



DEPARTMENT OF ADMINISTRATION

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Carson City, Nevada 89701-4298
Fax (775) 684-0260
(775) 684-0209

July 11, 2003

Robert V. Abbey, State Director
Bureau of Land Management
Nevada State Office
PO Box 12000
Reno, NV 89520-0006

NELLIS
LAS VEGAS

Re: SAI NV # E2003-141

Project: Proposed Nevada Test and Training Range Resource Management
Plan and FEIS

Dear Mr. Abbey:

Enclosed are the comments from the Nevada Division of Water Resources and the Office of Historic Preservation concerning the above referenced report that is a Governor's Consistency Review Document.

In addition, I have enclosed letters dated June 20, 2003 from the Division of Wildlife; June 14, 2002, from the State Clearinghouse; and December 20, 2001. The letters outline the state's position on many issues regarding the above document and were submitted timely and through the proper process. The FEIS neither addresses nor responds to many of them.

Please note that the Division of Wildlife has submitted a formal protest to the Director, Kathleen Clarke. The State of Nevada is in full support of the Division of Wildlife's comments.

These comments constitute the State Clearinghouse review of this proposal as per Executive Order 12372. Please address these comments or concerns in your final decision. If you have questions, please contact me at 684-0209.

Sincerely,

A handwritten signature in cursive script that reads "Heather K. Elliott".

Heather K. Elliott
Nevada State Clearinghouse/SPOC

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cc: Vicky Oldenberg, Legal & Policy Analyst, Governors Office
Nevada Congressional Delegation
Mike Peiper, Director, State of Nevada Washington D.C. Office
Robert Loux, NWPO
Allen Biaggi, Administrator, NDEP
Paul Liebendorfer, NDEP
John B. Walker, NDEP
Frank Siracusa, DEM
Terry Crawford, Dept of Wildlife
Pam Wilcox, State Lands
Cathy Barcomb, Wild Horse Commission
W. Percival, Nellis AFB



KENNY C. GUINN
Governor

SCOTT K. SISCO
Interim Director

STATE OF NEVADA
DEPARTMENT OF CULTURAL AFFAIRS
Nevada State Historic Preservation Office
100 N. Stewart Street
Carson City, Nevada 89701

RONALD M. JAMES
State Historic Preservation Officer

July 7, 2003

MEMORANDUM

TO: Heather Elliott, Nevada State Clearinghouse

FROM: Alice M. Baldrica, Deputy SHPO *Alice M. Baldrica*

SUBJECT: Proposed Nevada Test and Training Range Resource Management Plan and FEIS, Nevada SAI # E2003-141

The Nevada SHPO has reviewed the referenced document that relies on implementation of the Nellis Air Force Base Cultural Resources Management Plan, dated August 1998. This document obligated Nellis to a five-year plan to address Section 106 and Section 110 of the National Historic Preservation Act. The Nevada SHPO would like to see a progress report on tasks identified in this plan. We lack an executed programmatic agreement with Nellis and would like to see this task completed. In addition, what is the status of stratified sampling of the ranges?

Regarding consultation (page 5.3), BLM shares a nationwide programmatic agreement with the National Conference of SHPOs; we have a statewide protocol in place for Nevada under which our agencies consult and provide assistance to one another. It is not a memorandum of agreement (MOA) and it does not involve Nellis Air Force Base.

Please call me at 775-684-3444 or email me at ambaldri@clan.lib.nv.us if you have any questions.

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OFFICE OF THE DIRECTOR
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KENNY C. GUINN
Governor

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WILDLIFE

1100 Valley Road
Reno, Nevada 89512
(775) 688-1500 • Fax (775) 688-1595

R. MICHAEL TURNIPSEED, P.E.

Director
Department of Conservation
and Natural Resources

TERRY R. CRAWFORTH
Administrator

June 20, 2003

Ms. Kathleen Clarke, Director
Bureau of Land Management
P. O. Box 66538
Washington D.C. 20035

Attn: Ms. Brenda Williams, Protest Coordinator

Dear Director Clarke:

The Nevada Division of Wildlife (Division) as the primary agency with jurisdiction, authority and responsibility for wildlife management in the State of Nevada, protests the Proposed Nevada Test & Training Range RMP and Final EIS dated May 2003 (ref: Nevada State Director Dear Reader letter (1610 LVFO); (NV930.1); (NV050)). While the document prescribes reasonable and appropriate management objectives and direction for a multitude of natural resources, specific actions called for in the Proposed Plan for wild horses and burros will in our professional assessment, circumvent reaching objectives for several of the natural resources such as wildlife, riparian habitat, special status species and vegetative resources. In short, we believe the Proposed Plan is inconsistent and incompatible with attaining a "thriving natural ecological balance" between wild horses and other resources. The Division also finds that in developing the Proposed Plan concerning the wild horse and burro resource, the Bureau did not comport with Federal regulations, Bureau policy, and several decisions and directions issued by IBLA. Consequently, the Division is compelled to protest specific elements of the Proposed RMP and Final EIS relative to wild horse and burro management.

Because of the immense complexities inherent to the rationale used by the Bureau in developing its Plan, we summarize below our otherwise detailed statement of issues provided in the attached report necessary for your consideration. Specifics of our protest include but are not limited to:

1. The Proposed Plan fails to use available and pertinent information and relies upon insufficient and incorrectly interpreted information to support the expansion of the Herd Area on the Nevada Test and Training Range (NTTR). As such, it fails to reasonably substantiate that the 1971 wild horse and burro use extended beyond the Herd Area/Herd Management Area boundary identified in the *Approved Nellis Air Force Range Resource Plan and Record of Decision* (1992)¹⁷.
2. Management for the proposed "Core Area" does not comport with the Free-Roaming Wild Horse and Burro Act of 1971(Act), as amended. This


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management strategy proposes to limit monitoring to a "Core Area" and has no contingency for identification of resource damage outside of the "Core Area". In view of direction provide in several IBLA decisions, this would effectively limit the ability of the Bureau to perform horse gathers to maintain a "thriving natural ecological balance" with other resources on the NTTR.

3. Since at least 1985, the Bureau has consistently invoked new administrative Appropriate Management Levels (AML) in developing a series of HMAP and gather plans, however, the string of administratively developed AML's are never validated during interim periods using vegetation monitoring data and other environmental factors as required by the Act. Further, AML is not validated in this RMP/EIS.
4. The proposed management of wild horses on the Nevada Test and Training Range exceeds the demonstrated ability of the Bureau.
5. In development of the RMP and Final EIS, the Division's recommendations and concerns did not receive due consideration under the mandate for consultation within the Act, as amended. The Bureau was largely dismissive of the Division's professional positions regarding wild horse management on the NTTR and the impacts upon wildlife and habitat.

Thank you for your consideration of our resource issues and concerns regarding wild horse and burro management on the Nevada Test & Training Range. We look forward to a scientifically sound resolution to these issues and a finalization of a feasible and effective plan for the management of important Nevada natural resources on the NTTR. Should you have any questions or require any additional information, please contact Doug Hunt or Dave Pulliam at (775) 688-1560 or (775) 688-1561 respectively.

Sincerely,


for: Terry R. Crawford
Administrator

Attachment

cc: Bob Abbey, Nevada State Director, BLM
R. Michael Turnipseed, P.E., Director, DCNR
Nevada Board of Wildlife Commissioners
Cathy Barcomb, Administrator, Nevada Commission
for the Preservation of Wild Horses
Heather Elliott, Nevada State Clearinghouse

Nevada Department of Conservation & Natural Resources
DIVISION OF WILDLIFE

**Protest of Proposed Nevada Test & Training Range RMP and Final EIS
Specific Issues**

INTRODUCTION

The *Proposed Nevada Test & Training Range Resource Management Plan and Final Environmental Impact Statement* (2003)¹ contains major flaws that result in the Bureau of Land Management (Bureau) selecting a modified Alternative B for wild horse management. Because the planning process contains misrepresentations and omissions of pertinent information, the Nevada Division of Wildlife (Division) finds the document does not comply with federal law and interagency agreements.

In the introductory letter for the Plan, the Bureau claims the Air Force has agreed with the content of the Plan. However, the document responds to 122 comments by the Air Force, 25 of which are critical of the proposed horse management and are generally disregarded in the final.

While the need for a new plan for the Nevada Test and Training Range (NTTR) was mandated in Public Law 106-65, the Bureau failed to utilize all available data and analysis conducted by previous managers. In doing so, the Bureau has inappropriately validated an extensive distribution of horses across the area.

BLM response to comments is selective, incomplete, and inadequate. Rather than addressing entire letters, the Bureau has selectively addressed comments and excerpted letters, (Vernon Brechin, Comments 1, 2, 3, 4, 5 and U.S. Air Force, Comments 8, 10, 68, 97). Readers have no way of knowing the full context of a comment and whether the response is pertinent, fair and accurate. The Bureau completely fails to address the comment letter of the Nevada Department of Conservation and Natural Resources⁴⁵. Significant points by the Division are also ignored. The Division's position was downplayed by the Bureau as a difference of opinion or interpretation. Due to these and other examples, the Division can demonstrate that the Bureau has foregone any semblance of impartiality and balance in this plan.

The plan fails to recognize the Bureau's demonstrated performance and differentiate between an ideal and the real capabilities of the agency.

The difficulty of managing horses only on the NWHR was identified as an issue in the Proposed NTTR Plan (1.7.14, page 1-8). However, there is neither any specificity as to what those difficulties are, nor is there any discussion as to what steps were taken to comply with past direction that were unsuccessful, justifying a significant change. The Division maintains that the Bureau's management plan for wild horses on the NTTR is deficient if it does not address past problems and identify how new plans will correct or avoid those obstacles. Persistent drought

and limited access are concerns that the Bureau must consider in wild horse management. Without the reasonable planning for these and other variables, the Bureau will continue to fail to manage wild horses commensurate with the Act, specifically in a "thriving natural ecological balance" with the habitats and native species occurring in the area.

The management prescription identified for wild horses and burros on the NTTR represents a considerable deviation from past direction in this area and any other known plan instituted by the Bureau. The Las Vegas District proposes to expand the use area on the NTTR by prescription, as the remainder of Nevada BLM districts struggle to limit horse distribution and numbers. While the Division would welcome innovation in wild horse management, our review of the proposal finds that this new direction is impractical, potentially more expensive to pursue and fails to comply with the Free-Roaming Wild Horse and Burro Act of 1971 (Act), as amended [16 USCS 1331-1340], as well as subsequent IBLA decisions. It exceeds the demonstrated horse management capability of the Bureau, and therefore has the potential to impact native wildlife species and their habitats over a much larger area. The management prescription is also fatally predicated upon unsupported theories on the historic distribution of horses. In fact, analysis of the existing data leads one to a completely opposite conclusion on distribution.

Although the Bureau was found in error for its failure to collect data to manage wild horses on the Nellis Range (109 IBLA 114, 1989)³, the situation has not been corrected. Through this new plan, the Bureau proposes to administratively set a third AML since the IBLA ruling without proper vegetation monitoring. Management of wild horses and burros must be predicated upon sound science, which must be based upon resource monitoring as studies of "grazing utilization, trend in range condition, actual use and climactic factors" (131 IBLA 175, 178 (1994)⁴). The climactic factors are also identified as "other factors" in 134 IBLA 26 (1995)⁵ and additional rulings. With full knowledge and experience relating to the area's extreme weather variability and its demonstrated inability to respond promptly to emergency situations, the Bureau promotes a flawed management plan for wild horses on the NTTR.

The Division also finds that the proposed management in the Plan does not comply with the direction under the Act that "All management activities shall be at a minimal feasible level....." Drilling wells and establishing an expanded HA/HMA exceed that level. The Division has discovered that this direction under the Act has been diluted in the Code of Federal Regulations (CFR) 43⁶, 4710.4. The Division requests that there be an examination of this expansive interpretation within CFR that does not comport with either the original Act or the Act as it has been amended (1982).

Just as significant as the Bureau's poor past performance and lack of objectivity in this issue is the unwillingness of the Bureau to deal with the concerns of the Division. The partnership role of state wildlife agencies in the wild horse and burro management process is prominently stated in the Act. Yet the Bureau has maintained that input and consideration of conflicts identified by the Division extend only as far as National Environmental Policy Act accommodation. The fact that there is no procedure for conflict resolution, other than legal contest is reprehensible.

MANAGEMENT HISTORY

An overall understanding of the wild horse and burro planning and management on the NTTR is pertinent to this protest. The NTTR presents special challenges for resource management. Military security heavily influences access for resource managers. However, the Bureau has a long-term record of inappropriately managing horses on the area to high numbers and without following required practices. As such it has imperiled the horses and encourages damage to the habitat shared by wildlife. The Bureau's own documents demonstrate an historic inability to adapt its management of wild horses on the NTTR to long-term situations and to comply with any agreement or its own prescriptions.

1962-1972

In 1962, a level of 200 animals was set for the Nevada Wild Horse Range (NWHR) in a Memorandum of Understanding (MOU)⁷ with Nellis Air Force Base. A second agreement⁸ in 1965, reduced the size of the Nevada Wild Horse Range to its present size (394,500 acres). By September of 1972 a BLM livestock survey recorded the number of horses as 30% above the 200 animal management goal. Animals were also trespassing into areas outside the agreed upon management area.

