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UNITED STATES DEPARTMENT OF INTERIOR
OFFICE OF HEARINGS AND APPEALS
HEARINGS DIVISION

KUDRNA NEVADA LLC,) NV - _____
Appellant,) NOTICE OF PARTIAL APPEAL
vs.) Appeal from the Asst. Field Manager's
BUREAU OF LAND MANAGEMENT,) Decision dated 1/14/08, Winnemucca Grazing
Respondent.) District, Nevada, relating to the Soldier Meadows
Allotment

NOTICE OF PARTIAL APPEAL and STATEMENT OF REASONS

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NOTICE

NOTICE IS HEREBY GIVEN TO THE HEARINGS DIVISION (SLC), TO THE BUREAU OF LAND MANAGEMENT, AND TO ALL OTHERS TO WHOM IT MAY CONCERNS that: BLM is required to transmit this filing to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah “within 10 days after receipt” of this filing, as required by 43 C.F.R. § 4.472(a) (as amended). See 68 Fed.Reg. 68765, 68770 (12/10/03). Kudrna requests that you simultaneously serve a copy of your transmittal upon Kudrna’s lawyer at the above noted address.

NOTICE OF PARTIAL APPEAL

KUDRNA NEVADA LLC (“Kudrna”) is adversely affected in part by the “Final Decision” dated January 14, 2008 and gives notice of partial appeal therefrom pursuant to 43 C.F.R. §§ 4.470, 4160.4.

Kudrna appeals portions of the Decision as described below:

(1) Terms and Conditions. Kudrna appeals any provisions of the Terms and Conditions which are inconsistent with the provisions of the CORRECTION CONSERVATION EASEMENT (Soldier Meadows Ranch) between Roberts and The Nature Conservancy dated October 30, 1992 and the subsequent ASSIGNMENT OF CONSERVATION EASEMENT from The Nature Conservancy to The United States of America dated January 6, 1993. Said provisions conflict if they purport to prevent grazing in those areas subject to the Easement.

STATEMENT OF REASONS

KUDRNA NEVADA LLC (“Kudrna”) submits their Statement of Reasons in support of their “Notice of Partial Appeal.”

I. Introduction.

This is a dispute over a grazing decision relating to approximately 327,000 acres of public land within the Soldier Meadows Allotment Winnemucca District, Nevada, which is located approximately 60 air miles northwest of Winnemucca, Nevada and approximately 110 air miles northeast of Reno, Nevada. The Decision is attached as Exhibit “A”.

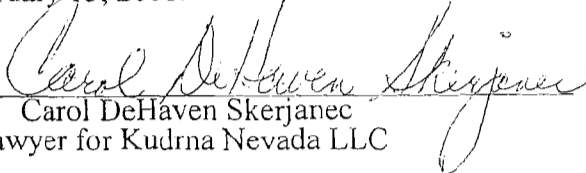
The decision appears to eliminate certain areas of the Allotment from grazing which appellant asserts must remain open to grazing because of agreements reached in the CORRECTION CONSERVATION EASEMENT and ASSIGNMENT OF CONSERVATION

EASEMENT identified above and attached hereto as Exhibits "B" and "C", respectively.

The decision is erroneous in its elimination of grazing in areas subject to the Easement (Exhibit B).

Appellant's manager and person in control of all legal documentation of the Appellant, Jim Kudrna, has been hospitalized for emergency heart surgery since the receipt of this Decision and has been physically unable to participate in the preparation of this Notice of Appeal. For this reason, Appellant requests an additional 30 days to supplement this Notice with additional Statement of Reasons and supporting affidavits.

Respectfully submitted, February 15, 2008.

By: 
Carol DeHaven Skerjanec
The lawyer for Kudrna Nevada LLC

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Certificate of Filing and Service

I certify that on February 15, 2008, I transmitted the forgoing document to "the BLM field office that issued the decision" in accordance with 43 C.F.R. §§4.470(a), 4.471(a) (as amended), and I did so by depositing with the US. Postal Service at Vale, Oregon an envelope containing the original of said document, with postage for certified mail, return receipt requested, addressed to said office, as follows:

USDI-BLM
Winnemucca Field Office
5100 East Winnemucca Blvd
Winnemucca , NV 89445-2921

and, in addition, on February 15, 2008, I served a copy on the "appropriate office of the Office of the Solicitor" in accordance with 43 C.F.R. § 4.471(b)(2) (as amended), by depositing with the U.S. Postal Service at Vale, Oregon an envelope containing a copy of said document, with postage for certified mail, return receipt requested, addressed as follows:

USDI-Office of the Regional Solicitor
2800 Cottage Way, Room E-1712
Sacramento9, CA 95825

and, in addition, on February 15, 2008, I served a courtesy copy thereof by depositing with the U.S. Postal Service at Vale, Oregon an envelope containing a copy of said document, with postage for first class mail, as follows:

USDI-Office of Hearings and Appeals
Hearings Division
139 East South Temple, Suite 600
Salt Lake City, UT 84111

and, in addition, on February 20, 2008 I will serve a copy on the "person(s) named in the decision" in accordance with 43 C.F.R. §§ 4.470(a), 4.471(b)(1) (as amended), by depositing with the U.S. Postage Service at Vale, Oregon an envelope containing a copy of said document, with postage for certified mail, return receipt requested at the addresses noted on the attached pages 1 and 2. If the same "interested public" have multiple representatives listed, certified mailing will only go to one representative and others will be mailed first class mail.

Dated: February 15, 2008.


Carol DeHaven Skerjanec

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In Reply Refer to:
4160(NV-22.15)
Auth No 2702893

JAN 14 2008

NOTICE OF FINAL DECISION

CERTIFIED MAIL NO. 7006 2760 0001 6678 5508
RETURN RECEIPT REQUESTED

Kudrna Nevada LLC
C/O Jim Kudrna
16912 Mt. Rose Highway
Reno, NV 89511

Dear Mr. Kudrna:

This Final Decision is being issued in accordance with the July 11, 2007 Proposed Decision which stated; "Subsequent to a protest period, a Final Decision will be issued which will provide an opportunity for appeal in accordance with 43 CFR 4160.4 and CFR Part 4."

The Final Decision is in conformance with the BLM Sonoma-Gerlach Management Framework Plan, MFP III, 1982, the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Resource Management Plan, 2004 and the Biological Opinion, as amended, 2003. These documents guide the management of public lands within the Soldier Meadows Allotment (SMA).

Please find enclosed the Finding of No Significant Impacts (FONSI) for the SMA grazing modification, permit issuance and range improvement project. The purpose and need for this project is described in the final SMA Grazing Permit Environmental Assessment (EA) No. NV-020-07-EA-08, which was mailed to you, with the Proposed Decision on July 11, 2007.

BACKGROUND

On May 5, 2004, the SMA Final Multiple Use Decision (FMUD) was issued to Estill Ranches LLC. This document guided livestock grazing in the allotment.

On June 14, 2004, BLM received a partial appeal and petition for partial stay of the FMUD from Estill Ranches LLC which was docketed as N2-04-06.

On November 18, 2005, Estill Ranches LLC transferred the BLM grazing preference to you, making you the sole permittee within the SMA.

On February 15, 2006 you filed a motion to substitute yourself as appellant in the appeal of the 2004 FMUD.

On October 25, 2006, you filed a Motion for Dismissal of the appeal of the 2004 FMUD.

On November 17, 2006, you submitted an application for modification of the grazing system in the SMA, and for the construction and/or modification of a range improvement project.

On May 4, 2007, the interested publics for the SMA were notified that the preliminary Environmental Assessment (EA) was available for comment until June 3, 2007. Two comments were received.

On May 8, 2007, a Notice of Proposed Action Lands in Wilderness (NOPA) was sent to the interested publics for comment until June 11, 2007. Several comments were received.

On July 11, 2007, the Proposed Decision (PD) was sent to the interested publics with a fifteen (15) day protest period. The Proposed Decision stated that subsequent to the protest period a Final Decision would be issued. Three (3) protests were received. None of them were submitted timely, however they were considered in the development of this Final Decision.

On July 16, 2007, the Biological Assessment (BA) was sent to the interested publics with a fifteen (15) day protest/appeal period. Two (2) protests were received. They were not submitted timely and the decision became final. No appeals were received.

On October 3, 2007, the BA was submitted to the U. S. Fish and Wildlife Service (FWS) in accordance with the consultation process.

On January 2, 2008, the U. S. Fish and Wildlife Service issued an Amendment to the Biological Opinion (BO) to the BLM. This amendment included the following conservation recommendation: BLM should establish a range monitoring site to determine livestock use on public lands adjacent to Summit Lake.

After review of specific points of protest on the PD and BA, BLM grouped them into the following broad categories: Monitoring, National Environmental Policy Act (NEPA)/Planning, Sensitive Species, Wild Horses/Burros, Wilderness and Outside the Scope of the EA. A summary of the protest points follows:

Monitoring – One protest point claimed that information related to soils, microbiotic crusts, waters, watershed processes, native plants, invasive plants and recreational activities was old, stale and grossly inadequate. Another point suggested conducting monitoring to determine the difference between wild horses/burros and livestock use patterns.

