

COMMISSION FOR THE PRESERVATION OF WILD HORSES APPEAL POINTS

1. The Final Decision was issued January 24, 1994, at the time when the Winnemucca District was actively gathering wild horse from the Soldier Meadow Allotment. The Nevada State Director issued an instruction memorandum, November 1993, stating that full force and effect decisions must allow affected interests the 30 day comment period allowed by law to comment on documents prior to an action taking place unless an emergency situation is established. This would allow for a request for a stay of the action or if necessary an injunction to be filed. The actions taken by the District is a violation of the Directors instructions as well as 43 CFR 4.21 (58 FR 4939, January 19, 1993) allowing appeals/petition for stay (suspension) of this decision.

Response:

Part of this appeal point indicates the Commission for the Preservation of Wild Horses is appealing the Winter 1994 Wild Horse Removal Plan and Environmental Assessment for the Black Rock Range; East and West, Calico Mountains, and Warm Springs Canyon HMA's. Those appeal points are covered in Appeal File No. N2-94-13, Appeal of the Winter 1994 Wild Horse Removal Plan and Environmental Assessment for the Black Rock Range; East and West, Calico Mountains, and Warm Springs Canyon HMA's.

The Final Full Force and Effect Multiple Use Decisions for the Soldier Meadows Allotments was issued on January 24, 1994. On January 24, 1994, the Winter 1994 Wild Horse Removal plan was approved, and a pre-work conference was held with the contractor. The removal of wild horses started January 25, 1994, in the Leadville Allotment. The capture operation did not move to the Soldier Meadows Allotment until the first week in February. Based on the rationale for placing the capture plan in full force and effect, the District implemented the capture plan on the day following issuance.

A request for stay can not be filed for the Livestock Decision portion of the MUD. When the area manager issued the decision in full force and effect, the decision is implemented on the specified day, in this case January 24, regardless of an appeal (43 CFR 4160.3 (c)). Therefore, the Commission's right to file for administrative remedies was not violated. In addition, the livestock portion of the appeal was not filed timely. The Commission's appeal period ran from January 26, 1994, through February 24, 1994; the appeal was received on April 14, 1994.

2. The Final Decision short and long term objectives for riparian habitat were extended beyond the five year schedule of

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the land use plan to the years 2001 and 2017, respectively.

The Sonoma-Gerlach Resource Area Management Framework Plan III was completed in 1982. Range Management Decision Objective RM-1 clearly states:

"5. At the end of the third and fifth year of grazing following the grazing decision make necessary use adjustments based upon monitoring results and other data then available"

Bureau of Land Management national Instruction Memorandum No. 86-706 states:

"BLM policy is to issue decisions or enter into agreements within 5 years of publication of a Range Program Summary following completion of a grazing environmental impact statement (EIS)."

The allotment evaluations and manager decisions affecting livestock and wild horse management are necessary to implement the land use plan in absence of proper activity plans. It is apparent that the Humboldt County Coordinated Resource Management Planning processes and BLM activity planning processed did not meet the land use plan schedule. Therefore, it is reasonable expect management actions of the second Soldier Meadows allotment evaluation and manager's decision to achieve short term land use plan objectives.

Extending the land use plan objectives beyond 10 years of the current Management Framework Plan will require amending the land use plan.

Response:

The 1988 Agreement fulfilled our obligation of issuing decisions/agreements within 5 years after the Record of Decision was signed as outlined in RM-1 and IM 86-706. The 1994 Final Multiple Use Decision (FMUD) is part of the continuing process of monitoring and making adjustments based on monitoring. The 1988 agreement addressed livestock carrying capacities and objectives only; and did not set objectives or a schedule for adjustments to wild horses or burros.

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". The 2001 date corresponds to two grazing cycles (page 75 of Final Re-evaluation). We felt it would take two cycles to measure the effectiveness of management actions, the grazing system, and AMLs for wild

horses and burros. On page 75 of the Final Re-evaluation, we identified a mechanism (an annual allotment narrative) that will allow us to recognize problems/shortcomings and correct them as they occur.

