

Spruce

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Wild Horses, Appellant

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

WILD HORSE ORGANIZED : NV-010-94-1  
ASSISTANCE, :

Appellant

v.

BUREAU OF LAND MANAGEMENT,

Respondent

.....  
COMMISSION FOR THE PRESERVATION : NV-010-94-02  
OF WILD HORSES :

Appellant

v.

BUREAU OF LAND MANAGEMENT,

Respondent

.....  
VON L. and MARIAN SORENSEN : NV-020-94-06  
:

Intervenor

v.

BUREAU OF LAND MANAGEMENT,

Respondent

.....  
WITHDRAWAL OF APPEAL

TO ALL PARTIES OF RECORD:

The Nevada Commission for the Preservation of Wild Horses (COMMISSION) hereby



1 withdraws and dismisses its appeal in Case No. NV-010-94-02, Appeal of the Spruce Interim  
2 Allotment Management Plan and the Spruce Allotment--Valley Mountain Allotment Line  
3 Agreement approved April 13, 1993, Wells Resource Area, Elko District, Nevada.

4 The COMMISSION expressly reserves and does not waive its right to intervene in any  
5 appeals brought by other parties on the Spruce and/or Valley Mountain Allotments.

6 The COMMISSION also expressly reserves and does not withdraw its separate appeal,  
7 dated November 12, 1993, from the District Manager's Full Force and Effect Decision for the  
8 Pequop Area Wild Horse Gather.

9 Dated: March 6<sup>th</sup>, 1995.

10 Respectfully submitted,

11 FRANKIE SUE DEL PAPA  
12 Attorney General

13  
14 By: 

15 C. Wayne Howle  
16 Deputy Attorney General  
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**DISTRIBUTION BY CERTIFIED MAIL**

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# United States Department of the Interior

## OFFICE OF HEARINGS AND APPEALS

Hearings Division  
6432 Federal Building  
Salt Lake City, Utah 84138  
(Phone: 801-524-5344)

March 2, 1995

WILD HORSE ORGANIZED  
ASSISTANCE (WHOA),

Appellant

v.

BUREAU OF LAND MANAGEMENT,

Respondent

: NV-010-94-01  
:  
: Appeal of the Spruce Interim Allotment  
: Management Plan and the Spruce  
: Allotment-Valley Mountain Allotment  
: Line Agreement approved April 13, 1993,  
: Wells Resource Area, Elko District,  
: Nevada  
:  
:

### ORDER

Motion of Intent to Intervene in the above captioned matter is taken under advisement and will be ruled upon at the outset of the hearing of this matter set to commence at 10:00 a.m. on Tuesday, March 21, 1995, in Reno, Nevada.

Ramon M. Child  
Administrative Law Judge

Distribution

By Regular Mail:

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District Manager  
Elko District Office  
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# United States Department of the Interior

## OFFICE OF HEARINGS AND APPEALS

Hearings Division  
6432 Federal Building  
Salt Lake City, Utah 84138  
(Phone: 801-524-5344)

March 2, 1995

COMMISSION FOR THE	:	NV-010-94-02
PRESERVATION OF WILD HORSES	:	
(CPWH),	:	Appeal of the Spruce Interim Allotment
	:	Management Plan and the Spruce
Appellant	:	Allotment-Valley Mountain Allotment
	:	Line Agreement approved April 13, 1993,
v.	:	Wells Resource Area, Elko District,
	:	Nevada
BUREAU OF LAND MANAGEMENT,	:	
	:	
Respondent	:	

### ORDER

Motion of Intent to Intervene in the above captioned matter is taken under advisement and will be ruled upon at the outset of the hearing of this matter set to commence at 10:00 a.m. on Tuesday, March 21, 1995, in Reno, Nevada.

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Elko District Office  
P.O. Box 831  
Elko, Nevada 89801

COPY

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS

Hearings Division  
6432 Federal Building  
Salt Lake City, UT 84138

Von L. and Marian Sorenson

v.