Available monitoring data were examined for the SMA. These data were analyzed and were sufficient to determine if the proposed action would allow for attainment of, or progress toward meeting the Standards for Rangeland Health (SRH). Monitoring criteria and objectives of the proposed action have been brought forward in this final decision.

NEPA/Planning – One point was that BLM did not consider a reasonable range of alternatives such as conservative stocking rates or reduction or cessation of grazing in areas of the SMA. Another position was that BLM ignored the adverse impacts of existing and proposed livestock facilities on animal and plant species and public uses and enjoyment. Another point was that BLM failed to consider impacts of the proposed fence to existing tribal fences. An additional protest point was that the proposed action would increase use in the Idaho Canyon pasture and impact wildlife habitat and cultural resources.

The EA for the SMA complies with NEPA and associated Council of Environmental Quality regulations (40 CFR 1500-1508). The BLM used a systematic, interdisciplinary approach to evaluate environmental impacts from the proposed action and encourages public participation. In addition, BLM rigorously explored and objectively evaluated reasonable alternatives as required under 40 CFR 1502.14(a). The proposed action and alternatives on BLM administered lands are in conformance with the applicable management plans.

Sensitive Species – A protest point stated that there was a lack of current data related to sage grouse populations and habitat. Another point was there was inadequate biological information related to cutthroat trout and desert dace to develop a BA. A point was made that wild horses/burros are a federally protected species and should have been included in the BA. Another point was that BLM didn't consider livestock and wild horse/burro impacts to Lahontan cutthroat trout habitat in Summit Lake. A further point was that cool season grazing (11/16-12/15) would contribute to excessive sediment in Colman Creek.

During the NEPA process, the Winnemucca Field Office requested and received a list of Threatened and Endangered species from the U. S. Fish and Wildlife Service. The affected threatened and endangered species as well as BLM sensitive species were addressed and analyzed in the EA. BLM submitted a BA to the FWS and has received an amendment to the 2003 Biological Opinion.

Although wild horses/burros are protected under the Wild Free Roaming Horses and Burros Act they are not a federally listed species under the Endangered Species Act. The 1994 SMA Final Multiple Use Decision (FMUD) established Appropriate Management Levels (AML) for horses/burros in the Herd Management Areas (HMAs) within the SMA. This decision addresses the livestock grazing modification, permit issuance and a range improvement project and will not modify the AMLs established in the 1994 FMUD.

Wild Horses/Burros – A protest point suggested allocating additional forage to wild horses/burros. Another point said BLM failed to analyze the wild burros as a distinct population and species separate from wild horses. A point was made that BLM is increasing the forage allocated to livestock and ignoring the forage needs of burros in the Warm Springs HMA. Another point was that there is only a “token presence” of 24 burros in the Warm Spring HMA which may not be a genetically viable population.

The 1994 FMUD established AML for horses/burros in the HMAs within the SMA. The FMUD placed 4,481 of Active Preference livestock AUMs into a Non-Scheduled category due to drought conditions and the high numbers of wild horses/burros on the allotment at that time. This decision addresses livestock grazing modification, including the criteria for activation of those Non-Scheduled livestock AUMs and does not propose to adjust the AMLs established in the 1994 FMUD.

Wilderness – Cheatgrass and other invasive species are adversely impacting wilderness values.

On May 4, 2007 BLM issued the SMA EA, which addressed the impacts of the proposed action on wilderness values, to the interested public for comment. There were several comments that were taken into consideration in the preparation of this decision.

On May 8, 2007 BLM issued a Notice of Proposed Action Lands in Wilderness (NOPA) to the interested publics and requested comments to the proposed action. Several comments were submitted and were taken into consideration in the permit renewal process.

Outside the Scope of the EA – The following protest points fell outside the scope of the EA. A protest point was related to a 1999 Government Accounting Office report on livestock grazing. Another point referenced retired BLM scientists opinions related to livestock grazing regulations. The existing Desert dace Exclosure removes forage and water from wild horses/burros.

Many of the protest points are basically the same comments that were submitted on the SMA Grazing Permit Renewal EA. These comments were addressed and considered in the development of the EA, PD and BA. (A copy of these protests are available upon request.)

DECISION

Based upon the NEPA analysis, EA comments, protest points, Biological Opinion, as amended, consultation with the permittee and other interested publics, and recommendations from my staff, my Final Decision is to select the Proposed Action Alternative with the exception of the 30% utilization of key upland species. In place of the 30% utilization, I have selected 50% utilization which is a component of the No Action Alternative that was analyzed in the EA. This decision is in accordance with 43 CFR subpart 4160 and consistent with the FONSI and is as follows:

GRAZING PERMIT:

A seven year (2008 – 2014) grazing permit, reflecting the terms and conditions of this decision, will be offered upon completion of the decision making process. The existing permit will become null and void when the new permit becomes effective.

SHORT TERM MONITORING CRITERIA AND LONG TERM OBJECTIVES ARE AS FOLLOWS:

A. Short Term Monitoring Criteria:

1. Livestock grazing on Colman (existing LCT habitat) and Donnelly (potential LCT habitat) Creeks would be subject to the following criteria based upon site potential and stream characteristics:
 - a. A minimum of a 6-inch greenline¹ stubble height for riparian herbaceous vegetation in Colman Creek, will remain when livestock are removed from the Colman Use Area.
 - b. A minimum of a 4-inch greenline stubble height for riparian herbaceous vegetation, in Donnelly Creek, will remain when livestock are removed from the Calico Use Area.
 - c. Utilization of willows (*Salix*) greater than 5 feet in height will not exceed 30% and will not exceed 20% on willows less than 5 feet in height, and will not exceed 10% on any height of aspen (*Populus tremuloides*).
 - d. Streambank alteration from livestock trampling will not exceed 10% as measured along the greenline.

¹ Greenline – the first perennial vegetation that forms a lineal grouping of community types on or near the water's edge. Most often it occurs at or slightly below the bankfull stage. (BLM TR 1737-20)

2. A minimum of 3 inches of greenline stubble height on key riparian herbaceous vegetation species in wetland lentic riparian sites not previously identified will remain at the end of September.
3. A minimum of 4 inches of greenline stubble height on key riparian herbaceous vegetation species in wetland lotic riparian sites not previously identified will remain at the end of September.
4. Utilization on key woody species not previously identified will not exceed 30% utilization at the end of September.
5. Utilization of any key upland plant species; bluebunch wheatgrass (*Pseudoroegneria spicata*), serviceberry (*Amelanchier*), curleaf mountainmahogany (*Cercocarpus ledifolius*), basin wildrye (*Leymus cinereus*), ephedra (*Ephedra*), winterfat (*Krascheninnikovia lanata*), Idaho fescue (*Festuca idahoensis*), meadow barley (*Hordeum brachyantherum*), Baltic rush (*Juncus balticus*), lupine (*Lupinus caudatus*), Indian ricegrass (*Achnatherum hymenoides*), bluegrass (*Poa*), Nevada bluegrass (*Poa nevadensis*), Sandberg bluegrass (*Poa secunda*), antelope bitterbrush (*Purshia tridentata*), bottlebrush squirreltail (*Elymus elymoides*), needleandthread (*Hesperostipa comata*), Thurber needlegrass (*Achnatherum thurberianum*), and snowberry (*Symphoricarpos*) will not exceed 50% on any key species. Occasional use up to 60% is acceptable since 41 to 60% use is considered moderate grazing. Repeated utilization (two consecutive grazing seasons) of more than 50% on any one species will be considered as not meeting the criteria. Moderate use means that half of the available forage (by weight) on key species appears to have been utilized and 15 to 25% of the current seedstalks remain intact.

B. Long Term Objectives:

1. Maintain or improve public rangeland conditions to provide forage on a sustained yield basis for livestock, with an eventual stocking level of 12,168 AUMs.
2. Maintain or improve public rangeland conditions to provide forage on a sustained yield basis for big game, with a forage demand of 786 AUMs for mule deer, 429 AUMs for pronghorn, and 264 AUMs for bighorn sheep.
3. Manage herd management areas (HMAs) to provide adequate food, water, and living space for the long-term maintenance of healthy wild horses/burros and maintain their free-roaming nature.
4. Sagebrush Habitat-Sagebrush Obligates

Maintain or improve sagebrush plant communities on stable soils with structurally diverse shrub component in various age classes (within a stand or among stands across the landscape) with vigorous, diverse self-sustaining understory of native grasses and forbs based on ecological site potential.
5. Maintain existing Proper Functioning Condition (PFC) on reaches of Cherry, Colman, Donnelly, Mahogany, Slungullion, and Summer Camp Creeks; improve to PFC or make significant progress toward PFC on reaches of Cherry, Colman, Donnelly, Slungullion, Snow, and Soldier Creeks presently not meeting standard.
6. Maintain or improve fisheries habitat to a condition appropriate to stream potential.