1971-1984

With the creation of the 1971 Act, the Division gained the right to consult with the federal agencies on wild horse and burro management, to represent the interests of wildlife and to assure that wild horse and burro management activities "protect the natural ecological balance of all wildlife species".

The Act nullified population limits previously agreed to for the NTTR. In 1974, to adapt their agreement to the Act, the Bureau and U.S. Air Force developed a third MOU⁹. Horses were still to be managed within the limits of the Wild Horse Management Area (i.e. Nevada Wild Horse Range) and excess animals would be removed "to protect the soil, vegetation, watershed or other resource values in the area." However, horse numbers continued to balloon. By March of 1984, numbers had increased such that 4,890 horses and 118 burros were observed across the NTTR during a Bureau wild horse survey.

The Division gained standing, in addition to the Act, within Supplement No. 5 (1975)¹⁰ to the Memorandum Of Understanding between the Bureau and the Division (1970). The Division was also part of the Five Party Agreement¹¹ developed in 1977 to provide for the protection, development, and management of natural resources, including fish and wildlife, vegetation, watershed and wild horses on the Nellis Air Force Range and the Nevada Test Site.

1985-1991

In 1985, the Bureau developed the Nevada Wild Horse Range Herd Management Area Plan¹² that stated its intent "to manage wild horses on the Nellis Range Complex with the objective to "maintain the home range wholly within the NWHR." (page 10). A gather plan¹³ developed the same year, set an administrative AML of 2,000 horses for the NWHR. The plan identified the need to remove 3,500 to 4,000 wild horses and noted a then NTTR-wide distribution. The gather plan was appealed to the Interior Board of Land Appeals (IBLA).

109 IBLA 118 (1989)³ identifies that in 1981 and 1982, one-point-in-time vegetation inventor[ies] had been discredited. The Secretary of the Interior was faced with the dilemma of establishing Appropriate Management Levels without adequate monitoring data. These numbers required validation by consistent resource monitoring. The ruling found, "Accordingly, we conclude that section 3(b) of the Act does not authorize the removal of wild horses in order to achieve an AML which has been established for administrative reasons, rather than in terms of the optimum number which results in a "thriving natural ecological" balance and avoids a deterioration of the range." The Bureau had made minimal, and thus, insufficient effort to collect vegetation monitoring data. The removal decision on the NTTR was remanded.

Regarding NWHR and other areas, 109 IBLA 118 found that, "These AML's were originally established for administrative convenience, rather than based on a determination of the optimum number of wild horses which would maintain the range in a "thriving natural ecological balance" and avoid a deterioration of the range. Since that time, there is no evidence that BLM has engaged in any range assessments adequate to allow the Bureau to conclude that returning the numbers of wild horses to these AML would achieve that optimum number of wild horses."

The situation in 2003 is virtually unchanged since that ruling. No adequate monitoring has been accomplished to validate those numbers or subsequent administrative changes, including the analysis presented in this RMP.

1991-1995

A 1991 wild horse gather plan⁴⁷ administratively adjusted the AML to 1,000 horses on the Nevada Wild Horse Range. Previously unacceptable use pattern mapping, an unsubstantiated water-based assessment and animal health observations were used to set the new AML. There was still no accumulation of proper vegetation monitoring data. Despite the rebuke and direction from IBLA, proper vegetation monitoring effort was ignored. Although this plan failed to conform with regulations and IBLA direction specific to the area, it was not protested and horses were removed.

During this period, the *Nellis Air Force Range and Resource Plan and Record of Decision* (1992)¹⁷ was completed. It stated the intent "to maintain and manage populations of wild free-roaming horses only on the Nevada Wild Horse Range." The Animal Protection Institute protested the previous Draft Plan (1989)¹⁵ in a letter to the BLM Director, dated February 9, 1990⁴⁴, proposing a range-wide horse use area at the time of the Act. API supplied no supporting data or information, however, an area was added as recognition of use beyond the Nevada Wild Horse Range. That area appears on Map 5 in the Record of Decision. This 1992 plan is the one currently in effect, yet no attempt has been made to implement the prescription approved.

1995-2003

In 1996, the Bureau amended the HMAP¹⁸ and administratively adjusted the AML to a range of 600 to 1,000 horses, again without collecting or utilizing appropriate vegetation monitoring data. The primary basis for the AML was available water. The development of AML erred by allotting 100% of water flows to horses, allotting none for riparian habitat

maintenance or wildlife. A gather plan¹⁹ was also produced in 1996 to remove approximately 750 horses and leave 600 animals.

Soon after the development of this activity plan, the U.S. Air Force began protecting riparian areas in the Cactus Range. Fencing was used to exclude horse use. The Bureau produced an environmental assessment (EA. NV-052-98-009)²² which proposed to supply water outside the exclosures for wild horses. The Cactus Range lies outside the Nevada Wild Horse Range and 1971 use area designated by the 1992 land use plan. Additionally, the land use plan did not allow for promoting horse use outside the NWHR. The Division protested²³ the proposal.

One basis for protest was 43 CFR Ch II 1610.5.5-3 (a), which states: "All future resource management authorizations and actions, as well as budget and other action proposals to higher levels in the Bureau of Land Management and the Department, and subsequent and more detailed or specific planning, shall conform to the approved plan." By promoting horse use outside the existing HA, the activity was counter to the land use plan. The action was appealed, but not resolved, however the action is on hold.

Further bolstering the Division's disappointment with wild horse management on the NTTR, a 2001 range survey counted approximately 1,190 horses on the range, or 20% above the current AML. Although the 1996 Removal Plan and this Final Plan set a three to four year cycle for removals to maintain AML, the Bureau has identified plans to remove excess horses on the NTTR in 2003, a six-year gap. Based upon reasonable recruitment assumptions, population numbers could exceed 1,900 animals by that time.

Overall History

Over the course of the past 40 years, the Bureau has struggled with wild horse management on the NTTR. The Division points out that control of wild horse numbers on the area has so far occurred only in response to emergency conditions, where the Bureau has determined that animal health has been imperiled.

The mission of the Air Force has allowed only limited access to perform needed management activities at times. In this document the Air Force notes in its comments that access restrictions will not change (Page E-10, Comment 12). The Bureau responds, "The BLM does not believe at this time that access to the range is a problem. BLM planners will change the document to reflect better access conditions. Even with limited access, which can make managing horses more difficult, it does not create an inability to manage. The BLM is pleased with how the military is working with us to provide access as a problem. There are times nobody can access the range and we accept that reality." The Division does not believe that altering the Plan's description of past reality, will result in a genuine resolution of past management problems. Apparently, neither does the U.S. Air Force.

This record is clear evidence of systemic failure. There has been no known effort to limit the distribution of horses to the NWHR, identified as a management goal since 1962. Little has been accomplished since 1989 to correct problems identified in the IBLA decision. Requirements for vegetation monitoring data identified in the Bureau's own standards continue

to be ignored. Adequate vegetation monitoring on the range remains minimal to non-existent. AUM calculations in this plan are not based on vegetation monitoring and measurements of actual use, but are inappropriately based on limited water availability information as discussed later.

This continuing history demonstrates an inability to manage according to agreements and plans. The Division asserts that the long-term record of horse management on the NTTR warrants a more conservative approach than that which the Bureau has presented. By over-reaching through ambitious planning, the Bureau continues to position itself to fail.

HA - HMA

Both the cornerstone and the weakness of the plan's wild horse management is a flawed portrayal of extent of horse use as of December 15, 1971. The Bureau has maintained that this issue involves a simple difference of opinion between our agencies. The Interior Board of Land Appeals has ruled in 118 IBLA 63,76(1991)²⁴ that "The Department is entitled to rely on the reasoned analysis of its experts in matters within the realm of their expertise. In cases involving an expert's interpretation of data, it is not enough that the party objecting to the interpretation of data demonstrates that another course of action or interpretation is available or that the party's proposed course of action is also supported by the evidence. The appellant must demonstrate by a preponderance of the evidence that the BLM expert erred when collecting the underlying data, when interpreting that data, or in reaching the conclusion." In the case of identifying a herd use area, the Division asserts that the Bureau's interpretation of both new and previously presented information is contradictory and highly speculative, but clearly in error.

The Division submits that the Proposed Plan does not present new, substantiated information to alter the previous understanding of wild horse distribution on the NTTR. The only "new" data brought forth in the development of the Plan was used, in part, to create Map 3-11 contradicts the Proposed Plan's horse management direction. In fact, survey data available and partially used in the development of map 3-11 strongly supports the area delineated in map 5 of the 1992 Approved Nellis Air Force Range Resource Plan and Record of Decision.

The Bureau's Proposed Plan even contradicts itself on the issue of herd area expansion. On page E-10, the U.S. Air Force's Comment 13 questions the Bureau's fiscal ability to manage an expanded HMA. The Bureau response states (emphasis added): "The comment does not accurately reflect the intent of the plan. **The area where horses will be managed is not being expanded.** While personnel and budgets are not addressed in RMPs, the proposal does not create an additional need for funding and personnel." Then in response to Comment 1 by the Division, the Bureau states (emphasis added): "Furthermore, the management direction of the Draft NTTR Plan does not 'abandon a consistent management direction,' but rather **justifiably expands the herd area** while still having the primary goal of 'adjusting wild horse numbers to achieve a thriving natural ecological balance using data obtained from monitoring and evaluation' as stated in the Keystone Dialogue." The Keystone Dialogue is a community level forum consisting of 65 diverse, interested and knowledgeable people to provide the Nellis Air Force Range and other land managers with input on resource management issues. Either the Bureau refuses to recognize that the previous land use plan designated a significantly smaller

HA/HMA, or it is an admission that the Bureau has been intentionally funding management of horses in areas outside the HA and HMA defined in the 1992 Plan. As such, by expansion of the boundaries of the HA/HMA beyond those identified in the 1992 Plan, the Bureau would be validating past and improper management without substantiated justification.

From the beginning of the Division's involvement in the development of the NTTR Plan, the Bureau has stated that the 1992 Record of Decision (ROD) mandated a new delineation of "the 1971 use area" for wild horses. The Draft Plan stated (emphasis added), "The Las Vegas Field Office *does not believe* that an appropriate herd area was previously established." (Draft Plan, page 4-1, Section 4.1.1.2, paragraph 1).

The Proposed Plan states (emphases added), "A provision of the WHBA, 43 CFR 47[7]00.0-5(d) and subsequent to implementation BLM planners interpreted the intent of 43 CFR Part 4710.3-1 to be that of defining the Herd Management Area for all horse herds that existed in 1971. The WHBA defines a herd area as the geographic area used by a herd as its habitat in 1971. *This has never been accomplished on the NTTR* (Keystone Center, 1998; BLM, 1992)." (page 3-46, Section 3.3.11.2, paragraph 1). Stating that a designation was never made is different than stating that the designation was done improperly or inadequately (page E-34, response to Comment 3).

The Division strongly disagrees with the Draft Plan and Proposed Plan statements. The Record of Decision (ROD) for the 1992 Plan¹⁷ clearly identified that the BLM National Director instructed the Nevada State BLM Director to "include a map delineating the 1971 Wild Horse Use Areas" in the 1992 Plan to resolve two protests of the proposed resource plan by wild horse advocacy groups. (*Approved Nellis Air Force Range Resource Plan and Record of Decision (ROD)*, pg. 20, Section E). Map 5 on page 8 of the ROD was included to identify additional lands beyond the Nevada Wild Horse Range where horses were known to exist in 1971. Since finalization of the 1992 Plan, the Division, USAF and previous Bureau management have all understood that the entire NWHR and the 1971 horse use area as delineated in Map 5 to be the Herd Area.

The Division acknowledges the Bureau's right to present and act upon pertinent information. However, the Bureau does not substantiate its new assertions. The Bureau is simply arguing against its own past management. The Division must point out that both 1992 and 2001 Plans were generated out of the same Bureau district office. It is spurious for the Bureau to argue within the Draft and Proposed NTTR documents that its own previous designation was illegal and improper. The opinion of wild horse specialists or mid-level administrators does not substitute for the reasoned opinion of the Department of the Interior's solicitors. The Bureau has not presented a valid, legal opinion that finds wild horse management in the 1992 Plan as illegal or improper to alter the line of management set forth in the 1992 Plan. The position of the Bureau that a new Herd Area definition was required, is clearly in error.

The document attempts to support the expanded Herd Area/Herd Management Area by various means. The purpose of Figure 3-12 in the Proposed Plan is questionable. Although there were no fences to influence horse movement across NTTR boundaries in 1971, this map shows substantial mis-alignment of this purported NTTR Herd Area with adjacent 1971 Herd Areas.