Bureau of Land Management.

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)  
) NV-020-94-06  
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)

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Request for postponement of hearing.

1. Von L. and Marian Sorenson, HC 60, Box 165, Wells, NV 89835, hold a preference to graze the Spruce Allotment of the Wells Resource Area of the Elko Grazing District (Nevada). On April 13, 1993 the preference holder and the Bureau of Land Management made the Interim Allotment Management Plan for Spruce Allotment, Wells Resource Area, Nevada, dated March 9, 1993) and the Spruce Allotment Valley Mountain Allotment Range Line and Allotment Agreement.

2. Wild Horse Organized Assistance and Commission for Preservation for Wild Horses (hereinafter called "horse groups") filed identical notices of appeal dated July 7, 1993 which pend for hearing on March 21. 1995. The claim for relief is to "stop this action". See, par. 2. The statement of reasons is ambiguous except that appellants claim that they were entitled to participate in the development of the agreements described.

3. On January 12, 1994 the Bureau of Land Management proposed a decision. It stated, inter alia that on August 23, 1993  
1Request for postponement of hearing.



said Sorensens were notified that the Bureau was "rescinding authorization of" said agreements. In fact, the Bureau notified said Sorensens on August 23, 1993 that the Bureau was suspending the said agreements until the appeals of the horse groups were resolved. Said appeals remain unresolved. Sorensens duly appealed from the decision which became the final decision after the expiration of 15 days from the date of said proposed decision, there being no intervening protest. The Sorensens' appeal pends for hearing on March 21, 1995.

4. The final decision from which Sorensens appeal confess error of the Bureau of Land Management as to the claims of the horse groups as a justification for making the final decision from which Sorensens appeal. The Bureau of Land Management was not in error in the respects confessed by it, and there is no justification for making the final decision from which Sorensens appeal, on that account. Sorensens have simultaneously filed a notice of their intent to intervene in the hearings of the appeals of the horse groups and to move for dismissal of said appeals on the grounds stated within their notice. A copy of said notice is attached and made a part hereof. The horse groups were not entitled to participate in the development of the agreements described in paragraph 1, or have no standing to appeal.

5. The appeals of the horse groups should be heard and decided before Sorensens' appeal is heard, because if it is finally decided that the agreements which are the subject of the appeals were made in violation of the rights of the horse groups, there is

2Request for postponement of hearing.

no reason to hear the appeal of Sorensens. If, however, it is finally decided that the agreements which are the subject of the appeals are valid agreements, the issues of Sorensens' appeal turn upon the post agreement actions of the Bureau of Land Management, specifically whether the management of the Spruce Allotment should occur as provided in the agreements or whether an environmental assessment justifies deferring the agreements.

6. Resolving the appeals of the horse groups will require an evidentiary hearing of one day or less because it will pertain to whether the conditions prescribed by 43 CFR 4100.0-5 (Affected interest) existed at the relevant time. The legal issues are more expanded, as introduced by the notice of intent to intervene.

However, if the agreements are determined to be valid ones, the factual questions presented by Sorensens' appeal require extensive presentation, as indicated by the statement of reasons for Sorensens' appeal, items 3, 4, 5, 6, 9. An evidentiary hearing of 3-4 days will be required to produce the evidence upon these issues.

7. Judicial economy and the time and expense of all parties will be served by postponing the hearing of the Sorensens' appeal until after the appeals of the horse groups are heard and finally decided. Appellants request postponement of the hearing of the above appeal pursuant to 43 CFR 4.432.

February 11, 1995.  
William E. Schroeder  
W. Alan Schroeder

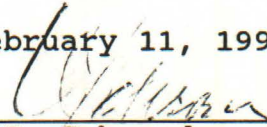
By  \_\_\_\_\_

3Request for postponement of hearing.