7. Maintain Mahogany Creek and Summer Camp Creek to the State of Nevada designated Class A (NAC 445A.124) water standards.
8. Maintain Snow Creek to State of Nevada designated Class B (NAC 445A.125) water standards due to the tributary rule found at NAC 445A.145 (or subsequent revisions).
9. All other surface waters within the allotment are subject to the State's water quality standards, found at NAC 445A.121 (or subsequent revisions).

Following appropriate consultation, some revision or further quantification of some short-term monitoring criteria and long-term objectives may occur during the next evaluation of grazing management.

LIVESTOCK MANAGEMENT IS AS FOLLOWS:

Scheduled Use	Non-Scheduled	Active AUMs	Suspended AUMs	Total
8,785	3,383	12,168	3,902	16,070

Table 3. Grazing Schedule - Odd Years

Use Area	Cow #s	Begin	End
1 - South	800	01/16	03/31
2 - Hot Springs (South)	800	04/01	04/30
3 - Warm Springs	800	05/01	07/15
4 - Idaho Canyon	800	07/16	10/31
5 - Hot Springs (North)			
6 - Slumgullion	800	10/01	12/15
7 - Colman	*	11/16	12/15
Calico Mtns.	Rest		
Private Lands		12/16	01/15

Table 4. Grazing Schedule - Even Years

Use Area	Cow #s	Begin	End
1 - South	800	01/16	03/31
2 - Calico Mtns. & South	800	04/01	06/15
3 - Hot Springs (South)	800	04/15	07/15
4 - Idaho Canyon	800	07/16	10/31
5 - Hot Springs (North)			
6 - Slumgullion	800	10/01	12/15
7 - Colman	*	11/16	12/15
Warm Springs	Rest		
Private Lands		12/16	01/15

* Colman is used in conjunction with the Hot Springs (North) and Slumgullion Use Areas.

The livestock Active Preference for the SMA is 12,168 AUMs. This two-year cycle grazing system will authorize an initial stocking level of 8,785 Active Preference AUMs. BLM may authorize the activation of a portion of the remaining 3,383 Non-Scheduled Active Preference AUMs contingent on attaining and maintaining the monitoring criteria, allotment objectives and SRH for the two year cycle. Approximately 845 AUMs (25% of the 3,383 Non-Scheduled AUMs) may be authorized in two-year intervals (2010, 2012 & 2014) if the monitoring criteria, allotment objectives and SRH are achieved and maintained through each two-year cycle. If the

Figure 1

Soldier Meadows Allotment Grazing System Odd Years

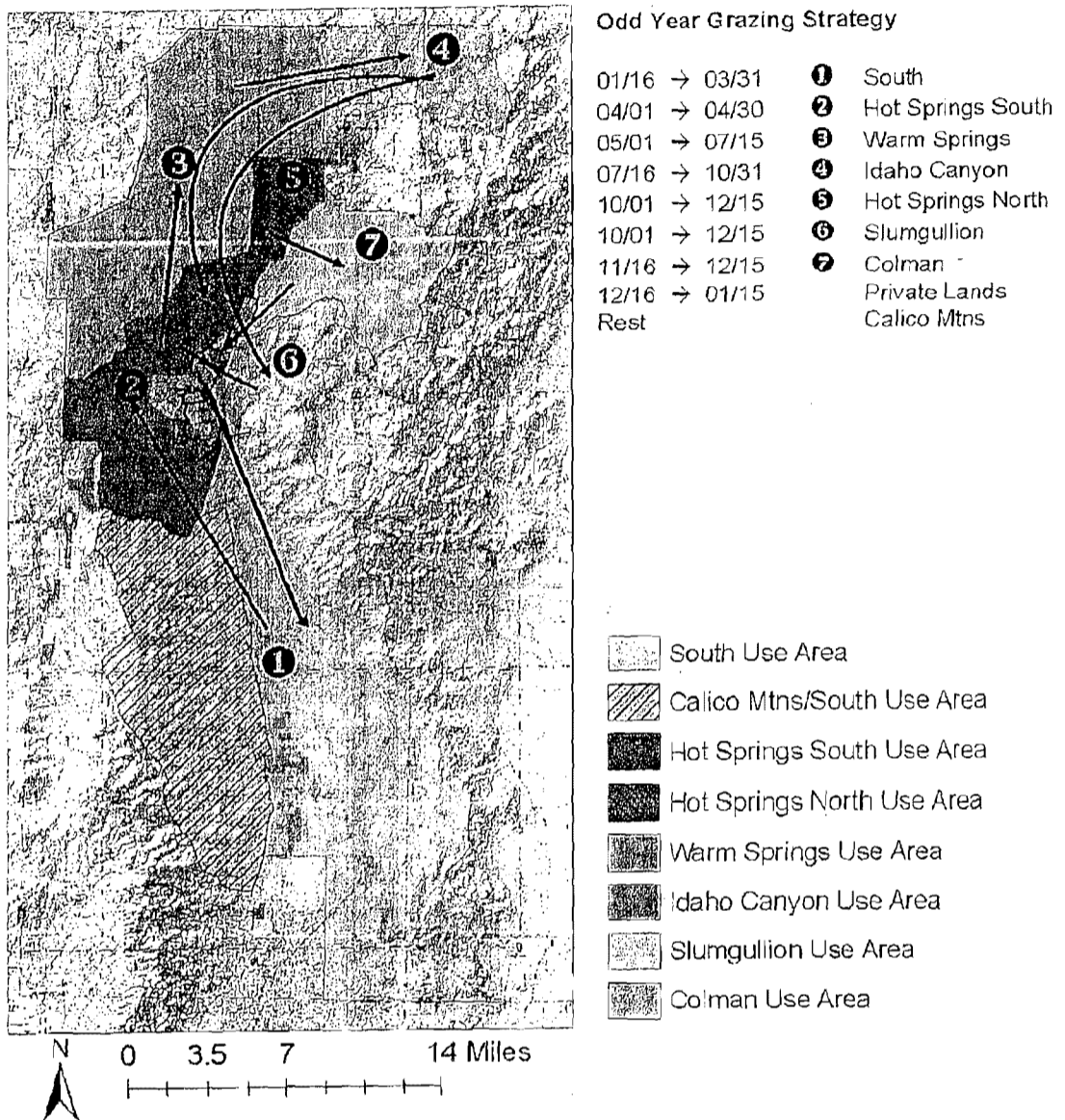
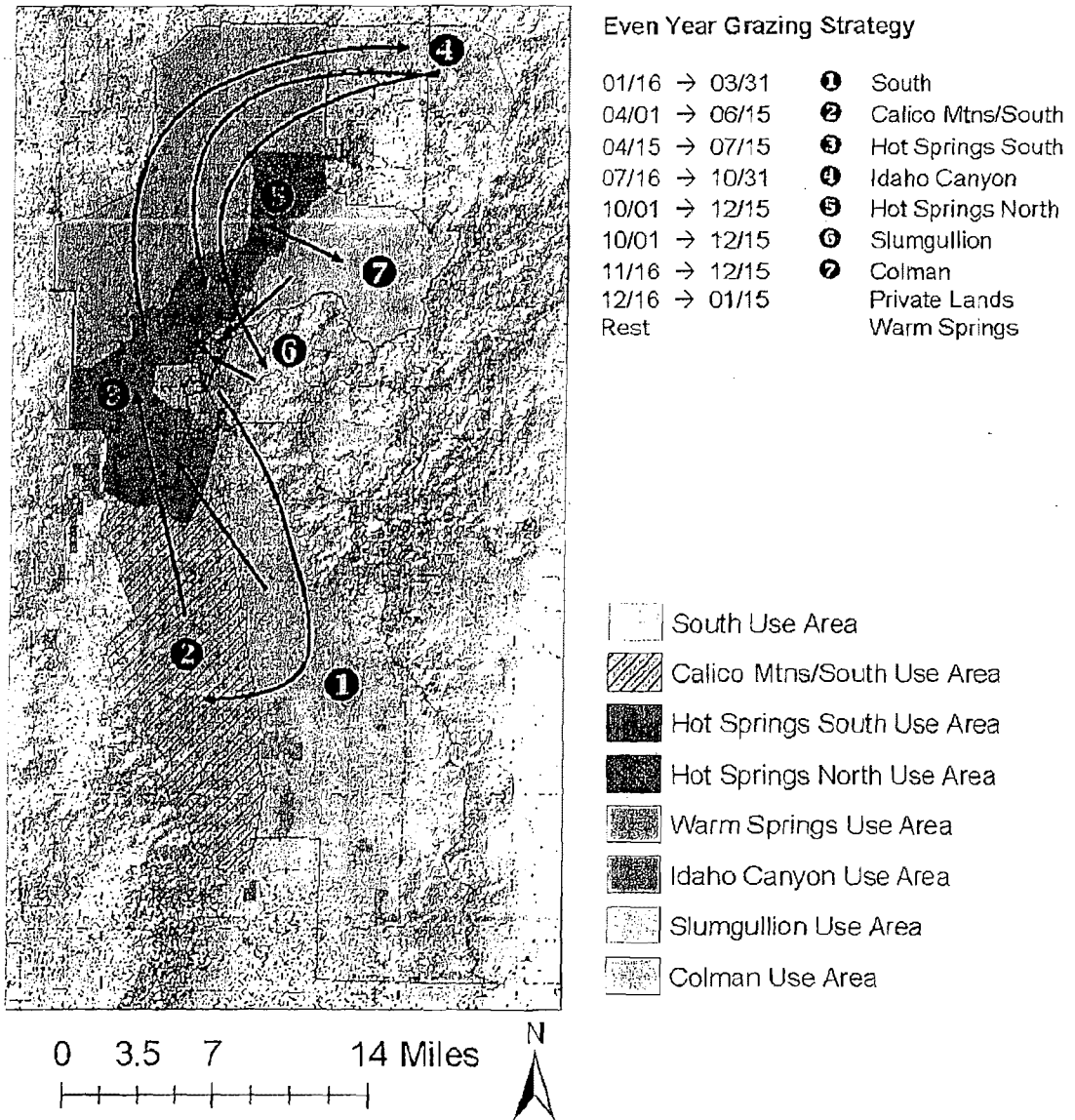