The FMUD is now taking the process another step, monitoring and making adjustments based on the monitoring. There are no decisions in the MFP establishing an "achievement schedule" with specific dates for accomplishment. The only document that does discuss time frames is the Draft/Final Sonoma-Gerlach Grazing Environmental Impact Statement which states 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. Therefore, the MFP does not need amending because of these time frames.

3. The Final Decision uses different procedures and criteria to determine appropriate management levels from the Notice of Final Full Force and Effect MUD - Buffalo Hills Allotment - February 9, 1993, FMUD - Paiute Meadows Allotment - April 12, 1993 and Notice of Final Full Force and Effect MUD - Leadville Allotment - January 19, 1994. These decisions are for allotments that are adjacent to each other and common to one ecosystem.

The AMLs for East and West Black Rock Range Wild Horse Herds were established in the Final Full Force and Effect MUD - Paiute Meadows Allotment - April 12, 1993 and this Final Decision, respectively. Procedures to establish the AML for the combined wild horse herds - Black Rock Range Wild Horse Herd - were not consistent.

The East Black Rock Range Wild Horse Herd AML was established upon the criteria of meeting 50% utilization of key forage species on wetland riparian habitat. The West Black Rock Range Wild Horse Herd AML was established upon the criteria of meeting 60% utilization of key forage species on wetland riparian habitat. These herds inhabit the Black Rock Range which have identical climate and habitat conditions. Establishing carrying capacities should have been consistent to properly manage an ecosystem and maintain equality between livestock and wild horses.

The allocation of the available forage was proportional to the ratio found in the land use plan. This allocation of forage between users is arbitrary.

The AML for the Calico Mountain Wild Horse Herd was established in the Final Decisions for Buffalo Hills Allotment, Leadville Allotment and Soldier Meadows Allotment. Soldier Meadows and Buffalo Hills Final Decisions used 60% utilization of key species of riparian habitat as the criteria. Leadville Allotment Final Decision use 50% utilization of key species of

riparian habitat as a criteria. These criteria were not consistent.

Allocation of available forage was proportional to the land use plan in the Leadville and Soldier Meadows Final Decision. Allocation of forage to wild horses in Buffalo Hills Final Decision is unknown. Allocation of forage to horses was arbitrary.

Carrying capacity computations and AML were established by procedures that weight averaged use pattern mapping data. Calculations, based upon formula Example C of Appendix 2 of the "Rangeland Monitoring Analysis, Interpretation and Evaluation (TR 4400-7)", did not fully consider riparian habitat. Example C assumes rangeland production is not uniform and utilization is uniform. The Soldier Meadows Allotment Reevaluation's use pattern mapping data supports its conclusion that livestock distribution problems are causing heavy and severe utilization of riparian habitats. The Final Decision's carrying capacity computations will not meet riparian short term objectives for this allotment.

Response:

The difference between Paiute Meadows and Soldier Meadows procedures are due to the different resource needs for the individual allotments. We used 50% in Leadville and 60% in Buffalo Hills and Soldier Meadows to compute Potential Stocking Levels for the following three reasons:

- 1) Generally speaking, in the Leadville Allotment where livestock and wild horses have the most utilization overlap occurs on upland sites that are in a lower ecological seral stage. These sites are droughty range sites; which take longer to respond to management. We felt by having a lower stocking rate it should help to hasten the process. These droughty range sites are not as predominate in the Buffalo Hills and Soldier Meadows Allotments.
- 2) Approximately 30% of the Leadville Allotment was burned in the Middle Fork Fire of 1985. These sites have been slow to recover and having a lower stocking rate should expedite recovery.
- 3) The grazing system designed for the Leadville Allotment has only one complete growing season rest, versus two growing season rest for the Buffalo Hills and Soldier Meadows Allotments. We felt a more conservative stocking rate was needed.