Certificate of Document, Filing and Service

My signature certifies this document as provided by 43 CFR 1.5. The document was transmitted to the office in which the filing is required (identified in the caption), such transmission being by delivery on February 11, 1995 to the United States Postal Service at Boise, Id. the original of said document within an envelope with postage prepaid thereon addressed for mailing to said office. The service required by 43 CFR 22(b) and 4.27(b) has been made as permitted by 43 CFR 4.401(c) and 4.473 by sending a copy of said document to each of the following by delivery on February 11, 1995 to the United States Postal Service at Boise, Idaho said copy within an envelope with postage prepaid thereon addressed for mailing to each, as follows: Burton J. Stanley, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1980; Dawn Y. Lappin, Director, Wild Horse Organized Assistance, P.O. Box 555, Reno, NV 89504; Catherine Barcomb, Executive Director, Commission for the Preservation of Wild Horses, 255 W. Moana Lane, Reno, NV 89509.

February 11, 1995.

  
\_\_\_\_\_  
W.F. Schroeder.

4Request for postponement of hearing.

COPY

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS

Hearings Division  
6432 Federal Building  
Salt Lake City, UT 84138

Wild Horse Organized Assistance )  
 )  
 v. ) NV-010-94-01  
 )  
 Bureau of Land Management. )

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Commission for Preservation for Wild Horses )  
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 v. ) NV-010-94-02  
 )  
 Bureau of Land Management. )

Notice of Intent to Intervene and to  
Move for Dismissal of the Appeals

Von L. and Marian Sorenson, HC 60, Box 165, Wells, NV 89835, hold a preference to graze the Spruce Allotment of the Wells Resource Area of the Elko Grazing District (Nevada). On April 13, 1993 the preference holder and the Bureau of Land Management made the Interim Allotment Management Plan for Spruce Allotment, Wells Resource Area, Nevada, dated March 9, 1993) and the Spruce Allotment Valley Mountain Allotment Range Line and Allotment Agreement.

The above named Wild Horse Organized Assistance and Commission for Preservation for Wild Horses filed identical notices of appeal dated July 7, 1993 which pend for hearing on March 21, 1995. The claim for relief is to "stop this action". See, par. 2.

1-Notice of intent to intervene.

The statement of reasons is ambiguous except that appellants claim that they were entitled to participate in the development of the agreements described.

Said Sorensens are interested in the appeals because their agreements will be suspended or rescinded if appellants' claim for relief is allowed. Said Sorensens designate William F. Schroeder and Carol DeHaven Skerjanec, P.O. Box 220, Vale, Oregon 97918 (503-473-3141) and W. Alan Schroeder, P.O. Box 267, Boise, Idaho 83701 (208-384-1627), as their representatives in all aspects of these appeals. Each is eligible to practice before the Department under the provisions of 43 CFR 1.3(b)(2), as an attorney at law admitted to practice before the courts of Oregon and Idaho, respectively. Said Sorensens direct the Department and its officers and agents to serve their representatives in all aspects of this appeal and authorize their representative to bind them in all aspects of this appeal.

Privacy Act Request for Access. This request is made pursuant to 43 CFR 2.45, et. seq. Said Sorensens request access to all records which relate to them which are contained in a system under the control of the Department and the Bureau of Land Management, and to review the records and, on separate specific request, have a copy made of all or any portion thereof for a copying fee which appellants are willing to pay according to the schedule of the Department published as Appendix A to 43 CFR Subtitle A Pt.2. They authorize the Department and the Bureau of Land Management to open said records to their representatives (or designee) designated

2-Notice of intent to intervene.

herein within or without their presence, and further authorize discussion of said records with such representatives.

Said Sorensons give notice of their intent to move for dismissal of the appeals after they have been recognized as intervenors, for the following reasons:

1. The notices of appeals are not from any final decision. 43 CFR 4.470.

2. The notices of appeals do not disclose the interests of appellants which may be adversely affected. 43 CFR 4.470.

3. The notices of appeals are not timely. 43 CFR 4.470.

4. The notices of appeals do not state the reasons, clearly and concisely, why appellants think the authorized officer is in error. 43 CFR 4.470.