Figure 2

Soldier Meadows Allotment Grazing System Even Years



monitoring criteria, allotment objectives, and SRH are not achieved and maintained during the two-year cycle, or progress in not being made toward their achievement, and grazing management is a major factor in the failure to achieve these goals appropriate actions, such as to adjust livestock numbers, season of use, and/or AUMs would be initiated.

Dates for use area movements may be modified if it is consistent with management objectives and approved in advance by the authorized officer. However, in accordance with the Biological Opinion, as amended, use in the Colman Use Area will be limited to November 16 to December 15 annually.

Prescribed grazing may be authorized in the Stanley Camp Riparian Pasture, excluding the Mahogany Creek Exclosure, if it is consistent with the management objectives of the NCA Resource Management Plan. No grazing will be authorized in the Mahogany Creek Exclosure. Any proposed prescriptive grazing plan for the Stanley Camp Riparian Pasture will require further NEPA analysis and reinitiating consultation with the U.S. Fish and Wildlife Service.

TERMS AND CONDITIONS ARE AS FOLLOWS:

The following terms and conditions are in conformance with the Standards and Guidelines for the Sierra Front - Northwestern Great Basin Resource Advisory Council, approved by the Secretary of the Interior on February 12, 1997.

- The permittee is required to perform normal maintenance on the range improvements as per his signed Cooperative Agreements/Section 4 Permits prior to turning out in a use area scheduled for livestock use.
- The permittee is required to maintain authorized water improvements outside of livestock use periods to provide water for wild horses/burros seasonally.
- The permittee is required to ensure available water is provided to wild horses/burros where water is controlled by valve(s). The valve(s) will be locked and only the permittee and BLM staff will have access to the valves.
- The permittee is required to install bird ladders in all water troughs for which he has maintenance responsibility, BLM will provide the bird ladders.
- The permittee's certified actual use report, by pasture/use area, is due 15 days after the end of the authorized grazing period.
- Pursuant to 43 CFR 10.4(g), the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 CFR 10.2). Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the immediate vicinity of the discovery and protect it from your activities for thirty (30) days or until notified to proceed by the authorized officer.
- The permittee may be approved to actively trail (riders present) livestock through use areas outside of the authorized period of use on a case by case basis. Active trailing between use areas/pastures within the SMA by the permittee during the authorized use period does not require a trailing permit. Livestock will be trailed, via the county road where applicable, in a timely manner between use areas with a minimal amount of drift.

- Livestock trailing through the Desert Dace Exclosure will only be authorized consistent with the following Terms and Conditions identified in the August 14, 2003 BO, as amended.
 - a. The permittee shall notify BLM no less than 24 hours prior to and after trailing through the Desert Dace Exclosure, or as soon as possible.
 - b. Any livestock that are trailed into the Desert Dace Exclosure shall be continuously herded until they reach the outside boundary of the exclosure within 4 hours.
 - c. Livestock trailing through the Desert Dace Exclosure shall be restricted to the routes identified in the 2003 Biological Opinion, as amended.
 - d. BLM shall monitor desert dace thermal spring outflow crossing along the route to ensure that livestock streambank alteration does not exceed a maximum of 25 linear feet from each side of the existing culverts.
- With the exception of salt or mineral blocks, supplemental feeding is not authorized on public lands unless prior approval is requested and given by the authorized officer.
- Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of springs, streams, riparian habitats or aspen stands.
- The authorized officer reserves the authority to make modifications to the annual grazing authorization that are consistent with the SRH, allotment specific objectives and are NEPA compliant.
- The terms and conditions of the permit will be modified if additional information indicates that revision is necessary to conform to 43 CFR 4180 as supplemented by the Sierra Front - Northwestern Great Basin Resource Advisory Council SRH and Guidelines for Grazing Management.
- Allotment and/or pasture gates, but not into any exclosure, will be tied back (open) when livestock are not present (or present in adjoining pastures/allotments) to minimize impacts on the free-roaming nature of wild horses/burros.

OTHER CONDITIONS OF APPROVAL:

- If livestock drift into the Colman Use Area prior to the scheduled season of use (11/16-12/15) becomes a problem, a series of small drift fences along the Slungullion Canyon Road will be constructed following additional NEPA analysis.
- If BLM determines that unacceptable impacts are occurring at dispersed springs, off-site water will be developed and barriers constructed, following additional NEPA analysis, to protect the springs and associated riparian areas.

TEMPORARY NON-RENEWABLE (TNR) USE

When it is determined that additional forage is temporarily available for livestock, the authorized officer **may** authorize use on a nonrenewable basis. Temporary non-renewable use, if granted, will be based on monitoring and actual forage production for the year, but will not exceed 16,070 AUMs (Total Grazing Preference = 12,168 AUMs Active Use + 3,902 AUMs Suspended Use). The permittee will be required to meet the short term monitoring criteria and must meet or make progress towards the SRH and long term objectives.

INCREASES IN PERMITTED USE:

The livestock Active Preference for the SMA is 12,168 AUMs. This two-year cycle grazing system will authorize an initial stocking level of 8,785 Active Preference AUMs. BLM may authorize the activation of a portion of the remaining 3,383 Non-Scheduled Active Preference AUMs contingent on attaining and maintaining the monitoring criteria, allotment objectives and SRH for two consecutive years. Approximately 845 AUMs (25% of the 3,383 Non-Scheduled AUMs) may be authorized in two-year intervals (2010, 2012 & 2014) if the monitoring criteria, allotment objectives and SRH are achieved and maintained through each two-year period. If the monitoring criteria, allotment objectives, and SRH are not achieved and maintained, or progress in not being made toward their achievement, and grazing management is a major factor in the failure to achieve these goals, appropriate actions such as to adjust livestock numbers, season of use, and/or AUMs would be initiated.

RANGE IMPROVEMENT:

The fence, analyzed in the EA, between the Idaho Canyon and Warm Springs Use Areas is required for the grazing system to function properly and this project is authorized by this decision. Until the fence is constructed the permittee must ride and herd to keep cattle in the appropriate use areas.

The fence will be constructed with four wires (bottom wire is smooth, 16 inches above the ground and three barbed wires with the top wire 42 inches above the ground) and metal posts in compliance with BLM's specifications for fences in antelope habitat (as described in the SMA EA NV-020-07-EA-08) and as further defined in the Cooperative Agreement to be developed prior to construction of this project. Cultural clearances will be completed prior to construction being authorized by the BLM.

The following mitigation measures identified in the EA are hereby accepted and will be implemented:

Gates will be strategically placed where horse trails intersect the fence line. The new fencing will be flagged so wild horses/burros can see the new fence.

Gates will be tied back (open) when livestock are not present (or present in adjoining pastures) to minimize impacts on the free-roaming nature of wild horses/burros.

The fence line will be inventoried for two years after construction of the project. If noxious weeds are observed at the project site they would be treated by the permittee following approval by the BLM.

