

21 Rock Creek G C/19/96



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ELKO DISTRICT OFFICE
3900 E. IDAHO STREET
ELKO, NEVADA 89803

*Received
June 24, 1996*

IN REPLY REFER TO:
4710 (NV-010)

JUN 19 1996

NOTICE OF FULL FORCE AND EFFECT DECISION TO GATHER & REMOVE WILD HORSES FROM THE ROCK CREEK HERD AREA

MANAGEMENT ACTION: The action is the continued implementation of the Rock Creek Emergency Fire Rehabilitation (EFR) Plan, the Rock Creek Herd Area Wild Horse Gather Plan and associated Environmental Assessment (EA# BLM/EK/PL-94-038) dated 10/26/94, and the Area Manager's Decision "Notice of Closure to Livestock Grazing Spanish Ranch Allotment" dated 3/3/95. The action is to gather horses from within the fenced Mahogany Springs EFR project area. This project area is located within the Rock Creek herd area and was closed to all grazing to allow for reestablishment of perennial vegetation on the upland watershed and riparian areas of Winters Creek. Winters Creek is habitat for the Lahontan Cutthroat Trout (LCT) Federally listed threatened species.

The action is also to remove horses from outside and adjacent to the Mahogany Springs EFR area. Current and historical data indicate that horse numbers in the Rock Creek herd area (813) are at a population level in excess of the area's forage and water capacity and the potential exists for significant death loss and damage to resources. In addition, at this current population level, it is expected that a removal of horses from the Mahogany Springs EFR closure area alone would not result in the meeting of rehabilitation objectives as horses from adjacent habitats would continue to put pressure on the new fence in attempts to enter the closure area. It is expected that once the herd area is at or near the appropriate management level, the pressure on the fence will be greatly reduced.

Horses will be gathered and removed using standard Bureau operating procedures as outlined in the Rock Creek Herd Area Wild Horse Gather Plan and associated EA.

BACKGROUND INFORMATION: On July 17, 1994, lightning ignition started what became the Mahogany Springs Fire. The fire burned approximately 6,304 acres of public land and approximately 2,482 acres of private land in the Rock Creek herd area and Spanish Ranch Allotment. The Mahogany Springs EFR Plan outlined actions needed to restore the Mahogany Springs Fire. These steps included construction of a fence to facilitate closure of the burned area to livestock and wild horse grazing. In order to successfully reestablish perennial vegetation, restore plant vigor and seed production, it is necessary that the burned area be rested from grazing until rehabilitation objectives have been met.

On November 29, 1994, the BLM began to gather and remove wild horses inhabiting the Mahogany Springs enclosure area. A total of 157 horses were removed from the range. Before the enclosure could be completed, over 200 wild horses moved back into the burned area. On October 6, 1995, the BLM contracted a helicopter and pilot to herd horses out of the enclosure. Of the approximately 200 horses within the enclosure, all but 27 were herded out; a removal of horses did not take place at this time. In the Spring of 1996, over one hundred head of wild horses were observed within the enclosure fence. The number of wild horses within the enclosure and the amount of utilization on recovering vegetation is jeopardizing the attainment of fire rehabilitation objectives.

Including the horses within the enclosure, there are approximately 813 wild horses within the Rock Creek herd area. The BLM Elko District is currently in the process of establishing an appropriate management level (AML) through the Spanish Ranch/Squaw Valley allotment evaluation. Monitoring data (grazing utilization, actual use, seasonal distribution/census data, climatic factors, etc.) is indicating that AML will be about 200 horses for the herd area. The Spanish Ranch/Squaw Valley Allotment Evaluation is scheduled to be completed in July, 1996. Prior to issuance of the multiple use decision, the BLM is required to conduct formal consultation with the United States Fish and Wildlife Service regarding potential impacts to the Federally listed endangered LCT. The BLM does not expect to have a multiple use decision completed and AML established for the Spanish Ranch/Squaw Valley allotment until early 1997.

