



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>



In Reply Refer to:
4130 (NV-012)

FEB - 1 2001

Dear Interested Public:

The Bureau of Land Management (BLM) is in the process of changing livestock management on the **Little Humboldt Allotment**, located in northwestern Elko County, Nevada. The Little Humboldt Allotment supports Lahontan cutthroat trout (LCT), a federally listed threatened species subject to protection under the Endangered Species Act. The purpose of this letter is to solicit input for development of a Decision, effective upon issuance, for livestock grazing in 2001 in the portion of the Little Humboldt Allotment identified as the South Fork Little Humboldt River basin (basin) (refer to the attached map). The SFLHR basin supports streams occupied by LCT and grazing as has historically occurred, will continue to cause resource damage adverse to Lahontan cutthroat trout habitat recovery. BLM is currently developing a Biological Assessment (BA) that will analyze the impacts of proposed changes in livestock use in the South Fork Little Humboldt River basin. The BA, when completed, will be submitted to the U.S. Fish and Wildlife Service for section 7 consultation and will be available for public review.

Events occurring in the Little Humboldt Allotment between 1999 and 2000 including issuance of management decisions by BLM, court rulings, fence construction, and wildfire are relevant to the development of a grazing plan for 2001. These events are summarized below.

Background 1999 - 2000

On June 1, 1999, BLM issued a Final Decision, Effective Upon Issuance for the Little Humboldt Allotment to Hammond Ranches, Inc. (later changed to Oro Vaca, Inc.) which addressed changes in grazing management for the benefit of LCT. The decision which followed informal consultation with the U. S. Fish and Wildlife Service required livestock to be removed from the SFLHR basin after June 30. BLM felt that a June 30th removal date would allow for improvement in stream and riparian habitat conditions important for recovery of LCT.

An appeal and petition for stay to the final decision was filed by Oro Vaca, Inc. on July 8, 1999. On August 3, 1999, the Interior Board of Land Appeals issued an order staying BLM's June 1, 1999, decision. When the Board stays a final decision, grazing use is authorized at previous levels until the stay is resolved. Consequently, Oro Vaca, Inc. was authorized to graze the Little Humboldt Allotment at the 1998 licensed level of grazing use which meant livestock could be present within the SFLHR basin from approximately May until October. Since this level of livestock use was different than the June 30th off date agreed to through the informal consultation process with the U. S. Fish and Wildlife Service, BLM was required to reinitiate formal section 7 consultation under the Endangered Species Act with the Service for grazing in 2000.

In January of 2000, BLM completed a biological assessment for formal section 7 consultation with the U.S. Fish and Wildlife Service. The assessment addressed impacts to LCT habitat resulting from continuation of the 1998 levels of livestock use which allows for summer-long grazing of the SFLHR basin. In general, BLM concluded the hot season grazing as proposed would adversely affect LCT. In March of 2000, the U. S. Fish and Wildlife Service issued a biological opinion stating that the action proposed by BLM (authorization of the 1998 level of livestock use) was "likely to jeopardize the continued existence of the Humboldt Basin Distinct Population Segment of the LCT" unless the BLM adopted provisions of the BO to reduce livestock impacts on LCT streams. In order to preclude a jeopardy opinion, BLM adopted these provisions (including removal of livestock from the SFLHR basin by June 30th) and issued a Decision, Effective Upon Issuance, on March 31st, 2000. The U.S. Fish and Wildlife Service also recommended certain thresholds for use of riparian vegetation and for trampling of streambanks for the long-term management plan with stipulations that riparian habitat for LCT streams were to be in an upward trend. These thresholds are similar to what BLM is now proposing for the SFLHR basin for 2001 with the July 15 off-date.

Oro Vaca, Inc. appealed to the Interior Board of Land Appeals and requested a stay of the 2000 Decision. The stay was denied and Oro Vaca, Inc. filed a complaint for judicial review and injunctive relief with the U. S. District Court. Although a settlement addressing removal of livestock from the SFLHR basin was negotiated in District Court, the intent of the settlement was interpreted differently by BLM and Oro Vaca, Inc. and at least some cattle remained in the basin throughout the summer. Consequently, the thresholds for livestock impacts identified in the jeopardy biological opinion were exceeded.