Horse use is purported on one side of an imaginary line, but not on the other side. The disconformities appear to be offset by as much as 20 miles. The Draft Plan² conceded that the data source for this presentation is unknown (page 3-49, Section 3.6.8.2, paragraph 3). Now the Proposed Plan claims, "His sources for the data were extracted from historical records." (Section 3.3.11.2, page 3-46, paragraph 4). Yet, the Bureau neither identifies nor presents that historical information. This horse use depiction is suspect, but might appear to support horse use of the eastern Cactus Range waters. However, if valid, it would also fail to support either a North Range-wide distribution or any north-south seasonal movement, critical to the Plan's new management delineations.

To further a NTTR-wide use theory, this document misreports the 1985 Herd Management Area Plan (HMAP), the 1992 Plan (and draft), Division antelope and sheep surveys, and even cattle numbers on the range.

1985 HMAP Misuse

In the Proposed NTTR Plan, the 1985 Herd Management Area Plan¹² is quoted as proposing "managing the horses where they were found in 1971,....." (Page 3-46, Section 3.3.11.2, paragraph 2). The 1985 HMAP does not contain such wording or the implication. Nor does the HMAP attempt to estimate a 1971 home territory, or Herd Area.

Map 3 of the HMAP (page 22) does, however, show horse home range and use areas. Although no time period for that horse use is included upon the map, it is identified in Appendix I as "Home Range and Herd Use Areas." The only reference to this map in the HMAP text is relative to the presentation of 1985 horse distribution. The map does not present the 1971 distribution. Also contradicting the Proposed Plan assertion of managing horses where they were found in 1971, the 1985 HMAP does list under Management Objectives: "Manage wild horses on the NRC (*Nellis Range Complex*) with the objective to maintain the home range wholly within the NWHR." (page 13, Section #6).

1992 ROD Misuse

The Proposed Plan also expounds that a range-wide 1971 horse distribution was identified, but was ignored in the 1992 ROD¹⁷. The statement on page 3-46 reads, "Also, the 1992 approved management plan identifies the 1971 herd area as an area that is largely non-coincident with the NWHR (i.e. the herd management area: see Map 5 on Page 8 of the 1992 document). The draft 1992 NAFRRP which was sent out for public review and comment, contained a map of the 1971 herd use area that encompassed most of the NTTR North Range." (*emphasis added*).

The Division's review of the 1989 *Draft Nellis Air Force Range Resource Plan and Environmental Impact Statement*¹⁵, the 1992 Plan and the ROD¹⁷ did not reveal a 1971 range-wide horse distribution map. The 1989 Draft Plan does include a map showing range-wide horse distribution (Map 8, page 1-14) that is plainly identified in the text as the distribution of horses in the early 1980's (1989 Draft Plan, page 3-7, Wild Horses, paragraph 4). An identical map is used in the 1990 Proposed Plan¹⁶. Nowhere in those documents is it even remotely suggested that these maps represent a 1971 distribution.

On page 3-7 (Wild Horses, paragraph 2), the 1989 Draft states, "The only Herd Management Area identified in response to the Wild Free-Roaming Horse and Burro Act of 1971 was the area encompassed by the Nevada Wild Horse Range, although horses were seen on an occasional basis throughout the northwest portion of the planning area. A census conducted on the ground in 1973 identified 800 horses on the Nevada Wild Horse Range. Since that date, wild horse herds have expanded their numbers and currently roam over most of the north portion of the Nellis Air Force Range." While, even occasional use could qualify an area as a Herd Area, the Bureau had simply modified the information provided in the 1985 HMAP, but provides no substantiated information in the 1989 Draft Plan which supports claims of occasional horse use "throughout the northwest portion of the planning area."

The first published BLM account of a need to recognize an expanded wild horse Herd Area is in the *Nevada Wild Horse Range Habitat Evaluation and Drought Effects Mitigation Plan*, Eschelman and McFadden (1996)²⁰. This theory was advocated by the Bureau and adopted by the participants in the *Keystone Dialogue on Nellis Air Force Range Stewardship* (pages 65-66) (1998)²⁵ without critical examination. From all Bureau documents reviewed relating to the NTTR, the range-wide 1971 horse use concept in Bureau documents originated after the 1992 Plan.

The Bureau's confidence in the expanded Herd Area/Herd Management Area information waivers in the Proposed Plan. The Air Force criticism of the Herd Area/Herd Management Area expansion and failure to use horse and cattle survey data is responded to with, "The evidence presented should not be questioned in relationship to its validity, but rather its limited scope makes interpretation and integration into the best possible Draft NTTR Plan a difficult task. This in essence highlights the need to conduct more extensive and intensive studies to determine as accurately as possible where wild horses occurred in 1971, where they occur today and their impact(s) on the plant communities in the herd areas." (Response to Comment 14, page E-11). NDOW also provided comment on the Bureau's failure to use the available horse and cattle survey data but the Bureau did not respond.

If the Bureau acknowledges that the information it has based the Herd Area/Herd Management Area expansion upon is not definitive and needs further study, the Division must question why the Bureau continues to pursue this major alteration in management. Certainly the Bureau should not be allowed to enact the proposed action, and then search for substantiating information.

NDOW Surveys Misuse

The Proposed NTTR Plan contorts Division survey information to imply expanded horse use. An antelope survey of August 16, 1974, reported groups of 79 and 17 horses in the "Cactus Peak" area. This information has been reported in the Plan to "suggest" horse use of the Cactus Range. "Areas on Figure 3-11 that indicate an absence of horses, may indicate "no horses" simply because the areas were never visited. Data provided by the Nevada Division of Wildlife (see table on Figure 3-11) [Note: There is no table on Figure 3-11] support this possibility.....The elevation and physiographic identifiers (i.e. valley bottoms) suggest these bands were located on alluvial landforms below the mountains, but above the low point of Stonewall Flat." (page 3-48, Section 3.3.11.2, paragraph 4).

There is no suggestion on the survey data sheets²⁶ as to where specific horse groups were located during the antelope survey. These fixed-wing aircraft surveys did not identify specific positions, but covered vast areas utilizing prominent features and well known localities for reference points. Cactus Peak is simply the closest geographic reference feature for that segment of the survey. It is unlikely that flight time would have been spent surveying the Cactus Peak portion of the Cactus Range. The largely mountainous, poorly watered terrain at the north end of the range would have been impractical to survey for antelope during the hot, late-summer period. The implication that horses can be placed in the Cactus Range utilizing this data is wildly speculative.

The use of the lavational information from the same survey to imply that horses were observed on alluvial areas of Cactus Peak is an even broader interpretation of very little data. The elevations noted as "6000 ft. to Valley Bottoms" on the survey summary sheet applied to the entire survey area, a vast, general portion of Nye and Esmeralda Counties that supported antelope populations. Using the lavational information, the observed horses **could have been** anywhere from the 6,000 ft. elevation foothills below Cactus Peak to Mud Lake (5,248 ft. elev.). Most of the Cactus Range is above 6,000 ft.

Interestingly, the Division antelope survey data, reporting two groups totaling 96 horses, could be correlated to the point on Figure 3-11 of the Proposed Plan representing 51-100 horses observed by BLM personnel. However, that data point is approximately 14 miles north-northwest of Cactus Peak and several miles outside of the then unfenced NTTR.

Based upon the 1974 antelope data, the 1968 pronghorn distribution map²⁷ and survey maps produced for later flights (also supplied to the BLM and DRI) it can only be stated that 96 horses and no antelope were seen in the broad vicinity of Cactus Peak. The interpretation issue is not a simple difference of opinion. These data neither support nor contradict the range-wide distribution theory or the existence of wild horses in the Cactus Range in 1974.

During other Division work, sixty-seven horses were seen near Stonewall Mountain during antelope surveys two years later on 7/23/76²⁹. This "best information" as delineated on the survey map shows the flight was limited to the northern and western periphery of Stonewall Mountain. It infers horse use on only the western half of the Stonewall HMA shown in the 1992 or Proposed plans. The Bureau supplies no information to show horse use on or to the northeast from Stonewall Mountain around the time of the Act.

Bighorn sheep helicopter flights made on 1/12/75, 2/23/76, 7/27/76 and 9/29/76³⁰ reported 65, 38, 74 and 53 horses, respectively. These flights would have been restricted to Stonewall Mountain itself. This information about the Stonewall area neither supports a North Range-wide horse distribution, nor does it support as expansive a Stonewall HA as that shown in Figure 3-11.

Cattle Use Theory

The Proposed NTTR Plan attempts to explain the theoretical range-wide 1971 distribution by correlating the excessive horse numbers of the late 1980's and early 1990's with a

speculated, excessive number of cattle and horse numbers in the 1970's. The document states, "potentially 6,000 to 8,000 or more cattle may have grazed on portions of the northern planning area," in addition to several hundred horses (Section 3.3.11.2, paragraph 5).

By linking unsubstantiated, excessive cattle numbers and undocumented, damaged range conditions in 1971 this theory serves two purposes. It would absolve wild horses of full blame for range condition resulting from the NTTR-wide distribution of 8,000 to 10,000 wild horses documented in the late 1980's and early 1990's. More importantly, the Bureau can advance the speculation that the later horses-only numbers and distribution simply mirrored the total wild horse and cattle numbers in 1971. "The availability of forage and seasonal water at the south end of Gold Flat, the northern rim of Pahute Mesa, Tolicha Peak, and northward to Stonewall Mountain (personal communication, Gary McFadden, BLM wild horse specialist), combined with high grazing pressures in 1971, most likely would have resulted in wild horses using much of the northern planning area, from Kawich Valley to the western boundary." (page 3-48, Section 3.3.11.2, paragraph 5).

It is highly unlikely that a number of trespass cattle ever existed on the NTTR that would have forced wild horses to expand their home ranges across the entire area. First, the Bureau's information relates to grazing allotments on or adjacent to the NTTR. Some allotments encompassed large areas outside the NTTR. For example, the Montezuma Grazing Allotment extends over 80 miles from Tonopah to Beatty, both east and west of U.S. Highway 95. Cattle grazing near Beatty and other perimeter areas, included in allotment figures, would not have been associated with NTTR trespass cattle and horse use areas in 1971.

Second, the **estimated** total number of cattle that could have been on the NTTR on December 15, 1971, appears wildly hypothetical. These numbers are gleaned from the number of cattle that **could** have been permitted upon all grazing allotments on or adjacent to the NTTR. It may be possible, but it is highly improbable that all, or even most, of the cattle in any allotment were in trespass on the NTTR at one time. There is no attempt in the plan to determine the seasons of use for the allotments, or determine the annual level of use, both of which could have varied widely on an annual basis.

Third, Bureau survey data collected on eight maps dated from 1972 to 1974³¹ do not support the Proposed Plan's position. The highest number of cattle and horses observed was 3,020, barely half of the speculated number. Even the map for one of the higher livestock counts (March 21 and April 4, 1973 surveys), reporting 2,112 cattle and 515 horses, does not show horse use beyond the boundaries shown in the 1992 Plan.

Fourth, Figure 3-11 shows only **horse** group locations on the NTTR. BLM personnel collected the data on locations and numbers of **horse and cattle** groups during eight counts on the NTTR from 1972 to 1974. In the development of this plan, the Division suggested verbally and again in written comment³² to the Draft Plan² that both cattle and horse numbers and location data should be placed upon Map 3-11 to better delineate the survey area and clarify if horse and cattle use was as extensive as claimed. This suggestion/consultation was ignored. The Proposed Plan continues to state that the extent of the surveys was unknown or cannot be determined. The Division has examined horse and cattle locations for four of these counts (Maps

2/73, 11-12/73, 3-4/74 and 6/74)³¹. One map does exactly delineate the extent of the surveys.

These maps do not reflect a broader distribution of horses and, as such, the data strongly counters the expanded 1971 distribution theory and speculated use of the Cactus Range by wild horses. Group locations on the four maps even indicate a segregation of cattle and horse groups.

Finally, in this desperate struggle for support, the Bureau is actually arguing that it grossly mismanaged horses and cattle in 1971. Then it allowed horse numbers to reach those damaging, crisis levels again in the mid 1980's to early 1990's period. Neither time did the Bureau qualify or quantify the damage, real or purported to have resulted in a range-wide distribution.

The purported horse distribution from this mismanagement would be of questionable legality if the NTTR were being managed far beyond a "thriving natural ecological" balance on December 15, 1971, as this document theorizes. The Division points out that by presenting the cattle numbers speculation, the Bureau is arguing that it be rewarded for consistently poor livestock management of the NTTR.

BLM Survey Data

The wild horse distribution data most pertinent to 1971 distribution was reviewed in the development of the Proposed NTTR Plan and is included, in part, as Figure 3-11. This map displays a compilation of eight BLM livestock surveys (8/21/72, 11/12/72, 2/10/73, 5/6/73, 8/7/73, 11/10/73, 3/21/74, and 6/28/74) that show cattle and horses numbers and distribution on the NTTR dated from August 1972 to June 1974.

SURVEY DATE(S)	OBSERVED HORSES	OBSERVED CATTLE	TOTAL ANIMALS
8/21/72 & 8/26/72	259	622	881
11/12/72 & 11/18/72	275	1,700	1,975
2/10/73 & 2/25/73*	239	2,200	2,439
5/12/73	447	2,573	3,020
8/ 7/73	542	629	1,171
11/10/73 & 12/1/73*	422	919	1,341
3/21/74 & 4/4/74*	515	2,112	2,627
6/28/74 & 6/29/74*	174	392	566

*NDOW possesses map.