Water in the area consists of McFadden Spring and intermittent streams which flow only during the spring. McFadden spring was documented to be dry in July of 1994, and was producing approximately 250 gallons per day (25 horses @ 10 gallons/horse/day=250 gallons) in late summer 1995. The reason horses did not die of dehydration in 1994 and 1995 is because (1) there were 100 fewer horses in the herd area and (2) horses were able to migrate to and utilize forage and water in the Mahogany Springs EFR area. The *Nevada Basin Outlook Report May 1, 1996* shows that the snowpack conditions in the Owyhee River Basin are below average. Snow water content was 87% of the May 1 average and 83% of the snow water content of last year. Chances are good that McFadden Spring will be producing minimum flow or be dry by late summer 1996, therefore, potential for a water and forage emergency exists in this area. Approximately 125 to 150 horses should be removed from the McFadden Spring area in order to prevent potential significant death loss and/or severe degradation to other resources in the area.

Typically there are 150 to 200 horses that utilize the area around McFadden spring on a year-long basis (see Map 1). The primary grass species that occurs in this area is *Poa secunda* or Sandberg bluegrass (POSE). POSE greens up April through June and is dried out (and therefore extremely low in protein content) by July 1. Utilization readings in April 1996 are showing upwards of 30% use by wild horses. The 30% utilization figure is quite high for early April. If use continues at this level it will approach 80% by the end of the growing season. The objective for *combined* use by cattle and wild horses is 50% at the end of the use period, normally 11/30. The permittee has not grazed livestock in the area of McFadden Spring for several years due to the high number of wild horses and resulting lack of forage.

The average rate of population growth seen in the Rock Creek herd area is 20.5%; rates as high as 26% and 32% have been observed in 1986 and 1991 respectively. Given this reproductive rate, there could be close to 1000 horses in the herd area by July of 1997. The Interior Board of Land Appeal (IBLA) has stated that "The BLM need not wait until actual damage occurs, but may take preventative action to avoid damage to the range" (Animal Protection Institute of America, 118 IBLA 63, 75 1991). In the case of the Rock Creek herd area, the BLM feels that the integrity of the range and its forage and water capabilities are threatened by an overpopulation of horses and the potential for significant death loss to the herd is very real.

DECISION: Given the above information, it is my decision to gather and remove approximately 225-250 wild horses from the Rock Creek herd area. The location of horse removals within the herd area are as follows: (1) all horses found within the Mahogany Springs enclosure (approximately 100) and (2) approximately 125-150 horses adjacent to the EFR project that would potentially re-enter the closure area and/or potentially would die of dehydration should McFadden spring dry up or be reduced to minimum flows. As mentioned above, the preliminary monitoring data indicates that AML will be below the number of horses remaining in the herd area after this action. The draft Spanish Ranch/Squaw Valley Allotment Evaluation is scheduled to be completed in July 1996 and will have a 30 day comment period. The multiple use decision is expected to be issued in early 1997 and will address needed changes in grazing management, including livestock, wildlife and wild horses. There is a 15 day protest period and a 30 day appeal period for the proposed multiple use decision and final multiple use decision respectively. Therefore, there will be several opportunities to review and comment on the future management of wild horses within the Rock Creek herd area.

METHODS: The method to be used is an age selective removal following current Bureau guidelines. If older horses that do not meet the age criteria are found within the Mahogany Springs enclosure they will be released in the Rock Creek herd area. To make room for these older horses, younger horses outside the enclosure would be gathered and removed. This would be in addition to those being removed to alleviate the potential for significant death loss. The gather will be conducted through the Fiscal Year 96 Nevada Wild Horse/Burro Removal Requirements Contract and supervised by a Contracting Officer's Representative.

DATES: The action will begin on or about July 22, 1996, and will likely be seven days in duration. Affected interests will have over 30 days from the issuance of the Full Force and Effect decision and the initiation of the proposed removal action. Waiting until July 22 for implementation also ensures that foaling season is over and will reduce stress to the animals.

LOCATION: The action will occur in the Rock Creek herd area.

NUMBER OF HORSES INVOLVED: The approximate number of horses to be gathered and removed is approximately 225-250. 563 to 588 horses will remain in the Rock Creek herd area.

CAPTURE TECHNIQUES: A helicopter will be employed to move horses into temporary traps. Motorized vehicles will be employed to transport the horses to their final destination.

AUTHORITY: The authority for this decision is contained in Sec.3(a) and (b) and Sec.4 of the Wild Free-Roaming Horse and Burro Act (P.L. 92-195) as amended and Title 43 of the Code of Federal Regulations. The authority for the Full Force and Effect decision can be found at 43 CFR 4770.3(c) which states:

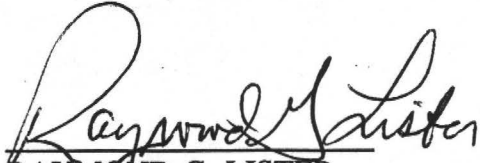
The authorized officer may place in full force and effect decisions to remove wild horses or burros from public lands if removal is required by applicable law or to preserve or maintain a thriving ecological balance and multiple use relationship. Full force and effect decisions shall take effect on the date specified, regardless of an appeal. Appeals and petitions for stay of decision shall be filed with the Interior Board of Land Appeals, as specified in this part.