A number of other events which occurred in 2000 are also relevant to developing a new grazing plan for 2001 in the SFLHR basin. A fairly extensive amount of new fencing was either partially or completely constructed in and around the SFLHR basin on both private and public lands which will allow for better control and management of livestock. Wildfire burned a portion of the allotment which will result in additional fencing, as well as reductions in livestock use in 2001. Finally, BLM collected additional information on livestock impacts to LCT streams in 2000 as required under the biological opinion issued by the U. S. Fish and Wildlife Service. The data collected showed, among other things, excessive utilization of riparian vegetation, excessive streambank trampling, excessive stream temperatures within the lethal range for LCT due to livestock impacts on the streams within the basin. Additionally, Proper Functioning Condition assessments completed on 29.8 miles of SFLHR basin streams in 1999 and 2000 indicate 78 percent of the stream reaches are non-functional or functional-at-risk in a downward or static trend. Ratings of nonfunctional were associated with channel entrenchment, draining of the floodplains, unstable streambanks, excessive sedimentation, lack of riparian vegetation, and lack of woody plant regeneration due to historic and recent livestock use within the SFLHR basin.

2001 Proposal

Because the actual grazing that occurred in 2000 in the SFLHR basin was different than what was provided for in the biological opinion, BLM is required to reinitiate formal section 7 consultation with the U. S. Fish and Wildlife Service. In addition, the new information collected in 2000 as well as the changes to the allotment brought about by construction of new fences and wildfire necessitates

development of a new biological opinion and new Decision for the 2001 grazing season.

Therefore, the BLM proposes the following management action for livestock grazing within the SFLHR basin area of the Little Humboldt Allotment beginning in 2001:

Livestock grazing use within the SFLHR basin will be authorized to extend to (but no later than) July 15th, provided the following criteria are met:

1. Riparian herbaceous stubble height shall be at least six inches before livestock are allowed to enter the SFLHR basin.
2. All livestock shall be removed when the average stubble height of herbaceous riparian vegetation reaches four inches to allow time for regrowth to a level of six inches by the end of the growing season.
3. Utilization of woody riparian vegetation (aspen and willow) will not exceed 20 percent of the current year's growth.
4. Streambank trampling of five percent will initiate removal of all livestock so trampling does not reach 10 percent.

During the 1999 and 2000 grazing season, BLM evaluated vegetation stubble height, riparian and woody plant (willow and aspen) utilization, streambank trampling, completed a Proper Functioning Condition assessment, and stream temperature monitoring, and collected Rosgen channel type data. Monitoring showed livestock utilization exceeded limits established in the 2000 biological opinion. BLM has concluded that the overall lack of a healthy riparian zone and associated channel features in the basin affect the ability of the South Fork Little Humboldt River and its tributary streams to maintain a viable Lahontan cutthroat trout population over time. Stream habitat data on basin streams show a decline in bank cover and streambank stability and an increase in stream width to depth ratio. These changes are important indicators of channel instability. Proper Functioning Condition assessments indicate channel entrenchment, draining of floodplains, unstable streambanks, excessive sedimentation, lack of riparian vegetation, and lack of woody plant regeneration are causing the system to be nonfunctional.

Oro Vaca, Inc. concludes that by looking at four parameters associated with "optimum" habitat conditions for Lahontan cutthroat trout described in the Lahontan Cutthroat Trout Recovery Plan (1995) that the system is in good to excellent condition. They also contend that Lahontan cutthroat trout are in good condition because of multiple age classes of trout in the streams. BLM believes this is a misinterpretation of BLM and Nevada Division of Wildlife data and is not supported by the full database of the agencies.

BLM has concluded that the BLM proposed measures will improve riparian habitat (both herbaceous and woody species) along the streams within the basin and as a result will benefit recovery of LCT. Monitoring data indicates that livestock use impacts to woody and herbaceous riparian vegetation and streambank trampling became pronounced between late June to mid-July. These measures allow livestock to remain in the basin until July 15, if livestock management reduces utilization along the

streams and allows the stream reaches to improve towards Proper Functioning Condition. Residual six inch stubble height at the beginning of the season provides adequate streambank cover to minimize streambank damage from high spring flows, and help rebuild the deteriorated stream reaches within the basin.

