



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Ely District Office
HC33 Box 150
Ely, Nevada 89301-9408



IN REPLY REFER TO:

4160
(NV-046)

SEP 20 1991

Wild Horse Organized Assistance
C/O Dawn Lappin
P.O. Box 555
Reno, NV 89504

Dear Ms. Lappin:

We would like to take this opportunity to thank you for your comments and input to the out-of-court settlement proposal with Reed Robison and Western Farm Credit Bank for the Chin Creek Allotment. Thank you to all who attended the consultation meeting held in Reno on Sept. 12, 1991.

The purpose of this letter is to address the comments received and to clarify the issues that were discussed at the meeting. Also, see the enclosed Attachment 1 for specific and detailed responses to the comment letters that were originally received concerning the proposed stipulation.

1. (Question) Concern was expressed over the limits of flexibility to the grazing system.

(Answer) Modifications to the grazing treatment will need to be agreed upon by both parties and be consistent with the multiple use objectives for the allotment. The modifications may include flexibility in the numbers of livestock within the established seasons of use, but will not exceed the carrying capacity for each grazing use area as set forth in the decision or the stipulation. Modifications will not allow any one of the three pastures in Antelope Valley to be used for more than one consecutive year during the spring (April and May).

2. (Question) Comments were received pertaining to potential future increases or decreases in levels of use for livestock, wildlife and wild horses.

(Answer) Livestock preference and the Appropriate Management Level (AML) for wild horses identified in the decision and settlement are based on current monitoring data. When additional data becomes available, these numbers may change. Any future increases or decreases will be based on monitoring data and will be adjusted proportionally between all users, in accordance with the results of the monitoring data.

(Question) The question was specifically raised that AML was now a fixed number, never to be changed.

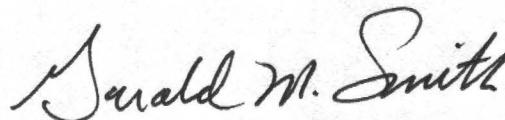
(Answer) As stated above, current monitoring data has set the present AML, however, future monitoring data will be used to make any necessary adjustments to AML during future re-evaluations.

3. All parties support an annual year end review of the current grazing management on the allotment.
4. All parties requested a copy of the Administrative Law Judge's decision regarding the settlement.

I have notified our solicitor to sign the settlement stipulation and then submit it to the Administrative Law Judge for an order dismissing the appeals.

Once again, thank you for your active participation and support with this endeavor and I look forward to your assistance and support in the future.

Sincerely yours,



Gerald M. Smith, Manager
Schell Resource Area

Attachment

ATTACHMENT 1

Summary and response to the comments from affected interests for the proposed stipulation for the appeals of Reed Robison and Western Farm Credit Bank.

I. Nevada Department of Wildlife

- a. (Question) Under Item 3 it shows that cattle use is from 11/01 - 05/31 for a total of 3,564 AUMs. Then under Item 4, treatments, we see cattle use from 11/1 - 05/31 for a total of 5,004 AUMs. Why the difference?

(Answer) The 3,564 AUMs under item 3 is the preference for the Antelope Valley use area of the Chin Creek Allotment in the Ely District only. The 5,004 AUMs under item 4 includes the AUMs in the Chin Creek Pastures plus a portion of the Antelope Valley Allotment AUMs in the Elko District. A portion of the permittee's active preference AUMs in the Antelope Valley Allotment in the Elko District are used in the deferred grazing system as shown in the proposal, and will be licensed by Mr. Robison through the Elko District Office. The remainder of his active preference AUMs in the Elko District will not be used in conjunction with the Chin Creek Allotment.

- b. (Question) In the allotment evaluation we see that winterfat is a key species. Under item 4 it states that use on winterfat would be 35%. If that 35% use is during the dormant season we see no problem but if there would be any use above 25% during the active growth period we question how stated planning objectives can be reached. If in fact the winterfat sites are in less than desirable condition it would be best that no grazing occur during the growing period. We would guess that on most years active growth on winterfat would commence on or before the first week in April.

(Answer) The 35% allowable use level was based on the fact that there will be a deferred rotation grazing system which allows for one pasture to be used during the spring growth period (April to May), and two pastures rested during the growing season.

General guidelines for continuous spring grazing are that a 25% AUL is appropriate for improving range condition. However, because; 1) a grazing system will be in effect, 2) there will not be continuous spring use in any year, and 3) most of the use will be made during the plants dormant periods, the 35% allowable use level will initiate the accomplishment of the land use plan objectives.

