



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:

4710 (NV-015)  
NV-010-94-05

DEC 20 1993

CERTIFIED MAIL NO. P 321 020 <sup>17</sup>915  
RETURN RECEIPT REQUESTED

United States Department of the Interior  
Office of the Secretary  
Board of Land Appeals  
4015 Wilson Boulevard  
Arlington, VA 22203

RE: Appeal filed by the Commission for the Preservation of Wild Horses &  
Wild Horse Organized Assistance of the District Manager's Decision to  
Implement the Goshute Wild Horse Gather Plan dated October 15, 1993

Gentlemen:

As requested by the Regional Solicitor, the Wells Resource Area of the Elko District hereby submits "answers" to the Statement of Reasons received from the Commission for the Preservation of Wild Horses and Wild Horse Organized Assistance, served concurrently with their Notice of Appeal of District Manager's Decision dated October 15, 1993. So as not to be construed as "ex parte communications" (43 CFR 4.22 (b) and 4.27 (b)), this letter of answers is also being served on the following:

Regional Solicitor, Pacific Southwest Region  
U.S. Department of the Interior  
2800 Cottage Way, Room E 2753  
Sacramento, CA 95825

The Commission for the Preservation of Wild Horses  
50 Freeport Boulevard, No. 2  
Sparks, NV 89431

Wild Horse Organized Assistance  
P.O. Box 555  
Reno, NV 89504

ELKO DISTRICT'S "ANSWERS" TO STATEMENT OF REASONS FILED BY THE COMMISSION FOR THE PRESERVATION OF WILD HORSES AND WILD HORSE ORGANIZED ASSISTANCE CONCURRENTLY WITH NOTICE OF APPEAL TO DISTRICT MANAGER'S DECISION DATED 10/15/93

1. The Environmental Assessment is inadequate and does not support the Wells RMP Wild Horse Amendment or Final Decision.

The Environmental Assessment (EA) for the Goshute Area Wild Horse Gather Plan (BLM/EK/PL-93/054) was written to identify the impacts to all resources as a direct result of gathering wild horses. The EA process began with a "Request for Baseline Data" from the specialists in the Wells Resource Area. This baseline data was then incorporated into the draft Preliminary EA. This draft went through two in-house reviews by District specialists. All in-house comments received were incorporated into the final Preliminary EA which was then sent to interested parties on the District's Wild Horse and Burro mailing list for a 30 day public comment period. Three comment letters were received from the following parties: Dr. E.B. Robinson, Jr.; Rutgers Animal Rights Law Clinic and Resource Concepts, Inc. on behalf of Von L. and Marion Sorenson. All comments received were carefully reviewed and considered for incorporation into the final plan and EA. No changes were made as a result of the comments received and the Preliminary EA became final. The interested parties were notified of the "No Change" situation; the final EA was not sent out.

a. Consultation

The Commission for the Preservation of Wild Horses (the Commission) and Wild Horse Organized Assistance (WHOA) met with the Associate State Director and the Wells Resource Area on August 31, 1993. This meeting was called by the Associate State Director; the Wells Resource Area was informed prior to the meeting that the purpose of the meeting was to ensure that the two groups understood that the upcoming gathers were not based on allotment evaluations/multiple use decisions, but were based on the Land Use Plan as amended and the BLM had followed the regulatory process.

In the Statement of Reasons, it is maintained by the appellants that the Wells Resource Area did not recognize issues presented and recommendations made at the above mentioned meeting in the Goshute Wild Horse Gather Plan/EA. Whereas the draft plan was discussed at this meeting, the primary focus was on the proposed gathers based on a land use plan amendment versus the allotment evaluation/multiple use decision process. Another main focus of the meeting was the 10 percent utilization by wild horses on key forage species in combined winter use areas prior to livestock turnout as presented in the Wells Resource Management Plan (RMP) Wild Horse Amendment (the Amendment). Issues presented at this meeting were resolved during the meeting, including the fact that one round of gathers would be based on the Amendment and not multiple use decisions. The Commission and WHOA understood this and had no problems with the concept as long as the next series of removals would be based on allotment evaluations and multiple use decisions. The general outcome of the meeting was positive.

