture is a fenced boundary, cattle could not drift
23 down into Warm Springs, Hot Springs, or Colman by
24 using this pasture at this time of year.

25 c. Private lands from mid-October through mid-November.

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1 d. Colman Pasture and Hot Springs Pasture from mid-November
2 through mid-January.

3 e. South Pasture from mid-January through the end of April,
4 at which time the May 1 rotation would begin again.

5 Although BLM personnel expressed to Estill before issuance of
6 the 2004 FMUD, and again to Estill on June 7, 2004, that such
7 "Interim Grazing System" would satisfy all of their resource
8 "concerns", BLM nevertheless refused to amend their "Interim
9 Grazing System" prior to the appeal expiration period.

10 I declare under penalty of perjury that the foregoing is
11 true and correct to the best of my knowledge. Signed on June
12 10, 2004, at Eagleville, California.

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15 
16 John B. Estill

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