



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Elko Field Office  
3900 East Idaho Street  
Elko, Nevada 89801-4611  
<http://www.nv.blm.gov>

M 3/31/00

In Reply Refer To:  
4130/4400.4 (NV-012)

CERTIFIED MAIL NO. P 213 904 563  
RETURN RECEIPT REQUESTED

MAR 31 2000

Hammond Ranches, Inc.  
c/o Roy Shurtz  
P.O. Box 2148  
Elko, NV 89803

Dear Mr. Shurtz:

### FINAL DECISION EFFECTIVE UPON ISSUANCE

On April 13, 1999, the BLM Elko Field Office (hereafter BLM) completed an evaluation of riparian monitoring data for streams within the Little Humboldt Allotment which provide habitat for Lahontan cutthroat trout (LCT), a Federally listed threatened species. This evaluation report, titled Summary of Stream and Riparian Conditions of the South Fork Little Humboldt River Drainage and Proposed Changes in Livestock Management, was issued for public comment on April 26, 1999 in accordance with 43 CFR 4130.3-3. Following the review and consideration of comments received to the evaluation, and after completing informal consultation with the United States Fish and Wildlife Service (USFWS) under section 7 of the Endangered Species Act as amended of 1973 (ESA), a Final Decision Effective Upon Issuance for the Little Humboldt Allotment was issued on June 1, 1999 as provided for by 43 CFR 4110.3-3(b), 4160.3(f) and 4180.2(c). This decision implemented interim changes to the current Hammond Ranches, Inc. grazing permit to be effective immediately, pending completion of the Little Humboldt Allotment Evaluation and issuance of a Final Multiple Use Decision scheduled for the year 2000. The June 1, 1999 decision modified the terms and conditions of the Hammond Ranches, Inc. grazing permit, closing the Little Humboldt Allotment to grazing use after June 30<sup>th</sup>.

An Appeal and Petition for Stay of the June 1, 1999 final decision was filed by Hammond Ranches, Inc. on July 8, 1999. On August 3, 1999, the Interior Board of Land Appeals issued its Order, staying the June 1, 1999 decision. 43 CFR 4160.3(d) provides, "When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed...". In this case, Hammond Ranches, Inc. normally would have been authorized at the 1998 licensed levels of use as follows:

Hammond Ranches, Inc. 1998 authorized use levels within the Little Humboldt Allotment.

ALLOTMENT	LIVESTOCK NUMBER & KIND	BEGIN PERIOD	END PERIOD	%PL	TYPE USE	AUMS
Little Humboldt	68 cattle	4/1	11/30	97	Active	529
	1000 cattle	4/1	4/30	97	Active	957
	1300 cattle	5/1	5/31	97	Active	1,285
	1400 cattle	6/1	7/30	97	Active	2,678
	1300 cattle	8/1	8/31	97	Active	1,285
	1000 cattle	9/1	9/30	97	Active	957
	500 cattle	10/1	10/31	97	Active	494
	97 cattle	11/1	11/30	97	Active	93
<b>Total</b>						<b>8,278</b>

Section 7(a)(2) of the ESA provides, "Each Federal Agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required...". Because the stay would have allowed for grazing to be different from that outlined in the June 1, 1999 decision, and different from that which was consulted on with the USFWS through the informal consultation (1-5-99-I-219) process, the BLM was required to complete formal consultation.

On November 3, 1999 a letter was sent to Hammond Ranches, Inc. informing you that the Elko Field Office was in the process of initiating formal consultation with the USFWS and preparing the necessary biological assessment. The letter solicited any input you might have regarding development of the biological assessment related to grazing strategies for resolving LCT and riparian issues in the Little Humboldt Allotment.

On January 3, 2000 we received a management proposal from Hammond Ranches, Inc. pertaining to livestock management within the Little Humboldt and Jakes Creek Allotment. This was followed by a series of meetings which occurred on January 6<sup>th</sup> and 13<sup>th</sup> of 2000 between the BLM, USFWS, you and your range consultant. The purpose of those meetings were to discuss your management proposal and address other management strategies specific to the 2000 grazing season which we could mutually agree on and that would satisfy section 7 of the ESA.