The carrying capacity was computed using all of the sites that were mapped moderate and heavy utilization, which

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includes riparian and wetland sites (there were no areas mapped in the severe category). On page 13 of the Final Re-evaluation it was noted that the points of severe use occurred on very small sections of the creeks and wetland areas and does not represent the entire creek or all wetlands. 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 in the carrying capacity calculations. In computing the carrying capacity we did not break out just the riparian and wetland sites but used all acreage mapped with the two utilization classes. Except for creeks listed on page 7 of the FMUD, overall pasture utilization for livestock was not to exceed a combined use of 50% of current years growth. Knowing wild horses and burros are in the allotment year long, we felt they should be held accountable not to exceed an additional 10% more use by February 28, to 60%. As stated on page 8 of the FMUD if monitoring shows that we are exceeding either the stubble height or utilization criteria, then we will determine if there is a need to adjust the carrying capacity downward.

Since over 70% of the allotment was either in late or PNC ecological condition we felt it was reasonable to use the 60% figure in the computation to come up with the total forage base. Also, the additional use will occur after the growing season, therefore vegetation vigor will be maintained. A reasonable stocking level is not as important as not exceeding the established utilization criteria.

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 and wild horses/burros numbers were too high to meet management objectives, so the operator agreed to a 25% reduction in active grazing preference; 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 AUMs 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.

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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 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. Generally speaking, riparian areas fell within one of these utilization categories. We felt the calculations would 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.

On page 52 of TR 4400-7, it states that it is proper to use weighted average if production levels are unknown and utilization patterns have been mapped; the weighted average utilization may be calculated on the basis of acreages found in each utilization zone. We are trying to establish a Potential Stocking Level for the allotment or pasture. Changes in livestock and wild horses and burros numbers along with other management actions will change the overall utilization level to be more uniform across the allotment or pasture. This is why we calculate the Potential Stocking Level using acreage weighted averages. The calculations shown in Appendix 2 are examples, or guidelines, on how to determine a carrying capacity for an area, not hard and fast rules to be followed.

4. The Final Decision acknowledges the existing 10-year or long term grazing permit. This grazing permit was issued without environmental assessment.

Response:

On page 24 of the FMUD we state that the Terms and Conditions of this decision will be incorporated into the Term Permit. The terms of the Permit are for 8 years which corresponds to the next evaluation.

On January 24, 1994, the area manager determined that the proposed action is in conformance with the approved land use plan and that no further environmental analysis was required. This conformance record further stated that the Record of Decision for the Final Sonoma-Gerlach Grazing EIS and the LUP consists of the integration of the Proposed Action and the Livestock Reduction/Maximizing Wild Horses and Burros alternatives. The Soldier Meadows FMUD selected management action compliments the EIS and LUP decisions by

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implementing a grazing system that would enhance the vegetative recovery in the uplands, in riparian areas, and aquatic habitats. In addition to the public involvement process during the development of the EIS, consultation has continued throughout the allotment evaluation process and is identified in the Consultation and Cooperation section of the Final Soldier Meadows Allotment Re-evaluation. On page 78 of the Final Re-evaluation interested parties are directed to contact the Resource Area if they are interested in reviewing these documents. This fulfilled the NEPA process.

5. Implementation of the "Strategic Plan for the management of Wild Horses and Burros on Public Lands" required the restructuring of the herds based solely upon adoptability of captured horses. Age, production, sex and genetic trait data will be available during the capture of each horse herd. Herd composition criteria for the remaining herd should be part of the Final Decision. Restructuring wild horse herds were not assessed in an environmental impact statement or specific environmental assessment. Bureau of Land Management Policy must be consistent with applicable laws and regulations that protect wild horse herds.

Response:

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.

6. Allocation of available forage of the allotment's carrying capacity require environmental analysis and consultation of affected interests. The Sonoma-Gerlach Final Grazing Environmental Impact Statement did not set the initial stocking levels for wild horses and livestock based upon composition and compatibility with multiple use. Monitoring data must be the basis for adjustment in ungulate populations to meet the land use plan objectives.

Response:

See Response to #3, #4 and #5.

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