A separate proposal for livestock use of the SFLHR basin developed by Oro Vaca, Inc. dated January 12, 2001, is also attached for your review and comment. The primary differences between the two proposals is that 1.) BLM provides the criteria listed above to remove livestock before July 15 if the criteria are reached or exceeded. BLM has found that these criteria are generally reached or exceeded by early to mid-July. Oro Vaca, Inc. recommends only a July 15 off-date, and proposes using riders, salting and additional private lands fencing to keep livestock away from the creeks. 2.) Oro Vaca, Inc., wants improvements such as additional fencing and water developments on public land within the basin part of the Allotment for 2001 which BLM is required to evaluate in the allotment evaluation process and assess through the National Environmental Policy Act for its effects on other resources. 3.) Oro Vaca, Inc. proposes that the basin be divided into two pastures, one for spring use and one for fall use. BLM cannot commit to this management scenario without full evaluation of the effects on other resources in the long-term evaluation process. 4.) Oro Vaca only commits to try and get the livestock out of the basin by July 15. This is unacceptable to the BLM.

Please provide this office with any written comments you may have to either proposal (BLM's or Oro Vaca, Inc.'s) by February 15, 2001. If you have any questions, or need more information, please contact Carol Evans at 753-0349 or Pat Coffin at 753-0289.

