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UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Ely District Office
HC33 Box 150
Ely, Nevada 89301-9408

In reply refer to:
4700 (NV-046)

SEP 14 1990

Memorandum

To: State Director, Nevada (NV 931.1)

From: District Manager, Ely, Nevada

Subject: Response to Animal Protection Institute of America's "Request for a Motion to Stay - Antelope HMA Wild Horse Removal"

INTRODUCTION/BACKGROUND

The Ely District Office has completed the Allotment Evaluations for the Chin Creek, Tippett, and Sampson Creek Allotments which occur in a portion of the Antelope Herd Management Area (HMA). Final Multiple Use Decisions (FMUDs) were the culmination of the allotment monitoring, analysis, evaluation, and consultation process regarding present and future management of these allotments. Due to the severity of the ecological status deterioration and irreparable damage to existing plant communities, the FMUDs were issued in full force and effect. An overpopulation of wild horses in combination with overgrazing by livestock were determined to be the factors causing irreparable damage to the vegetative resources.

A wild horse removal plan for the Antelope HMA was issued as a management action implementing the FMUDs for the Chin Creek, Tippett, and Sampson Creek Allotments. These decisions, as well as the removal plan, were issued full force and effect due to the severity of the resource deterioration on these allotments and the HMA.

Attached are the FMUDs for Chin Creek, Tippett, and Sampson Creek Allotments; Attachments 1, 2, and 3 respectively. Also attached is an Affidavit/Declaration which attests that the information contained in this response is true and correct; Attachment 4.

LEGAL CONSIDERATIONS

The Animal Protection Institute of America (API) submitted a "Request for Motion to Stay - Antelope HMA Wild Horse Removal" dated August 13, 1990 to IBLA. The opening sentence of the request states

that on June 4, 1990, API appealed the "Grazing Evaluation Decision from the Ely District BLM of Nevada affecting the wild horses in the Antelope HMA." In fact, API has not appealed the FMUDs for the Chin Creek, Tippett, or Sampson Creek Allotments.

On April 11, 17, and 18, 1990, the Proposed Multiple Use Decisions were issued respectively for Tippett, Chin Creek and Sampson Creek Allotments, which make up a large part of the Antelope HMA. On May 29, June 5 and June 7, protest letters to these proposed decisions were received from API. Also on June 7, BLM received a copy of an appeal entitled "Antelope HMA Grazing Evaluation Decision Appeal" which API had sent to IBLA. Since the decisions were proposed decisions from which protest letters were received from API, permittees, and other interest groups, the decisions did not become final. Since the proposed decisions never became final, they could not be appealed. Appeals to proposed decisions are inappropriate according to 43 CFR 4160.2 and 4160.3(a). On June 12, 1990, the Ely District BLM sent a letter to API with courtesy copies to IBLA; The Regional Solicitor; and the Nevada State Office, BLM, informing them that their appeal was inappropriate at that time (see Attachment 5). and therefore, the "appeal" would be considered a protest. The letter also explained that final decisions would be issued at a later date from which they could then appeal.

After careful consideration of the protest letters received from API, permittees and other interest groups, the FMUDs were issued on July 16, 17, and 18, 1990 respectively for Chin Creek, Tippett and Sampson Creek Allotments (see Attachments 1, 2, and 3). Upon issuance of the FMUDs, API did not appeal. Therefore, we question the validity of a motion to stay the action without first appealing the decisions which direct these actions.

It is the Ely District's opinion that API failed to appeal the final decisions within the required 30 day time limit and therefore, in accordance with 43 CFR 4.402 and 4.411(c), the decisions stand due to API's failure to file an appeal in a timely manner.

Full force and effect decisions are the final determination of the Dept. of the Interior of which IBLA is a part. API contends that the BLM needs "clearance" from IBLA to issue full force and effect decisions. The authorized officer (in this case the Schell Resource Area Manager) has the authority to issue full force and effect decisions according to 43 CFR 4160.3(c), 4720.1, the Delegation of Authority, BLM Manual 1203 and the Nevada State Office Manual Supplement Release No. NV. 1-136.