- c. (Question) Under item 4 it states that "the grazing formula set forth above may be modified by agreement of the parties during any given year." This stipulation causes some concern. If the grazing formula is periodically modified, how then does monitoring accurately evaluate the achievement of objectives in relation to any grazing formula. This again is seen as awarding further flexibility for the permittee rather than a firm commitment to meet land use planning objectives.

(Answer) Any modifications to the grazing formula will need to be agreed upon by both parties and be consistent with the multiple use objectives for the allotment.

Also, flexibility would be limited to making changes in the number of livestock or seasons of use, however these changes must stay within the maximum prescribed seasons of use and carrying capacities of the established use areas.

II. Animal Protection Institute

- a. (Question) We can't accept the proposal unless it specifies that the optimum number is not known and must be determined on the basis of monitoring the impact of wild horses on their habitat to determine how many the current range condition under this proposed change of use will support without "posing a threat to themselves, their habitat, or other resource values." This, the recent Pryor Mountain federal decision affirms, must be shown.

(Answer) The stipulation does not in any way change the Appropriate Management Level (AML) identified in the Final Multiple Use Decision (FMUD). The AML reflects all current monitoring data and will be modified at a later date if the third or fifth year re-evaluations indicates a change is necessary.

- b. (Question) Before we can agree to the proposal, we would insist that it include the following five specifications in addition to declaring that the optimum number for the Herd Management Area (HMA) has not been determined.

(Answer) The settlement stipulation relates only to the livestock portions of the FMUD and therefore, does not change the Wild Horse Management portions of the FMUD.

1. (Question) Wild horses will be censused twice a year over the next monitoring period showing adult and young counts.

(Answer) The BLM does not normally have the funding to provide for two censuses per year but a proposal is in the planning stages for a seasonal movement study within the Antelope HMA, which may result in increased census.

2. (Question) Census information will be used to provide the actual use data to be averaged over the monitoring period for utilization calculations.

(Answer) Census data is and will continue to be used to provide actual use data for wild horses throughout the Schell Resource Area.

3. (Question) Numbers and location of horses and livestock (sheep as well as cow-calf pairs) [in accordance with the enclosed Nevada BLM field manual] and these maps be separate from use pattern mapping but all three (livestock number and location, and use pattern) sent to interested parties and be part of the record accompanying decisions affecting wild horses. This record of maps would include both the pre and post removal (1990) census MAP's.

(Answer) Wild horse numbers and location data is being collected and documented on maps showing the information and location of all users. The information is documented on larger scale maps for office reference, however, the information is available to all interested parties at the Ely District Office upon request.

4. (Question) Wild horse key areas be immediately identified and utilization cages put in place in the Spring Valley, the Black Hills, the Antelope Range and Valley as well as the Elko portion of the HMA; and that the proposal quote the statutory language regarding when horses can be removed from the public lands.

(Answer) Wild horse key areas have already been identified and utilization cages are in place in all use areas. The Elko District is responsible for the administration and monitoring of the Antelope Valley HMA.

5. (Question) Statutory language defining the Allotment Management Plan from FLPMA be quoted in the proposal and, under the "other objectives" and the "other applicable law" provisions, the proposal will stipulate that the AMP for the Chin Creek Allotment is to list the wild horse objectives, practices and policies, management constraints plus the time frame for implementation.

(Answer) All activity plans must incorporate the multiple use objectives identified through the Land Use Plan (LUP) and used in the monitoring evaluations. This includes those objectives for wild horses, as well as, livestock, wildlife, watershed, etc.

III. Commission For The Preservation of Wild Horses and Wild Horse Organized Assistance

- a. (Question) I refuse to recognize a stipulated agreement that does not afford representatives of the multiple uses the opportunity to comment and participate when these numbers are due to be reactivated.

(Answer) As the proposal states, (pgs. 4 and 5) all interested parties will be advised and consulted concerning management actions.

(Answer) Also, the nonuse will require a third or fifth year re-evaluation of the monitoring data prior to any subsequent adjustments. The re-evaluations and any adjustments will require affected interest consultation and a new decision and/or an agreement to be issued.

- b. (Question) This stipulated agreement does not afford us the opportunity to determine if the Bureau has done the monitoring to enable an increase in use before the AUM's are reactivated to the permittee.

(Answer) All affected interests, as stated above, will have the opportunity to once again participate in the monitoring evaluation, decision and/or agreement process.