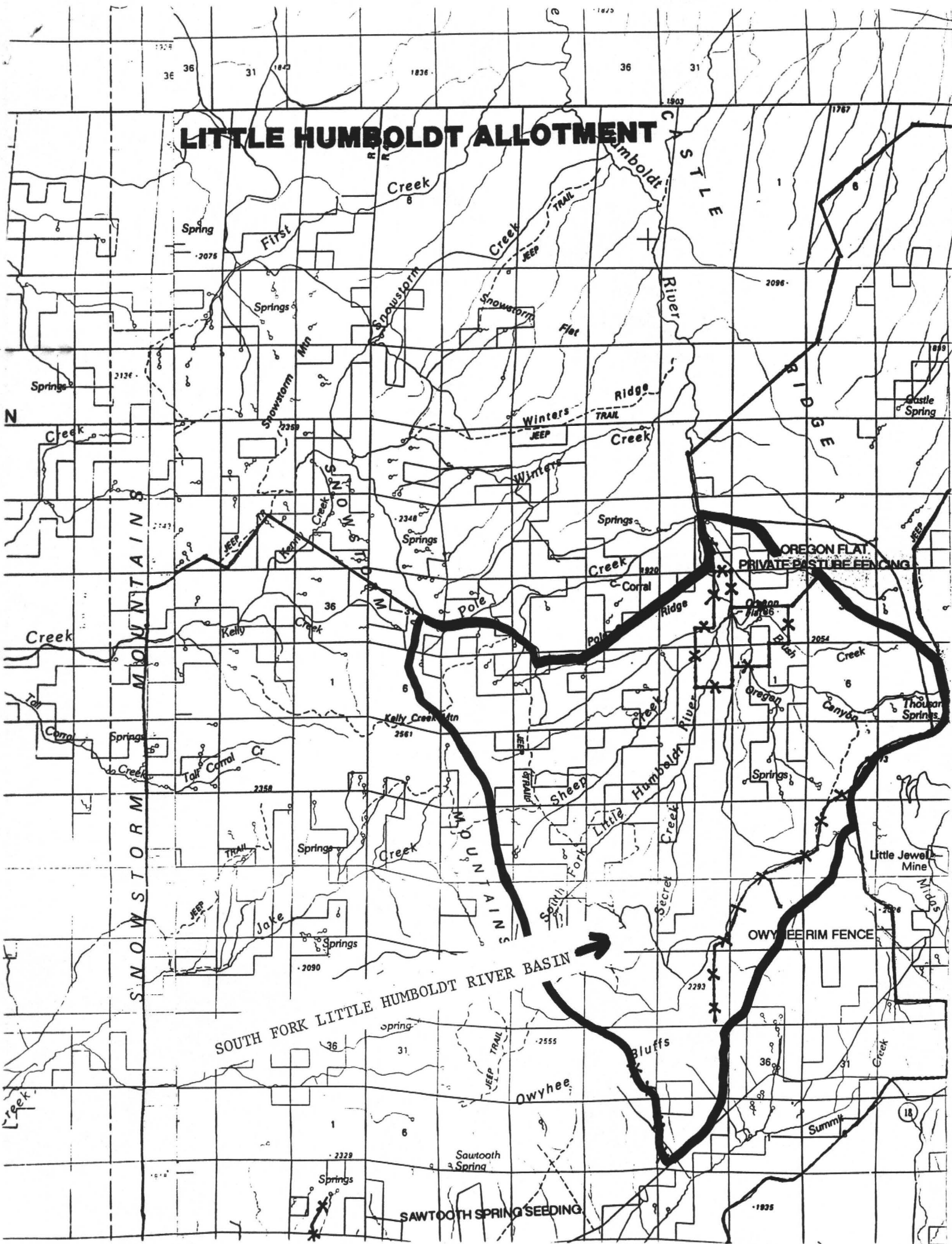
Sincerely,



CLINTON R. OKE
Assistant Field Manager
Renewable Resources

Enclosure: as stated above

LITTLE HUMBOLDT ALLOTMENT



SOUTH FORK LITTLE HUMBOLDT RIVER BASIN



SAWTOOTH SPRING SEEDING

1/12/01

MANAGEMENT

2001 JAN 12 PM 2: 25

**ORO VACA, INC.
P.O. BOX 2148
ELKO, NEVADA 89803**

January 12, 2001

USDI-BLM
Elko Field Office
3900 East Idaho Street
Elko, Nevada 89801-4611

Attn: Clinton R. Oke --Asst. Field Manager, Renewable Resources

Re: "Action" for LCT, as to the South Fork of Little Humboldt Basin, Little Humboldt Allotment, Elko Grazing District.

Dear Mr. Oke:

Thank you for meeting with us on January 3, 2001, regarding the South Fork of the Little Humboldt (SFLH) Basin of the Little Humboldt Allotment, specifically regarding your letter dated December 13, 2000, and a similar letter from you to USFWS dated December 13, 2000.

As our lawyer, W. Alan Schroeder, told you at the outset of the meeting, we protest your contemplated Biological Assessment (BA) [and potentially Biological Opinion (BO)] process because BLM and USFWS have not yet withdrawn (or otherwise vacated) their decisions, i.e. at least BLM Decision dated 3/31/00 and USFWS BO dated 3/30/00. We contend this is required, as a product of your decision to reinitiate consultation pursuant to 50 CFR 402.16. See Natural Resource Defense Council v. Houston, 146 F.3d 1118 (9th Cir. 1998).¹ We also protest your

¹ As Mr. Schroeder also told you, we agree with you that you were legally obligated to "reinitiate consultation", but we disagree with all your reasons to "reinitiate consultation". It is our position that you previously failed to consider and assess the private and public land fencing proposed by us to mitigate and abate use upon the stream segments accessible by cattle within the SFLH Basin. The fact that you have finally decided to consider and assess such fencing is the compelling reason driving this "consultation", including our continued success between August 3, 1999 and now to enjoin/stay your draconian actions. We remain optimistic this "consultation" process will finally and properly document the Action, the Action area, and the best

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contemplated process, because the process fails to include a process whereby the BA is issued in the context of a decision document and is exposed, subject to an appeal, to the USDI Office of Hearings and Appeals, before the BA is forwarded to the USFWS, as required by a Board of Land Appeals decision. See F. Duane Blake et al. v. Bureau of Land Management, 145 IBLA 154 (1998). Therefore, we demand that you withdraw (or vacate) said decisions and that you include in this process conformity with F. Duane Blake. To the extent you refuse to do so, we contend any document(s) arising from this process is unlawful.

We attended this meeting and participated in the discussions with full notice to you of our above-noted protests and with your stated understanding of our position and protests. We also wish to make it clear that you refused to allow us to videotape (or otherwise record) the meeting so that a complete record of the meeting would be available to certain representatives of Oro Vaca who could not attend, but who wished a recording of the meeting be made. You offered no reason for this denial, except that "it's not the way we do business". We request you to reconsider, as to future meetings.

The purpose of this letter is to:

- (1) Confirm the scope or Action area of the 2001 BA;
- (2) Confirm the status of the fences which were completed in 2000 or which were initiated in 2000 and will be completed in 2001;
- (3) Confirm generally the information collected by BLM in 2000;
- (4) Confirm the current situation, including stream habitat condition for LCT waters, age class information for LCT, and status of the streams, although a full discussion and comment as to all the information will be made in writing during forthcoming 15 day comment period;

scientific and commercial data available, as related to the LCT habitat within the SFLH Basin.