RESPONSE TO API'S ALLEGATIONS

1. API has stressed that evaluations should be completed by Herd Management Area for wild horses, rather than by designated livestock allotments. However, the Schell Resource Area Decision Summary and Record of Decision dated July, 1983 for the Schell Land Use Plan (LUP) states in pertinent part:

> "Prior to initiating grazing adjustments, the Bureau, within the guidance of the Management Framework Plan and consultation and coordination, will consider the specific management objectives for an allotment and other resource values (e.g., riparian habitat, water quality, wildlife, recreation, wild horses and livestock) to be evaluated in determining progress in meeting these objectives. Changes in the resource values may warrant a modification of the scheduled adjustments and thus indicate the intensity and types of monitoring that will be required in each allotment." (Emphasis ours).

This LUP statement provides mandatory direction to complete evaluations and make grazing adjustments on an allotment basis.

The Ely District has completed allotment evaluations for the three allotments, Chin Creek, Tippett and Sampson Creek. API states that two of the five allotments that make up the Ely portion of the HMA are missing from the data entirely. In fact, there are four allotments; Deep Creek, Becky Spring, Tippett Pass, and Goshute Mountain; that have not had allotment evaluations completed and therefore the BLM determined not to remove any horses from that portion of the HMA even though monitoring data shows there are numerous wild horses in these areas. However, the majority of the HMA occurs within the Chin Creek, Tippett and Sampson Creek Allotments.

2. API contends that previous wild horse removals from the Antelope HMA have had no apparent consequence on the range. (API is confusing some of the numbers that have been removed. The 711 wild horses removed in 1980 came from both the Elko District's Antelope Valley HMA and the adjoining Ely District's Antelope HMA. The Elko District is a separate district with a separate Herd Management Area.) These gathers have never taken the wild horse numbers down to either the initial stocking level established in the LUP or the level (AML) established and agreed to in the Antelope HMAP. If these animals had not

been removed, the resource deterioration would undoubtedly be much greater. The livestock permittees have taken voluntary non-use in these allotments due to the lack of forage. Attachment 4 is the affidavit by the Schell Resource Area Manager with a summarization of the data which shows that there is significant resource deterioration within these allotments and that full force and effect implementation of the decisions is mandatory to protect the resources.

3. API references the Antelope HMAP which states that some monitoring studies (actual use, utilization and trend) have been established in the HMA and that ultimately these studies will be used to determine proper grazing levels of wild horses, livestock and wildlife. API contends that the data is not sufficient at this time to make adjustments. In the three years since the HMAP was issued, more data collection and analysis has taken place and the data shows serious range degradation occurring (see FMUDs, Attachments 1, 2, and 3; and Attachment 4, the Area Manager's affidavit of resource data summary). The BLM does have sufficient data to support reductions in both livestock and wild horse numbers.

4. API states that the Appropriate Management Level (AML) in the HMAP was not based on monitoring as required and that the removal conducted in 1987 was not valid and justified. We have the monitoring data and AML has been determined and established in the FMUDs for those portions of the HMA that occur in the Tippett, Chin Creek and Sampson Creek Allotments. The 1987 removal of 58 wild horses was justified because monitoring data has shown that the entire HMA cannot support more than 303 wild horses. Even after the removal, a post gather census revealed that 782 horses remained in the HMA; 479 more than the area could support.

5. API contends that, "BLM is allowed a five year period in which to reduce livestock where livestock damage the resource. If BLM can take five years to correct damage from livestock, there is no reason for putting a wild horse removal into full force and effect to correct resource damage". Due to economic hardship, reductions in excess of ten percent in livestock active preference must be phased in over a five year period according to 43 CFR 4110.3-3(a), unless the decision is placed in full force and effect. BLM is not taking five years to reduce livestock; the decision is full force and effect for both livestock and wild horses. The severity of the resource deterioration in the Antelope Area not only requires

immediate removal of excess wild horses but requires immediate reductions in livestock active preference to the full reduction in some areas and to two thirds of the full reduction in other areas according to 43 CFR 4160.3(c) which states in pertinent part:

> "....The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration. Full force and effect decisions shall take effect on the date specified, regardless of an appeal."