This information documenting horses observed on the NTTR correlates closely with the combination of the NWHR and the 1971 use area, produced as Map 5 in the 1992 ROD¹⁷. Figure 3-11 displays approximately 143 horse group locations within the NTTR. Eighty locations are within the NWHR and 54 locations are given for the 1971 use area. Only nine of the total NTTR locations occur outside the currently recognized HA. The Division finds the 95.1% correlation of this data with the HA established in the Bureau's 1992 Plan to be significant.

The Division has obtained copies of four of the maps showing surveys from February 10, 1973, to June 29, 1974 (see table above). The maps exhibit tables with data from four other surveys. These maps show use of the Cactus Range to be almost exclusively by cattle. They show no horse use in the Cactus Range, except for one group of eight horses three miles west of Cactus Peak on the edge of the mountainous terrain. An important situation noted on all four maps is the segregation of cattle and horses. Intermingling of these animals appears to have been uncommon.

Most importantly, the four maps provide relevant evidence of the extent of the surveys by showing all animal locations. The February 1973 map specifically delineates the extent of the surveys, which included all of the Cactus Range. These data clearly do not corroborate an NTTR-wide horse distribution close to December 15, 1971. Nor does the Map 3-11 data or any other data support contentions of extensive seasonal horse distribution circa 1971 theorized in the Proposed Plan (pages 3-48 to 50, Section 3.3.11.3).

The data show limited seasonal movement. In Kawich Valley, the movement even appears to have been summer south - winter north, opposite of current Plan speculation. The Gold Flat purported movements appear to have been fostered by Bureau range "improvements." On page 3-49 (Section 3.3.11.3, Cactus Flat Herd, Historical paragraph) the document reports, "To facilitate movement from Cactus Flat (summer range) to Gold Flat (winter range), the BLM constructed two pit reservoirs located between the springs and reservoirs toward the south end of Cactus Flat." Based upon the survey map data and the Bureau's water project work, the seasonal movements described in the plan are contemporary, learned use patterns and are not relevant to establishment of a herd area or herd management area predicated on horse use as of December 15, 1971. When combined with the data shown for all eight maps used to create Map 3-11, a reasonable person would conclude that the HA created in the 1992 ROD adequately encompasses the extent of horse use around the time of the Act. In fact, much of Cactus Flat and Gold Flat could be eliminated from the HA.

The information used to create Map 3-11 represents a "Pandora's box" which counters the Bureau's desired management option. The Proposed NTTR Plan attempts to dismiss the Map 3-11 data as incomplete. Paragraph 4 of Section 3.3.11.2 states "Areas on Figure 3-11 that indicate an absence of horses, may indicate 'no horses' simply because the areas were never surveyed." It is correct that the exact extent of most of the surveys is unknown. Areas of the NTTR may have gone unsurveyed, even though map 2/73 delineates the exact survey boundary. However, the facts remain that the data used to create Map 3-11: 1) indicate the Bureau's selective use of data makes their conclusions suspect; 2) represent the best hard data that the Bureau has for the period close to the December 15, 1971; 3) comprise a good cross-section of seasonal horse distribution; 4) by delineating cattle observations, demonstrate consistent survey coverage of horse-free areas in dispute; 5) fails to show southward cool-season or opportunistic movement of horses during the early 1970's; 6) expose a need to reduce the size of the HA shown in the 1992 Plan, eliminating lower Cactus Flat and Gold Flat from the HA; and finally 7) fail to support the contention of an NTTR-wide distribution and thus the expansive HA required to promote wild horse management as identified in the Proposed NTTR Plan.

The Bureau further attempts to minimize the information on the 1972 to 1974 maps by

asserting that, "The first aerial census of horses on the NTTR was taken in 1977 and counted 1,300 horses on the NWHR and adjacent withdrawn lands. Earlier horse censuses were all from the ground." (Page 3-46, Section 3.3.11.2, paragraph 2). In reference to the data used to create Figure 3-11, "The count (point) data are from ground surveys." (Page 3-46, Section 3.3.11.2, paragraph 4). The implication appears to be that ground counts are less accurate than aerial counts. However, three of the four BLM survey maps (11-12/73, 3-4/74 and 6/74) are printed with the notation: AERIAL CENSUS PERFORMED BY EPA-NERC, LAS VEGAS, NEVADA³¹.

The Division maintains that to justify the dramatic change of wild horse management, the Bureau should present and analyze new or persuasive information that soundly contradicts previous management direction. However, the Bureau does not offer any substantive information that would justify changing the boundaries of the current Herd Area (HA) to allow for expanded management of wild horses on the NTTR or establishment of the "Core Area."

CORE USE AREA

The core use area, as portrayed in this plan, relies heavily on the expansive herd area, which has also been designated as the HMA. This extensive area claim is contested by the Division to not be valid and legal. However, if the Bureau's herd area were adopted, the "core use area" concept would still fail to comport with regulatory and IBLA direction. The Division challenges this point to preclude its future use.

The Division contends that the Bureau incorrectly attempts to establish a new, unsanctioned management classification within the HA/HMA. By instituting a "Core Area," to concentrate resource monitoring efforts the Bureau inexplicably complicates wild horse management. If, as the Bureau presents, the Herd Area virtually covers the NTTR, then wild horses are sanctioned to utilize all of that area. 43 CFR 4710.4 states, "[m]anagement of wild horses and burros shall be undertaken with the objective of limiting the animal's distribution to herd areas." They are more strongly entitled to exist with an Herd Management Area, which the Bureau delineates for active management of horses. By layering the HMA designation over the HA, the Bureau reinforces the legal ability for horses to roam across the entire area and establish home territories. The proposed situation also causes problems for the Bureau in regard to removal parameters, as proposed, and monitoring.

The Plan proposes that "[w]ild horses will be removed when animals permanently reside on lands outside the AML core area (i.e. use is more than seasonal drift), or if the total horse population exceeds AML." (Page 2-11, Section 2.6.11, second Objective, Management Direction). Since most of the NTTR north range is proposed as the herd management area, the Division maintains that there are no provisions in federal law or any legal precedence to penalize horses for mere use of an area where they are entitled to exist. Whether inside or outside the "core area" the determinant for removal remains the animal and resource conditions relative to the thriving, natural ecological balance.

117 IBLA 208³³ further defines the guidelines for controlling horse numbers as: "A BLM decision to gather wild free-roaming horses from within and outside a wild horse herd management area will be affirmed on appeal when: (1) a conclusion that the dormant season

utilization levels have exceeded the utilization levels called for in an approved resource management plan is supported by field monitoring data; (2) the actual size of the wild horse herd exceeds an appropriate management level identified in approved land use plans; and (3) it is necessary to remove excess horses to restore and maintain a "thriving natural ecological balance" to the range and protect it from deterioration associated with overpopulation."

In the Proposed Plan the designated core area consists of 474,370 acres within an 1,330,540 acre HA/HMA. The Bureau has identified that only resources monitoring within of the core area are to be used to calculate the Appropriate Management Level for the entire Herd Management Area. The Bureau first errs in proposing to monitor horse use upon only a portion (35.6%) of the intended use area (HA/HMA). Clearly, the Act and supporting IBLA opinions [Craig C. Downer, 111 IBLA 332 (1989)³⁴; Animal Protection Institute, 117 IBLA 208 (1990)³³; Animal Protection Institute 118 IBLA 20 (1990)³⁵] establish that wild horses are entitled to utilize the resources within an entire HMA unless that use exceeds the thriving, natural ecological balance standard. The Bureau could not under color of law remove horses from any portion of an area designated as an HMA or HA where it cannot demonstrate objectively that 1) those horses or the total number of horses in the HMA are causing damage or 2) damage to the range by horses is imminent.

The evident need to monitor across the entire Herd Area/Herd Management Area is of great concern to the Division. The NTTR is a vast area with limited ground access for much of the supposed winter use areas. To actually prevent the establishment of trespass home ranges outside the AML core area would require extensive and more numerous animal surveys of the entire NTTR than is proposed in this plan. Vegetation monitoring would also have to be extensive and intense in anticipation of random seasonal horse use throughout the NTTR. This is unlikely, given that the Bureau has been unable to accomplish a far less taxing task on the Nevada Wild Horse Range during the past 30 years.

The Proposed NTTR Plan has recognized that water sources are the centers for horse activity and that horses range out widely from waters (page 3-48, paragraph 3). By gerrymandering the boundary of the experimental monitoring tract (Figure 2-1) to place waters of the Cactus Range on the edge of the "AML core area", the Plan will promote significant year-around horse use outside the area. The Division is concerned that this will result in horse expansion to Stonewall Mountain. Combined with recurrent drought, horse numbers appear to have been managed beyond a "thriving natural ecological" balance on Stonewall Mountain. In 1997, sheep surveys³⁶ found a sharp drop in sheep numbers and lamb production, supported by subsequent surveys. More telling were the more than 40 horse carcasses observed. The Division desires to avoid a recurrence of the situation.

The Division has understood that conflicts with the U.S. Air Force's mission have hindered the Bureau's ability to manage wild horses on the NTTR. The Division also encourages the Bureau to be innovative in its management. However, the Bureau's AML "Core Area" management proposal actually increases the opportunity for conflicts. Rather than manage horses on the 394,000 acre NWHR, as under past management direction, the Proposed Plan will allow for horse movement and use across 1,330,540 acres of the NTTR. The plan legitimizes horse use of many new areas with bombing ranges and sensitive sites where horse use is undesired and management activities are subject to restrictions that can inhibit monitoring. This

would inflate the level of conflict with the Air Force mission far beyond that to be expected with management under the 1992 Plan. The Division asserts that the Bureau proposes an obviously difficult management. Our concern is strongly supported by the U.S. Air Force in Comments 12 and 13 on page E-10.

The AML core area concept is weak and faulted. It has no regulatory or legal foundation, which will open actions under the plan to legal contest. Wild horse advocates and animal protection groups have demonstrated an almost predictable willingness to oppose wild horse removals on the western rangelands. The current acquiescence of some wild horse advocates toward this management scheme is not guaranteed to endure, nor would that acquiescence be a justification for natural resource management. The Division is unwilling to allow the Bureau to gamble resources upon the defective "core area" concept.

Wildlife Conflicts

Wild horses and burros, when present, are a dominant species in the ecological systems of the United States. Studies by Joel Berger, (University of Nevada, Reno)³⁷ and others [Sumner, (1959)³⁸, Weaver, R. A. (1959)³⁸, Weaver, R. A. (1972)³⁸, Dunn and Douglas, (1982)³⁸] have documented interspecific dominance and territorial aggression that can negatively impact wildlife use of the natural resources. With regard to interspecific social interactions, Berger reports in *Wild Horses of the Great Basin: Social competition and population size*, (1986)³⁷, "In fact, in virtually all cases, native species were subordinate to exotics (table 11.1), that is, horses supplanted deer 11 times, bighorns 2 times and pronghorn 6 times." (pages 254-255).

While forage requirements and habitat preferences may differ between horses and most ungulate wildlife species on the NTTR, water is the most heavily contended habitat component. The Division is not assured by another plan and another commitment to maintaining a "thriving natural ecological balance". AML computations for the NWHR horses in 1992⁴⁷ and 1995²⁰ allotted 100% of the water available for wild horses. While the Proposed Plan advances allotting 50% of available water for horses, the Division remains concerned that the Bureau's wild horse management bias still allows for proposing double the allotment of water for horses than that recommended by its hydrologist³⁹. The 50% proposal, based upon simple mathematical equations, does not present thoughtful regard for wildlife or site specific riparian maintenance needs.

The Bureau's *A Guide to Managing, Restoring, and Conserving Springs in the Western United States* (Technical Reference Manual 1737-17, 2001)⁴⁰ lends credence to concern about horse use. "Unlike domestic livestock, wild horses and burros are not usually subject to grazing systems that would afford some protection or rest for springs. As a result, their activities frequently reduce or eliminate riparian vegetation, pollute aquatic habitats and impact functioning condition." It also points out, "In addition, springs are areas of social interactions for wild horses and burros where the dominant males protect their bands of females. This territoriality tends to keep horses or burros using the same spring, increasing the negative impacts to these areas."

Recognizing horse use across the entire NTTR, also exposes one of the more fanciful benefits attributed to the selected alternative. The Plan attempts to rationalize, "[e]xcluding

water and forage from outside the proposed area for calculating AML, would reserve scarce water supplies for other wildlife in much of the planning area.” (Page 4-9, Section 4.4.10, paragraph 4). The Division contests this portrayal. The Plan attempts to expand the area where horses may legally exist. It also allows horses to move seasonally and compete with wildlife for forage and water over the expanded HA/HMA. It is our assessment that implementation of this proposed expansion of the HA/HMA would only result in increased impacts to native wildlife populations and habitat and not result in a “thriving natural ecological balance”.

