

MemorandumDEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

IN REPLY REFER TO:

4710
(NV-023.5)

To : State Director, Nevada (NV-931.3)

Date: July 19, 1988

FROM : District Manager, Winnemucca

SUBJECT: Chronological Narrative of Issues, Events, and Actions Leading to the
Appeal and Recommendation for Dismissal of Appeal

The Sonoma-Gerlach Land Use Plan (LUP) was approved on July 9, 1982. This LUP (Attachment 1) is the Bureau's decision document that sets forth how the various resources are to be protected and managed in the Sonoma-Gerlach Resource Area. This LUP is a valid operating document until such time policy changes or public demand render a need for revision, amendment or replacement.

The LUP determined that the Appropriate Management Level (AML) of wild horses in the Buffalo Hills Herd Management Area (HMA) is 272 wild horses. To implement this LUP decision to attain AMLs, 349 excess animals were removed from the Buffalo Hills HMA in 1986. In 1979, 533 wild horses were removed from the HMA. This removal (1979) was approved in an effort to "stop further deterioration of the available resources." The Winnemucca District files contain documented evidence that over 300 wild horses starved to death during the winter of 1977-78. The objective of the removal was restoration of an ecological balance for the HMA.

To further implement the LUP decision, and to attain AMLs for the HMA, the Winnemucca District submitted a draft Removal Plan (Attachment 2) to all interested parties on April 29, 1988 for review and comments. This draft Removal Plan proposed the removal of an additional 549 excess wild horses from the Buffalo Hills HMA. The proposed action would result in attainment of AMLs for this particular HMA by reducing the present population of 821 horses to the management level of 272 animals.

On June 21, 1988, the Winnemucca District Office received a copy (Attachment 3) of an appeal filed by the Animal Protection Institute of America (API). API appealed the proposed action to remove wild horses from the Buffalo Hills HMA. The appeal further stated that..."Should they (the Winnemucca District) put their decision into effect, we request that IBLA call a halt to the roundup pending full review of our appeal."

Since the appellant is appealing a specific action being proposed to implement a portion of the LUP decision, the applicable regulation to process and respond to the appeal is 43 CFR-1610.5-3 which states, in part..."Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or amendment may appeal such action pursuant to 43 CFR 4.400 at the time the action is proposed for implementation."

In response to the allegations/reasons for appeal the District presents the following supportive answers and evidence. The appellant's reasons for appeal are grouped into similar issues and listed numerically under "a)" and the District's supportive answers, evidence under "b)", and the reasons for dismissal under "c)".

1. a) "The number of horses BLM claims are to be allowed in the Buffalo Hills HMA is based on a proposed CRMP committee recommendation that was never signed or finalized as a valid CRMP decision. The "appropriate management level" referred to in the present capture plan is an arbitrary number that is not supported by a CRMP decision or by range monitoring and inventory data as required by policy and law. There is no Appropriate Management (AML) established for the Buffalo Hills HMA at this time."
- b) The AML for the Buffalo Hills HMA was not established by any proposed or final CRMP recommendation. The AML was established by the LUP (Attachment 1) as those numbers of wild horses present in the HMA on July 1, 1982. The LUP decision stated that..."Existing/current wild horse and burro numbers (as of July 1, 1982) will be used as a starting point for monitoring purposes except where one of the following conditions exist:
 - 1) Numbers are established by adequate and supportable resource data.
 - 2) Numbers are established through the CRMP process as documented in CRMP recommendations and agreed to by the District Manager.
 - 3) Numbers are established by formal signed agreement between affected interests.
 - 4) Numbers are established through previously developed interim capture/management plans. Plans are still supportable by parties consulted in the original plan. EAs (EARs) were prepared and are still valid.
 - 5) Numbers are established by court order.

None of the above five conditions were used to establish an AML for the Buffalo Hills HMA. Accordingly, the 1982 population numbers were used to establish an AML of 272 wild horses in the Buffalo Hills HMA.

Enclosed are the Sonoma-Gerlach Record of Decision (Attachment 4), the Sonoma-Gerlach Final Grazing Environmental Impact Statement (Attachment 5), and the Sonoma-Gerlach Resource Area Rangeland Program Summary (Attachment 6). These are supporting documents for the establishment of an AML of 272 wild horses for the Buffalo Hills HMA.