- (5) ~~33~~ Deliver the Action for livestock management upon the public land within the SFLH Basin for (at least) 2001; and,
- (6) Demand that this letter be attached to your forthcoming 15-day comment letter, so the "interested public" is (at least) advised of what we contend is the Action.

(1) You confirmed at the 1/3/01 meeting that the scope or Action area of the 2001 BA will be as follows:

The 2001 BA will address only grazing management upon what we all refer to as the SFLH Basin (i.e. the South Fork Little Humboldt River, Sheep Creek, and Secret Creek drainages).

The 2001 BA will not address areas outside the SFLH Basin i.e. "Castle Ridge", "Rim Pasture", Jakes Creek Allotment, "Jakes Creek/Kelly Creek", "Flats", or "North or South Midas" (the area below and south of the Owyhee Bluffs), because all of these areas are irrelevant to LCT habitat and LCT habitat management.

The 2001 BA will also not address the private pastures which have been removed from the public land grazing allotment (i.e., "Pole Creek Crossing Private Pasture" and "Oregon Flat Private Pasture").

The 2001 BA will consider additional structures within the Basin, such as what we is referred to as the "Blue Fence", and such as water developments.

The areas of the allotment which were affected by wildfire in 1999 and 2000 are all outside the Basin, and management actions for those areas will be considered in a different consultation and decision-making process and not part of the 2001 BA.

(2) We confirmed at the 1/3/01 meeting the current status of Allotment structures that were developed (completed or initiated) in 2000 are as follow:

The "Pole Creek Crossing Private Pasture Fence" is complete, except for approximately 1/4 mile on the southwest portion. This is fence "1a" which we

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proposed in our January 3, 2000 letter to you. We project that this will be completed as soon as weather and soils permit access to the site.

The "Oregon Flat Private Pasture Fence" is complete. This is fence "1b" within said letter.

The "East Basin Fence" is complete. This is fence "2a" within said letter.

The "Rim Fence" is complete. This is fences "2b" and "2c" within said letter.

The "West Basin Fence" is approximately 1/4 completed, with all necessary clearances complete and all materials on-site. BLM projects that project work will commence as soon as weather and soils conditions permit access, and project that it will be completed within 3-5 weeks of work commencement in 2001. This is fence "2d" within said letter.

The "Knolls Fence" is complete, except for approximately 1/2 mile on private lands. The "Lower Seeding Gap & East Fence" is complete, except for cattle guards. These fences comprise fence "2f" within said letter.

The "Jakes Creek Drift Fence" is complete, except for approximately 1/2 mile near the top. This fence complements the Owyhee Bluffs in creating a physical barrier between the lower & upper elevations of the Jakes Creek and Little Humboldt Allotments. BLM projects that this will be completed as soon as weather and soils permit access to the site.

The Secret Creek Gap Fences have not yet been completed. We project that such construction will commence as soon as weather and soils permit access to the sites.

In summary, approximately 10.25 miles of private fence were constructed of the approximate 11.25 miles proposed or contemplated in our January 3, 2000 letter. BLM constructed approximately 12.5 miles of public land fence, and the materials are on site to finish the remaining 5.0 miles, of the 17.5 miles we proposed in our January 3, 2000 letter². That is, about 91% of the private land fences and

² These are fences pertaining to livestock access to/from the SFLH Basin, but do not include the public safety/pasture fences we proposed along the Midas Road.

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about 71% of the public land fences which we previously proposed to mitigate or abate your LCT concerns within the SFLH Basin (regardless of the merit of your concerns) were completed in 2000, and the remaining 9% and 29%, respectively, will be finished in 2001.

- (3) You confirmed during the 1/3/01 meeting that no stream habitat condition data and no LCT age class data were collected in 2000. The only data collected was "enforcement" data relating to the 2000 BO, plus some water temperature data.

You reviewed with us Intermountain Range Consultant's December 26, 2000, Freedom of Information Act (FOIA) request. You confirmed that no stream survey data or age class data were collected in 2000, and that you would provide information collected in 2000 relating to FOIA Requests 1c.; 1e.; 4; 6; 7a.; 7b.; 7c(5) (a field trip report by NDOW employee John Elliot); 12 (as it relates to water temperature); 13 (as it relates to range improvement monies and to emergency fire rehabilitation monies); and 19 (at least as to whether such sites exist, but not necessarily their location within the allotment).