The Bureau also employs faulty logic when the Air Force asks (Page E-28, Comment 111), “How can expanding the potential area of impact improve wildlife populations?” To which the Bureau responds “For alternative B and C, the AML will be based on a “thriving natural ecological balance”, which will provide for wildlife needs. Alternative B provides the largest area and most flexibility in terms of other management options.” The Division questions the reasoning of this statement. All alternatives would have to manage wild horses based upon a “thriving natural ecological balance”. Again, Alternative A proposes management for an extensive area, increasing the chance for conflicts with wildlife. The Bureau has not discussed in the Draft Plan or Proposed Plan what “flexibility” is offered by managing a larger area.

APPROPRIATE MANAGEMENT LEVEL

Horse population management levels have consistently been set administratively for the NTTR (1962⁷, 1974⁹, 1985¹², 1991⁴⁷, 1996¹⁸, Proposed Plan¹). These levels are appropriate only as a starting point. Proper monitoring of vegetation, water, climatic factors and other considerations is required to either validate that level or support adjustments to the horse population to meet a “thriving natural ecological balance”. The Division questions the appropriateness of establishing another administrative appropriate management level (AML), or starting point. The Division also contests the AML established in the Proposed Plan. The calculations are based upon faulty logic and insufficient information.

The most recently adopted appropriate management level determination in 1996¹⁸ was made considering only estimates of available water. In the Summary, preceding page S-1, the Proposed Plan states, “Based on current range conditions, water is the limiting factor for supporting herd numbers.” Nowhere in this document does the Bureau present long-term vegetation monitoring data that would substantiate the unwritten claim that forage is adequate to support the proposed AML. This is improper.

With the Bureau’s consistent failure to conduct more than sporadic and minimal vegetation utilization studies, the U.S. Air Force contracted with Science Applications International Corporation (SAIC) to delineate range associations, determine vegetative condition and recommend an AML for wild horses on the Nevada Wild Horse Range. SAIC utilized the *National Range Handbook* (Natural Resources Conservation Service [NRCS], 1985) and the *Nevada Rangeland Monitoring Handbook* (NRCS, 1984) to develop procedures that were reviewed and accepted by personnel of the Las Vegas and Ely Field Offices. The *Range Condition Survey and Appropriate Management Level of Wild Horses on the Nevada Wild Horse Range, Nye County, Nevada*, (1999)⁴¹ determined that, “Based on 1999 perennial grass production data, estimates of grass production in poor years, and location of water, the AML for the NWHR is 227 horses.”

The 1996 administrative, water-based AML¹⁸ was set at 600-1,000 based upon allocating 100% of the low flow of all waters in the HMA to horse use. In 1997, the Bureau tasked Jack Norman, Las Vegas District hydrologist, to collect data on the waters of the Nevada Wild Horse Range and reassess the AML situation. (pers. comm. 2000). This data was to be utilized in conjunction with the NTTR Wetland Survey Report (Dames and Moore [1996]), to refine the water-based AML for the NWHR. Thirteen of the 30 water sources identified were dry. Norman also found consistently lower flow rates than those utilized for the 1995 AML calculation.

In a memo³⁹, Norman recommended allotting only 25% of low flow for horses, “[I]n order to maintain good ecosystem health and maintain proper functioning condition at these spring riparian habitats.” The memo continues, “The remaining 75% will be reserved for wildlife, including birds, insects, amphibians, and for riparian habitat maintenance including evapotranspiration.” Daily water consumption was estimated to be 15 gallons per day for each horse. This water-based AML for the NWHR was determined to be 222 horses. It should be noted that both the 227 horse (SAIC) and 222 horse AML were calculated on the area identified for wild horse management in the land use plan (1992) that was legally in effect. Both recommendations were ignored and wild horse management continued for a range of 600 to 1,000 animals. Neither of these AML estimations was discussed or referenced in the Proposed Plan. Nor was this disparity addressed when mentioned in the Division’s comment letter to the Draft NTTR Plan.

While the Proposed Plan reduces the percentage of natural water flows allocated to wild horses, it still proposes allotting 50% of that water for horses. The Division remains concerned that the Bureau’s wild horse management bias still allows for proposing double the allotment of water for horses than that recommended by its hydrologist. The 50% allocation, based upon simple mathematical equations, does not present thoughtful regard for wildlife or site specific riparian maintenance needs, and thus does not support a “thriving natural ecological balance” between wild horses and native wildlife and their habitats.

The Division maintains that NTTR Plan process has been reverse-engineered to validate management for a predetermined number of horses. During the development of the document, the Bureau continually inserted and pushed for the 600 to 1,000 horse appropriate management level set administratively in the 1995 removal plan. At no point has the Bureau validated that number of animals with monitoring data. Although the Bureau’s AML numbers were supposed to have been removed from the Draft Plan², the 600 to 1,000 horse limits can be found in that document on page 4-13 (Section 4.6.8, paragraph 1):

To match the lack of vegetative monitoring data, the Proposed Plan’s use of water information is suspect. For example:

- The Plan acknowledges that it does not know the extent of water discharge that might be available outside of riparian protection fences (under Springs on page 3-12). The AML calculations are allotting water for horse use that is unavailable to horses. This is borne out when, on page 4-9 (Section 4.4.10, paragraph 3), the Plan states that only “[f]ourteen of the twenty perennial water sources would be available to the horses.” It is incongruous that the AML calculation to determine the appropriate number of horses would utilize resources acknowledged to be unavailable to those animals.

- In Appendix F, one of the twenty **perennial** water sources in the Core Area, Silver Bow #1, shows no flow, this would classify it as **ephemeral**. It also lists moderate horse use at 0 flow.
- The Core Area configuration is shown in Figure 2-1. Sleeping Column Spring lies outside the Core Area, but it is used in Appendix F to calculate the water-based AML.

The calculation also fails to identify the actual flows required at each water source to attain a proper functioning condition, an objective under Riparian Resource Management (Section 2.6.4). The flows above these maintenance levels would then be available to allocate for wild horses and wildlife use. Instead, the Plan simplistically allocates 50% of the flows of 20 water sources within the "Core Area" to horse use.

Water location information on maps 3-11 and 3-12 are inaccurate and misleading. Reservoirs, pit tanks dug into playas, and pipeline troughs are portrayed as springs. These portrayals imply a broader natural distribution of waters than actually exists. At least six sites annotated as springs in the legends should be portrayed as reservoirs.

The Bureau has yet to establish appropriate vegetation monitoring and documentation as required by federal law [Free-Roaming Wild Horse and Burro Act of 1971 (Act), as amended [16 USCS 1331-1340] and direction of IBLA [Craig C. Downer, 111 IBLA 332 (1989)³⁴; Animal Protection Institute, 111 IBLA 109³³; IBLA 112 (1989)³⁵]. The proposed administrative AML is not fully resource based, even though the figure is fitted to a water availability calculation, as such it is invalid.

Removals

The premise for a four year removal cycle to maintain the AML is faulty. If the minimum level is 300 horses, the top level is 500 and removals are accomplished every four years, the Bureau anticipates a population growth rate of only 14%. The Proposed Plan does not state an estimated reproductive rate or population growth rate. However, given the 526 horses that the Bureau maintains were on the range in July of 1997 (page 3-48), noting 150 horses were "removed" in 2000 (Table 3-8) and that Bureau wild horse specialist, Gary McFadden has reported 1194 horses counted on the range in June or July of 2001, the demonstrated population growth rate (assuming consistent rate of increase) would be 27.39% annually (shown in the tables below). Assuming this rate over four years, a population of 300 horses should result in population of 790 animals. The increased number of animals would require the capture budget to be increased by at least 145% to allow for capture and removal of the additional 290 animals. To actually hold animals within the proposed initial parameters, the Bureau would have to remove horses every 2 years or adjust the lower limit to 190 horses.

Year	Removals	Total (27.39% Growth)
1997		526*
1998		670

Year	Total (27.39% Growth)
Base	190
1	242

1999		854
2000	150*	937
2001		1194*
2002		1521
2003		1937

2	308
3	393
4	500

*BLM reported numbers.

EXCESSIVE SUPPOSITION

Most disappointing, regarding wild horse management issues in the Proposed NTTR Plan, are the unsupported speculations promulgated as fact in this federal land use plan. Some of these are (emphasis is added):

- 1) "The BLM and Nevada Wild Horse Commission have *a variety of qualitative and quantitative data* about wild horse numbers, and/or locations from throughout the 1970's and early 1980's that can be used to identify the approximate area wild horses used in 1971." (page 3-46, Section 3.3.11.2, paragraph 4).
- 2) "Areas on Figure 3-11 that indicate an absence of horses, *may indicate* "no horses" simply because the areas were never visited." (page 3-46, Section 3.3.11.2, paragraph 4).
- 3) "The elevation and physiographic identifiers (i.e. valley bottoms) *suggest* these bands were located on alluvial land forms below the mountains, but above the low point of Stonewall Flat."
- 4) "Information on file with the Nevada State Horse Commission *suggests* that wild horses *probably* used much of the northern planning area in 1971." (page 3-48, Section 3.3.11.2, paragraph 1).
- 5) "Until the late 1970's, *potentially* 6,000 to 8,000 or more cattle *may have grazed* on northern planning area." (page 3-48, Section 3.3.11.2, paragraph 1).
- 6) "The large number of cattle and horses in 1971, *is likely to have resulted in* one or both species having to range across most of the northern planning area to meet their forage demands, since both species primarily consume grasses." (page 3-48, Section 3.3.11.2, paragraph 5).
- 7) "The availability of forage and seasonal water at the south end of Gold Flat, the northern rim of Pahute Mesa, Tolicha Peak, and northward to Stonewall Mountain (personal communication, Gary McFadden, BLM wild horse specialist), combined with high grazing pressures in 1971, *most likely would have resulted in* wild horses using much of the northern planning area, from Kawich Valley to the western boundary." (page 3-48, Section 3.3.11.2, paragraph 5).
- 8) "The BLM Las Vegas Field Office wild horse and burro specialist *believes* that three largely independent herds exist on the NTTR." (page 3-48, Section 3.3.11.3, paragraph 1).

Assertions of 1971 horse use areas, seasonal movements and attacks upon the practicality of continuing current management direction for horses on the NTTR are based upon the above statements, unsubstantiated in the Proposed Plan. During development of the Plan (at least twice in written comments), the Division asked to view the "data" and "information" upon which these

statements are based. Information proffered by the Nevada Wild Horse Commission at meetings in 2000, consisted of undated newspaper articles, memos and letters that were non-specific as to horse locations or distribution, and fail to bolster the NTTR-wide horse distribution conjecture. The Plan contractor, Desert Research Institute, produced a three page summary of selected text from various documents, entitled *DOCUMENTS ABOUT WILD HORSES AND LIVESTOCK ON THE NTTR*⁴². Citations from the ten memos and reports are truncated, inconclusive and contextual relevance is omitted. No other information or pertinent data has been supplied or referenced in this document such that it could be critically reviewed and evaluated. Certainly none of the information presented counters the data from the eight BLM survey maps.

WATER WELL DRILLING

The Division strongly opposes the drilling of wells to supply water for horses (Page 2-11, 2.6.11, 1st Objective, 4th Management Direction). This proposed action is as inappropriate as feeding "wild" horses upon degraded ranges. The natural amount of water available should be weighed along with the natural amount of forage available in determining the thriving, natural ecological balance. Calculating the need for water wells concedes that the Bureau is attempting to establish its experimental core area where there are not adequate perennial water supplies to either support wild horses in general, or to supply a predetermined number of horses. This is despite calculations that sufficient "low-flow" water exists at low flow to support 734 horses, or 47% above the proposed AML (Page F-2, Appendix F).

The Bureau has twice before utilized water as the sole basis for determining the AML for wild horses of the NTTR (1992 Removal Plan⁴⁷, 1996 Plans^{18,20}), albeit improperly. Clearly, the Bureau recognizes the importance of water as a variable, but finite component of habitat. As such, water is subject to consideration under 43 CFR 4700.0-6(a), which states that wild horses and burros "shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat."

Drilling to increase the amount of water available for wild horses and manipulate their distribution is decisively contrary to the thriving, natural ecological balance described within the Act and obviously goes beyond "the productive capacity of their habitat." The reticence of the Bureau to manage to these standards is well documented.

The Bureau constantly struggles with the term "natural." In the *Nellis Wild Horse Range Herd Management Area (HMA) Emergency Removal Plan* (4700 NV-050, 1996)¹⁹ the Bureau states, "[t]he southern portion of the NWHR is traditional winter range, however no moisture was received in the winter's of 1995 or 1996 which concentrated utilization on the northern half of the range. Water facilities will be developed on the southern half of the range to duplicate natural seasonal migrations." The Division points out that the lack of rainfall is **natural**. Rather than reduce the number of horses to match the natural "productive capacity" of the habitat, the Bureau reacts by providing water to exceed that capacity. This is a seminal theme of Bureau management on the area.