APPEALS: Within 30 days of receipt of this decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c). Within 30 days after filing a Notice of Appeal, you are required to provide a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file an appeal and petition for a stay, the petition for a stay must accompany your notice of appeal and be in accordance with 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(c). Copies of the Notice of Appeal and Petition for a Stay must be submitted to (1) the Interior Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, (2) the Regional Solicitor's Office, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890, and (3) Elko District Office, 3900 E. Idaho Street, Elko, NV 89801. The original documents should be filed with this office.

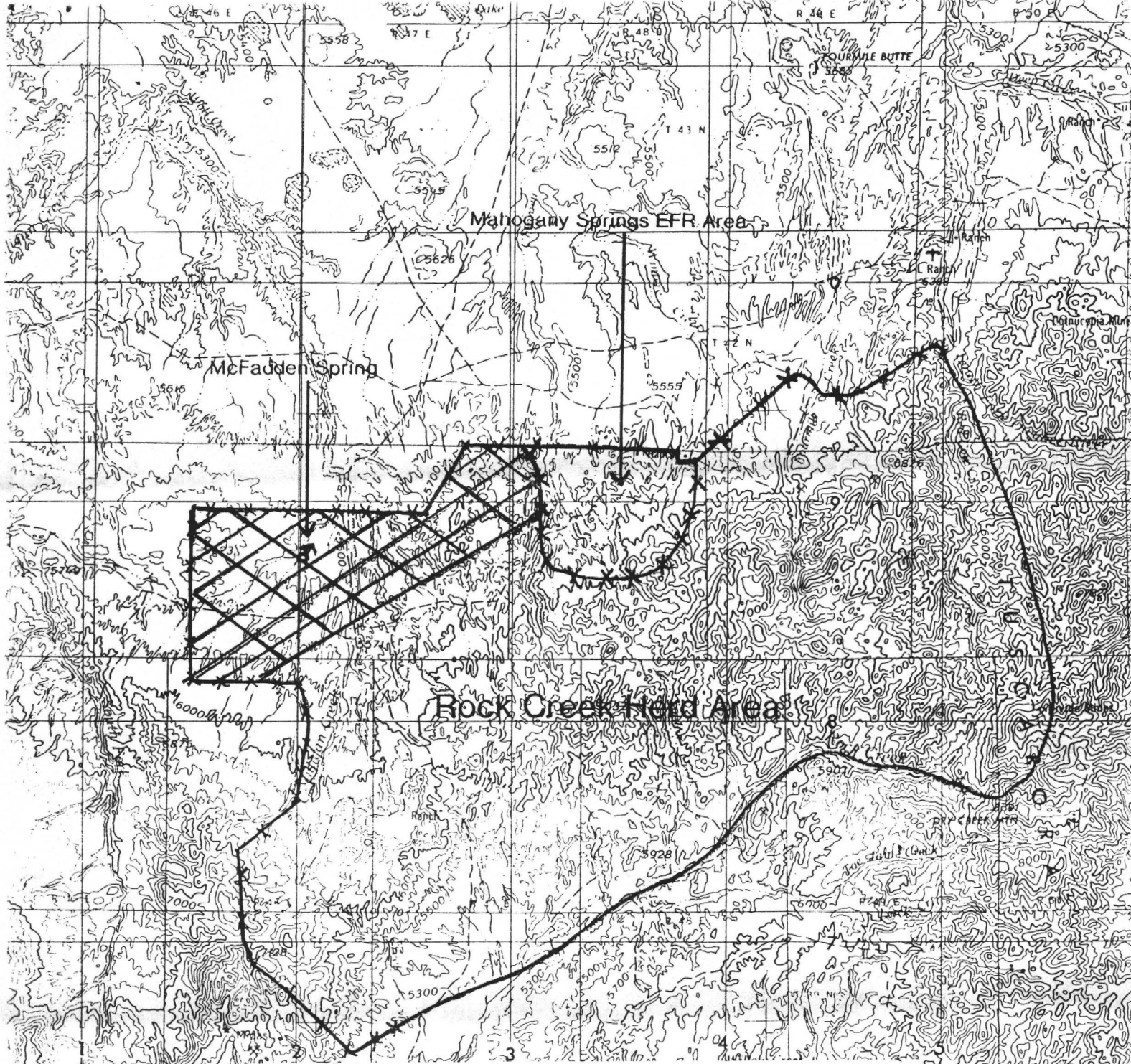
If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay of a decision pending appeals shall show sufficient justification based on the following standards:

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.