- c. (Question) I would strongly suggest that if the Bureau believes that this is to be in the best interest of the multiple uses of the public lands that any future reactivation of non-use AUM's be through a multiple use decision document. Any future increases should be allocated proportionately between wild horses, wildlife, and livestock.

(Answer) All future increases or decreases will be made proportionately on an equitable basis between all users through the multiple use decision or agreement process.

VI. Sierra Club and Natural Resource Defence Council

(The following numbers refer to corresponding numbered items in the stipulation.)

1. We are concerned that the first stipulation gives the wrong impression or implies there is no doubt that non use will be restored to active use or the permittee agrees that active use may resume as determined through monitoring data. There is no language in the settlement that additional reductions in livestock use may be necessary if monitoring data indicates the active use is above the carrying capacity.

The wording for Stipulation #1 was taken directly from Title 43 CFR 4110.3-2(c) and was not intended to imply that the AUMs will be reactivated without sufficient justification.

We may have to make further reductions. However, BLM is confident that the proposed actions will improve conditions and allow for at least a partial restoration of the AUMs to include an proportionate increase for wild horses. All future adjustments will be based on all available data.

- a. (Question) Is the permittee agreeing to take additional reductions for conservation and protection purposes if necessary?

(Answer) If additional reductions are necessary, they will be implemented with or without the permittee's agreement.

- b. (Question) Did the BLM use forage utilization monitoring data use as per manual formula to determine carrying capacity for the Chin Creek Allotment.

(Answer) Yes, the carrying capacity was determined by evaluating monitoring data towards the accomplishment of multiple use objectives as per BLM Handbook 4400.7, Instruction Memorandum (IM) No. 86-706 and Nevada State Office (NSO) IM No. NV-89-268.

- c. (Question) Is the BLM committed to continuing monitoring future adjustments based on carrying capacity calculations.

(Answer) Yes.

2. (Question) We believe that the Bureau is working on wild horse management in the entire Antelope Wild Horse Herd Management Area. Why is this statement necessary?

(Answer) It's not necessary but it shows good faith that we will be managing for all users.

3. (Question) We do not understand what is meant by the statement on p. 2 that "At the beginning of each grazing season flexibility within the terms and conditions of the grazing permit will be determined through an annual field inspection ..." Does this mean that the seasons of use will be changed or that numbers can be increased above 7,372 AUMs? Please clarify.

(Answer) The flexibility involves numbers of livestock and the period of use, however any flexibility must remain within prescribed seasons of use and carrying capacities of the pastures. In addition any flexibility must be consistent with the multiple use objectives for the allotment. For example a request may be made to run more cows for a shorter period of time (only during the winter months) within the identified stocking rate for a particular pasture. This request may be approved if this use would be consistent with objectives. Stacking of livestock numbers during the spring period will not be allowed.

4. (Question) Why is there no rest built into the "treatments" described on pg. 3? What evidence does BLM have that the proposed treatments will improve range conditions?

We do not understand the meaning of the statement "The grazing formula set forth above may be modified by agreement ..." Does this mean that the treatments will not be applied each year? Will changes go through a multiple use decision process with consultation with affected interests? Please clarify.

(Answer) The treatments are described in terms of when the use will be made. The periods of rest are the remaining times not specified for use. Two out of three pastures will receive spring rest any given year. This should provide the necessary rest to improve plant vigor and reproduction for key management species in Antelope Valley.

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(Answer) The treatments are described in terms of when the use will be made. The periods of rest are the remaining times not specified for use. Two out of three pastures will receive spring rest any given year. This should provide the necessary rest to improve plant vigor and reproduction for key management species in Antelope Valley.

Modifications will only involve the grazing treatments and not the grazing formula. Any modifications to the grazing treatments will need to be agreed upon and consistent with multiple use objectives for the allotment.

5. (Question) We oppose the (temporary?) conversion of cattle use to sheep use in the Spring Valley area without an allotment management plan. With most of the allotment in unsatisfactory condition currently, adding yet another type of livestock without an effective management plan will worsen an already bad situation.

(Answer) The allotment was originally adjudicated for sheep use and subsequently to dual use (sheep and cattle). Spring Valley continues to be authorized for sheep and cattle use in the FMUD. The temporary conversion from cattle to solely sheep use is within the scope of the FMUD. Sheep and wild horses have less dietary overlap than do cattle and wild horses and thus do not directly compete for forage.

