

COPY

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS

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Hearings Division
6432 Federal Building
Salt Lake City, UT 84138

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

- - -

Commission for Preservation for Wild Horses)
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Said Sorensons are interested in the appeals because their agreements will be suspended or rescinded if appellants' claim for relief is allowed. Said Sorensons 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 Sorensons 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 Sorensons 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

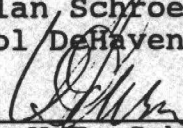
4-Notice of intent to intervene.

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.

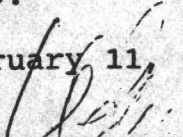
William F. Schroeder, Esq.
W. Alan Schroeder, Esq.
Carol DeHaven Skerjanec, Esq.

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.