The Wells Resource Area was never under the impression that the meeting constituted the Commission's or WHOA's formal comments on the Draft Goshute Wild Horse Gather Plan/Preliminary EA. This was apparent in the fact that the meeting was not recorded and minutes were not taken at the time of the meeting. It was not until later that a memorandum on the meeting was prepared.

The Wells Resource Area never indicated to any interested party that they would have an opportunity to review the final documents because as per BLM policy, when no changes are made to a draft document a final document does not have to be sent out, but the interested parties do need to be notified of the "No Change" situation. Normally, interested parties are not allowed an additional "review" period on final decision documents; they receive the final decision then are allowed an appeal period. When the Commission and WHOA assert that they never had an opportunity to review or comment on the final documents nor did they have an opportunity to comment, appeal, appeal with a request for a stay of the action, or if necessary file an injunction, the Wells Resource Area would rebut that they did indeed have an opportunity to comment on the proposed action during the 30 day comment period and they are now being allowed the opportunity to appeal the decision.

2. Consistency with other plans.

The appellants assert that they were promised input in the final stages of the gather plans but realized that by receiving the documents after the gather had been conducted that it violated their rights under FLPMA, NEPA and BLM policy by not giving them an opportunity to file an appeal with a request for a stay of the action.

Part 43 of the Code of Federal Regulations, section 4770.3 was amended by adding paragraph (c) to read as follows:

The authorized officer may place in full force and effect decisions to remove wild horses or burros from public or private lands if removal is required by applicable law or to preserve or maintain a thriving ecological balance and multiple use relationship. Full force and effect decisions shall take effect on the date specified, regardless of an appeal. Appeals and petitions for stay of decisions shall be filed with the Interior Board of Land Appeals as specified in this part. Dated June 5, 1992.

Under this regulation, the Wells Resource Area was allowed to start the gather on the day the full force and effect decision was signed. The Commission and WHOA are now being allowed the opportunity to appeal the District Manager's decision.

The Commission and WHOA note that the *Strategic Plan for Management of Wild Horses and Burros on Public Lands* (the Strategic Plan) is not supported by an EA or Environmental Impact Statement (EIS). While The Strategic Plan, which is not a decision document, is not covered by an EA or EIS, the directives given therein are supported by an EA for specific management actions.

a. Riparian Habitat

The Statement of Reasons states that the Wells Wild Horse Amendment attributes overuse of riparian areas to no other user except wild horses. When the Amendment was written, all non-wild horse issues were purposely excluded as they were addressed in detail in the original Wells RMP. The Wells Resource Area has monitoring data which indicates excessive numbers of wild horses leads to riparian damage. The Amendment proposes additional water developments for wild horses and reducing horse numbers to initial herd size. As data collection continues, the initial herd sizes will be adjusted, if necessary, if the problems identified in the Amendment are not being alleviated.

In addition, the Amendment did analyze alternatives; they are found in the Draft and Proposed Amendment.

b. Allocation of Available Forage

The Statement of Reasons asserts that the Elko District's decision to limit wild horse utilization to 10 percent prior to livestock turnout on key forage species in combined winter use areas (which is found in the Amendment) was arbitrary. The Wells Resource Area refutes this by maintaining that the decision was data based. The district took all the best available data and the professional judgement of several range conservationists and wild horse specialists to make this decision. Data shows that 40-50 percent utilization prior to livestock turnout on winter use areas leads to severe use at the end of the combined use period. The 10 percent utilization level, which is the midpoint of the slight use category, given to wild horses prior to livestock turnout in winter use areas is a starting point. It is believed that continued monitoring will prove that the 10 percent utilization prior to livestock turnout will protect wild horse winter range and will result in proper use at the end of the combined use period. Monitoring may show that utilization prior to the entry by livestock can be higher and still meet key area utilization goals and adjustments will be made in the allotment evaluation process.

c. Carrying Capacities

The Wells Resource Areas decision to set the initial herd size in the Goshute HMA at 160 horses, as per the Amendment, was based on the best available data as interpreted by Wells Resource Area specialists. Continued monitoring and data collection will show if an adjustment in wild horse numbers is needed. The initial herd size is a starting point only.