On January 31, 2000 a letter containing two proposed management changes within the Little Humboldt Allotment for the 2000 grazing year was sent to you as well as others who identified themselves as interested public for comment. The first management proposal was to authorize the 2000 grazing season use at the previous 1998 levels of use as provided for in 43 CFR 4160.3(d). The second proposal resulting from our previous meetings was an attempt to address your concerns and to cooperatively develop a workable management proposal that would satisfy

section 7 of the ESA.

In your comments to this letter, you rejected both proposals and suggested that we adopt your original January 3, 2000 management proposal. After consideration of your comments as well as those received from the Nevada Division of Wildlife concerning the proposed management changes, a biological assessment was prepared by the Elko Field Office, BLM and submitted to the USFWS on February 29, 2000 for formal consultation under section 7 of the ESA. As a result of the IBLA stay order, the proposed management action assessed in the biological assessment was that of the 1998 previous levels of authorized use consistent with 43 CFR 4160.3(d). In addition, included in this proposed action was that of pursuing necessary fencing to help facilitate livestock management within the allotment.

Also on February 29, 2000 a proposed decision demand for payment for unauthorized use which occurred between July 1, 1999 and August 2, 1999 within the Little Humboldt Allotment was sent to Hammond Ranches, Inc.

On March 22, 2000, the USFWS issued a draft biological opinion (1-5-00-F-078) finding that the proposed action was likely to jeopardize the continued existence of the Humboldt Basin Distinct Population Segment (DPS). The draft biological opinion included a reasonable and prudent alternative (RPA) that, if implemented, would not result in a finding of jeopardy.

On March 23, 2000 Hammond Ranches, Inc. submitted to this office in person 1) an application for the 2000 grazing year 2) a check for grazing fees for the Little Humboldt Allotment and 3) an appeal and petition for stay of the February 29, 2000 final decision demand for payment. Also on March 23, 2000 a copy of the biological assessment and the draft biological opinion was provided to a representative of Hammond Ranches, Inc. at the Elko Field Office. Elko Field Office personnel informed you that comments to the final biological opinion were due by close of business on March 28, 2000. In addition, the attached cover letter solicited either your acceptance of the RPA or submission of any other proposal of a mutually agreeable grazing regime that is substantively similar to the RPA.

On March 28, 2000 comments to the biological assessment and the draft biological opinion were received from Hammond Ranches, Inc. via fax. You did not indicate acceptance of the RPA nor did you suggest any substantively similar grazing regime. Your comments were forwarded that same day to the USFWS along with comments from this office for consideration prior to issuance of a final biological opinion.

The final biological opinion (1-5-00-F-078) was issued on March 30, 2000. It was modified as a result of your comments and those received from this office. However, the final biological opinion determined that the proposed action is likely to jeopardize the continued existence of the Humboldt Basin DPS of the LCT. The final biological opinion contains an RPA which, if implemented, would not result in jeopardy.

Therefore, to be in compliance with Section 7 of the ESA, it is my decision to adopt the RPA outlined in the final biological opinion (1-5-00-F-078) and implement the management actions identified below immediately upon issuance of this decision. This is provided for in 43 CFR 4110.3-3(b), which states, "When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions ... when continued grazing use poses an imminent likelihood of significant resource damage ... the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use..." and 4160.3(f) which states "... the authorized officer may provide that the final decision shall be effective upon issuance ... and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals ... as provided in 43 CFR 4.21...".

## **LIVESTOCK GRAZING MANAGEMENT DECISION**

**My decision is as follows:**

### **PART I ADOPTION OF THE PERTINENT PORTIONS OF THE FINAL BIOLOGICAL OPINION (1-5-00-f-078)**

Adopt the Reasonable and Prudent Alternative and implement the Reasonable and Prudent Measure and Terms and Conditions as presented in the Final Biological Opinion (1-5-00-F-078) dated March 30, 2000 as follows:

#### **A. Reasonable and Prudent Alternative**

1. BLM shall implement their "Full Force and Effect" interim decision developed for the 1999 grazing season (removal of livestock from the entire allotment by June 30) for the 2000 grazing season, but with the following modification: If proposed fencing activities outlined by the BLM and private landowner are completed by June 30, then livestock will need to be removed only from the SFLHRB part of the allotment.
2. BLM shall complete an allotment evaluation, biological assessment, and long-term allotment management plan in 2000 to be implemented beginning with the 2001 grazing season. BLM will continue to use the June 30 off-date as described in number 1 with the requirement that LCT stream habitat conditions are in an upward trend, or until alternative actions such as those described below are in place to allow for enhanced long-term livestock management within the SFLHRB:
  - a. The BLM shall minimize adverse impacts of livestock grazing activities to riparian habitats associated with streams that support LCT by providing restrictions on use of herbaceous and woody plant species within the riparian zone.

