

m 2/23/95 ✓

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4 Deputy Attorney General
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6 Carson City, Nevada 89710
7 Telephone: (702)687-3700
8 Attorneys Commission for the Preservation of
9 Wild Horses, Appellant

6 UNITED STATES DEPARTMENT OF THE INTERIOR
7 OFFICE OF HEARINGS AND APPEALS
8 HEARINGS DIVISION

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

10 Appellant

11 v.

12 BUREAU OF LAND MANAGEMENT,

13 Respondent

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

16 Appellant

17 v.

18 BUREAU OF LAND MANAGEMENT,

19 Respondent

20 VON L. and MARIAN SORENSEN : NV-020-94-06
21 :

22 Intervenor

23 v.

24 BUREAU OF LAND MANAGEMENT,

25 Respondent

26 OPPOSITION TO MOTION TO DISMISS

27 COMES NOW APPELLANT NEVADA COMMISSION FOR THE
28 PRESERVATION OF WILD HORSES ("COMMISSION") and opposes the motion made by



1 Von L. and Marian Sorensen for an order dismissing the COMMISSION's appeal in the
2 above-captioned matter.

3 In a document dated February 11, 1995, and entitled "Notice of Intent to Intervene,"
4 Von L. and Marian Sorensen, through their representative, stated their intent to move for
5 dismissal of the COMMISSION'S appeal. The Sorensens intended to move for dismissal
6 "after they have been recognized as intervenors." Notice of Intent to Intervene at 3. But by
7 order, the request for intervention was placed in abeyance until the scheduled March 21,
8 1995, hearing.

9 It is therefore unclear to the COMMISSION whether a motion to dismiss is now
10 pending, or whether the motion is held in abeyance along with the request to intervene. In
11 order to avoid any question about the COMMISSION'S resolve to pursue its appeal, however,
12 the COMMISSION submits this opposition to affirm its resolve and briefly respond to the
13 grounds for dismissal alleged by the Sorensens.

14 The first reason cited for dismissal is that there is no final decision. To all
15 appearances, the Interim AMP from which the appeal was taken is a final document. There
16 is no denotation that it is a draft document. It is signed and dated by the BLM and the
17 operator. If there is any question about the finality of the plan, it will be a factual issue for
18 determination at the hearing.

19 The second reason given for dismissing the COMMISSION'S appeal is that the
20 COMMISSION is not an affected interest. However, the BLM by letter dated June 4, 1993,
21 acknowledged the affected interest status of the COMMISSION on the Spruce Allotment. See
22 Exhibit 1. The acknowledgment letter refers to the request for such status being made in
23 1991. Therefore the COMMISSION's interest is well-established on the allotment.

24 Further, the COMMISSION has a statutory interest in the decision. It is a
25 commission of the state of Nevada, organized pursuant to state statute, NRS 504.430 et seq.,
26 and has responsibilities including "promot[ing] the management and protection of wild
27 horses." NRS 504.470(1)(a). Because it is statutorily established, the interested status of the
28 COMMISSION may be the proper subject of judicial notice.

1 The involvement of state agencies in public land planning and use is extensively
2 provided for by federal statute. *E.g.* 43 U.S.C. § 315h, 43 U.S.C. §§ 1701(2) and 1701(5),
3 43 U.S.C. §§ 1712(c) and 1712(f), 43 U.S.C. § 1739(e). An interpretation of regulations
4 which prevents state participation in the AMP process would be unreasonable and contrary
5 to these statutes.

6 The third basis for dismissal relied on by Sorensens is the allegedly untimely nature
7 of the COMMISSION's appeal. But in fact the appeal was timely. The July 7, 1993, appeal
8 by the COMMISSION recites that it was received by the COMMISSION on June 7, 1993.
9 *See* Exhibit 2. The time from the June 7 receipt to the July 7 appeal is thirty days, which
10 comes within the time allowed for appeal. 43 C.F.R. § 4160.4, 43 C.F.R. § 4.470(a). A
11 grace period is provided at 43 C.F.R. § 4.401(a), so that an appeal which is timely
12 transmitted will not be rejected if it is received in the proper office within ten days thereafter.
13 Therefore the appeal was timely.

14 The final reason given for dismissal is that the COMMISSION appeal fails to set forth
15 reasons for the appeal. In fact at least three reasons for the appeal are clearly and concisely
16 supplied. First, the appeal alleges an unlawful delegation to a private entity of the BLM's
17 discretion to administer the public lands. Second, the appeal alleges failure to comply with
18 NEPA requirements. Third the appeal alleges the failure to consult in the development of
19 the AMP as required by law. Any one of these reasons would suffice to sustain the appeal
20 on a motion to dismiss.

21 For these reasons, the COMMISSION requests that its appeal be sustained and the
22 motion to dismiss be denied. The COMMISSION furthermore requests additional opportunity
23 to more fully argue these points when and if the motion to dismiss is more certainly
24 considered.