6. API states that the FMUDs provide an increase in livestock active preference. As stated clearly in the FMUDs, livestock active preferences are reduced over a two year period as follows:

Allotment	Effective Date		Reduction in AUMs	% of Active Preference
Chin Creek	11/1/90		3,935	31%
	3/1/92		754	6%
		Total	4,689	37%
Tippett	11/1/90		6,651	49%
	3/1/92		1,258	11%
		Total	7,909	60%
Sampson Creek	8/1/90		177	11%
	3/1/92		88	6%
		Total	265	17%

The wild horse removal scheduled to begin on September 17, 1990 will remove the following number of wild horses from the portion of the Antelope HMA that occurs within the three allotments:

Allotment	Number to be removed	% Reduction From Existing Numbers
Chin Creek	331	70%
Tippett	25	21%
Sampson Creek	2	6%

Based on the above information and Attachments, the Ely District Office recommends that the solicitor file a counter-motion to deny API's request for a motion to stay the Antelope HMA wild horse removal.

Kenneth G. Wallace

5 Attachments:
1. Chin Creek Allotment FMUD.
2. Tippett Allotment FMUD.
3. Sampson Creek Allotment FMUD.
4. Affidavit by Schell Resource Area Manager with summary of data.
5. Letter to API dated June 12, 1990.

Attachment 4

AFFIDAVIT OF GERALD M. SMITH

1. My name is Gerald M. Smith. I am the Schell Resource Area Manager, Ely District BLM, Ely, Nevada, Bureau of Land Management, United States Department of the Interior. As the Schell Resource Area Manager I am responsible for managing the resources in the Schell Area of the Ely District. The Chin Creek, Tippett, and Sampson Creek Allotments are within the boundaries of the Schell Resource Area.

2. I have determined; based on the monitoring, evaluation, analysis, and consultation process; that the severity of the damage to the vegetative resources in the Chin Creek, Tippett, and Sampson Creek Allotments warrants my decision to issue the Final Multiple Use Decisions in full force and effect.

3. I hereby testify that the attached summary of data which supports my decision is true and correct to the best of my knowledge.

Dated: September 14, 1990

Gerald M. Smith

Gerald M. Smith
United States Department of the Interior
Bureau of Land Management
Schell Resource Area Manager
Ely District Office, Ely, Nevada

Declaration of Rationale for Issuing Final Multiple Use Decisions in Full Force and Effect for the Chin Creek, Tippett, and Sampson Creek Allotments and the Antelope HMA.

Livestock use increased on the Chin Creek and Sampson Creek Allotments in 1989. Although Reed Robison ran less head of cattle during the winter, because of a lack of snow he was unable to move his cattle onto the Antelope-Badlands Allotment in the Elko District for three months as he normally does. Also, Reed started to graze sheep on the allotment again. This resulted in 1,500 AUMs of cattle and 378 AUMs of sheep use or 1,878 AUMs in the Antelope Valley use area over that used in 1988. In 1989, Warren Robison ran his band of ewes/lambs on the Sampson Creek Allotment for a longer period of time than he normally does, and also ran a band of dry ewes on the allotment for two months during late summer. This was the most livestock use he made on the allotment since 1984. Livestock use on the Tippett Allotment in 1988 and 1989 was more than in 1987. Thus the level of use made by the permittees had increased even though a drought condition has continued into its fourth year.

Wild horse numbers increased from 502 head (post-gather census in March 1988) to 753 head (census in March 1990). This is a 50 percent increase in the herd in only the past two years.

Allowable use levels (AULs) continued to be exceeded on areas that were measured on the Chin Creek and Tippett Allotments. Use pattern mapping for 1989 showed areas of heavy use on the North Pasture in Antelope Valley of the Tippett Allotment. No use pattern mapping was done on the Chin Creek Allotment the last two years. Utilization was read at nine of the eleven key areas for 1989 use in Chin Creek Allotment with six exceeding the AUL. Four key areas were measured for 1989 use in the Tippett Allotment in conjunction with the use pattern mapping. None of these four sites exceeded AUL. Not all key areas were monitored due to priority in completing the evaluations.