We have since received this information, except for the funding information and for more detailed water temperature information. We will comment upon this information during the forthcoming 15-day comment period.

- (4) Subject to our comments to be submitted during the forthcoming 15-day comment period, the record should reflect that the current situation of LCT water within the SFLH Basin is:

First, the best scientific and commercial data available regarding the **stream habitat condition** is as follows:

Stream System Habitat Condition Data³, based upon the latest (1999) BLM stream survey data:

³ This information pertains to the four parameters of "optimum" habitat condition as described by USFWS LCT Recovery Plan, i.e. "streambank cover", "streambank stability", "pool:riffle ratio", and "percent desirable streambottom materials".

Whole System:	66% ("good")
SFLHR:	68% ("good")
Sheep Creek:	70% ("excellent")
Secret Creek:	62% ("good")

Stream System Habitat Condition Data, based upon the latest (1999) BLM stream survey data, not Excluded by Private Fencing in 2000:

Whole System:	66% ("good")
SFLHR:	70% ("excellent")
Sheep Creek:	69% ("good")
Secret Creek:	62% ("good")

Second, the best scientific and commercial data available regarding **species age classes** is as follows:

Stream System LCT Population Class Data, based upon the latest (1999) BLM Stream Survey information and Intermountain Range Consultants observations in 1999 and 2000:

At least three age classes (actually five age classes), have persisted since at least 1977.

Third, the best scientific and commercial data available regarding the status of stream segments is as follows:

SFLHR 7.6 miles total length, of which 7.1 miles are on private land, and 0.5 mile is on public land. Of the 7.6 miles of "length", 1.1 miles are actually dry wash, making the water length 6.5 miles.

Of the 6.5 miles of stream flow, 2.25 miles are within private fenced pastures not exposed to the public land Grazing Permit, making 4.25 miles subject to public land Grazing Permit use.

Of the 4.25 miles, 1.5 miles are physically inaccessible to livestock⁴, and 2.75 miles are accessible to livestock.

Of the 2.75 miles of stream accessible to livestock, approximately 0.1 mile is public land.

Therefore, 2.75 of the 7.6 miles of LCT habitat along SFLHR are subject to public land Grazing Permit use.

SHEEP CREEK 4.5 miles total "length" (including a perennial tributary), of which all is private land, except for 0.25 mile. Of the 4.5 miles, 2.75 miles are ephemeral (dry wash or intermittent flow), leaving 1.75 miles of perennial water. However, of the 1.75 miles of perennial water, 0.5 mile is not stream flow, but is instead spring source flow which is separated from the perennial stream flow by the dry and intermittent ephemeral wash. Therefore, LCT habitat consists of approximately 1.25 miles of stream above the confluence with SFLHR, and the main water is not supplied by what maps show as the length of Sheep Creek, but rather by a "tributary" in Sections 2 and 3, T39N, R45E.

Of the 1.25 miles of perennial stream flow, 0.5 mile is within a

⁴ Of the 1.5 miles of inaccessible stream, a little less than 0.5 mile is public land.

private fenced pasture not exposed to the public land Grazing Permit, leaving 0.75 mile of the stream subject to public land Grazing Permit use.

Of the 0.75 mile, 0.25 mile is physically inaccessible by livestock; and 0.5 miles is accessible to livestock.

Therefore, 0.5 of the 1.25 miles of LCT habitat along Sheep Creek are subject to public land Grazing Permit use.

SECRET CREEK 2.5 miles total length, all of which is private land. Of the 2.5 miles, approximately 0.5 miles is dry wash. Of the 2.0 miles of perennial stream flow, none was fenced in 2000, approximately 0.5 mile is physically inaccessible; and approximately 1.5 miles are accessible to livestock.

Therefore, 1.5 of the 2.0 miles of LCT habitat along Secret Creek are subject to public land Grazing Permit use.

POLE CREEK 1.2 miles total length, 1.0 miles of which is private land. None of the stream in the Little Humboldt Allotment is LCT habitat, except for the approximate 0.2 mile of stream just above the confluence with SFLHR (i.e. Lower Pole Creek), because physical barriers exist which prevent fish migration within the adjacent Bullhead Allotment, through which the majority of the stream runs, making it impossible for fish to occupy the upper elevations of this stream which lie within the Little Humboldt Allotment, and all of which are private.