To minimize adverse impacts of livestock grazing to riparian and upland habitats that support LCT, the allowable utilization level cannot exceed 30 percent by measurement of key representative herbaceous species (minimum standard of 6 inches stubble height) and 20 percent utilization of key woody species.

- b. Streambank trampling shall not exceed 10 percent.
  - c. Stubble height shall be at least 6 inches high at the end of the grazing season.
  - d. Livestock should be intensively managed through:
    1. development of riparian pastures and allotment boundary fencing;
    2. development of water away from streams and spring-sources;
    3. livestock herding onto uplands; and
    4. removal of problem livestock that continually return to riparian areas.
3. Monitor livestock utilization and trampling weekly after June 15 of each year until livestock are removed from the SFLHRB part of the allotment. BLM will provide an ongoing monitoring report documenting removal of livestock from the SFLHRB and an annual monitoring report on riparian utilization to the Service within 3 months of the end of livestock grazing.

**B. Reasonable and Prudent Measure**

1. Improve permittee compliance toward 100 percent in permit implementation and operating terms and conditions.

**TERMS AND CONDITIONS**

1. BLM must begin monitoring by mid-June and continue monitoring of livestock numbers and utilization within the allotment until livestock are removed from the allotment.
2. BLM must initiate livestock removal notice when livestock grazing utilization reaches 25 percent on herbaceous vegetation.

**C. Reporting requirements**

1. Upon locating dead, injured, or sick threatened or endangered species during the time when livestock are authorized to be in the pasture, initial notification must be made to the Service's Division of Law Enforcement Senior Resident Agent Barry Jordan in Reno, Nevada at telephone number (775) 861-6360 and the Nevada Fish and Wildlife Office within three (3) working days. Instructions for proper handling and disposition of such specimens will be issued by the Division of Law Enforcement. Care must be taken in handling sick or injured LCT to ensure effective treatment and care, and in handling dead specimens to preserve biological material in the best possible state. In conjunction with the care of sick and injured fish or wildlife, the preservation of biological materials from a dead specimen, the BLM and the permittee have the responsibility to ensure that information relative to the date, time, and location of the wildlife, when found, and possible cause of injury or death of each must be recorded and provided to the Service.
2. Results of all riparian and stream habitat and population monitoring conducted within the Little Humboldt Allotment that may affect LCT shall be provided to the NFWO. A complete report of livestock use activities and impacts, especially unauthorized uses, will be submitted to the NFWO three months prior to the next grazing season.

Rationale: The final biological opinion included a finding that the action proposed by BLM (authorization of grazing at 1998 use levels) is likely to jeopardize the continued existence of the Humboldt Basin Distinct Population Segment of the LCT. Upon receipt of a jeopardy opinion from the Service, BLM may do one of the following in accordance with Section 7(a)(2) of the ESA:

Adopt one of the reasonable and prudent alternatives for eliminating the jeopardy or adverse modification of critical habitat in the opinion.

Decide not to grant the permit, fund the project, or undertake the action

Request an exemption from the Endangered Species Committee

Reinitiate the consultation by proposing modification or the action or offering reasonable and prudent alternatives not yet considered; or

Choose to take other action if it believes, after a review of the biological opinion and the best available scientific information, such actions satisfies section 7(a)(2).

Since it is BLM's desire to allow for continued grazing by livestock of the Little Humboldt Allotment in such a manner as to allow for improvement in LCT habitat conditions, the only RPA provided for in the biological opinion was adopted. In January 2000, an attempt was made

to develop a workable compromise for the 2000 grazing season which would address both the proposal presented by Hammond Ranches and the position held by BLM and the USFWS that significant changes in livestock management were needed to improve LCT stream habitat. However, since no agreement could be reached between Hammond and BLM for grazing in 2000 which was substantively different than the action leading to a jeopardy opinion, BLM chooses to adopt the RPA presented in the biological opinion rather than reinitiate section 7 consultation by proposing further changes. The RPA selected in this decision will reduce impacts of livestock grazing on stream and riparian habitats in the Little Humboldt Allotment for the benefit of LCT and at the same time allow for continued use of the allotment by livestock.

