

Nellis

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240



IN REPLY REFER TO:

PP-NV-NR-90-02

1617.2 (760)

JUN 10 1991

CERTIFIED MAIL — RETURN RECEIPT REQUESTED

Ms. Catherine Barcomb
Executive Director
Nevada Commission for the Preservation of Wild Horses
Stewart Facility, Capitol Complex
Carson City, Nevada 89710

Dear Ms. Barcomb:

This letter constitutes our decision concerning a protest originally filed by Ms. Terri Jay, the former Executive Director, on February 23, 1990. We have carefully reviewed and considered the issues raised on behalf of the Nevada Commission for the Preservation of Wild Horses to portions of the proposed Nellis Air Force Range Resource Plan (RP).

The protest raised issues concerning: the 1971 area of use by wild horses has never been established as required by law; the Five-Party Cooperative Agreement stipulates that horses will be managed where they existed in 1971; the proposed RP fails to address where wild horses existed in 1971 as an issue of the plan; the Nevada Wild Horse Range (NHWR) was eliminated by the passage of the *Wild Free-Roaming Horse and Burro Act of 1971*; and, the document fails to address the impacts to the wild horses of the elimination of over 1 million acres of habitat in the proposed RP area. These issues are addressed below.

Issue: The 1971 area of use by wild horses has never been established as required by law.

Response: The proposed RP did not establish the 1971 area of use for wild horses in the planning area. The Federal lands within the planning area were withdrawn as an aerial gunnery range and for other military purposes in 1940 by President Roosevelt. Since that time, several Executive Orders, Memoranda of Understanding, and Public Laws have enlarged the acreage of the original area to 3,035,326 acres. Since the lands were withdrawn prior to enactment of the *Wild Free-Roaming Horse and Burro Act of 1971*, the Bureau of Land Management (BLM) Nevada State Director correctly considered these lands to be "non-public" under the terms of that Act. Since this Act allows for identification of areas used by wild horses and burros, without regard to land status, it is appropriate that this identification be done in this RP. Therefore, we are directing the BLM Nevada State Director to include a map in the approved RP and Record of Decision that will illustrate the 1971 wild horse area of use.

Issue: The Five-Party Cooperative Agreement stipulates where horses will be managed, which is throughout the Nellis Range Complex, where they existed in 1971.

Response: The *Cooperative Agreement of February 8, 1974*, between the BLM Las Vegas District, and the USAF, Nellis Air Force Base, established a "Wild Horse Management Area" on the Nellis Air Force Range and described it by legal subdivision. This Management Area is the same area as the NWHR that is discussed in the proposed RP. It is important to point out that, while the Wild Horse and Burro Act allows for identification of "non-public" areas that were used by wild horses, it does not authorize management by the Secretary of the Interior on these lands. The 1974 agreement is the original agreement which provided authority for the BLM Nevada State Director to manage wild horses in this area.

The *Five-Party Cooperative Agreement* between the USAF, U.S. Fish and Wildlife Service, the BLM, Nevada Department of Wildlife, and the U.S. Department of Energy was approved on January 21, 1977. This agreement was made for the purpose of protecting, developing and managing the natural resources of fish and wildlife, vegetation, watershed, and wild horses and burros on the Nellis AFR, Nevada Test Site, and Tonopah Test Range. It is important to note that this agreement did not modify, supersede, or change any provision of the 1974 Cooperative Agreement (see sections I.8 and I.10. of this Agreement).

We, therefore, conclude that it is the 1974 Cooperative Agreement that established the management boundaries for wild horse management rather than the 1977 Five-Party Cooperative Agreement.

Issue: The proposed RP fails to address where wild horses existed in 1971 as an issue of the plan.

Response: The proposed RP did not establish the 1971 area of use for wild horses within the planning area. In view of the limited management authority in this area, we continue to believe that it is not an appropriate planning issue. However, the BLM Nevada State Director will include the map as described in our above response.

Issue: The NWHR was eliminated by the passage of the *Wild Free-Roaming Horse and Burro Act of 1971*.

Response: Also, as noted above, this Act simply required identification of wild horse use areas. It did not provide authority for the Secretary of the Interior, however, to manage or maintain wild horses on "non-public" lands. Since the lands were withdrawn prior to enactment of the *Wild Free-Roaming Horse and Burro Act of 1971*, the BLM Nevada State Director correctly considered these lands to be "non-public" under the terms of that Act and not subject to management of wild horses.

In the proposed RP, the BLM Nevada State Director correctly stated that our wild horse management authority is derived solely from the two Cooperative Agreements with the USAF. Currently, this covers only the NWHR, which was agreed to in 1974 and unchanged by the 1977 Cooperative Agreement.

We, therefore, conclude that the NWHR was not eliminated by the *Wild Free-Roaming Horse and Burro Act of 1971* but continues to exist by virtue of the Cooperative Agreements that are currently in force.

Issue: The document fails to address the impacts to the wild horses of the elimination of over 1 million acres of habitat.

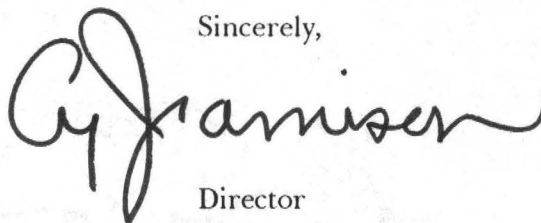
Response: The proposed RP and final Environmental Impact Statement (EIS) summarized these impacts on page S-5. These impacts are fully described in the draft EIS in the Wild Horse section on pages 4-11 and 4-12. After review, we find that this impact analysis meets our criteria for environmental impact analysis.

We, therefore, conclude that the BLM Nevada State Director and Las Vegas District Manager followed the applicable planning procedures, laws, regulations, policies, and resource considerations in developing the Nellis Air Force Range RP. With the exception of the addition of a map illustrating the area of use by wild horses in 1971 in the approved RP, the review of your protest does not warrant further changes to the proposed RP.

This decision completes the administrative review of and constitutes final agency action for the Department of the Interior (43 CFR 1610.5-2(b)) on the issues which you raised in this protest. The Interior Board of Land Appeals (IBLA) does not hear appeals from a decision by the Director of the BLM on protests concerning resource management plans (RMP) or RPs. (*Oregon Natural Resources Council*, 78 IBLA 124, 127 (1983)). Any person adversely affected by a decision of a BLM officer to implement some portion of an RMP or RP may, however, appeal such action to the IBLA at the time the action is proposed for implementation.

We encourage you to remain actively involved in the BLM's resource management activities and to provide information and input during the implementation of the RP.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. J. Amisen". The signature is written in black ink and is positioned above the printed name "Director".

Director