Herding practices for sheep provides more control over utilization patterns than cattle use. Cattle herding is not economically feasible in this use area due to the low number of animals that would be allowed.

6. (Question) We strongly object to this condition which apparently is intended to protect forage on private lands at the expense of utilization of public forage. Is the utilization standard for turnout on public lands "six inches"?

(Answer) If the forage on the operator's private lands has reached six inches height before the date set for removal from public lands (May 31), the operator may remove the livestock from the public lands early. The operator will not be allowed to stay on the public lands past the maximum season of May 31. Since spring grazing use is a critical period for both the public lands and the economics of the livestock operation, this stipulation was written to specify earlier off dates during the spring for the public lands.

7. (Question) What are the BLM standards on monitoring to which this condition refers?

(Answer) The Nevada Rangeland Monitoring Handbook, Instruction Memorandums, BLM monitoring manuals, and technical references will all be used, in accordance with Bureau policy.

8. (Question) We support the development of an AMP within a year. If this cannot be accomplished, we expect the Bureau will need to make further reductions.

(Answer) The proposal states that an AMP will be targeted for development within three years if funding and manpower are available. Regardless, there will be third and fifth year re-evaluations of the monitoring data and dependent upon the results subsequent adjustments may be made to all users.

9. (Question) We are concerned that additional fencing will block wild horse and wildlife movements. The AMP should look at removing fencing which is interfering with natural wildlife and wild horse corridors.

(Answer) The identified fence projects are and will be open ended to allow for the free roaming nature of the wild horses. The horses will not be restricted in their movements and will have full access to the entire herd management area. Range improvement projects will go through the process of consultation with all affected interests and analysis through an environmental assessment report.

W H O A

WILD HORSE ORGANIZED ASSISTANCE
P.O. BOX 555
RENO, NEVADA 89504



a note from

Dawn Y. Lappin

August 29, 1991

Gerald M. Smith, Manager
Schell Resource Area
Ely District Office
HC33 Box 150
Ely, Nevada 89301-9408

Dear Mr. Smith,

Thank you for the opportunity to comment on the out-of-court settlement (stipulation) proposal with Reed Robison and Western Farm Credit Bank.

The Schell EIS identified the over-allocation of forage in 1974. Since that time there has been no reduction in preference on livestock but there have been reductions to wild horses.

I clearly do not understand why the wild horses are treated so differently when the Bureau went full force and effect on horses but negotiated a settlement in their full force and effect decision on livestock. Representatives of the wild horses have not had the opportunity or been given the option of negotiated settlements regarding grazing numbers of horses as have the representatives of livestock.

I fully support the monitoring data that has been thusfar presented despite the fact that it does not document the movements of the horses. I feel that more information is needed on the movement from Antelope into the Elko area (Sampson Creek).

I refuse to recognize a stipulated agreement that does not afford representatives of the multiple uses the opportunity to comment and participate when these numbers are due to be reactivated. This stipulated agreement does not afford us the opportunity to determine if the Bureau has done the monitoring to enable an increase in use before the AUM's are reactivated to the permittee.

I would strongly suggest that if the Bureau believes that this is to be in the best interest of the multiple uses of the public lands that any future reactivation of non-use AUM's be through a multiple use decision document. Any future increases should be allocated proportionatly between wild horses, wildlife, and livestock.

DL

yes

yes

Gerald M. Smith
August 29, 1991
Page 2

Any acceptance of this "settlement proposal" would be on the incorporation of the concerns mentioned above. Otherwise I feel that I cannot accept this document as written.

In your letter you mentioned a tentative consultation meeting on September 12, 1991. I would be most interested in attending such a meeting.

Again, thank you for the opportunity to comment. If you have any questions, please feel free to call.

Sincerely

DAWN LAPPIN
Director

Smith — Reed Robinson & wife

doesn't chg decision ~~///~~

3 & 5th year
evaluation

NDow

① NOW use as vehicle vs suspended
→ carry same weight

2 past. deferred Septem

rangeland improvements?

Grazing systems

35% - 50% white Sage.

Antelope Valley -

Spring use back

light graz use on winter

pastures

3rd year adjustments

#

late Dec. or January

seasonal use #

fertility study

increase animals then shorten season

Gerald M. Smith
August 29, 1991
Page 2

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Dawn Y. Lappin

DAWN LAPPIN
Director

Handwritten notes and bleed-through from the reverse side of the page, including phrases like "settlement proposal", "consultation meeting", and "opportunity to comment".