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July 10, 1992

Scott Billing, Area Manager
Bureau of Land Management
705 East Fourth Street
Winnemucca, NV 89445

Dear Mr. Billing:

This is to provide comment on your proposal, dated June 25, 1992, to gather wild horses from the Little Owyhee livestock grazing allotment. I would like to note for the record that neither Mr. Gary Bengochea of Circle A Ranches, nor I, received a copy of the proposal by regular mail. Mr. Bengochea and I were both present at a meeting on May 27, 1992, at which meeting the issue was discussed and, we believed, resolved. We expected to be informed by the Bureau in writing of the plan. Mr. Bengochea finally received the plan by getting it in person from your office, and I by Mr. Bengochea delivering it to me. We are disappointed in the Bureau's lack of coordination with us in this matter.

We concur with the Bureau's approach in determining the service area of the waters that are available to the horses currently in the allotment. We do not concur with the Bureau's conclusion that the entire service area is to be allocated for use solely by wild horses. This is contrary to the statutory intentions of the Taylor Grazing Act, the Multiple Use and Sustained Yield Act, the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, and the Wild and Free Roaming Horse and Burro Protection Act. It is also contrary to case law determining that the Bureau of Land Management must not place resource use by wild horses above that by domestic livestock, especially in the use of privately-owned lands and resources (Falini v. Hodel).

The 1981 CRMP agreement, subsequently approved by District Manager's Decision, established the proportion of wild horse use in AUM's to that of domestic livestock on the allotment at approximately 8% (The CRMP agreement called for 2400 AUM's use by wild horses and 27,800 AUM's by livestock). To the extent that the capacity of the rangelands within the service area of the waters open and available to horses year-round is limited, so too must the horse use of those areas be limited to the CRMP proportions, in order to accomplish balance with the other uses of the allotment. The thriving ecological balance of wild horse populations on the allotment should properly be limited to 8% of the capacity of the area which they may be able to use, not 100%, which would place the horses in priority over domestic stock and wildlife.

We believe furthermore that the service areas of the perennially available public water sources should properly define the Herd Management Area of the horses of the Little Owyhee Allotment, and that herd populations in the

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future should be limited to the proportionate (8%) use of the forage capacity of those areas.

The gathering plan as written is not in conformance with the agreement which was reached on May 27, 1992 that the Bureau would immediately gather approximately 500 head of horses and that the Bureau would gather by October, 1992 the remaining horses down to a level of 200 agreed to in the CRMP. It was under these conditions that Circle A Ranches agreed to not shut off their private water sources from use by the horses. The Bureau has once again renigged on their agreement to keep horse numbers in balance on the Little Owyhee Allotment.

North Twin Valley:

The recommendation for the North Twin Valley area proposes the transport of approximately 40 head out of this area into the South Fairbanks area, which the Bureau's own information tells us is over-populated at present with horses. We also do not believe that either the Wild Horse and Burro Protection Act or the pertinent case law intend, nor is the public interest well served, by the proposal to drill a well in this area for the purpose of watering wild horses. Domestic livestock wells on this allotment are well in excess of 600 feet deep, and pumping costs are high. We do not believe the public interest is well served by such a proposal, nor is it one which is economically feasible with no return to the public. The thriving ecological balance of wild horses in the North Twin Valley area is zero, since the area has no water to support horses year-round.

Rodear Flat:

The recommendation for the Rodear Flat area is flawed in recommending that the Bureau leave behind approximately 95 head of horses, in an area which the Bureau's plan reports is capable of supporting only 64 head (in the absence of any livestock) and which has, according to the report, already sustained considerable utilization to the point of requiring emergency removal of livestock.

The recommendation is further flawed in proposing removal of livestock from the area while leaving an overpopulated number of horses. Such decision would create only two conditions: that of placing priority of resource use by wild horses over that by domestic livestock, which has been found to be improper; and, that of overstocking the capacity of the range with year-round use by uncontrolled wild horses.

The area is serviced primarily by private-lands access to water, and the removal of livestock is not only unwarranted, but is an infringement of the U.S. Government upon the water rights of Circle A Ranches. Such infringement has been found to be explicitly wrong by the courts.

Applying the CRMP-agreed proportion of 8% to the Bureau's reported carrying capacity of 747 AUM's would allow 60 AUM's, or 5 horses year-round, as the thriving ecologically-balanced number of horses which should be allowed in this area in balance with other uses.

As for the North Twin Valley Area, we do not believe that the enabling legislation and case law intend, nor that the public interest is well served, by the proposal to drill a well in this area for the purpose of watering wild horses. Domestic livestock wells on this allotment are well in excess of 600 feet deep, and pumping costs are high. We do not believe the public interest is well served by such a proposal, nor is it one which is economically feasible with no return to the public. The thriving ecologically-balanced number of wild horses for the Rodear Flat area is 5 head year-round, in balance with the available water, forage, and other resources uses of the area.

We believe this number would also come closer to providing the type of protection for the riparian areas of the South Fork which were contemplated in the Little Owyhee and Bullhead CRMP Plans. The majority of the river was fenced from livestock use, and the Rodear Flat area is a water gap area, composed primarily of private-lands access. The livestock using this area are currently grazed in the area only in the spring of any given year, thereby allowing the watergap areas on the allotment the opportunity for full regrowth. This opportunity, however, is destroyed by the presence of large numbers of wild horses in the vicinity, and allowing 95 head to remain in the area will create undue damage to the riparian area on private lands and public lands accessed by the horses.