RATIONALE:

General:

The changes to the existing grazing system, implemented by the 2004 decision, are not due to any problems, but to develop a stabilized livestock operation that will continue to achieve the allotment objectives and SRH while meeting the new owner's needs and situation namely, for a stable herd size on the SMA. The livestock grazing management system and range improvement are expected to improve or maintain the health of the majority of the riparian habitats and all of the upland habitats. As a result, other resources such as fisheries, wildlife, water quality, vegetative communities, and other resources, will benefit. Health of upland areas will be maintained or improved. As identified in the EA there was some concern that the springs, seeps and associated riparian areas in the Warm Springs and Idaho Canyon Use Areas may not achieve or make significant progress towards achievement of the SRH. However, by incorporating the

identified mitigating measures, these concerns are addressed. There is no change regarding the impacts to affected T&E species from the analysis for the 2004 FMUD and associated Biological Opinion and this decision is consistent with the impacts addressed in that BO. As a result I have determined that the approved objectives and management system are in conformance with the Standards and Guidelines for Rangeland Health developed by the Sierra Front - Northwestern Great Basin Resource Advisory Council, approved by the Secretary of the Interior on February 12, 1997

Section 102 (7) of the Federal Land Policy and Management Act of 1976 states: “.....and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;” The preamble to The Taylor Grazing Act of June 28, 1934 states: “An Act to stop injury to the public grazing lands by preventing over-grazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes.” The current land use plan recognizes grazing as a legitimate use of the public lands within this allotment. This plan meets all of these requirements and balances the use and sustained yield of the resources present within the allotment.

This decision conforms to the Sonoma-Gerlach Management Framework Plan, NCA RMP and is consistent with federal, state and local laws, regulations, and plans to the maximum extent consistent with federal law. It is also in compliance with the existing August 14, 2003 Biological Opinion, as amended.

Short Term Monitoring Criteria and Long Term Objectives:

The short-term monitoring criteria are intended to be used to indicate whether grazing management is expected to result in progress towards long-term objectives. It is appropriate to use short-term monitoring criteria:

- In conjunction with long-term objectives and/or the SRH in evaluating the results grazing management over time,
- To make annual changes in grazing management as needed to facilitate progress towards meeting long-term objectives and/or the SRH, and/or,
- As triggers to remove livestock or leave in a pasture longer during the grazing season.

The 30% vegetation utilization objective was not carried forward in this decision since the selected grazing system provides rest from livestock grazing during the critical growing period therefore allowing for maintenance and improvement of vegetative health. The 30% utilization objective was originally developed due to the yearlong presence of wild horses and burros. Monitoring data collected since the removal of excess wild horses/burros in December of 2004 indicate acceptable utilization levels at the current 50% utilization criteria. This grazing system combined with maintaining wild horses/burros at Appropriate Management Level (AML), should result in meeting allotment objectives and SRH. Given the relative few numbers of horses/burros, their impact on upland vegetation during the critical growing period will be minimal. This conclusion is supported by the fact that several upland monitoring sites established in the Warm Springs HMA are no longer being monitored because very little or no use by wild horses/burros was documented at these sites.

Concern with impacts to lentic riparian systems is discussed elsewhere in this decision. A handful of wild horses/burros, cattle, or wildlife grazing during the hot season can result in these areas not meeting vegetative objectives. The grazing system and objectives were developed to minimize impacts to vegetation, both upland and riparian.

Monitoring sites will be established at a minimum of one per use area based upon ecological sites and utilization patterns within the area. The monitoring sites will be reviewed periodically,

usually at the end of a growing season. If short-term monitoring criteria are not met, livestock management will be changed in consultation with the permittee to allow the short-term criteria to be met under subsequent grazing. For example, if stubble height on herbaceous vegetation is less than the established limit at the end of the growing season, adjustments in cattle numbers, period of use or other changes may be implemented. Science-based revisions or further quantifications of the short-term monitoring criteria and long-term objectives may be made as a result of the next evaluation. For example, long-term objectives for riparian habitats will be further refined to maintain or improve spring brook/channel morphology, riparian vegetation cover/community, and aquatic species diversity. As a result, if long term objectives are not being met, adjustments in short term monitoring criteria may include, but are not limited to, changes in trampling limits, reduced utilization levels, and implementation/adjustment of stubble height.

In accordance with the January 2, 2008 Amendment to the Biological Opinion monitoring will be conducted to determine livestock use on public lands adjacent to Summit Lake.

The rationale for the objectives include balancing multiple use management with the resources in compliance with the existing laws, regulations, policies and land use plans. Emphasis is placed on management of wild horses/burros, sagebrush habitat and sagebrush obligates, LCT and other fisheries habitat, desert dace habitat, and water quality. No grazing is permitted in the desert dace habitat with the exception of active trailing through the enclosure. Likewise no grazing is authorized in the Mahogany Creek/Summer Camp enclosure. No trailing through this enclosure is authorized due to its importance to LCT and water quality.

Prescriptive grazing in the Stanley Camp Riparian Pasture would undergo further NEPA analysis and consultation with the U. S. Fish and Wildlife Service before being authorized.

Livestock Management:

The accepted grazing management system meets the needs of the permittee for a sustainable livestock operation without unduly or unnecessarily impacting other resources and uses. The system provides the maximum amount of flexibility that I am convinced will protect other resources on the allotment. The accepted terms and conditions are either required by regulation, policy or were identified in the EA as necessary to protect resource values.

Terms and Conditions:

Repair and maintenance of range improvement projects, especially water developments, is crucial to the success of this grazing system. The operator is expected to perform this maintenance where they have an approved cooperative agreement or range improvement project authorization. However, use of mechanical equipment in any wilderness area requires specific authorization from BLM, since BLM must coordinate with wilderness groups to determine if the use of the equipment complies with the minimum tool requirement.

The operator must maintain bird ladders in all water troughs on public land in order to comply with the Migratory Bird Act. BLM will supply these ladders in an effort to minimize the impact of this requirement on the permittee.

In order to maintain a thriving population of wild horses/burros in balance with the ecosystem their access to water is critical. Therefore, consistent with the authorization for the development, water shall be kept available to wild horses/burros even when livestock are not in the use area/pasture. Where water is provided through a system that has a valve(s) there is a concern that anyone could close the valve and thus impact wild horses/burros. To minimize this potential situation only BLM and the permittee will have access to locked valves.

Under the livestock management system, use will be authorized by pasture or use area. The permittee is required as a term and condition of his grazing permit to provide his certified actual use report, by pasture/use area, after the end of the authorized grazing period. Accurate and timely reporting of actual use is key to the success of adaptive management.

The requirement to stop work and call the BLM immediately if human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered is in compliance with 43 CFR 10.4(g) and is included here so the permittee will be aware of that requirement.

Trailing is a necessary part of livestock management on public lands. As long as it occurs during the authorized use period a specific trailing permit is not required as it is considered as being covered by the annual authorization. Trailing through the Desert Dace Exclosure is necessary in order to access portions of the allotment from the ranch headquarters. Livestock trailing through the Desert Dace Exclosure are subject to specific requirements agreed upon with the USFWS in the 2003 Biological Opinion, as amended, and are pertinent to this decision.

Supplemental feeding without authorization is prohibited by 43CFR 4140.1(a)(3), however, salt and mineral blocks, that are required for livestock survival, are not considered as supplemental feeding and are authorized as a term and condition in accordance with 4130.3-2(c).

Accurate reporting of actual use is critical in analyzing monitoring data and making decisions to adjust livestock numbers or season of use.

Other Conditions of Approval:

There is some concern that cattle may drift north from the Slumgullion Use Area into the Colman Use Area (Colman Creek) prior to scheduled use on November 16. I am authorizing this grazing system based upon the proximity of Colman Creek to the ranch headquarters and assurances from the permittee that he will properly manage his livestock and prevent cattle from drifting north of Slumgullion Canyon which is the boundary between these use areas. If BLM determines cattle are impacting Colman Creek in violation of this decision and the Biological Opinion, then BLM will construct drift fences, subject to NEPA compliance, or take other appropriate action along the Slumgullion Canyon Road to address these impacts.

Given the number of springs and seeps within the allotment it is unrealistic to expect they will not be impacted by livestock, wild horses/burros, or wildlife. In recognition of this fact, I have decided to mitigate any impacts to these resources on a case-by-case basis determined upon their identified priority. As necessary springs and riparian areas will be evaluated to determine if they are being impacted and off-site water and some type of barrier constructed around the spring(s) and associated riparian area(s) if needed to eliminate these impacts.

Temporary Non-Renewable Use:

Temporary nonrenewable (TNR) grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple use objectives and does not interfere with existing livestock operations on public lands. (43 CFR 41 10.3-1 and 4130.6-2) There are 3,902 suspended AUMs on the permit. These Suspended AUMs are in addition to the 12,168 Active AUMs. Approval of TNR use would be based on available forage and the requirements to continue to: 1) meet the short term monitoring criteria and 2) meet or be making progress in meeting SRH and long term objectives. Under these requirements no undue impacts were identified in the EA. This decision will give the BLM the needed flexibility to approve the use of these AUMs without conducting additional NEPA.

Increases in Permitted Use:

The initial stocking level of 800 cattle is expected to result in achieving the allotment objectives and the SRH. In accordance with Bureau policy any increases in livestock numbers will be based upon monitoring and implemented incrementally to ensure attainment of the allotment objectives and SRH.

Range Improvement:

Construction of the Warm Springs/Idaho Canyon Fence will eliminate livestock drift between the two use areas and enable the operator to maintain his livestock in the authorized areas. The operator has experienced cattle drifting back into the Warm Springs use area after being moved into the western portion of the Idaho Canyon use area. Since seasonally wild horses/burros move through the area of the proposed fence, gates will be placed in areas where trails intersect the fence to maintain their free roaming nature. The gates will be tied open when they are not needed to control livestock.