25 ...

26 ...

27 ...

28 ...

1 The COMMISSION further requests that all mailings and notices be directed to its
2 counsel of record, C. Wayne Howle, at the following address:

3 Office of the Attorney General
4 198 S. Carson Street, Room 311
5 Capitol Complex
6 Carson City, Nevada 89710

7 DATED this 23rd day of February, 1995.

8 Respectfully submitted,

9 FRANKIE SUE DEL PAPA
10 Attorney General

11 By: 

12 C. Wayne Howle
13 Deputy Attorney General
14 Capitol Complex
15 198 S. Carson St., No. 311
16 Carson City, Nevada 89710
17 Tel: (702) 687-3700

18 Attorneys Commission for the
19 Preservation of Wild Horses

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Dawn Y. Lappin, Director
Wild Horse Organized Assistance
P. O. Box 555
Reno, NV 89504

Office of Hearings and Appeals
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Salt Lake City, UT 84138

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Burton J. Stanley
John R. Payne
Office of the Regional Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-2753
Sacramento, CA 95825-1890

Wells Horse Commission



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ELKO DISTRICT OFFICE
3900 E. IDAHO STREET
P.O. BOX 831
ELKO, NEVADA 89801



IN REPLY REFER TO:
4120 (NV-015)

JUN 4 1993

Dear Affected Interest:

In 1991 you indicated that you would like to be involved in the allotment evaluation process on the Spruce Allotment. A draft of the allotment evaluation is scheduled for completion in fiscal year 1994.

Prior to you receiving the allotment evaluation, I think that it is important to provide you with an update on what has been happening on the allotment.

In 1987, a draft allotment management plan (AMP) was completed for the Spruce Allotment. However, the draft AMP was never signed as a result of unresolved conflicts with the permittees.

In 1991, after several meetings with one of the permittees, it was decided that he would hire Resource Concepts, Inc. (RCI) to complete an interim AMP. There were two main purposes of the interim AMP. First, the Spruce Allotment would be formally divided into two separate allotments (Spruce and Valley Mountain). The interim AMP would only outline management on the Spruce Allotment and not the Valley Mountain Allotment. Second, the interim AMP would outline management while the allotment evaluation is being completed.

RCI used the format of the 1987 draft Spruce AMP as a guideline for completing the Spruce Interim AMP. The interim AMP was signed on April 13, 1993. A copy is enclosed for your information.

Therefore, upon completion of the draft allotment evaluations for the Spruce and Valley Mountain Allotments, a copy will be forwarded to you for review and comment.

If you have any questions, please contact me at 753-0200.

Sincerely yours,

BILL BAKER, Manager
Wells Resource Area

*Elko 11/20/93
738-5352
Signed: ERICKSON*

Enclosure

cc: Bert Paris and Sons
American Horse Protection
Humane Society - US
Nevada Wildlife Federation
Animal Protection Institute
National Resources Defense Council
U.S. Fish and Wildlife Service
Commission for the Preservation
of Wild Horses

Jim Mulcahy
Nature Conservancy
Rose Strickland
Kathryn Cushman
Federal Land Bank
U.S. Wild Horse Foundation
HTT Resource Advisors
NV Department of Agriculture



**COMMISSION FOR THE
PRESERVATION OF WILD HORSES**

Stewart Facility
Capitol Complex
Carson City, Nevada 89710
(702) 687-5589

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Steven Fulstone
Smith Valley, Nevada
Dawn Lappin
Reno, Nevada

July 7, 1993

Bill Baker, Manager
Wells Resource Area
BLM-Elko District Office
3900 E. Idaho St.
Box 831
Elko, Nevada 89801

Dear Mr. Baker,

We are in receipt of the interim AMP that was signed on April 13, 1993. We received this document on the 7th of June, therefore we are within our legal framework to appeal this document within the 30 day time frame from receipt of such work.

We formally appeal your decision to sign this plan. We formally request that this appeal stop this action on the basis that you are in violation of BLM regulations, policy, as well as wild horse and burro policy.

We have severe concerns that you have a special interest dictating management that affects all users without those users having their legal right recognized. According to 40 CFR 1502.3, 1501.4 (a)(b), an EIS or EA must be completed before approval of the Spruce AMP. In addition you have violated the entire consultation process according FLPMA and NEPA.

There are too many violations and arguments to list at this time. Surely it does not require 29 years to produce an environmental assessment for the change-in-kind of livestock taking this allotment from sheep in 1964 to livestock. However, now the urgency appears to be approval of an interim AMP to support an expenditure for a fence and seedings that may or may not have impacts on other users.

We have worked very hard and long with the BLM in Nevada to affect good range management and a trusting relationship. This is

Bill Baker, Manager
July 7, 1993
Page 2

a blatant example of the BLM intentionally shutting affected interests out of the process due them by law.

Sincerely,

Catherine Barcomb

CATHERINE BARCOMB
Executive Director