Water has been hauled for horses on the NTTR regularly as an "emergency" measure. In fact, the *Nevada Wild Horse Range Habitat Evaluation and Drought Effects Mitigation Plan* (1996)²⁰ advocates under RECOMMENDED ACTIONS, on page 10, "1. Begin hauling water immediately to: a. The Southwest corner of E.C. West. Water should be sufficient to water 600 head (6,000 gallons/day during warm temperatures.)..... b. The Southeast corner of E.C. East.

Water should be sufficient to water 400 head (4,000 gallons/day during warm temperatures.)....”

In the comment letter to the Drought Plan dated December 11, 1996, the Division states, “The Nevada Division of Wildlife has routinely requested a definition of “thriving natural ecological balance” and has never received one. Hauling 10,000 gallons per day and developing wells for wild horses does not meet any definition of “thriving natural ecological balance”. Meetings of the Five Party have agreed in principle to make any additional water developments on the Nellis Bombing Range unavailable to horses in an effort to keep numbers from expanding rapidly.” Additional concerns were expressed about the lack of consultation and the resolution of conflicts.

Drilling wells additionally exceeds the direction in Section 3(a) of the Act, says in part, “All management activities shall be at the **minimal feasible level** (emphasis added) and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species.”

During the plan development process, the Bureau identified a desire to drill wells, specifically in the Cactus Flat area outside of the Nevada Wild Horse Range. However, it proposes no such remedy for the south Kawich Valley, which is within the NWHR. To the contrary, the Draft Plan states, “This alternative (B) would attempt to minimize the number of horses in Kawich Valley, thus, the number of horses with inadequate water supplies during periodic, severe droughts that dry up water supplies.” (2001 Draft NTTR Plan, page 4-14, section 4.6.8.2, fourth paragraph).

The Draft Plan goes on to state that limiting the use of southern Kawich Valley “would minimize conflicts between Air Force operations and BLM management requirements.” (2001 Draft NTTR Plan, page 4-14, section 4.6.8.2, fourth paragraph). This is reflected in the Proposed Plan on Page 4-9 (Section 4.4.10, paragraph 4). The Plan’s characterization of the desired wild horse management as conflict minimization of use of Air Force target areas falters, when noting that the Plan identifies a desire to legitimize and promote at least seasonal horse use in the southwest and west portions of the NTTR where numerous live ammunition target areas exist.

The Division also asserts that the well drilling proposal needs to be examined in light of the Bureau’s limited budget. The addition of wells will further complicate wild horse management with increased expense, maintenance demands and access needs. To improve its wild horse management on the NTTR, the Division recommends that the Bureau simplify its obligations, not complicate them.

The Division assesses the situation not as inadequate water supplies, but as excess horses. The Division maintains that the Plan’s identification of the need to drill wells identifies an improper intent to manage horses to numbers exceeding the natural capacity of the area’s resources. The Act in no way allows for active horse ranching management by the federal government. The Division finds the Plan’s intent to drill water wells beyond the scope of its authority for wild horse management and prudent resource administration.

FUNDING

Budgetary and staffing limitations have hampered the Bureau in attempts to manage wild

horses on the NTTR, as much as the conflicts with the Air Force mission. A foremost example would be the calculation in this plan for scheduled wild horse removals on a four year cycle. Bureau managers have acknowledged in interagency meetings that insufficient demand in the wild horse adoption program has resulted in overloaded horse and burro holding facilities. The Bureau further reports it is unable to make the necessary removals to reduce many herds to even the upper limits of established AML. It has been six years since the last removal plan for the NTTR attempted to establish a four year removal cycle. Horse numbers were identified over AML two years ago. Water has been hauled to support these numbers and will likely continue through the summer of 2003. The NTTR 2003 summer removal has been pushed back on the schedule to at least the fall and a new fiscal year.

The Division finds the Proposed NTTR Plan remiss in its authorization of a wild horse management plan or objectives that do not consider budget and staffing constraint considerations. All the plans and good intentions mean little if the Bureau is unable to adequately fund wild horse management upon the NTTR.

CFR

Examination of the water wells issue has uncovered two conflicts between the Free-Roaming Wild Horse and Burro Act, as amended [16 USCS 1331-1340], and the Bureau's interpretation of that Act and IBLA direction included within the Code of Federal Regulations (CFR)⁶. In the first, CFR 43, Section 4710.3-1 states, "Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, and the relationships with other uses of the public and adjacent private lands, and the constraints contained in 4710.4. The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas."

The problem is with Section 4710.4, which expounds, "Management of wild horses and burros shall be undertaken with the objective of limiting the animals distribution to the herd areas. **Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.**" (Emphasis added).

Section 3(a) of the Act states more succinctly, "All management activities shall be at the minimum feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species."

CFR 4710.4 inappropriately broadens wording of the Act. It does not define or provide a discernable standard to assist managers. The section also truncates the wording of the Act to eliminate the State wildlife agency consultation obligation.

The second improperly altered section, 43 CFR 4700.0-6 (d) reads, "**In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for the management of wild horses and burros on the public lands.**" (Emphasis added)

The Act is clear in the roles of the Secretary and the obligation to provide consultation by the State wildlife agencies in regard to natural resource management affecting and affected by

wild horses and burros. It appears that it was necessary to include reference in CFR to Federal wildlife agencies in light of duties under the Endangered Species Act. However, the elevation of "all other affected interests" to consultation status is inappropriate and beyond the direction of the Act.

There is no provision in the Act or other guidance to elevate the status of ranchers, horse and burro advocacy groups, hunters or others. These groups are accommodated within the Federal processes by provisions of the National Environmental Policy Act (NEPA) and the regulatory responsibilities of the Bureau and the State wildlife agencies.

The Division formally requests that these interpretations be critically reexamined and corrected to comport to the Act and other Federal law.

FAILURE TO CONSULT

The Division's opposition to wild horse management within the Proposed NTTR Plan largely results from the Bureau's failure to adequately consult and consider wildlife as required in the Act. Although Division representatives participated in the development of this plan, the process and resulting document demonstrates the fallacy of the Bureau's adherence to the Act, in this regard. The Division's concerns and comments have been dismissed out of hand, without recourse until this document was produced. The wording of the Act is specific and the intent of Congress is obvious.

Regarding the consultation issue, the Las Vegas Field Office of the Bureau has maintained that "consultation" requires that the Bureau only entertain comment, but does not mandate mediation of conflicting assessments.

The *Proposed Las Vegas Resource Management Plan and Final Environmental Impact Statement* (1998)⁴³ contains two revealing responses to comments under NEPA. On page O-47 the comment is made, "Relocation or natural movement of wild horses and burros from one Herd Management Area to another was analyzed, and should have the Nevada Division of Wildlife approval." The Bureau responds: "Grazing impacts of wild horses and burros within Herd Management Areas and their movement within and between Herd Management Areas was analyzed in the Draft Plan, and is carried forward to the Plan. This action would not require additional National Environmental Policy Act documentation or Nevada Division of Wildlife concurrence."

On page O-49, the question is posed: "Shouldn't water developments within Herd Management Areas be limited if they would conflict with uses by other herbivores, potentially expand horse use areas, or if wild horses and burros are over Appropriate Management Level?" To which the Bureau responds: "Water can be developed anywhere within a Herd Management Area for the management of 'wild horses'. Management facilities for wild horses and burros would be planned and developed by BLM, consistent with BLM policy. The Nevada Division of Wildlife would be invited to comment, however, BLM would make final decisions and advise the Nevada Division of Wildlife of the actions."

The Division maintains that NEPA-type consideration does not comport with consultation addressed in the Act. NEPA was enacted three years prior to the Free-Roaming Wild Horse and Burro Act. Yet, Congress saw fit to specifically address the potential impacts of

wild horses and burros upon wildlife. The partnership role of State wildlife agencies in the Act is strongly identified.

Periodically, the Bureau has properly complied, but more often it dismisses the comments and concerns of the Division when those consultations conflict with the desires of current managers. The 1985 NTTR gather plan¹³, 1985 HMAP¹², and 1992 NTTR Plan¹⁷ were developed with input and support of the Division. However, both the 1992⁴⁷ and the 1995¹⁹ gather plans, which adjusted the AML without meaningful vegetation monitoring data, were accomplished without Division consultation except as allowed during the NEPA public comment period²¹. At that late stage in the process, changes are rarely made and wildlife consideration is not added.

It is disturbing that the Bureau saw fit to schedule meetings with the U.S. Air Force to work through differences. The Division was neither asked by the Bureau to participate in those meetings, nor were independent meetings suggested.

There must be a means of ensuring an equitable consideration of the Division's concerns regarding wild horses and their impacts to wildlife. The results of the failure to establish a meaningful means of dispute resolution has been significant trespass outside herd areas by wild horses on the NTTR and an unnecessarily contentious relationship between our agencies.

SUMMARY

The Bureau's continuing history of wild horse management history on the NTTR demonstrates an inability to manage according to agreements and plans.

The Division maintains that to justify the dramatic changes in wild horse management proposed in this plan, the Bureau should present and analyze new or persuasive information that contradicts previous management direction. It does not do so.

The supposed mandate to redefine the HA is incorrect. Nor does the Bureau offer substantive information that would justify changing the boundaries of the current Herd Area (HA) to allow for expanded management of wild horses on the NTTR. The Bureau's own historic information regarding wild horses on the NTTR used in this document was not properly evaluated and utilized. That survey data contradicts the Bureau's proposed horse management direction.

The Plan fails to comply with the Free-roaming Wild Horse and Burro Act on several points, including: 1) Failure to give due consideration to the Nevada Division of Wildlife's issues and concerns in the development of the wild horse management portion of the plan; 2) Proposing to provide water in excess of "thriving natural ecological balance" and 3) The "core area" concept does not comport to the Act;

Wild horse management in the plan was predetermined regardless of the information and data produced during the development of the document. In 145 IBLA 237 (1998), the decision references Administrative Practice - Administrative Procedure: Decisions, wherein it states, "It is incumbent upon the BLM to ensure that its decision is supported by a rational basis which is set out in the written decision and demonstrated in the administrative record accompanying the decision. Parties affected by a BLM decision deserve a reasoned and factual explanation of the

rationale for the decision and must be given a basis for understanding it and accepting it or, alternatively, appealing and disputing it.” The Wild Horse Management section of the Proposed NTTR Plan is rife with contradictions, unsubstantiated speculation and misrepresentations. This Plan fails to meet this standard.

The result of the failure to establish a meaningful means of dispute resolution has been significant range damage and an unnecessarily contentious relationship. There is an obvious need to institute a defined procedure or forum for consultation required under the act and the resolution of conflicts.

The plan is unrealistic and fiscally unsound. The Proposed Plan resolves to dramatically alter management of wild horses upon the NTTR by misidentifying and expanding the 1971 wild horse use area, or Herd Area. The Division maintains that the Bureau has not presented sufficient information to justify an alteration of the HA boundary as identified in the 1992 Plan and Record of Decision. The Division requests the following: 1) the wild horse management direction in the 1992 plan HA continue in effect; 2) The Bureau will actually perform management under that prescription and the procedures directed by federal law and IBLA direction; 3) The Bureau actively consults with the Nevada Division of Wildlife, such that wildlife and wild horses are able to use the range in a “thriving natural ecological balance” on the Nevada Test and Training Range.