While initially proposed as mitigation for this fence, I have determined that tying gates open when they are not needed to control livestock is a good management practice for the entire allotment, except for gates in enclosure fences (Desert Dace, Mahogany, etc). Tying the gates in the open position will lessen the chance that someone will close the gate and unnecessarily impact the free-roaming nature of the wild horses/burros.

FUTURE MONITORING AND GRAZING ADJUSTMENTS:

The Winnemucca Field Office will continue to monitor the SMA. The monitoring data will continue to be collected in the future to provide the necessary information for subsequent evaluations. These evaluations are necessary to determine if the SRH as expressed by the allotment specific objectives are being achieved under the new grazing management strategy. In addition, these subsequent evaluations will determine if adjustments are required to meet the established allotment specific objectives and SRH or if incremental increases may be authorized.

Springs and associated riparian areas will be monitored and if objectives are not being met selected springs and riparian areas may be fenced, following NEPA compliance, after off-site water is developed if necessary

AUTHORITY:

The authority for this decision is contained in Title 43 of the Code of Federal Regulations, which states in pertinent parts:

§4100.0-8 "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans."

§4120.3-1(a) "Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management."

§4120.3-4 "Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer."

§4130.2(a) "Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits or leases shall also specify terms and conditions pursuant to §§ 4130.3, 4130.3-1, and 4130.3-2."

§4130.2(b) "The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases."

§4130.2(c) "Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources."

§4130.3 "Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part."

§4130.3-1(a) "The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment."

§4180.1(a) "Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow."

§4180.1(b) "Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress towards their attainment, in order to support healthy biotic populations and communities."

§4180.1(c) "Water quality complies with State water quality standards and achieves, or is making significant progress towards achieving, established BLM management objectives such as meeting wildlife needs."

§4180.1(d) " Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species."

APPEAL

In accordance with 43 CFR 4.470, 4160.3(c), and 4160.4, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 CFR 4.470, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

Pursuant to 43 CFR 4.471 and 4160.3(c), an appellant may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision.

The appeal and any petition for stay must be filed at the office of the authorized officer Arlan G. Hiner, Assistant Field Manager, Renewable Resources, Bureau of Land Management, 5100 East Winnemucca Boulevard, Winnemucca, NV 89445. Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Solicitor, Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825-1890.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

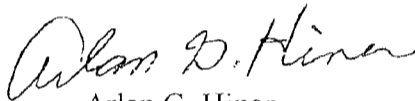
- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for stay may file with the Hearings Division in Salt Lake City, Utah, a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response to the petition, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the decision (43 CFR 4.472(b)).

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

Sincerely,



Arlan G. Hiner
Assistant Field Manager
Renewable Resources

Enclosures:

cc:
(See attached mailing list)

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CERT MAIL 7006 2760 0001 6678 5911
Leah Brashear
P.O. Box 1
Denio, NV 89404

CERT MAIL 7006 2760 0001 6678 5928
Mr. Mike Harper
Washoe County Dept of Comp.
P.O. Box 11130
Reno, NV 89520

CERT MAIL 7006 2760 0001 6678 5935
AZ Wilderness Coalition
P.O. Box 529
Alpine, AZ 85920

CERT MAIL 7006 2760 0001 6678 5942
Judi Caron
Washoe County Advisory board to Man
11865 Juniper St.
Reno, NV 89506

CERT MAIL 7006 2760 0001 6678 5959
Ms. Vicky Hoover
Sierra Club
85 2nd St. 2nd Floor

CERT MAIL 7006 2760 0001 6678 5966
Dave Pulliam
NV Dept of Wildlife
1100 Valley Rd.
Reno, NV 89512-2817

CERT MAIL 7006 2760 0001 6678 5973
Terry Williams
P.O. Box 239
Cedarville, CA 96104-0239

CERT MAIL 7006 2760 0001 6678 5980
James Jurad
Pershing Co. Wildlife Advisory Board
P.O. Box 813
Lovelock, NV 89419

CERT MAIL 7006 2760 0001 6678 5997
Mr. Terry A. Reed
Public Land Solutions
3361 Herons Landing Dr.
Reno, NV 89502-7719

CERT MAIL 7006 2760 0001 6678 6000
Bryan Lamont
Rocky Mtn Elk Foundation
2638 Stewart Ave.
Minden, NV 89423

CERT MAIL 7006 2760 0001 6678 6017
Ms. Debbie Sease
Sierra Club
408 C. St. NE
Washington, DC 20002

CERT MAIL 7006 2760 0001 6678 6024
Ken Longballa
1725 E. Commercial Row
Reno, NV 89512

CERT MAIL 7006 2760 0001 6678 6031
Ms. Marjorie Sill
Sierra Club
720 Brookfield Drive

CERT MAIL 7006 2760 0001 6678 6048
Susan Lynn
Nevada Water Network
1755 E. Plumb Ln Ste 170
Reno, NV 89502-3683

CERT MAIL 7006 2760 0001 6678 6055
Stephen Smith
Bureau of Land Management
Nevada State Office
P.O. Box 12000
Reno, NV 89520

CERT MAIL 7006 2760 0001 6678 6062
Kody Menghini
3730 Pershing Ln.
Carson City, NV 89704-9312

CERT MAIL 7006 2760 0001 6678 6079
Donna Potter Stammers
Empire Farms
P.O. Box 40
Empire, NV 89405-0040

CERT MAIL 7006 2760 0001 6678 6086
Willie Molini
The Wildlife Society
1710 Opal Star Drive
Reno, NV 89506

CERT MAIL 7006 2760 0001 6678 6093
Mr. Steve Tabor
Desert Survivors
P.o. Box 20991
Oakland, CA 94620-0991

CERT MAIL 7006 2760 0001 6678 6109
James D. Morefield
NV Natural Heritage Program
Richard H. Bryan Bldg.
901 S. Stewart St. Ste 5002
Carson City, NV 89701-5245

CERT MAIL 7006 2760 0001 6678 6116
Ed & Anita Wagner
Coalition for NV Wildlife
P.O. Box 70143
Reno, NV 89570

CERT MAIL 7006 2760 0001 6678 6123
Brian Murdock
BLM
USFS Moab Ranger District
62 E. 100 North
Moab, UT 84532-2437

CERT MAIL 7006 2760 0001 6678 6130
Johanna Wald
Natural Resources Defense Council
111 Sutter St. Fl 20
San Francisco, CA 94104-4540

CERT MAIL 7006 2760 0001 6678 6147
Marisha Noneo
Cedarville Rancheria
200 S. Howard St.
Alturas, CA 96101-3929

CERT MAIL 7006 2760 0001 6678 6154
John Walker
Division of Administration
Capitol Complex
Carson City, NV 89710

TINA CONSERVANCY W
Corrected with Management Plan
AP MAPS of all related parcels
BOOK 318 PAGE 539 FRAME 1 except T42N R27E
BOOK 312 PAGE 24 FRAME 1 T43N R27E
which needed

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

THE NATURE CONSERVANCY
2050 BROADWAY, SUITE 210
BOULDER, CO 80302
ATTN: WRD ATTORNEY

CORRECTION CONSERVATION EASEMENT
(Soldier Meadows Ranch)

This Correction Conservation Easement (the "Easement") is entered into this 30th day of October 1992, by and between R.C. Roberts and Barbel Roberts, husband and wife, as joint tenants, whose address is 801 A Street, San Rafael, CA 94901, hereinafter called GRANTOR, whether one or more, and The Nature Conservancy, a District of Columbia non-profit corporation, 1815 N. Lynn Street, Arlington, VA 22209 (the "Conservancy"), hereinafter called GRANTEE, for the purpose of correcting certain mistakes in the Conservation Easement between the parties recorded on June 30, 1992, at Book 313, Page 283 of the Official Records of Humboldt County, Nevada, and is intended to supersede and replace that document.

WITNESSETH THAT:

WHEREAS, Grantor is the owner of certain real property in Humboldt County, Nevada consisting of 5,023.52 acres, more or less, and more particularly described in Exhibit A to this Conservation Easement and as shown on the maps attached as Exhibits B & C to this Easement (the "Property"); and

WHEREAS, the Property is a historical area which contains remnants of Camp McGary and has substantial natural, ecological and recreational values; and

WHEREAS, the Conservancy is a non-profit conservation organization which is working cooperatively with Grantor and the Bureau of Land Management (the "BLM") to realize the preservation of the historic and natural features of the Soldier Meadows Ranch for conservation purposes;

NOW THEREFORE in consideration of the sum of \$10 and other valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee and its successors and assigns in perpetuity, thereby restricting and limiting the uses of the Property in certain respects, upon the express terms and conditions hereafter set forth, reserving to the Grantor, his heirs, successors and assigns forever, fee title to

Notary Public for Nevada
April 20 1992

EXHIBIT B

BOOK 312 PAGE 74 FRAME 2

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the Property and all incidents of ownership thereof other than the Conservation Easement to and over any and all portions of the Property situated in the county of Humboldt, State of Nevada, for the purposes described herein.