Riparian areas continued to be overgrazed and trampled and are still in less than good condition.

Frequency transects read at the key areas on the three allotments over the past several years show a decrease in the number of key plant species (i.e., Bluebunch Wheatgrass, Indian Ricegrass and White Sage), and an increase in the number of undesirable plant species (i.e., Cheatgrass, Halogeton, and mustard). Halogeton is known to be poisonous to livestock, especially sheep. In Antelope Valley halogeton significantly increased on five out of seven key areas on the Chin Creek Allotment, and four out of six key areas on the Tippett Allotment.

Trend is significantly down at five of the 19 key areas that have been measured during the last six years.

The current ecological status is not meeting the long-term management objectives on 14 out of the 24 native range key areas on the three allotments. On half of these areas the seral stage is below the objective. On the other half of these areas the existing vegetative composition is not at, or near the desired plant community. The composition of perennial grasses, forbs, or shrubs is too low or too high to meet the objective for that specific site.

The three Crested Wheatgrass seedings on the Chin Creek Allotment are in only fair condition because Crested Wheatgrass comprises less than 30 percent of the vegetative composition. On the Tippett Allotment all five seedings are in good condition with over 40 percent composition of Crested Wheatgrass.

There is little, or no forage available for either livestock or wild horses on approximately 23.0 percent of the Chin Creek Allotment due to the encroachment of pinyon and juniper. This is equal to approximately 34,500 acres of public land. Pinyon and juniper encroachment has also reduced the forage on approximately 18 percent, or 35,800 acres of the Tippett Allotment, and on approximately 20 percent, or 2,600 acres of the Sampson Creek Allotment.

Table 1 shows the status of the long-term management objectives for those portions of the Chin Creek, Tippett, and Sampson Creek Allotments that are represented by key areas.

The long-term management objectives are not being met on approximately 54,000 acres of public land on the Chin Creek Allotment (see Map 1). Livestock are the primary user (56 percent of the estimated use in 1987) in Antelope Valley where the objectives are not being met on over 33,400 acres of public land. On the other hand, wild horses are the primary users (over 80 percent of the estimated use) in Spring Valley where the objectives are not being met on the other 20,600 acres.

On the Tippett Allotment, the long-term management objectives are not being met on approximately 34,500 acres of public land (see Map 2). Livestock are the only users in Antelope Valley and in the Kern Mountains where the objectives are not being met on over 26,000 acres of public land. Wild horses are the primary user in the Schell Creek Range and in the Antelope Range where the objectives are not being met on the other 8,500 acres.

In summary, the past actual grazing use by wild horses and livestock have resulted in over-grazing of the vegetative resources in the Chin Creek, Tippett, and Sampson Creek allotments, to the point of unsatisfactory ecological condition and significant downward trend. This combination of

unsatisfactory ecological condition with significant downward trend and/or static trend, over large portions of these allotments, is allowing undesirable plant species (ie, halogeton) to invade the natural plant communities. This is resulting in irreparable damage to these natural plant communities. This irreparable damage is the instant case at hand which constitutes an emergency. Because, if appeals are allowed to stay the effect of the required management actions, then wild horse numbers will escalate to a predicted 1,116 animals by the year 1993. Livestock numbers may remain at the 1989 levels which is the highest amount of use in the last three years. This increased grazing demand upon the vegetative resources over the next two to three years while awaiting a decision from litigation, combined with the last four years of drought will accelerate the irreparable damage to the natural plant communities.

Table 1. Status of Long-Term Management Objectives by Allotment.

	Chin Creek	Tippett	Sampson Creek
	Percentage of Allotment Based Upon Key Management Areas		
Objectives Met	25.2	59.1	69.0
Objectives Not Met	74.8	40.9	31.0
Objectives not met due to:			
(Seral Stage/Livestock) (Forage Condition)	(57.4)	(18.2)	(25.1)
(Desired Plant Community)	(17.4)	(22.7)	(5.9)
Total	100.0	100.0	100.0