Therefore, 0.2 mile of LCT habitat along Pole Creek are subject to public land Grazing Permit use

Fourth, the best scientific and commercial data available regarding the **Grazing Permit** is as follows:

The Grazing Permit (approved by BLM on April 24, 1996) authorizes us to graze cattle between March 1 and January 31 within the Little Humboldt Allotment. This permit does not specifically prescribe a pasture/area of use rotation through the Allotment. However, practically speaking, grazing use has been historically limited

(about May 15 - September 15) within the SFLH Basin area of use due to topography and the livestock management practices. In short, seasonlong grazing has never occurred within the SFLH Basin.

The construction of (at least) the private land and public land fence within and around the SFLH Basin during 2000 has given us the ability to further refine the grazing use within the SFLH Basin, regardless of the merit of the need to do so. These fences have now enclosed the SFLH Basin into a fenced pasture; this gives us the ability to better control the timing of use within the SFLH Basin as against the remainder of the Little Humboldt Allotment. These fences have also enclosed certain stream corridors within the SFLH Basin; this gives us the ability to abate grazing use on significant portions of the streams within the SFLH Basin when public land grazing use is permitted within the SFLH Basin.

(5) Action:

Based in part on the points above, we contend that the Action to be considered and assessed in a BA process^⑤ is as follows:

First, the construction of additional fencing, as follows:

"Hangnail Fence". This fence will consist of less than 1/4 mile of fence, and will be constructed on public land on the west side of the SFLHR, below the gorge below Oregon Flat (the reach of stream on which BLM's Station SFLHR S-2 is located). The fence will encompass all of the 0.1 mile of public land stream which lies between Oregon Flat Private Pasture and Pole Creek Crossing Private Pasture. This fence will exclude this reach of SFLHR from grazing under the public land Grazing Permit. Together with the inaccessible portion of public land stream, no public land portion of the SFLHR will be exposed to grazing under the Grazing Permit.

^⑤ No BA (or BO) is necessary if we, BLM, and USFWS are in agreement on the Action and the Action is deemed to "not likely affect". See 50 CFR 402.14(b)(1).

Secret Creek Gap Fences. These fences were contemplated in our January 3, 2000 proposal, and have been further discussed and detailed since that time. These fences will exclude livestock use from the entire stream length, except for four small water gaps at livestock access points. It is projected this will include approximately 0.75 mile total fence, all on private lands.

Together with the existing fences and physically inaccessible areas of stream lengths within the SFLH Basin, the above fences (Hangnail and Secret Creek Gap fences) will result in the following status for the streams:

LCT water Length	Excluded By Fence	Physically Inaccessible	Accessible to Livestock Total	Public
SFLHR 6.50 miles	2.25 miles	1.50 miles	2.75 miles	0.00 miles
Sheep 1.25 miles	0.50 miles	0.25 miles	0.50 miles	0.00 miles
Secret 2.00 miles	2.00 miles	N/A	0.00 miles ⁶	0.00 miles
Pole 0.20 miles	0.00 miles	0.00 miles	0.20 miles	0.20 miles
Total 9.45 miles	4.75 miles	1.75 miles	3.45 miles	0.20 miles

"Modified" Blue Fence. This fence would consist of approximately 4.5 miles of fence, approximately 0.5 mile of which would be constructed across private land, and 4.0 miles of which would be constructed on public land. The fence would run southwest along the road from the private fence surrounding Oregon Flat Private Pasture (north of Sheep Creek drainage) for approximately 1.5 miles into Section 3, T39N, R45E; then south approximately 1.25 miles across the ephemeral drainage of Sheep Creek into Section 10; then southwesterly for approximately 1.75

⁶ Except at four small water gap areas for livestock watering.

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miles, across portions of Sections 15 and 16, and tying into topography.

This fence would split the SFLH Basin, with all of the perennial waters of Sheep Creek, SFLHR, and Secret Creek — essentially all of the public and private LCT habitat subject to the Grazing Permit — in the South Basin.