1. PURPOSE. It is the purpose of this Conservation Easement to preserve and protect in perpetuity the natural, historic, scenic and open space features and values of the Property including but not limited to the preservation of critical habitat for the desert sage and other sensitive species and ecosystems associated with the property. In so doing, it is intended that this Conservation Easement shall permit and foster those agricultural and ranching practices and activities on the Property which have been conducted in harmony with the conservation purposes of this Conservation Easement.

2. EASEMENT DOCUMENTATION REPORT. The parties acknowledge that within one year of the date of this Conservation Easement, the Grantee, with input from the Grantor, will complete an Easement Documentation Report (the "Report") for the Property which shall be reviewed and approved by the Grantor, which approval shall not be unreasonably withheld by the Grantor. The Report shall document the physical condition of the Property as of the date of this Conservation Easement. The Report shall be attached as an exhibit to and incorporated by reference into this Conservation Easement. The Report shall provide information for future monitoring, enforcement and restoration to Report levels, and shall be used to establish criteria for any permissible changes in the condition of the Property and in the uses and activities to be carried out on the Property by the Grantor. If the parties do not agree to the physical condition of the Property as provided in the Report or the criteria permissible for a change in condition, use or activity, the parties may also use any and all other relevant documents, surveys, publications or other information to assist in the resolution of that controversy. Failure to compile the information required hereby or to do so in a timely manner shall not affect the enforceability or validity of any provisions of this Conservation Easement.

THE Report
EDR
Need

3. WATER MANAGEMENT PLAN. The parties acknowledge that a Water Management Plan (the "Plan") which sets forth Grantor's rights and privileges with regard to the water rights Grantor is retaining on the Property and adjacent lands is hereby incorporated as a part of this Easement as Exhibit D. This Plan specifies the points of diversion, places of use and manner of use of Grantor's water rights and shall be binding upon Grantor, Grantee, and their successors and assigns. Failure of Grantor to comply with the terms of the Plan and/or failure of the Nevada State Water Engineer to approve the changes in points of diversion, places of use and manner of use contemplated by the Plan shall not affect the enforceability or validity of any other provisions of this

Nov 15 2005 1:46 PM Kudrna

BOOK 319 PAGE 27 FRAME 3

BOOK 318 PAGE 539 FRAME 3

Conservation Easement.

4. ASSIGNMENT

The Grantee may assign its interest in this Conservation Easement or any of the documents described herein.

5. RIGHTS OF USE BY GRANTEE

Grantee is granted the right to go upon the Property for the following purposes:

- A. To inspect for possible violations and to administer the Conservation Easement.
- B. To enter upon the Property upon reasonable notice to Grantor, to study and make observations, all in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by the Grantor, his heirs, successors or assigns.
- C. To enjoin any activity on, or use of, the Property by the Grantor, his heirs, successors and assigns, that is inconsistent with the Conservation Easement and to enforce the reasonable restoration of such areas or features of the Property as may be damaged by such activities.
- D. To enter upon the Property upon reasonable notice to Grantor, to make archeological reconnaissance of the property. The grantee will be allowed to record any such cultural sites as are discovered during the reconnaissance. The Grantee will have the right to excavate significant cultural sites as long as the excavation does not unreasonably interfere with the Grantor's operation of the ranch. The Grantee will be responsible for proper rehabilitation of the excavated site upon completion of the excavation.

Nothing herein shall be construed as creating any duty on the part of the Grantee to undertake any of the acts described above.

II. RESTRICTIONS ON LAND USE BY GRANTOR

The Grantor agrees that the Property shall only be used in a manner that shall perpetuate the setting of a working ranch and agricultural operation, thus preserving the undeveloped and open character of the Property.

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BOOK 312 PAGE 24 FRAME 4
BOOK 318 PAGE 539 FRAME 4

The following restrictions are imposed upon the Property:

- A. No dividing or subdivision of the Property for sale.
- B. No use of the Property for any mining or mineral exploration, quarrying, sand or gravel removal, or extraction of any minerals under the mineral rights or interests in the mineral rights held by the Grantor, his heirs, successors or assigns. However, limited amounts of sand and gravel may be excavated on the property for use on the Property.
- C. No use of the Property for geothermal development or exploration by the Grantor, his heirs, successors or assigns or any other third party.
- D. No use of the Property for any industrial or commercial activity except for the growing of agricultural crops for sale, the grazing of livestock, and any activity related in character to the operation of a cattle and guest ranch. Allowable activities would include a guest ranch, hunting lodge, dude ranch, and spa.
- E. No destruction or alteration of the Camp McGary structures that have been identified in the Report. After consultation with the Grantee, alterations that enhance the longevity or structural integrity of the structures may be allowed.
- F. No use of the Property for public utility purposes, except as necessary in connection with use of the Property permitted by this Conservation Easement, existing easements, and those authorized after obtaining prior written approval of the Grantee or its authorized representative.
- G. No construction of any new airstrip or helipad. The existing airstrip located southwest of the ranch headquarters may be maintained and improved.
- H. No development of the Property that would physically damage the Applegate-Lassen Trail. No development of the Property within 1/2 mile on either side of the Trail (as shown on the "Exhibit C" previously recorded June 30, 1992 at Book 313, Page 283 of the Official Records of Humboldt County, Nevada) except for irrigation ditches, fences and livestock grazing. No irrigation wheel-lines or center pivots will be allowed. The Property in SW 1/4, NE 1/4, Sec. 32, T. 40 N., R. 25 E. shall be excepted from this provision.

BOOK 319 PAGE 29 FRAME 5
BOOK 318 PAGE 539 FRAMES

I. No restriction of public access to the portions of the Applegate-Lassen Trail at the following locations:

T. 40 N., R. 24 E., Sec. 36;

T. 40 N., R. 25 E., Secs. 31 and 32.

Public access shall be limited to "foot access" from existing roads and the access shall be limited for the purposes of viewing or walking on the trail.

J. No manipulation of water courses or waters which shall adversely impact the desert dace or other sensitive species or ecosystems other than those manipulations outlined in the Water Management Plan.

The Grantor, his heirs, successors or assigns shall pay all real property taxes and assessments properly levied on the Property by competent authorities, other than taxes or assessments on this Conservation Easement. The Grantor, his heirs, successors or assigns shall bear all costs of operation, upkeep and maintenance of the Property; provided, however that the Grantor shall be under no obligation to repair any damage to the Property or restore any feature thereof in the event of damage thereto from natural causes.

Except as otherwise provided herein, the Grantee shall furnish written determinations within sixty (60) days whenever the Grantor, his heirs, successors or assigns, submit a written request for approval of any action proposed to be taken by them under the terms of this Conservation Easement. If the Grantee does not respond within the sixty (60) days of receipt of the Grantor's request, the Grantee will be deemed to have consented to the proposed action.

All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the party for which intended at the respective address thereof set forth below or such other addresses as the parties may indicate in writing.

The Nature Conservancy
Western Regional Office
2060 Broadway, Ste. 230
Boulder, CO 80302

With Copies To:
The Nature Conservancy
Great Basin Field Office
P. O. Box 11486
Salt Lake City, UT 84147

Printed on Recycled Paper
August 18, 1997

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BOOK 318 PAGE 539 FRAME 6

and

R. C. Roberts
801 A Street
San Rafael, CA 94901

Any further gift, devise, transfer, sale, lease or conveyance of any interest in the Property, or any agreement for the use of the Property shall be subject to, and shall include a reference indicating that the transaction is subject to, the terms of this Conservation Easement.

The Grantor intends that enforcement of the terms and provisions of this Conservation Easement shall be at the discretion of the Grantee and that any forbearance on behalf of the Grantee to exercise its rights hereunder in the event of any breach hereof by the Grantor, his heirs, successors or assigns, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

TO HAVE AND TO HOLD the Conservation Easement hereby granted unto Grantee and its assigns forever. This grant shall be binding upon the heirs and assigns of Grantor and shall constitute a servitude upon the Property.

BOOK 318 PAGE 539 FRAME 7

BOOK 312 PAGE 24 FRAME 2

IN WITNESS WHEREOF, Grantor has hereunto set his hand on the day and year first above written.