REFERENCES

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- 2 *Draft Nevada Test & Training Range Resource Management Plan and Final Environmental Impact Statement* (2001)
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- 4 *Animal Protection Institute 131 IBLA 175-178*, 1994
- 5 *American Horse Protection, Inc. 134 IBLA 24-36*, 1995
- 6 *Code of Federal Regulations, Title 43, Group 4700, Part 4700*
- 7 *Wild Horse Management Area Agreement* (1962)
- 8 *Wild Horse Management Area Agreement*, (1965)
- 9 *Cooperative Agreement Between the Bureau of Land Management, Nevada State Office, and United States Air Force, Nellis Air Force Base* (1974)
- 10 *Memorandum of Understanding between the Nevada Department of Fish and Game and the Bureau of Land Management, Department of the Interior, Supplement No. 5* (1975)
- 11 *Five Party Cooperative Agreement* (1977)
- 12 *Nevada Wild Horse Range Herd Management Area Plan* (1985)
- 13 *Nevada Wild Horse and Nellis Range Complex Gathering Plan* (1985)
- 14 *Plan for Nellis Air Force Range Wild Horse Removal* (1985)
- 15 *Draft Nellis Air Force Range Resource Plan and Environmental Impact Statement* (1989)
- 16 *Nellis Air Force Range Proposed Resource Plan and Environmental Impact Statement* (1990)
- 17 *Approved Nellis Air Force Range Resource Plan and Record of Decision* (1992)
- 18 *Final Environmental Analysis for Nevada Wild Horse Range Herd Management Area Plan (EA-052-97-005)* (1996)
- 19 *Nevada Wild Horse Range Herd Management Area Gather Plan* (1996)
- 20 *Nevada Wild Horse Range Habitat Evaluation and Drought Mitigation Plan* (1996)
- 21 *Nevada Division of Wildlife letter of comment to EA-052-97-005* (1996)
- 22 *Water Development Projects, Nellis Air Force Range EA NV-052-98-009* (1999)
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- 30 *Desert Bighorn Sheep Aerial Survey Sheet and Map – Stonewall Mountain 1/12/75, 2/23/76, 7/27/76, 9/29/76 - Nevada Department of Fish and Game* (1975-1976)
- 31 *BLM Maps - Livestock Grazing Areas on or Near Nellis Air Force Range* (2/10/73, 11/10/73, 3/21/74, and 6/28/74)
- 32 Nevada Division of Wildlife comments to *Draft Nevada Test & Training Range Resource Management Plan and Final Environmental Impact Statement* (2001)
- 33 *Animal Protection Institute, 117 IBLA 208-220B* (1989)
- 34 *Craig C. Downer, 111 IBLA 339-343* (1989)
- 35 *Animal Protection Institute, 118 IBLA 20-29*
- 36 *Desert Bighorn Sheep Aerial Survey Sheet – Stonewall Mountain, Cactus Range, Tolicha Peak 9/6-7/97, Nevada Division of Wildlife*
- 37 Berger, Joel. 1986. *Wild Horses of the Great Basin: Social competition and population size*, University of Chicago.
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- 39 Memo from Jack Norman to Dan Morgan, *AML for the Nevada Wild Horse Range* (1997)
- 40 Memo from Jack Norman to John Jamrog, *Analysis of Water Based AML for Nellis Bombing Range* (2000)
- 41 *A Guide to Managing, Restoring, and Conserving Springs in the Western United States*, Bureau of Land Management (Technical Reference Manual 1737-17, 2001)
- 42 *Range Condition Survey and Appropriate Management Level of Wild Horses on the Nevada Wild Horse Range, Nye County, Nevada*, (1999)
- 43 *DOCUMENTS ABOUT WILD HORSES AND LIVESTOCK ON THE NTTR – Desert Research Institute* (2001) – Attached are rebuttal comments to “information” used to support range wide horse use area.
- 44 *Proposed Las Vegas Resource Management Plan and Final Environmental Impact Statement* (1998)
- 45 Letters from Animal Protection Institute and the Nevada Wild Horse Commission protesting the Proposed Nellis Plan (1990). Includes BLM response letter to Animal Protection Institute.
- 46 State of Nevada (Department of Conservation and Natural Resources through the Department of Administration) comments to *Draft Nevada Test & Training Range Resource Management Plan and Final Environmental Impact Statement* (2001)
- 47 Nevada Division of Wildlife comments to early drafts of the *Nevada Test & Training Range Resource Management Plan and Final Environmental Impact Statement* (2001).
- 48 *Plan for Nellis Air Force Range Wild Horse Removal* (1992)

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June 14, 2002

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Re: State Clearinghouse Comments – Draft Supplement Analysis (SA) for the Nevada Test Site Environmental Impact Statement

Dear Ms. Carlson:

We have completed our review of the Draft Supplement Analysis (SA) for the Nevada Test Site, Site Wide Environmental Impact Statement (EIS). A general overview of the document is presented first, followed by specific section-by-section comments. We conclude with several specific recommendations.

General Comments:

Land Use: The U. S. Department of Energy's (DOE) Record of Decision (ROD) for the Nevada Test Site, Site Wide Environmental Impact Statement (EIS), states that the Department's "use of the Nevada Test Site (NTS) continues to be consistent with the existing land withdrawals." However, the ROD further stated "in view of the comments submitted by the State [of Nevada] and Department of Interior . . . DOE commits to continue to consult with the Department of Interior, Bureau of Land Management as to whether the four major land withdrawals that comprise the Nevada Test Site need to be updated." The ROD also states that "DOE has selected the No Action Alternative for management of low-level and mixed low-level wastes, pending programmatic decisions regarding where the Department should manage these wastes, [and thus] there will be no immediate changes in DOE's ongoing use of the lands for disposal of radioactive wastes."

With the issuance of DOE's Programmatic EIS ROD for low-level waste (LLW), significant changes in DOE's national policy concerning disposition of certain LLW has now occurred. Many LLW streams, which are deemed unsuitable for onsite disposal at facilities across the Nuclear Weapons Complex, can now be sent to the NTS and/or the Hanford nuclear reservation for "final" disposal. The SA is silent, however, on the land use implications of this action. This is particularly relevant concerning the purpose of the intended land withdrawals for the NTS. The purpose of the land withdrawals was to establish an "on continent" proving ground for nuclear testing; the orders say nothing about using the NTS as a national/regional LLW disposal site to support cleanup of the nuclear weapons complex.

The land withdrawal orders also say nothing about using the NTS for non-defense commercial uses. In that regard, what is the specific federal land use authorization for the two major non-defense (private) commercial applications proposed at the NTS (i.e., the Wind Farm proposal and the Kistler Launch Facility)? State officials are aware of certain references to delegated permitting authorities granted to the NTS Development Corporation by DOE, however the SA is silent on whether or not these activities would be consistent with the land withdrawal orders.

The SA also suggests that land uses will not be affected by new site activities at the NTS. Yet the document fails to evaluate changes in environmental impacts, changes in physical characteristics, and changes in regulatory requirements that would result from new site activities envisioned at the NTS.

Soils Remediation: In Chapter 4 of the SA (Section 4.2.4) a discussion is provided that suggests that plutonium-contaminated soil remediation on the Nevada Test and Training Range (NTTR) would not cause any adverse impacts. (NTTR is the new name for the Nellis Air Force Range.) The SA further indicates changes in mission or soil remediation plans taken since development of the 1996 NTS EIS would clearly be under the umbrella of impacts evaluated in that EIS. It is also noted in Chapter 3 (Section 3.1.3) that the overall environmental restoration program strategy for soils (reference Table 3-4) is the same as described in the 1996 NTS EIS.

The State's review of the 1996 NTS EIS, however, indicates that DOE did not define a clear environmental restoration strategy for remediation of plutonium and uranium contaminated soils on the NTTR. The 1996 NTS EIS only states that "the final disposition of the remaining isotope inventory in these soils will be determined as part of the Soils Corrective Active Unit of the Environmental Restoration Program," (see page 4-106 third paragraph - DOE Final NTS EIS 08/96).

In the years since the 1996 NTS Site Wide EIS was completed, the State of Nevada (*Division of Environmental Protection - NDEP*) has participated with DOE and the United States Air Force in a dialog concerning "cleanup levels" for contaminated soils on the NTTR. While this dialog continues today, the parties have yet to reach complete agreement on a final soil remediation level that should be pursued to address soil contamination on the NTTR.

As a matter of record, the NTS Site Wide EIS did not evaluate alternatives for soil remediation levels and their consequences. And since an interim or final decision that establishes a soil remediation level would be considered a major federal action, DOE should initiate a National Environmental Policy Act (NEPA) process to address alternative remediation "cleanup" levels, costs, and Long Term Stewardship (LTS) management options. State officials strongly believe that DOE should institute such a process to further agency planning through development of a separate Environmental Assessment (EA) for the NTS Soils Corrective Action Unit Environmental Restoration Program, [see agency planning and decision-making 40 CFR Part 1501.3(b)]. Examples of issues that should be addressed in such a document could include:

- An examination of alternative soil removal levels and the effects on occupational safety and health issues;
- A review of long-term stewardship responsibilities such as institutional controls among the responsible federal entities (i.e., DOE, the United States Air Force, and the Bureau of Land Management ¹).
- An assessment of the effects of soil extraction and related short-term erosion by water and wind processes including proliferation of contaminants in the biosphere; and
- An assessment of hazards associated with shipping LLW from the NTTR to NTS for disposal.

Waste Management: Changes in waste management activities at the NTS occurred with the issuance of DOE's Waste Management Programmatic Environmental Impact Statement (PEIS) Record of Decision (ROD); the ROD selected Nevada (NTS) and Washington (Hanford site) as regional/national disposal sites for DOE low-level waste (LLW) and mixed LLW.

This national decision also required an amendment to the NTS Site Wide EIS ROD. The amendment now permits DOE to significantly expand the list of offsite waste generators that would be allowed to dispose of LLW and potentially mixed LLW at either the NTS Area 5 or Area 3 waste disposal sites.

In addition to these programmatic changes, DOE has also revised the agency's self-regulatory authorities for waste management activities through replacement of Waste Management Order 5820.2A, with DOE Order 435.1. This action revised DOE's approach to self-regulation by re-defining and/or adding new waste management

¹ NTTR is comprised of public lands withdrawn by the United States Congress and, authorized for military use for a period of 20 years; the current "landlord" is the United States Air Force, the ultimate landlord is Bureau of Land Management

requirements including revised performance assessments, a new composite analysis requirement and disposal authorization statements, defined closure plans, as well as new waste acceptance requirements and site monitoring activities.

While these recent programmatic decisions and new/revised self-regulatory authorities are not projected to result in increased waste disposal volumes that were assessed in the NTS Site Wide EIS, they do represent major program changes to DOE's LLW management program. Moreover, these major program changes have raised new policy, regulatory, and long-term environmental management issues that have yet to be collectively assessed or fully disclosed in a single comprehensive DOE document. Issues that should be addressed in such a document include:

- Public disclosure and review of a "common" waste acceptance criteria for the NTS and Hanford LLW disposal sites;
- An assessment of new waste streams that could be excluded from disposal at the Hanford reservation per the bounding analysis contained in the recently released Hanford Solid Waste EIS;
- Evaluation of DOE's self-regulation of LLW disposal activities conducted at NTS and at the Hanford nuclear reservation. (Both the states of Nevada and Washington contend that such an evaluation must be include in an assessment of alternatives to self regulation);
- Assessment of Long-Term Stewardship (LTS) options for DOE's LLW disposal sites to include an evaluation of permanent financing options (e.g., state trust funds) to support LTS management activities. (This is a state equity issue that is directly related to constraints associated with DOE's self regulation of LLW disposal sites at NTS and Hanford.)
- Review of DOE's waste acceptance process to insure LLW proposed by DOE for disposal at the NTS is in fact defense waste, as opposed to LLW generated from commercial activities.
- Review of DOE's waste acceptance process to ensure LLW proposed by DOE for disposal at the NTS is defense waste that is not defined as, and/or was previously defined as, defense "Special Case Waste" or "high activity LLW" exhibiting radiation characteristics considered equal to, or greater than, commercial Greater Than Class C wastes. Such wastes are not appropriate for shallow land burial.

Although most of these waste management issues are probably outside the scope of the SA, they do represent new potential impacts to DOE's waste management program at the NTS. Accordingly, State officials urge the DOE to institute a National Environmental Policy Act (NEPA) process to further agency planning through development of a separate Environmental Assessment (EA) for the NTS waste

management program, [see agency planning and decision-making 40 CFR Part 1501.3(b)].

At a minimum, such an assessment should address development of a "common" waste acceptance criterion for NTS and Hanford; it should evaluate a bounding analysis of waste streams in the Nuclear Weapons Complex that could be sent to the NTS; it should disclose findings including any technical constraints and limitations identified in recently completed site specific and composite performances assessments. It should also offer an evaluation of alternatives to self-regulation including (LTS) management of LLW sites including LTS financing options (i.e., creation of state/private LTS trust funds). Finally, such a document should address questions concerning waste restrictions at the NTS to include LLW considered not suitable for shallow land burial and commercial LLW.

Specific Comments -- by Document Pages Number

S-3 -- It would be useful to include English conversions with the metric values in the document (i.e., cubic feet as well as cubic meters). Historically, DOE/NNSA has reported waste volumes in cubic feet as opposed to cubic meters.

S-4 – No mention is made on page S-4 or in other places in the document about the NTS Underground Test Area (UGTA) program, including the results of the program to date. Since groundwater contamination beneath the NTS is a critical long-term concern, and given it is the leading environmental issue for NTS Environmental Management program, at least in terms of long-term costs, it would seem the program should be discussed in detail under the title of the UGTA program (section 4.2.8).

1-3 – The map on this page includes the modified boundaries resulting from the Military Lands Withdrawal Act of 1999 (Public Law 106-65). This map (or other maps in the document) should depict/address the land use issues associated with the addition of the Pahute Mesa to the NTS withdrawal(s), (i.e., as implemented by PL 106-65). What is the significance of the land use change generally; why did Congress institute the revised withdrawal; and what are the long-term stewardship responsibilities to DOE, if any?

1-6 – The public involvement process is mentioned, but what was the outcome of the process?

3-10 – The time period mentioned in Section 3.1.2.2 (*New waste management missions and facilities*) is different than the time period for the SA as a whole, (i.e., current and proposed programs and activities from now through 2006 – *see page 2-1*). The focus of the SA should not be alerted for just one major program area such as waste management and not other program activities such as the UGTA and/or the soil remediation program.

3-11 – In the right column in Table 3-3 (*page 3-11*), what ten-year period is referenced for waste volumes and number of shipments? What is the rationale for ten years? Given the statement on page S-3 that " additional waste streams are considered that may be

generated at, or sent to, the NTS for management from 2002 through 2011. In addition, the statement on page 5-13, which notes: "after 2011, it is anticipated that the proposed repository at Yucca Mountain would dispose of its LLW at the NTS." DOE officials at DOE/NNSA need to be aware that the State of Nevada would consider LLW generated at the proposed HLW repository at Yucca Mountain to be commercial LLW, and thus not eligible for disposal at the NTS. In any event, the SA presents a confused and unquantified review of LLW streams and waste acceptance time periods.