This fence concept was acceptable to USFWS in a meeting held in Elko, Nevada in August, 2000. However, the conceptual location of the fence discussed during that meeting was to have the fence run up the ridge between Sheep Creek and SFLHR, so that the accessible portion of Sheep Creek would be in the North Basin. The location proposed herein modifies the proposal discussed in the August, 2000 meeting so that all of the perennial water of Sheep Creek (hence, all of the LCT habitat of Sheep Creek) is included south of the fence line, in the South Basin Pasture⁷.

Second, the construction of water developments upon "private" land, as follows:

Springs: It is our intention to develop several upland water sources (springs) on private lands within the North and South Basin, so as to enhance the availability of water sources away from the LCT streams. Nearly all of the springs within the North and South Basin are on private land, and it is our intention to develop these in 2001.

Reservoirs: It is our intention to develop several reservoir sites on private land, so as to enhance the availability of water sources away from the LCT streams. While most of these reservoirs may not hold water in 2001, they will be operational for 2002 and beyond.

⁷ This fence location would also include in the South Basin approximately 1.0 mile of the 2.75 miles of ephemeral drainage of Sheep Creek into the South Basin.

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Third, the construction of water developments upon "public" land, as follows:

Springs: Upland springs on public land should be developed within the North and South Basin, so as to enhance the availability of livestock water sources away from the LCT streams. We believe at least one such opportunity exists within Section 35, T40N, R45E.

Reservoirs: Several reservoir sites on public lands are feasible and should be developed by BLM in 2001, to enhance the availability of water sources away from the LCT streams. Some of these were included in our January 3, 2000 letter, but numerous suitable locations exist within the North and South Basin.

In addition, several locations within the Rim Pasture, which will be used to stage cattle into and out of the SFLH Basin Sub-pastures, were discussed and conceptually agreed upon between BLM and us in 2000. These reservoirs should also be constructed, so as to provide additional use of the Rim Pasture, which may in turn effect turn-in and removal from the SFLH Basin Sub-pastures.

Fourth, the placement of salt within the SFLH Basin, as follows:

Salt blocks will be placed at least 1/4 mile away from SFLHR, Sheep Creek, Secret Creek, and Pole Creek, on ridges and benches, so as to encourage cattle to move away from these water sources.

Fifth, the placement of "cowboys" within the SFLH Basin. During the period of use for the South Basin sub-pasture, we intend to have cowboy(s) ride at least every third day to push cattle off of the in the stream segments accessible by livestock. See also the riding provision in "Sixth" point below.

Sixth, the refinement of the period of use within the SFLH Basin (in 2001), as follows:

The BLM stream survey data collected since 1977, including 1986 data and 1999 data, support no rational basis to change the period of use within the SFLH Basin from what has been the historical period of use. However, with the private and public land fence already constructed and with the other physical

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improvements constructed above, we are amenable to the following period of use within the SFLH Basin:

South Basin. May 1 to July 15. Cattle will be moved out of the South Basin by July 15. However, of consideration is that sagebrush in some parts of the South Basin is seven or more feet tall, and may hinder 100% cattle removal by July 15. Riders will be deployed daily from July 15 through July 31 within the South Basin to check for stragglers and strays using the stream courses. Cattle will be moved out of the South Basin as they are found after July 15.

North Basin. September 1 to October 31. Note: If the "Modified" Blue Fence is not completed prior to cattle entering the SFLH Basin⁸, we will not actively push cattle into the North Basin between May 1 and July 15, although some drift from the south may occur.

The overall period of use in the North Basin and South Basin will permit the maintenance of a stable livestock operation. During the period of July 15 through August 31, cattle will be on other areas of the Little Humboldt Allotment, not within the SFLH Basin.

- (6) This letter should be attached to your forthcoming 15-day comment letter, so the "interested public" is (at least) advised of what we contend is the "Action".

If you have any questions whatsoever, please call. Otherwise, I look forward to providing written comments during the forthcoming 15-day comment period

⁸ It should be noted for the record that moisture conditions will be decided when cattle are placed into the SFLH Basin, South Basin Pasture; it is possible we will not have placed all the cattle in the SFLH Basin, South Basin pasture until late May or early June. This will obviously further limit the use within the South Basin Pasture, and thereby on the stream segments accessible by livestock.

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and meeting with you again sometime during the first part of February. When you have your scheduling worked out as to such February meeting, please call.

Very truly yours,

ORO VACA, INC.

By 
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