Grantor

R.C. Roberts

Barbel Roberts

Barbel Roberts

ACKNOWLEDGEMENT

STATE OF *California*)
COUNTY OF *Marina*) ss:

On this *30* day of *Oct*, 19*92*, personally came before me, a notary public in and for said County and State, the within-named R.C. Roberts and Barbel Roberts, to me personally known to be the identical persons described in and who executed the within and foregoing instrument and acknowledged to me that ~~they~~ executed the same as *their* free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Lillian P. Oney
Notary Public in and for the
State of *California*
Residing at *11005 Fourth St., Ste. 630*
San Rafael, Ca. 94901

[SEAL]

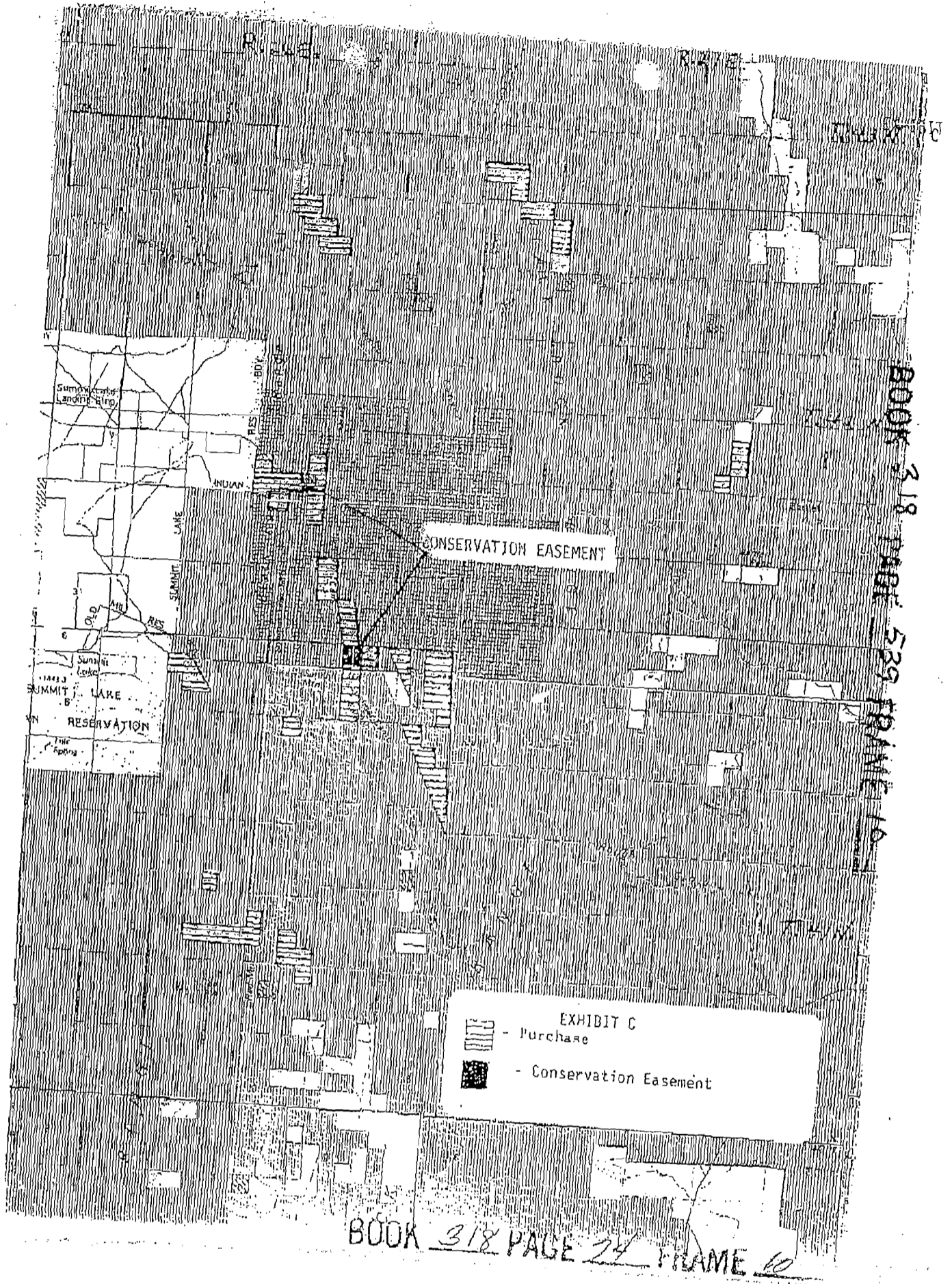
My commission expires: *Feb. 23, 1993*



BOOK 319 PAGE 24 FRAME 8
BOOK 318 PAGE 539 FRAME 8

EXHIBIT A
CONSERVATION BASEMENT

T. 42 N., R. 26 E., Sec. 22, ESWSEK, WSEKSEK	STANLEY CAMP.	40.00 acres	✓
T. 41 N., R. 26 E., Sec. 2, Lot 3		40.00 acres	✓
T. 40 N., R. 24 E., Sec. 12, SWNEK, ESEK		120.00 acres	✓
Sec. 13, ENNEK, SWNEK, SEK		280.00 acres	✓
Sec. 30, NWK, WNEK, SEKNEK, SWK, NSEK, SWSEK		560.00 acres	✓
T. 40 N., R. 25 E., Sec. 4, Lot 4, SWNWK		81.08 acres	✓
Sec. 5, SEKWK, NSEK, SWK		280.00 acres	✓
Sec. 7, NEKSEK, SKSEK		120.00 acres	✓
Sec. 8, ENNEK, WNEK, NWKWK, SWNWK, NSEK, SWSEK		440.00 acres	✓
Sec. 17, WNKWK		80.00 acres	✓
Sec. 18, Lots 2, 3, 4, ENWK, EK		582.76 acres	✓
Sec. 19, Lots 1 and 2, ENWK, EK		548.60 acres	✓
Sec. 20, WSEK		80.00 acres	✓
Sec. 29, NWKWK, SWNWK, NSEK, SEKSWK, WSEK		320.00 acres	✓
Sec. 30, Lots 1, 2, 3, 4, ENWK, EK		618.48 acres	✓
Sec. 31, Lots 3 and 4, ESWK, NEK, NSEK		329.80 acres	✓
Sec. 32, WSEK, SWK		320.00 acres	✓
T. 39 N., R. 24 E., Sec. 1, Lots 3 and 4		81.41 acres	✓
T. 39 N., R. 25 E., Sec. 5, Lot 4		41.39 acres	
Total		5,023.52 acres	



When Recorded Mail To:

BOOK 320 PAGE 459 FRAME 1

(Space above this line reserved for Recorder's use)

ASSIGNMENT OF CONSERVATION EASEMENT

FOR the true and actual consideration of One Hundred Sixty-Three Thousand and no/100s dollars (\$163,000), the receipt and sufficiency of which is hereby acknowledged, THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, 1815 N. Lynn Street, Arlington, VA 22209 (hereinafter referred to as the "Grantor"), does hereby assign to THE UNITED STATES OF AMERICA, and its assigns, acting under the authority of the Federal Land Policy and Management Act (43 U.S.C. Sections 1701, et. seq.), all the Conservancy's right, title and interest in and to, and all obligations arising under, that certain conservation easement dated June 28, 1992, and recorded on June 30, 1992 in the Records of Humboldt County, Nevada at Book 313, Page 283, and that certain correction conservation easement dated October 30, 1992 and recorded November 23, 1992 in the Records of Humboldt County, Nevada at Book 318, Page 539 and re-recorded December 3, 1992 in the Records on Humboldt County, Nevada in Book 319, Page 74.

SUBJECT to reservations, restrictions and conditions, if any; rights of way and easements either of record or actually existing on the Property.

C:\myfiles\old\con\CON\AKPT.A3M
January 6, 1993

EXHIBIT C

BOOK 320 PAGE 459 FRAME 2

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

The BLM hereby accepts all the Conservancy's right, title and interest in and to, and obligations arising under, the Conservation Easement described above.

TO HAVE AND TO HOLD the Property unto the UNITED STATES OF AMERICA and its assigns forever.

IN WITNESS WHEREOF, Grantor has executed this Assignment of Conservation Easement as of the 6 day of January, 1993.

GRANTOR:

THE NATURE CONSERVANCY, a District of Columbia non-profit Corporation

By: Dennis Donald
Dennis Donald
Its Vice President

ACCEPTED BY THE UNITED STATES OF AMERICA,
DEPARTMENT OF INTERIOR,
BUREAU OF LAND MANAGEMENT, SUBJECT TO APPROVAL
OF TITLE BY THE DEPARTMENT OF JUSTICE

By: Tom Winkler
Title: DISTRICT MANAGER

STATE OF COLORADO)
County of Boulder) ss.

The foregoing instrument was acknowledged before me this 6th day of January, 1993, by Dennis Donald as Vice President of THE NATURE CONSERVANCY, a non-profit corporation of the District of Columbia.

Witness my hand and official seal.



Susan M. Witt
Notary Public

My notarial commission expires My Commission Expires Jan 24, 1994

(1/24/94)



BOOK 320 PAGE 459 FRAME 3

OFFICIAL RECORDS
KANSAS CITY, MO
RECORD REQUESTED BY

WESTERN TITLE COMPANY, INC.
93 FEB 26 AM 1:07

BOOK 320 PAGE 459
EVIDENCE SECTION
RECORDS

FEE 29 FILE NO. KL

340112

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