3-18 – Given the extensive nature of the Defense Threat Reduction Agency Hard Target Defeat Tunnel Program and the potential for environmental impacts, there is very little discussion of this new activity in the SA. More importantly, the SA fails to make the case that existing NEPA coverage for this activity is "bounded" in the analysis contained in the NTS Site Wide EIS. In fact, the SA fails altogether to declare if there is a NEPA document, either programmatically or site-specific, that addresses environmental affects of this program.

4-8 – There is an inconsistent conclusion between Table 4-2 and the text in section 4.2.3.5. Either there are increased numbers of shipments with a consequent increased impact or there is a problem in the table. In any case, more discussion and analysis of transportation impacts needs to be undertaken in the SA. For example, with the unwritten DOE policy of keeping trucks laden with LLW out of the Las Vegas Valley (i.e. per agreement between DOE/NNSA and State and local governments), does the transportation analysis contained in the NTS Site Wide EIS still apply? The SA fails to mention that truck transport of LLW to the NTS is now confined to several in-state rural highway routes.

4-17 – The discussion in section 4.2.8 should be subdivided into (1) groundwater use/general hydrology, and (2) groundwater contamination beneath the NTS. As mentioned before, the NTS UGTA program is the most significant EM activity being conducted at the NTS. In part, this is because of uncertainties associated with how fast and where contaminants are moving in the groundwater. There is a need to determine if groundwater contaminants are contained within the borders of the NTS land withdrawals. If contaminant in the groundwater moves off the NTS, the State of Nevada would pursue Natural Resource Damage Assessments to mitigate the loss of groundwater along with adverse effects on local land uses. Hence, a more detailed discussion of the UGTA program and its results is needed to substantiate the statement in the SA that says, "the conclusions of the 1996 NTS EIS remain valid for impacts to groundwater" (see page 4-21). What are the impacts to groundwater, in terms of ongoing contaminant transport? In fact, State officials contend that DOE is not yet able to confirm that contaminants in the groundwater beneath the NTS will not move beyond the land withdrawals.

5-13 – The capacity for the waste management facility noted in table 5-5 has tripled for LLW, yet the volume has decreased. What is the reason for the increased capacity and why does the SA fail to discuss this expansion? Also, the time period is again in question using the 2002 to 2011 waste projections. What is the time period being analyzed in the SA?

5-17 – The summary statement on this page under Traffic and Transportation is inconsistent with other information in the SA, given changes in DOE's LLW transportation program undertaken after completion of the NTS Site Wide EIS (i.e, number of shipments on rural routes).

References: There are a number of references that are either e-mails or telephone logs of conversations. Are these available for review? Are these legitimate references for a document of this nature?

Recommendations:

Land Use: The SA indicates that land use issues will not be affected by new site activities proposed at the NTS. However, the document fails to assess changes in land use that would result in new environmental effects, changes in the physical characteristics of the site, and challenges to long-standing legal and regulatory requirements. The SA needs to be amended to include a more realistic and detailed discussion of land use issues, including DOE's commitment to consult with the Department of Interior about the relevance of the existing NTS public land orders.

Soil Remediation: The State's review of the SA indicates there are potential impacts associated with making a soil remediation decision to address "cleanup" of plutonium-contaminated soils on the Nevada Test and Training Range, the Tonopah Test Range and the NTS. Accordingly, and for the reasons outlined in the general comments above, the State of Nevada is encouraging DOE/NNSA to use the National Environmental Policy Act (NEPA) process to further agency planning by developing NEPA documentation to support a soils "cleanup" decision for the referenced "withdrawn" public lands.

Waste Management: The State's review of the SA also indicates there are potential impacts associated with both existing and expected changes in LLW and Mixed LLW disposal activities at the NTS. As with the soils program, and for the reasons outlined in the general comments above, State officials are encouraging DOE/NNSA to use the NEPA process to further agency planning by developing NEPA documentation to support NTS's evolving waste management program.

If you or your staff has any questions about these comments, the State Clearinghouse could arrange an intergovernmental meeting between DOE and State officials to address your concerns.

Sincerely

Heather Elliot
State Clearinghouse Coordinator

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December 20, 2001

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2001 DEC 21 11:10:09

Jeffrey G. Steinmetz
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Re: State of Nevada Comments, Draft Nevada Test and Training Range Resource Management Plan and Environmental Impact Statement, SAI#E2002-037

Dear Mr. Steinmetz:

Thank you for briefing state officials on the alternatives detailed in the referenced Draft Resource Management Plan and Environmental Impact Statement (RMP/EIS). The RMP/EIS describes various alternatives for managing and protecting the natural resources, with emphasis on wild horses, on the Nellis Air Force Range in south central Nevada.

This letter transmits the State of Nevada's comments on the referenced RMP/EIS. It contains the collective views and concerns of the effected state agencies, including the Office of the Governor.

RMP/EIS Alternatives (Management of Wild Horses on the Nellis Range)

With all due respect for the challenges the Bureau of Land Management (BLM) faces in managing wild horses, the State of Nevada is recommending that BLM select Alternative D as the preferred alternative in the referenced RMP/EIS. This alternative proposes the removal of all wild horses and burros from the Nellis range.

While the removal of all horses may be unpopular for some, there are clear and substantive reasons why the State of Nevada has taken this position. First, removal of wild horses will eliminate the ongoing (if not historic) conflict between the Air Force's training and

testing mission at Nellis, and BLM's legal mandate to manage wild horses on the withdrawn lands encompassing the range. Secondly, removal of the horses would eliminate reoccurring events when horses needlessly endure extended periods of hunger and thirst followed by numerous deaths. Removal of the horses would also produce long-lasting positive effects for soils and vegetation. This is particularly important for maintaining ecological health in riparian zones where natural and man-made water sources occur. Furthermore, removal of the horses will reduce conflicts with sensitive species and wildlife throughout the region.

State officials further believe that removal of the horses is directly related to the federal government's inability to define the "Appropriate Management Level" (AML) for sustaining wild horses on the Nellis range. Statements in the referenced RMP/EIS clearly document substantial gaps in basic scientific information needed to define the AML. While the document does state that wild horse use, mapping, and utilization studies have occurred on portions of the range, we call attention to other statements that soil mapping, ecological status inventories, forage production, water production, and seasonal horse movement data is lacking (page 4-13). According to the document, quantitative inventories, assessments, and regular monitoring of habitat composition and conditions have not been conducted (page 3-42). Furthermore, the document states only nine of about 65 riparian areas have been assessed for proper functioning condition, though observations of the others indicate widespread degraded conditions (page 4-7).

Hence, BLM has not been able to effectively manage wild horses on the Nellis range. Moreover, given the ongoing problem of range access, which is imposed by the Air Force for safety, national security, and training purposes, BLM personnel have been unable to routinely conduct gathers, improve forage vegetation, and protect water resources on the range. Since priority use of the Nellis range will remain with the military, at least for the next 20 years (as per PL 106-65), State officials are skeptical that BLM can manage the horses on the range in a viable and sustainable manner. It should further be noted that removal of wild horses would not affect horse populations statewide. Recently, BLM was quoted in the media, emphasizing that about 22,000 wild horses and burros roam on BLM land in Nevada, and that the current plan is to reduce the number to about 15,000 animals (see Las Vegas Review - Journal, 12/06/01).

Recognizing that complete removal of wild horses on the Nellis range may not be acceptable to the BLM and other stakeholders, State officials would support adoption of alternative C as a second choice. Alternative C would create a new wild horse herd management area (HMA) that will reduce conflicts with wildlife and protect important riparian areas throughout the Nellis range. This alternative would also enhance the horse management situation for BLM by removing wild horses from high-use and sensitive military training areas. Alternative C is the preferred alternative for the United States Air Force.

We note that alternative C greatly expands the boundary of the Herd Area (HA) that had been identified in the 1992 approved Nellis Air Force Range Resource Plan and Record of Decision (1992 ROD). The State cannot support the proposed HA in any RMP alternative unless additional substantiated, credible scientific data are provided (i.e., additional to the data used in the 1992 ROD). Such data are absent from the Draft RMP/EIS.

State support of Alternative C is contingent upon an adaptive management strategy being adopted in the proposed ROD. The purpose of the adaptive management strategy would

be to establish monitoring requirements and performance measures to evaluate success at meeting water, vegetation, wildlife, riparian, sensitive species, and wild horse management direction and objectives in the ROD. The ROD should include provisions for the implementation of alternative D if implementation of alternative C and the adaptive management strategy results in findings that management direction and objectives are not being met.

If alternative C is selected, State officials still believe the long standing difficulties of gaining sufficient access to monitor herd movement and vegetation utilization, as well as to conduct timely gathers if necessary, may prove too great an obstacle to successful implementation of a viable horse management program. Without timely access to the range and without adequate funding, State officials believe that the BLM's objectives to define, achieve and maintain the AML for the alternative C HMA would be thwarted. Needless to say, defining and maintaining the AML is a critical function for understanding and sustaining the carrying capacity on the Nellis range for wildlife and wild horses.

Should the BLM decide to keep wild horses on the Nellis range – over the State's objection – then we must insist that BLM provide regular briefings on the wild horse situation and other natural resource concerns on the Nellis range. Such briefings to state and federal officials could be accomplished through the regularly scheduled intergovernmental meetings hosted through the JMAC process (i.e., the biannual Joint Military Affairs Committee meeting).

Other Concerns

The aforementioned deficiency of information on the natural resources of the NTTR is an ongoing concern that apparently has not been resolved with development of the referenced RMP/EIS. The document fails to offer a programmatic approach to the inventory and assessment of vegetation resources. It also fails to address specific solutions to overcome problems with coordination and cooperation between the Air Force and the BLM. Such cooperation is needed to support field research on the Nellis range. Resource inventory, assessment and monitoring is important since general observations made in the Draft RMP/EIS about the status of vegetation indicate that serious problems exist that could affect wildlife and vegetation resources not only within, but also beyond, the boundaries of the withdrawn area.

Apparent problems cited in the Draft EIS include expansion and canopy closure of Pinion Juniper woodlands, loss of shrub species, expansion of cheatgrass, lack of perennial forbs and grass species at lower elevations, expansion of invasive weeds and the establishment of perennial noxious weeds. Deteriorated vegetation conditions are stated to have potentially negative impacts on mule deer, antelope, sage grouse (if present), and desert tortoise.

The final RMP/EIS should address the identified shortcoming and present a programmatic approach for enhanced resource study, management, and rehabilitation activities throughout the Nellis range. Since a limiting factor in the enhancement of resource programs is range access and BLM and Air Force coordination and cooperation, the RMP/EIS should also address approaches to improving this relationship.

Again, thank you for providing the briefing on the referenced RMP/EIS. You should know that Nevada Divisions of Water Resources and Wildlife are submitting additional comments under separate cover that address technical details not discussed in this letter for the sake of brevity. If you have any question about the comments herein, please contact me at 684-0209.

Sincerely,



Heather Elliott, Coordinator
State Clearinghouse

- cc: Governor Guinn
✓ Mike Turnipseed, Director CNR
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Catherine Barcomb, Wild Horse Commission
Glenn Clemmer, Natural Heritage
Allen Blaggi, Administrator, NDEP
Hugh Ricci, Administrator, NDWR
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Manager, NNSA - NTS (DOE)

**Comments on the Proposed Nevada Test and Training Range
Resource Management Plan and FEIS**

**Nevada Agency for Nuclear Projects
Office of the Governor
May 21, 2003**

Despite the fact that the U.S. Department of Energy's proposed Yucca Mountain high-level nuclear waste (HLW) repository is located on the southwestern boundary of the Nellis Test and Training Range, with portions of the site situated on NTTR, Nevada Test Site and BLM lands, no assessment was done regarding the possible impacts of the project in the FEIS nor were strategies for managing impacts addressed in the Resource Management Plan (RMP).

In addition to the Yucca Mountain site/facility itself, at least one potential rail shipping route evaluated by DOE in the Final Yucca Mountain EIS enters the NTTR just west of Rachel, Nevada, proceeds southward through the NTTR to the northern boundary of the NTS, where it continues south and then west through NTS to the Yucca Mountain site (ref. DOE "Chalk Mountain" rail access option). In the same FEIS, DOE also evaluated a similar route for heavy haul truck shipments of spent fuel and HLW to Yucca Mountain. The use of either of these routes for Yucca Mountain shipments would mean that NTTR could be impacted by almost 20,000 shipments of radioactive waste continuously over a period of 30 years. That amounts to almost 670 shipments per year, not including return shipments of empty transport casks. The RMP and FEIS for the NTTR contains no mention of this activity and fails to evaluate potential impacts. At a minimum, discussion of Yucca Mountain should have been included as part of the Cumulative Impacts assessment.

Should the Yucca Mountain project go forward, it would represent a very significant set of activities impacting lands within the NTTS resource management area. As such, the implications of the program should have been evaluated as part the Resource Management Plan and FEIS.