

**DRAFT**

February 6, 1990

**COPY FOR YOUR  
INFORMATION**

Cy Jamison  
Director  
Bureau of Land Management  
Department of Interior  
Washington, DC 20240

PROTEST: Nellis RMP

Dear Director:

API is writing to protest the final version of the Resource Management Plan for the Nellis Range Complex. The RMP supports a decision to eliminate wild horse habitat, clearly identified as WHERE HORSES EXISTED IN 1971 and where BLM agreed to manage and protect them. We were not given proper notice of that decision. Attached is a copy of the July 1988 public notice explaining the need for preparing the Nellis RMP, the schedule of events in the process, and the issues to be addressed (Attachment A). The opening paragraph says the plan is to be consistent with applicable law--which includes the 1971 Wild, Free-Roaming Horse and Burro Protection Act. Page 3 lists management concerns that will be addressed in the proposed plan. Thirteen planning criteria are listed. It does not refer to setting or changing boundaries, eliminating habitat area, making changes in the size of the area identified as the 1971 habitat area, or amending the 5-Party Agreement.

I am also attaching a copy of the synopsis of the 5-Party agreement contained in the proposed RMP document (Attachment B). This synopsis relates that the old "Nevada Wild Horse Range" (some 300,000 acres in size) became null, void, and obsolete when the Act was passed. Because the law required BLM to manage and protect wild horses/burros in the areas where they were found at the time of the law (e.g. December 15, 1971), a new 5-Party agreement had to be written to comply with the fact horses were found throughout the Nellis Range Complex (NRC). The 5-Party Agreement was specifically re-written to identify where horses were to be managed and protected. It names the areas of the NRC.

m 2/6/90

Nellis, Cy  
Washington  
2

Between 1971 and 1989, the "Nevada Wild Horse Range" was simply an area within the Nellis Complex of local historical interest because it described the intent of the people of Nevada to save wild horses in Nevada before federal legislation was passed. Only local people may have continued to refer to it as the Nevada Wild Horse Range. So common is the use of the term "Nellis" to identify the area--e.g., the Nellis Wild Horse Area, the Nellis wild horses, etc. --that we were amazed when we looked back at the 1985 HMAP to see it entitled the "Nevada Wild Horse Range Herd Management Area" on the cover sheet.

In June 1980, BLM led a field trip for the interested and affected public. API participated. The field report of our staff member is attached hereto. At this time, our staff gave no indication that he was being shown all of the area nor did he express any hint that half of the area was being eliminated by this on-site tour of the northern portion of the NRC. Neither the number of acres or the boundary was discussed or questioned. It was not an issue.

The 1985 Herd Management Area Plan contains the first reference to a "C and C Area" as part of the NRC. The old "Nevada Wild Horse Range" is a portion of this "C & C" area. There is no authority either statutory or regulatory or in the program guidance for something called a "C & C" area. There is no definition of what exactly a "C and C" area means. It is simply a designation of a portion of the NRC. Because of the pre-1986 shroud of military secrecy surrounding Nellis this appeared to us to describe the area of the 1980 field trip. API, as an interested and affected party to the management of wild horses in the NRC, participated in the 1980 field trip, but we were never part of a "C and C" committee.

The "C and C" group does not have power and authority to override the law and the 5-Party Agreement that declares where BLM will manage wild horses. BLM offers no documentation for the assertion that the "C and C" group decided to eliminate habitat area, change the boundary, or decide to resurrect the old Nevada Wild Horse Range. This was a major action. There appears to be no record of it.

The 1985 Environmental Assessment (NV 057-4-05) accompanying the 1985 HMAP analyzes the impact of the plan on the NRC. It refers to horses expanding their home range beyond the old "Nevada Wild Horse Range"--but no date is given. One must assume, and we contend, this so-called "expansion" occurred well before the 1971 Act. The 5-Party Agreement supports that contention. The reason the 5-Party Agreement was re-written was to accommodate that fact. BLM entered into an agreement that said exactly where wild horses were to be managed and protected. That agreement is the official document. It recognizes that horses existed beyond the boundaries of the old "Nevada Wild Horse Range" at the time of the law. In fact horses were throughout the NRC.

The EA invites individuals to view the proposed Military Land Withdrawal Act and it lists certain conflicts involving Sandia Lab vehicular/horse collisions. The Military Land Withdrawal Act [Sec. 1(b)(2)] states that the lands referred to as the withdrawn lands comprise 2,945,000 acres. These are the lands covered by the 5-Party Agreement for where wild horses are to be managed and protected.

No where in this 1985 document or in the Administrative records related to Nellis is there a reference to a boundary change or a proposal to change boundaries or an amendment to the 5-Party Agreement. There is no documentation of a "C and C" committee agreement related to boundary changes.