The biological opinion also included a Reasonable and Prudent Measure (RPM) with implementing terms and conditions. In contrast to the RPA, BLM has no discretion over implementation of these terms and conditions.

The biological opinion also included a Reasonable and Prudent Measure (RPM) to minimize the impacts of incidental take. In order to be exempt from the prohibitions of section 9 of the Act, the BLM must comply with the listed terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

**PART II ACTIONS ON 2000 GRAZING YEAR APPLICATION**

- A. 1. Approve the following grazing use applied for within the Little Humboldt Allotment for the 2000 grazing year including terms and conditions as provided for in Part IV of this decision:

68 Cattle	4/1 to 6/30	197 AUMs
1000 Cattle	4/1 to 4/30	957 AUMs
1300 Cattle	5/1 to 5/31	1285 AUMs
1400 Cattle	6/1 to 6/30	1339 AUMs

- 2. Deny the following grazing use applied for within the Little Humboldt Allotment for the 2000 grazing year:

68 Cattle	7/1 to 11/30	332 AUMs
1400 Cattle	7/1 to 7/30	1339 AUMs
1300 Cattle	8/1 to 8/31	1285 AUMs
1000 Cattle	9/1 to 9/30	957 AUMs
500 Cattle	10/1 to 10/31	494 AUMs
97 Cattle	11/1 to 11/30	93 AUMs

- 3. Issue grazing authorization billing (enclosed) for the approved use and return your check in the amount of \$11,175.30 (enclosed), subject to resolution of your pending stay request and appeal to the demand for payment decision issued on February 29, 2000.

Rationale: These actions are necessary to implement the RPA adopted by the BLM to avoid the likelihood of jeopardy.

**PART III ACTIONS RELATED TO GRAZING PERMIT**

Cancel your existing term grazing permit issued March 1, 1996 and issue a new term grazing permit for a period of two years effective April 1, 2000 through March 31, 2002 as shown below:

Allotment	Livestock Number & Kind	Begin Period	End Period	%PL	Type Use	AUMs
Little Humboldt	2,426 Cattle	3/16	6/30	97	Active	8,279
<b>Total</b>						8,279
Jakes Creek	130 Cattle	4/16	11/15	34	Active	312
	25 Horses	4/16	10/15	34	Active	51
Jakes Creek FFR	4 Cattle	4/1	2/28	100	Custodial Grazing	50
<b>Total</b>						413

Rationale: This action is necessary to implement the RPA adopted by the BLM to avoid the likelihood of jeopardy. To avoid confusion as to what has been modified in the existing permit (which will expire in 2006) and to be consistent with the RPA, the BLM elects to cancel the existing permit and reissue a new grazing permit. The BLM clearly intends to complete the allotment evaluation and begin the implementation of long-term management changes in 2001. However, in the event that any unforeseen circumstances might delay implementation of long-term management changes, the BLM has elected to issue this permit for a term of two years. Therefore, in the interest of sound land management, the BLM has determined that the new permit should not be issued for a term of more than two years.

**PART IV NEW GRAZING PERMIT TERMS AND CONDITIONS**

The terms and conditions on the term grazing permit will be as follows:

1. Grazing within the Little Humboldt Allotment will be in accordance with the RPA contained in the final biological opinion (1-5-00-F-078) which was adopted by the BLM.



2. The permittee will be required to remove livestock from the Little Humboldt Allotment by June 30<sup>th</sup> (or the South Fork Little Humboldt River Basin (SFLHRB) if fences are constructed to control livestock from re-entering the basin) or when utilization reaches 25 percent on riparian herbaceous vegetation which ever comes first. See attached map for the location of the SFLHRB.
3. The permittee is required to submit an actual use report to this office within 15 days from the last day of use authorized for each allotment. Actual use information must include specific grazing use by pastures and use areas. The actual use report for the Little Humboldt Allotment must include when cattle entered and when cattle were removed from the SFLHRB portion of the Little Humboldt Allotment (as described on the attached map). This reporting must specify cattle numbers and specific dates.
4. Authorized grazing use will be in accordance with the Final Decision Effective Upon Issuance implementing interim grazing management dated March 31, 2000, and the December 10, 1999 Decision and Notice of Closure for the Little Humboldt Allotment.
5. Historic suspended AUMs are listed below by allotment:  
Little Humboldt: 2,600  
Jakes Creek: 107
6. The livestock permittee will have the flexibility to adjust livestock numbers within the seasons of use outlined for the allotments above as long as the total number of AUMs of permitted use are not exceeded.
7. Deviations from the seasons of use may be authorized in the Jakes Creek Allotment on an annual basis where such deviations would not prevent attainment of the multiple use objectives for the allotment and the standards for rangeland health.
8. The terms and conditions of your permit may be modified if additional information indicates that revision is necessary to meet the requirements of 43 CFR 4180 - Fundamentals of Rangeland Health and Guidelines for Grazing Administration. An evaluation of the multiple use objectives for the Little Humboldt Allotment, including an assessment of approved standards for rangeland health is currently scheduled for 2000. Any necessary changes to permit terms and conditions will be made in consultation with affected interests in accordance with 43 CFR 4110.3 and 43 CFR 4130.3-3.
9. Supplemental feeding is limited to salt, mineral and/or protein supplements in block, granular or liquid form. Such supplements must be placed at least ¼ mile