Final decision as condition precedent to appeal.

The regulation authorizing administrative appeals permits them only with respect to final decisions. No final decision exists in this case.

Appellants are not affected interests.

Appellants have made no colorable allegations of injury and have no standing to appeal.

The subject of these appeals is an allotment management plan and range line agreement.

(a) The Public Rangeland Improvement Act which amended § 402(d) of the Federal Land Policy and Management Act of 1976, identifies the entities that are to be involved in the consultation

3-Notice of intent to intervene.

process producing an allotment management plan. The identified entities do not include appellants. Appellants are not necessary parties in the development of the plan, by legislation.

(b) 43 CFR 4100.0-5 "Allotment management plan (AMP), defines the document which is the subject of these appeals and prescribes that they are to be "prepared in consultation, cooperation and coordination with the permittee(s), lessee(s) or other involved affected interests." The category of interests is limited to affected interests which are "involved". Appellants are not necessary parties in the development of the plan, by regulation, if the regulation is construed consistently with the authorizing legislation.

See, however, 43 CFR 4120.2(a) which omits the adjective. Nevertheless, the regulation may not be construed to broaden the legislated class entitled to be involved in the development of the plan.

(c) 43 CFR 4100.0-5 "Affected interest", establishes two conditions for appellants having the status of an "affected interest". First, appellants must have "expressed in writing to the authorized officer concern for the management of livestock grazing" on the Spruce Allotment. Second, the authorized officer must have determined that such entitled was an affected interest. Neither condition existed before the agreements which are the subject of these appeals. See, Natural Resources Defense Council, Inc. v. Hodel, 618 F.Supp. 848, 880 (D.C.Cal. 1985), Oregon Natural Resources Council, et al. v. Bureau of Land Management, 129 IBLA

4-Notice of intent to intervene.

269, 273 (1994).

(d) Appellants have not expressed a concern for the management of livestock grazing or that they are adversely affected. Appellants have not identified any such concerns or made any colorable allegations of injury. Both are threshold conditions for appeal standing. Donald K. Majors, 123 IBLA 142, 143 (1992).

February 11, 1995.

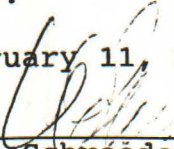
William F. Schroeder, Esq.  
W. Alan Schroeder, Esq.  
Carol DeHaven Skerjanec, Esq.

By   
W.F. Schroeder, of Sorenson lawyers.

Certificate of Document, Filing and Service

My signature certifies this document as provided by 43 CFR 1.5. The document was transmitted to the office in which the filing is required (identified in the caption), such transmission being by delivery on February 11, 1995 to the United States Postal Service at Boise, Id. the original of said document within an envelope with postage prepaid thereon addressed for mailing to said office. The attorney for the Bureau of Land Management is Burton J. Stanley, Esq., the representatives of appellants are Dawn Y. Lappin and Catherine Barcomb, respectively. The service required by 43 CFR 22(b) and 4.27(b) has been made as permitted by 43 CFR 4.401(c) and 4.473 by sending a copy of said document to each by delivery on February 11, 1995 to the United States Postal Service at Boise, Idaho said copy within an envelope with postage prepaid thereon addressed for mailing to each of said attorney and representatives to their addresses, as follows: Burton J. Stanley, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1980; Dawn Y. Lappin, Director, Wild Horse Organized Assistance, P.O. Box 555, Reno, NV 89504; Catherine Barcomb, Executive Director, Commission for the Preservation of Wild Horses, 255 W. Moana Lane, Reno, NV 89509.

February 11, 1995.

  
W.F. Schroeder.

5-Notice of intent to intervene.