ADDITIONAL INFORMATION: Contact Kathy McKinstry of my staff, at (702) 753-0290
or write at the above address.


RAYMOND G. LISTER
Acting Assistant District Manager
Renewable Resources

6/19/86
DATE



MAP 1.

-  - gather area (all horses found within the Mahogany Springs EFR area would be removed)
-  - fence

Map scale is 1: 250 000





United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ELKO DISTRICT OFFICE
3900 E. IDAHO STREET
ELKO, NEVADA 89803

IN REPLY REFER TO:
4710 (NV-010)

JUN 25 1996

Dear Reader,

The Notice of Full Force and Effect Decision to Gather & Remove Wild Horses from the Rock Creek Herd Area dated June 19, 1996, contained an error. The first paragraph of the Management Action on page 1 stated that Winters Creek is habitat for the Lahontan cutthroat trout (LCT), a Federally listed threatened species. Winters Creek is, in fact, habitat for the redband trout, a BLM sensitive species.

At the time the Mahogany Springs EFR Plan was written (August 24, 1994), the redband trout was a category 2 candidate species. As of February, 1996, the United States Fish & Wildlife service revised their list of candidate species. The redband trout is no longer a candidate species but is a BLM sensitive species. It is BLM policy to manage sensitive species in such a manner so that they do not become threatened or endangered.

This correction does not change our rationale for the decision to remove horses from the Mahogany Springs EFR project area. All rehabilitation objectives are still valid. We are sorry for any inconvenience this may have caused. If you have any questions please contact Kathy McKinstry of my staff, at (702) 753-0290 or write at the above address.

Sincerely,

RAYMOND G. LISTER
Acting Assistant District Manager
Renewable Resources

7/10/96

July 10, 1996

**Ms. Helen Hankins, District Manager
Bureau of Land Management
Elko District
Post Office Box 831
Elko, NV 89803**

Dear Helen:

WHOA has reviewed the Notice of Full Force and Effect Decision to gather the wild horses from the Rock Creek herd. We understand the urgency due to the fire plan. We do have a few concerns, we hope you will consider. We appreciate the cooperations of the permittees and the District's staff.

We encourage you to distinguish, through monitoring, of wild horse and livestock use. The data is defendable and removes the controversy of who ate what, when and where. We also would appreciate the inclusion of the Fire Plan and objectives in the allotment evaluation.

Our major concern is that of a greatly reduced herd and the impact that will have on the structure of bands. It would be advisable to predetermine a rate of increase, then structure the herd accordingly.

Thank you once again, for the opportunity to review and comment; and hopefully provide meaningful recommendations. If we can be of help, let us know.

Most sincerely,

A handwritten signature in cursive script, appearing to read "Dawn".

**Dawn Y. Lappin (Mrs.)
Director**

BOB MILLER
Governor

STATE OF NEVADA

done
7/10/96

CATHERINE BARCOMB
Executive Director



COMMISSION FOR THE
PRESERVATION OF WILD HORSES

255 W. Moana Lane
Suite 207A

Reno, Nevada 89509
(702) 688-2626

July 8, 1996

Ms. Helen Hankins
Elko District
Bureau of Land Management
3900 East Idaho Street
P.O. Box 831
Elko, Nevada 89803

Subject: Rock Creek Herd Gather

Dear Ms. Hankins:

The Commission for the Preservation of Wild Horses has received and reviewed the Notice of Full Force and Effect Decision to Gather and Remove Wild Horses from the Rock Creek Herd Area. This decision appears to be consistent with previous decisions regarding the Mahogany Springs Emergency Fire Plan. While the condition of the 1994 wild fire warrants immediate action, we do have concerns with the previous and pending decisions affecting the Rock Creek Wild Horse Herd.