from live waters (springs, streams), troughs, wet or dry meadows, and aspen stands.

10. All riparian exclosures, including spring development exclosures, are closed to livestock use unless specifically authorized in writing.
11. Pursuant to 43 CFR 10.4(g) the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the **immediate** vicinity of the discovery and protect if **from your activities** for 30 days or until notified to proceed by the authorized officer.
12. Payment of grazing fees is due on or before the due date specified on the grazing bill. Failure to pay the grazing bill within 15 days of the due date specified on the bill shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed \$250.00.

Rationale: These terms and conditions are necessary to implement the RPA adopted by the BLM to avoid the likelihood of jeopardy.

Authority for the actions described in this final decision are found in 43 CFR Parts 4100.0-8, 4110.2-2, 4110.3, 4130.2(d)(4), 4130.3, 4130.3-1, 4130.3-2, 4130.3-3(b), 4160.1(c), 4160.3(f), 4160.4, 4180.1, and 4180.2(c).

Additional authority is contained within the pertinent sections of the ESA and in 50 C.F.R part 402, which identifies the procedures for complying with the Act.

Section 7 (a) (2) of the Act states in part "Each Federal Agency shall, in consultation with and with the assistance of the Secretary, ensure that any action authorized, funded, or carried out by such agency... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species..."

Under Section 7 (b) (4) (A) of the Endangered Species Act of 1973 as amended, it states in part that the Secretary will offer the Agency after consultation "...reasonable and prudent alternatives which the Secretary believes would not violate..." Section 7 (a) (2) of the Act.

Title 50 CFR, Sub Part B Section 402.14 (i) (1) (iii) states that the U.S. Fish and Wildlife Service will provide in the Opinion to the Agency requesting a formal consultation a statement that, "Sets forth the terms and conditions...that must be complied with by a Federal Agency or any applicant to implement the measures specified..." as reasonable or

prudent measures.

Any applicant, permittee, lessee or other person whose interest is adversely affected by this final decision may file an appeal and petition for stay of the decision pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, at 3900 E. Idaho Street, Elko, NV, 89801 within 30 days following receipt of the final decision.

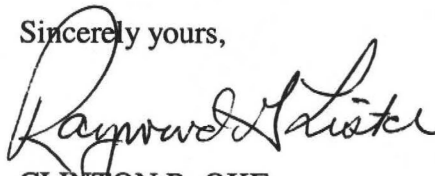
The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

Should you wish to file a motion for stay, the appellant shall 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.

As noted above, the petition for stay must be filed in the office of the authorized officer.