Were livestock interests to advocate stocking of the area to 150% of the forage capacity, and excluding all horses and wildlife from the area, we are quite certain the Bureau would deny such use. Yet it is the Bureau's proposal to do just that with wild horses in this area, to the exclusion of domestic stock and to the certain detriment of wildlife habitat and riparian area vegetation.

Milligan Creek:

The Bureau's proposal is to allow 175 head of horses, plus their offspring, to continue to use an area with a capacity for 94 head of adult horses (discounting the demand on the area by livestock use). This is an advocacy of stocking the range to 186% of its reported capacity. We are opposed to this advocacy.

Furthermore, the proposal ignores the CRMP-agreed proportion of 8%, and would result in the prioritization of resource use by horses over that by domestic livestock, which was never contemplated by any of the Bureau's enabling legislation, and which in fact has been dis-allowed by the courts.

Applying the proportional use of the forage base recognized in the CRMP would allow the use of this area of 90 AUM's, or 8 head of horses year-

round, in thriving ecological balance with the forage, water, and other resource uses of the area.

South Fairbanks:

The proposal as written proposes adding 40 head of horses, to a total of 265 head, to an area that the Bureau reports as being capable of supporting 94 head year round, and this in the absence of domestic livestock grazing which are permitted in the area. The proposal is woefully inadequate in this recommendation.

The proposal further advocates eliminating domestic livestock use until the remaining horses are gathered, at some nebulous date in the future. This is contrary to both enabling legislation and case law in prioritizing use of the resources by horses over that by domestic livestock.

It furthermore infringes upon private lands and waters to the detriment of the permittee and private landowner, and must, if implemented, be considered a takings by the U.S. Government, for which compensation is due to Circle A Ranches.

It is also illogical from the standpoint of practicality, since wintering livestock tend to use other sources of water when they are available, such as snow melt and storm water, and are furthermore in the area during the part of the year when forage plants are entirely dormant. Livestock grazing in the winter will not create ANY of the damage which the over-population of horses year-round creates.

Applying the CRMP-agreed proportion, the proper assignment of forage to wild horses in this area would be 90 AUM's, or 8 horses year round, in thriving ecological balance with the water, forage, and other uses of the area.

We believe this number would also come closer to providing the type of protection for the riparian areas of the North Fork which were contemplated in the Little Owyhee and Bullhead CRMP Plans. The majority of the river is inaccessible to livestock and wild horse use, and the portion which is accessible is composed primarily of private-lands access. The livestock using this area are currently grazed in the area only in the winter and spring of any given year, thereby allowing the riparian areas in the area opportunity for full regrowth. This opportunity, however, is destroyed by the presence of large numbers of wild horses in the vicinity, and allowing 265 head or horses to remain in the area year-round will create undue damage to the riparian area on private lands and public lands accessed by the horses, and will most certainly negatively impact the riparian vegetation and wildlife habitat of the area.

Other Areas:

Areas outside the currently-designated wild horse herd management area contain approximately 25 head of horses in Calico and Rock Springs (we believe this number to be considerably higher in reality), and a reported 75 head of horses in the Capitol Peak field, approximately 50% of which is private lands, and almost entirely private waters.

The proposal recommends removing the 25 head if it is convenient. It fails to mention entirely the approximately 75 head in Capitol Peak. Failure to remove all of these horses from these non-herd use areas is, we believe, a violation of the intent of the enabling legislation and is most certainly an infringement upon the private lands and waters of these "no horse" areas by the Bureau, and must be considered a "takings" by the U.S. Government, for which compensation is due to the permittee and private landowner.

These areas were not occupied by wild horses in 1971, and must be considered in the removal plan. All horses must be removed from these areas.

Within the Little Owyhee Allotment portion of the current Herd Management Area, the number of horses which should properly be stocked and still remain in thriving ecological balance with the available waters, forage, and other existing uses of the area are as follows:

North Twin Valley	0 horses year-round
Rodear Flat	5 horses year-round
Milligan Creek	8 horses year-round
South Fairbanks	8 horses year-round
Other Areas	0 horses year-round
TOTAL	21 horses year-round

Bullhead Allotment:

Not mentioned in this gathering plan is the Bullhead Allotment portion of the Herd Management Area. This area currently holds a reported number of approximately 350 head of horses, and was intended under the CRMP to contain no more than approximately 50 head. Whether this number of 50 head is truly in balance with the waters, forage, and other uses of the land remains a serious question. Given the proportion of "CRMP" numbers of 200 and the balanced number of 21 on the Little Owyhee portion of the HMA, it is likely that the CRMP numbers are likewise vastly in excess of the balanced numbers properly stocked in the Bullhead Allotment.

Failure of the Bureau to consider this over-population of horses constitutes an advocacy of over-obligation of the forage resource, a prioritization of resource use by wild horses over domestic stock, and a

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taking of private-lands forage and water resources within the allotment, which requires compensation to the private lands owner and permittee.

The overpopulation of horses on the Bullhead Allotment portion of this Herd Management Area must also be considered, and immediate removal efforts must be made.

Thank you for your consideration of these comments. I expect to be copied any further decisions or plans for this gathering and these horses on the Little Owyhee and Bullhead by direct mail. Thank you.

Sincerely yours,

Bob Schweigert

Bob Schweigert

cc: Circle A Ranches
Bill Templeton, BLM
✓ Dawn Lappin, WHOA
Rich Heap, NDOW
Barbara Vucanovich