d. Wild Horse Distribution and Habitat

The Wells Resource Area considered all elements of habitat needed by the Goshute HMA horse herd in the development of the Amendment. This included water, forage, cover and space for both winter and summer ranges. The Wells Resource Area has been conducting intensive seasonal distribution flights since 1990 and this data was closely examined before the decision to delete the checkerboard land from management within the HMA was made. The deletion of the checkerboard lands in the Goshute HMA resulted in a net loss of 16,000 acres of mostly heavily wooded, rocky terrain. The gather plan stated that wild horses are rarely found in that area but until a fence was constructed it would be impossible to manage the area as completely horse free. The Wells Resource Area was aware that eliminating the checkerboard lands from management would eliminate small portion of both winter and summer range, and this was considered in determining the initial herd size.

e. Restructuring of the Wild Horse Herd

An age selective removal is not addressed in the Amendment, only the proposal to maintain an initial herd size until monitoring data suggests an adjustment is required. The Amendment did not address what method of herd reduction should be utilized to achieve that goal; this was addressed in the plan for the specific management action.

f. No Consideration for Biological, Social or Economic Impacts

The Statement of Reasons maintains that the *Strategic Plan for the Management of Wild Horses and Burros on Public Lands* was finalized without public input stating that input could be provided in documents or actions implementing the plan. The Strategic Plan is not a decision document. The Wells Resource Area asserts that all affected interests were provided with ample opportunity to be involved in the development of the Strategic Plan through the public consultation process. This is the first time the Wells Resource Area has been made aware that the Commission and WHOA are displeased with the Strategic Plan as they were heavily involved in its development. The Resource Area has no knowledge of the public being informed that they could provide input on the Strategic Plan by commenting or appealing actions to implement the Strategic Plan.

3. The decision was arbitrary, these are improper procedures for making these decisions.

When preparing the Wells RMP Wild Horse Amendment, the Wells Resource Area followed all BLM guidelines, procedures and policies. The decision to set initial herd sizes within the newly designated HMAs was not an arbitrary one, but was based on the best available data and professional judgement. The initial herd sizes are meant to be a starting point and a solid basis for data collection and monitoring. The Amendment only addressed wild horses; no other grazing animal was given an increase or reduction through the wild horse Amendment. Utilization by other classes of grazing animals are thoroughly addressed in the original Wells RMP, grazing allotment evaluations or other land use planning documents.

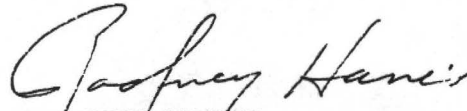
4. Carrying capacities were not established, the decision was arbitrary.

The initial carrying capacity or herd size for wild horses in the Goshute HMA is identified in the Amendment. This was determined based on the best available data and professional judgement. Multiple use decisions are currently being prepared. The Goshute HMA contains all or part of 7 different grazing allotments. When the multiple use decisions are final for the allotments making up the majority of the Goshute HMA, an appropriate management level for wild horses as well as livestock can be made. Until that time, the initial AML for wild horses within the Goshute HMA is 160.

5. The final decision is biased against wild horses.

The Amendment reduced the Goshute HMA horse numbers by 94 as of the latest census. The Amendment calls for no other reductions for different types of ungulates for the reasons stated above. There remain many forums for herd size adjustment, the Amendment was simply a starting point. It took the best available data and professional judgement to set numbers. If continued monitoring and the multiple use decision process determines a need for herd size adjustment, an adjustment will be made.

Sincerely yours,



RODNEY HARRIS  
District Manager

cc: CERTIFIED NO. P 321 020 916  
Regional Solicitor, Pacific Southwest Region  
U.S. Department of the Interior  
2800 Cottage Way, Room E 2753  
Sacramento, CA 95825

CERTIFIED NO. P 321 020 917  
The Commission for the Preservation of Wild Horses  
50 Freeport Boulevard, No. 2  
Sparks, NV 89431

CERTIFIED NO. P 321 020 918  
Wild Horse Organized Assistance  
P.O. Box 555  
Reno, NV 89504