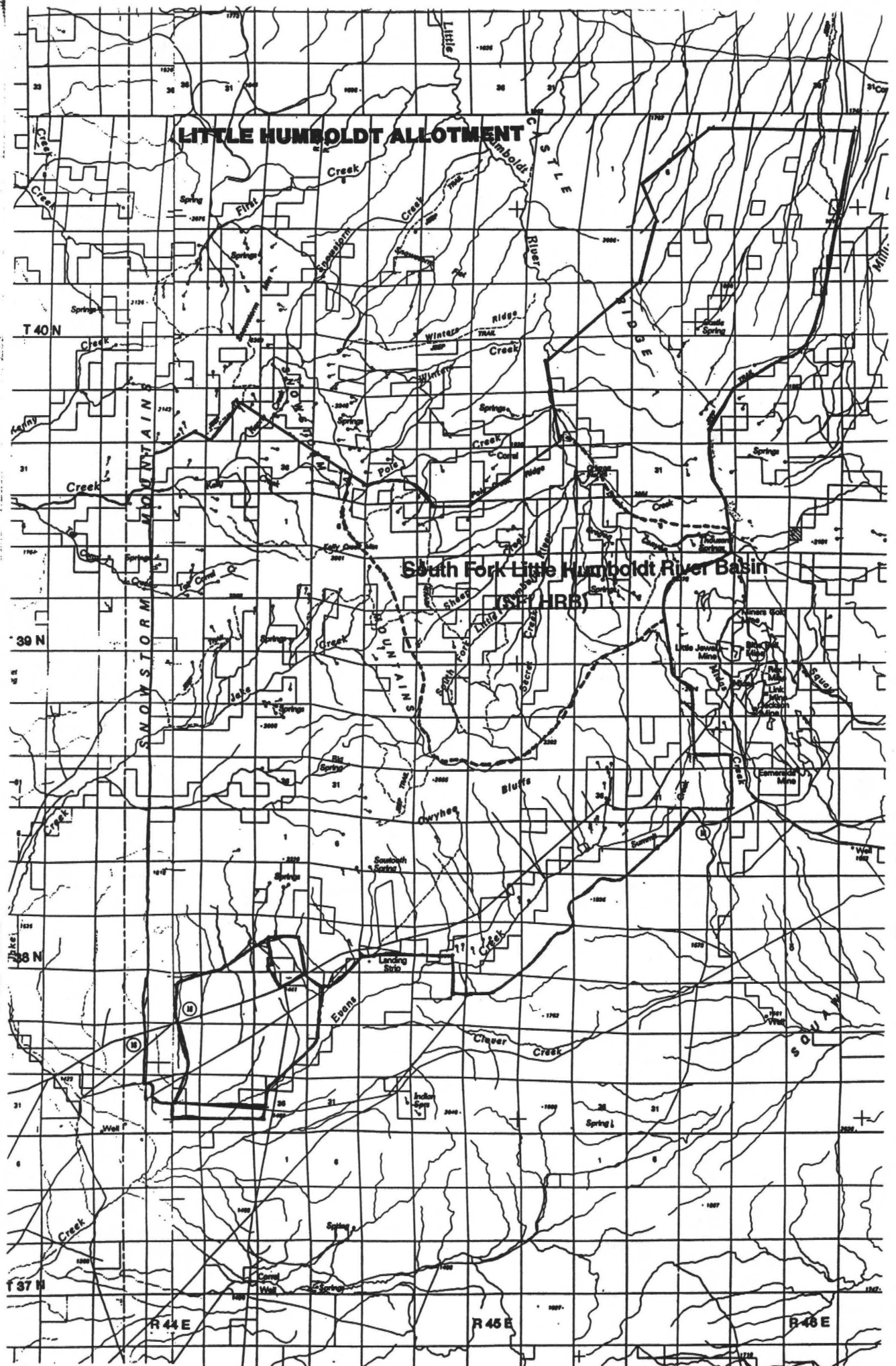
Sincerely yours,

  
for CLINTON R. OKE  
Assistant Field Manager  
Renewable Resources

Enclosure(s): as stated above

cc: Bottari & Associates Realty  
HTT Resource Advisors  
Elko County Conservation Assoc.  
Commission for the Preservation of Wild Horses  
Wild Horse Organized Assistance  
U.S. Fish & Wildlife Service  
Friends of Nevada Wilderness  
Nevada Cattlemen's Assoc. & Land Action Assoc.  
Barrick Goldstrike Mines Inc.  
Federal Land Bank of Sacramento  
Nevada Division of Wildlife  
Nevada State Clearinghouse  
Nevada Division of Agriculture

Elko County, Board of County Commissioners  
Kenneth Buckingham  
Ellison Ranching Company  
Resource Concepts, Inc.  
Nevada First Corporation  
Farm Credit Services  
M. Jeanne Hermann, Landfinder Country Properties  
Marvel and Kump, LTD  
LaVaca Cattle Co.



**LITTLE HUMBERT ALLOTMENT**

**South Fork Little Humboldt River Basin  
(SFLHRB)**

T 40 N

T 39 N

T 38 N

T 37 N

R 44 E

R 45 E

R 46 E