- c) Frivolous
The AML was not based upon a proposed CRMP recommendation. The AMLs were established in conformity with the terms, conditions, and decisions of the LUP. The development of the Sonoma-Gerlach LUP was consistent with all Bureau policies, direction, and guidance as specified by the 43 CFR-1610 regulations.

Appellant was informed by a letter (Attachment 7) dated June 7, 1988 that AMLs were not established through the CRMP process.

2. a) "The previous land use plans for this area are now obsolete as a result of the absence of cattle resulting from the revocation of the permit. According to the range data, the Herd Management Area is in a state of recovery and at a thriving ecological balance at the current usage. A removal of wild horses at this time does not constitute a remedial action as required by Dahl v. Clark. The statutory criteria for declaring that an excess of animals exists in this area are not met. There is not an excess of animals in Buffalo Hills at the present time."
- b) The Winnemucca District considers the Sonoma-Gerlach LUP as a valid and current decision document, and there are no immediate plans to amend or revise the plan as provided by 43 CFR-1610.5-5 and 43 CFR-1610.5-6. Furthermore, the Winnemucca District has not been directed by any court order, or other statutory requirement to revise or amend the Sonoma-Gerlach LUP.

Although it is true that one licensee's grazing privileges have been cancelled, the HMA is used by two other authorized livestock operators (Attachment 7).

Appellant alleges that the Buffalo Hills HMA... "is in a state of recovery. The Winnemucca District has not made a final determination about the condition of the HMA, and will not make this determination until all monitoring studies have been completed. Appellant also alleges that... "the HMA is---at a thriving ecological balance at the current usage." The HMA is not at a thriving ecological balance. It is the position of the Winnemucca District that a thriving ecological balance has been achieved when the grazing levels of all herbivores have been adjusted (based upon monitoring studies) to levels which meet all the goals and objectives identified in the Sonoma-Gerlach LUP. Since the herbivore use has not been adjusted at this time, the HMA cannot be considered as being in a thriving ecological balance.

Appellant also states that the proposed removal does not constitute a remedial action as required by Dahl vs Clark. Based solely upon this allegation, the proposed removal action should be allowed to be implemented. The Sonoma-Gerlach LUP was approved in 1982. The Dahl vs Clark suit was not decided until 1984. It is not within the Winnemucca District's administrative authority to interpret and implement any findings or procedure of law which may have resulted from this decision. The Winnemucca District has not been directed by any Bureau or court ordered instruction to revise or amend the Sonoma-Gerlach LUP because of the Dahl vs Clark judgment. Therefore, the Winnemucca District considers all numbers of wild horses over the AML of 272 as excess animals.

- c) Frivolous and Immaterial
Appellant's allegation that the Sonoma-Gerlach LUP is obsolete is not correct. The LUP has not been changed or amended since it was approved in 1982, and it (the LUP) remains the valid and current decision document for the Sonoma-Gerlach Resource Area.

Appellant submitted no evidence or documentation in support of the claim that the Buffalo Hills HMA is in a state of recovery. There is no supporting evidence or documentation available at this time. The condition of the HMA will not be determined until all monitoring studies have been completed, analyzed, and a management decision made based upon the studies.

Appellants assertion that a thriving ecological balance exists within the HMA is incorrect. A thriving ecological balance will not be attained until all herbivore use has been adjusted (based upon monitoring studies) which meet all the goals and objectives identified in the Sonoma-Gerlach LUP. Although the Winnemucca District has begun to implement partial adjustments, the adjustment actions are not complete, and a thriving ecological balance does not exist within the HMA at this time. See attachment f8.

Appellant alleges that the proposed removal of wild horses does not constitute a remedial action as required by Dahl vs Clark. The Winnemucca District has not been directed by any Bureau or court ordered instruction to remove excess animals other than by decisions of the Sonoma-Gerlach LUP. Therefore, the proposed removal of excess animals should be allowed as determined by the Sonoma-Gerlach LUP decisions.

Scott Bellin
Acting