Rock Creek Herd Area Wild Horse Gather Plan/EA

The removal of significant numbers or bands can alter the social structure and population dynamics of this herd. With the observed recruitment rates of 20.5, 26.0 and 32.0 percent since 1986, it would be desirable to reduce recruitment to just herd maintenance. Re-structuring of the Rock Creek Herd should be conducted by a pre-determined age and sex class criteria within a proper activity plan.

A plan amendment may be necessary to set criteria or to include additional population data collected in the gather. This information will be necessary to support the Decision and maintain a viable herd.

Ms. Helen Hankins
July 8, 1996
Page 2

Fish and Wildlife Service Biological Opinion

Recent decisions and administrative actions are bound by biological opinions provided to the Bureau of Land Management. These opinions are not subject to consultation.

We suggest the biological opinions be included in any future evaluations or decisions.

Spanish Ranch/Squaw Valley Allotment Evaluation

This document and multiple use decision are proper procedures to determine the allotment carrying capacity and allocate forage to wild horses. We suggest that all allotments within the Rock Creek HMA be completed at one time to determine the entire appropriate management level for the herd.

Mahogany Springs Emergency Fire Rehabilitation Plan have site specific objectives and use pattern mapping data that should be included in the allotment evaluation.

As the Decision mentions, wild horses may exceed allowable use levels for key species on the fire or in the allotment. Bureau of Land Management decisions have limited wild horse spring use of key species to 25 percent (See Happy Creek - Winnemucca). This type of objective and monitoring may distinguish cattle from wild horse use on key areas. We would encourage the District to include this type of objective in the evaluation or multiple use decision.

In summary, we have met and discussed the issues of this gather with the District and affected parties. The cooperative efforts of the permittees are appreciated, and necessary, to protect natural resources. The intent of proposed actions is to establish an appropriate management level for wild horses to restore damaged rangelands. It is essential that the District's obligation to follow through with proper data analysis and decisions to assure that wild horse reductions are not just temporary site specific actions that will not contribute to the long term and efficient management of the Rock Creek Wild Horse Herd.

Please forward any future correspondence to our new address at 1105 Terminal Way, Suite 209, Reno, Nevada 89502.

Sincerely,



CATHERINE BARCOMB
Executive Director

6/19/96

W H O A

WILD HORSE ORGANIZED ASSISTANCE
P.O. BOX 555
RENO, NEVADA 89504
(702) 851-4817



... a note from

Dawn Y. Lappin

June 19, 1996

Dear Cathy;

As per our conversation regarding Rock Creek, I agree private lands and management of wild horses is nearly impossible. The horses are better served, in dwindling monies and manpower, on lands with none or less private lands.

Thank you for your consideration.

Dawn Y Lappin

7/17/96



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ELKO DISTRICT OFFICE
3900 E. IDAHO STREET
ELKO, NEVADA 89803

IN REPLY REFER TO:
4710 (NV-015)
JUL 17 1996

Commission for the Preservation
of Wild Horses
1105 Terminal Way, Suite 209
Reno, NV 89502

Dear Ms. Barcomb:

Thank you for your letter concerning the Rock Creek wild horse gather and allotment evaluation. The upcoming gather (July 20, 1996) is based on a potential for emergency situation as the horses are concentrated around McFadden Spring which will probably stop flowing in the next few weeks. We are planning on removing horses ten years of age and younger that are found in the McFadden Spring area in excess of what the water and forage resources can support. When the appropriate management level (AML) is determined for the herd area (through the allotment evaluation process) we will need to decide how best to maintain AML using age and sex class removal criteria and possibly fertility control measures.

As you know, the renewable resources staff has been working towards the completion of the Spanish Ranch/Squaw Valley Allotment Evaluation. These are the only allotments within the Rock Creek herd area and they are being evaluated together. The Mahogany Springs Emergency Fire Rehabilitation Plan objectives and data will indeed be included in the allotment evaluation. The status of the enclosure fence will also be included in the evaluation. The Elko range and wild horse staff have been collecting utilization data in the Rock Creek herd area for the past two years. Depending on the time of year and location of the data collection, utilization is being attributed to either livestock, wild horses or both. This information is critical to setting carrying capacity and AML and will be included in the allotment evaluation.

Again, thank you for your letter and suggestions. The BLM is looking forward to working closely with the Commission and other effected interests on the Spanish Ranch/Squaw Valley Allotment Evaluation.

Sincerely,

RAYMOND G. LISTER
Acting Assistant District Manager
Renewable Resources