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m 2/13/95
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February 13, 1995

John R. Payne, Assistant Solicitor
Office of the Regional Solicitor
2800 Cottage Way, Room E-2753
Sacramento, California 95825-1890

Re: Commission for the Preservation of Wild Horses (N2-93-6 & IBLA 93-487[N2-93-18])
Nevada Division of Wildlife (N2-93-4)
LITTLE OWHYEE Final Multiple Use Decision (1993)

Dear Mr. Payne:

Enclosed please find the executed original Consent Order Dismissing Appeal in the above-reference matter for your signature.

Please sign the Consent and forward to the Administrative Law Judge for his signature and return a copy to me for our files.

It was a pleasure working with you again. Should you have any questions, please call me. Thank you.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: 

Wayne Howle
Deputy Attorney General
Conservation and Natural Resources
(702)687-3700

CWH/pw

cc: William Molini, Nevada Division of Wildlife
✓ Catherine Barcomb, Commission for the Preservation of Wild Horses
Gary L. Bengochea, Nevada First Corporation
Dawn Y. Lappin, Wild Horse Organized Assistance

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Attorneys Commission for the Preservation of
5 Wild Horses & Nevada Division of Wildlife, Appellants

6 **UNITED STATES DEPARTMENT OF THE INTERIOR**
OFFICE OF HEARINGS AND APPEALS
7 **HEARINGS DIVISION**

8 NEVADA FIRST CORPORATION, : N2-93-4 and IBLA 93-485 (N2-93-12)

9 Appellant :

10 v. :

11 BUREAU OF LAND MANAGEMENT, :

12 Respondent :

13 WILD HORSE ORGANIZED : N2-93-5 and IBLA 93-486 (N2-93-13)
14 ASSISTANCE, :

15 Appellant :

16 v. :

17 BUREAU OF LAND MANAGEMENT, :

18 Respondent :

19 COMMISSION FOR THE : N2-93-6 and IBLA 93-487 (N2-93-18)
20 PRESERVATION OF WILD HORSES :

21 Appellant :

22 v. :

23 BUREAU OF LAND MANAGEMENT, :
24 Respondent :

25 and NEVADA DEPARTMENT : N2-93-4
26 OF WILDLIFE :

27 Appellant :

28 v. :

BUREAU OF LAND MANAGEMENT, :

Respondent :

.....
CONSENT ORDER DISMISSING APPEAL

1 Pursuant to the stipulation of the parties, Nevada Division of Wildlife (hereinafter
2 "NDOW"), Nevada Commission for the Preservation of Wild Horses (hereinafter
3 "COMMISSION") and Bureau of Land Management, Winnemucca District (hereinafter
4 "BLM"):

5 IT IS HEREBY ORDERED as follows:

6 **STATEMENT OF FACTS**

7
8 A. The Nevada Division of Wildlife (NDOW) is an agency of the State of
9 Nevada, whose duty it is to ensure the preservation, protection, management and restoration
10 of wildlife within the State of Nevada. The COMMISSION is a commission of the State
11 of Nevada, whose duty it is to ensure the preservation and management of wild horses
12 within the State of Nevada.

13 B. On April 26, 1993, NDOW and the COMMISSION filed appeals (N2-93-4,
14 N2-93-6) from the Little Owhyee Final Multiple Use Decision which was issued in part by
15 full force and effect on March 26, 1993. The bases for these appeals were and are that (1)
16 the livestock and wild horse decisions were not both in full force and effect, and the
17 disparate treatment of horses and livestock was arbitrary; (2) the decision altered specific
18 allotment objectives to allow for resource damage; (3) carrying capacities are arbitrary and
19 capricious and contrary to the land use plan.
20

21 **ORDER**

22 A. **BINDING OBJECTIVES.** The objectives set forth in the Paradise-Denio
23 MFP decisions and Little Owhyee Final Multiple Use Decision (1993) are commitments
24 binding upon the BLM. Grazing decisions setting appropriate management levels for wild
25 horses and stocking rates for livestock must be consistent with these objectives.

26 B. **MONITORING.** Monitoring is an essential part of BLM's obligation and
27 duty to determine the achievement of objectives set forth in paragraph A above. The BLM
28 therefore shall monitor the actual use of livestock and wild horses and their impacts on the

1 vegetative resources of the Little Owhyee Allotment in a manner which will ensure early
2 detection of effects which will result in nonattainment of wildlife habitat, riparian, and range
3 objectives.