No where in the 1989 proposed RMP is there a reference to a boundary change, the elimination of habitat area, or an amendment to the 5-Party Agreement. The attached page from BLM's own program guidance on setting boundaries refers to the designation of a boundary as a very significant event. It would be one that needs a very clear explanation to interested and affected parties. BLM is obligated to tell us exactly what action is being undertaken and exactly what changes are being made. None of this was done--the very opposite is the case.

The actions surrounding the boundary change are draped in confusion and obscure references in ways designed to purposely delude, mislead, and deceive us. In the 1989 proposed RMP, there is confusion whether the area covered by the 5-Party Agreement is the 2,945,000 million acres of withdrawn land referred to in the Military Land Withdrawal Act or if it is the 3,035,326 million acres currently identified as the Nellis Air Force Range. But there is absolutely no confusion with regard to the fact that the old "Nevada Wild Horse Range" (NWHR) of some 300,000 acres became obsolete in 1971.

The only reference in the text of the 1989 document that hints that there is a boundary change and elimination of 1.5 million acres of habitat is on Page 3-7. This statement was made in a paragraph of confusion and misstatements--which were later corrected in the Errata Section of the final version.

Since the 5-Party Agreement is the document identifying the 1971 use area and was not changed by the 1985 HMAP, this one sentence--like the remaining sentences in the paragraph--is wrong. But the entire paragraph is purposely made confusing. The one sentence is the very crux of the entire purpose of the RMP!

Another example, of confusion, obfuscation, and deception is found in the Table in the proposed 1989 RMP which lists the impacts on the resources of the action/no-action alternatives. This is the only clear indication that IN FACT the difference between the action/no action is the elimination of 1.5 million

acres of habitat lands. This reference of to the no-action as allowing horses to utilize 1,784,000 acres contradicts the above statement in the text on Page 3-7 and makes it very clear that in fact there is a major action being undertaken.

In the final version of the RMP, the preferred alternative versus the No action alternative lists 69 items that were examined as being impacted by the action. Of these 47 remain the same; 12 have to do with fencing riparian areas or with cultural resources. The Wild Horse Section of the Table (S-2 and S-3) compares the impact of the no action and the preferred alternative as:

(1) Managing according to the 5-Party Agreement=SAME IN BOTH ALTERNATIVES; (2) Gather horses to AMLs=SAME IN BOTH; (3) Develop at least 6 waters=SAME IN BOTH; (4) Remove all burros=SAME IN BOTH.

(2) The No action will relocate wild horses v the preferred action of removing all wild horse outside the NWHR;

(3) The preferred alternative lists three additional actions that are not applicable to the "No Action;" plus the need to amend NWHR HMAP and fence up to 75 miles of the boundary, and if necessary fence up to 125 miles of NWHR boundary.

Of these impacts only No 2 above hints at the major change that took place. In the final RMP, it is only under the section entitled Vegetation in the Table that there is a clear reference to the elimination of habitat area for wild horses.

Furthermore the intent to gather horses "to AML" does not implement the recent IBLA order to determine optimum numbers and remove wild horses to achieve and maintain a thriving ecological balance of the natural system.

We believe the intention is to confuse and obfuscate. The intention is to get around the law. API contends this action violates the law. We contend a major change occurred without proper notification of affected parties. We contend that the 5-Party Agreement is the document that identifies where BLM is to protect and manage horses. We protest the RMP decision to recognize only the old, obsolete Nevada Wild Horse Range as the HMA. We protest the fact that objectives for wild horses do not implement the IBLA order. We ask that you require Nevada BLM to recognize the area identified by the 5-Party Agreement. We ask that you require Nevada BLM to implement the IBLA order to monitor wild horses to determine optimum numbers, to determine the carrying capacity of the area, and to establish objectives and a monitoring schedule and time frame.

API plans to testify at the FY-91 Appropriations hearings and we intend to request special funding for monitoring and inven-

torying Nellis to develop a proper HMAP and RMP for the entire withdrawn lands. We believe that the Nellis area offers a unique opportunity for wild horse groups and BLM to work cooperatively toward establishing objectives and monitoring schedules in an area without livestock conflicts.

We don't know what is the carrying capacity of the NRC or what possible restoration projects or population adjustments might be needed but we believe we can work with Nevada BLM despite our vigorous protesting above. In fact, we applauded BLM's final monitoring solution to work out the number of horses in the recent emergency removal at Nellis. We felt, at that time, that the Nevada State Office was very open, reasonable and in search of best solutions. We believe this final RMP simply carries over the underhanded policies from the past eight years and generates suspicion and distrust when there is an opportunity for changing that.

Sincerely,

Nancy Whitaker  
Program Assistant

NW:bms