4 Specifically, the BLM shall monitor fish and wildlife habitat within the Little
5 Owhyee Allotment. The BLM will continue to collect utilization data on stream bank and
6 wetland meadow riparian habitats. Wild horse census data will include accurate population
7 estimates, distribution, annual recruitment rates, age composition and annual mortality data
8 throughout the allotment.

9
10 C. ADJUSTMENT IN USE. Part of BLM's effort to achieve the objectives set
11 forth in paragraph A above is the adjustment of active livestock grazing use and appropriate
12 management levels for wild horses when the evaluation of monitoring data indicates an
13 adjustment is necessary to achieve allotment specific objectives within a reasonable time.

14 Desired Stocking Rate computations for the Little Owhyee Final Multiple Use
15 Decision will be presented in the allotment evaluation or environmental assessment.
16 Summer pasture stocking rates are to be determined by procedures found in BLM Manual
17 Rangeland Monitoring Analysis, Interpretation, and Evaluation, Technical Reference 4400-

18 7.

19 The following procedures will be applied:

- 20 1. Riparian habitats will be considered Key Management Areas.
- 21 2. Use pattern mapping data will not be weight averaged or Yield Indexed in a
22 manner which compromises or dilutes Key Management Area observed
23 utilization or objectives.
- 24 3. Must consider proportional allocation of forage will be established by the
25 amount of actual use, and necessary adjustments will be determined during
26 the period of evaluation.
- 27 4. All available and valid data will be used over the period of the evaluation.
- 28

1 Livestock season of use on summer pastures will be based upon monitoring data and
2 range science. The provision of the Final Multiple Use Decision shortening the livestock
3 grazing season of use to July 15 will be implemented, dependent on monitoring data which
4 is current at the time of the adjustment. This schedule allows for livestock to use the
5 summer pastures to August 15, with the exception of Calico Pasture. If allotment objectives
6 are not achieved in 1995, then season of use will be reduced by 15 days the following
7 grazing season in absence of an agreement by the affected interests. If allotment objectives
8 are achieved in 1995, the season of use can remain at August 15. This provision is binding
9 for each successive grazing season beyond 1995.
10

11 Livestock season of use and stocking levels for the spring and winter pastures will
12 be based upon specific suitability criteria, and will be determined annually based upon
13 monitoring data. These monitoring data will include, but not be limited to, amount of
14 available water, utilization of key species, soil moisture and phenology of key species.
15

16 D. RANGE IMPROVEMENT PROJECTS. Riparian enclosure projects will be
17 constructed in a timely fashion, with Nevada First Corporation providing the materials,
18 labor and maintenance for the following projects:

19 Lone Willow Spring Meadow(East Maghonany Pass)

20 North Fork Humboldt River Lower Cow Camp Spring

21 Antelope Spring Meadow

22 These projects will be completed by 1996.

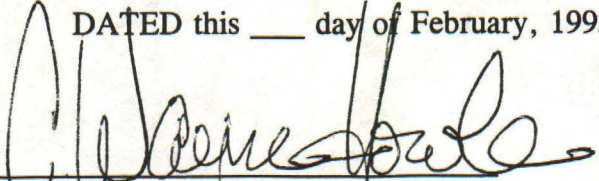
23 E. ADMINISTRATIVE PROCEDURES. The BLM will exercise its discretion
24 to issue decisions full force and effect in a manner that will not discriminate between
25 livestock and wild horses when there is no rational basis in resource conditions for such
26 distinction. The allotment will receive an allotment evaluation or environmental assessment
27 no later than 1996.

28 F. DISMISSAL. The appeals filed by NDOW and the COMMISSION shall be


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dismissed. NDOW and the COMMISSION reserve the right to enforce the provisions of this agreement and order by any lawful process.

DATED this ___ day of February, 1995.


C. WAYNE HOWLE
Attorney for NDOW and Commission

JOHN R. PAYNE
Attorney for Respondents


DAWN LAPPIN
Representative for WHOA

ORDER

IT IS SO ORDERED THIS ___ day of _____, 1995.

ADMINISTRATIVE LAW JUDGE