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September 8, 1989

Curtis Tucker
 Area Manager
 BLM
 P.O. Box 237
 Caliente, NV 89008

NELLIS RESOURCE AREA
PLAN

Dear Mr. Tucker:

We apologize for submitting a late response to the draft Resource Plan and EIS for the Nellis Air Force Range Planning Area. We inadvertently listed the due date for this comment period as September 15. Since your response to our May inquiry on wild horses was dated August 31 and did not arrive here until September 6 we hope you will accept our late response. We believe the information in our attached letter regarding the Nellis wild horse habitat area is so directly related to the final RMP that you will need to consider it when making your final decision on the RMP. But again we do apologize for our misreading of the due date and our late submission.

API'S RESPONSE TO RMP:

The Animal Protection Institute with 150,000 members nationwide is concerned with the protection of public land habitat for wild horses and wildlife particularly nongame species including predators, raptors, and their prey.

In reviewing the draft plan, we find the either/or format that addresses three issues (wildlife, wild horses, and vegetation) difficult to respond to. We oppose the Preferred Alternative and disagree with the objectives in the No-Action Alternative. Both of these obscure the wild horse boundary issue referred to in our attached letter. Neither of the alternatives incorporate the wildlife objectives of BLM's Plan 2000 for predators, raptors, nongame species or protection of riparian areas. The EIS refers to 150 acres along Breen Creek as well as areas within 4.5 miles of six developed springs and four undeveloped springs as being severely overgrazed. The number of acres involved is estimated as 814,300 or 37 percent of the wild horse habitat area. The damage is attributed

directly to the existence of horses. The area is assessed as 49 percent mid-seral and in a downward trend. On pages 4.3 and 4.4 of the environmental consequences it quotes utilization figures of 60-100 percent within a half mile radius of water sources and extending to a 4.5 mile radius. These areas are the same as those quoted by Craig Downer's 1980 report. Without your having done utilization or trend studies we don't know what the utilization figures and trend description in the EIS are based on.

In the description of vegetation, the EIS states that livestock decisions would affect the ecological condition at seven developed springs and three undeveloped springs on the Bald Mountain Allotment. We have no clear indication of where Bald Mountain is located or where the overlap between horses and livestock exists. Page 4-10 combines both wild horse and livestock impact on vegetation information. We're not able to determine whether livestock will or will not be grazing along Breen Creek in the area labeled NWHR under either alternative.

Between pages 3-6 and 3-7 of the EIS the wild horse boundary confusion arises once more. Page 3-6 refers to over a million acres as wild horse habitat (this is also in keeping with maps that accompanied previous removal plans in our files), but page 3-7, a few paragraphs later, refers to the old NWHR area that was canceled in 1973 to comply with the 1971 Act. On page 3-8, the history of livestock grazing is totally inconsistent with the narrative in other documents or that which Mr. Downer quotes in his 1980 field trip report. We have an uncomfortable reaction to the fact that all other summaries in this section describe the environmental analysis procedure of what kinds of things are looked at as indicating possible impacts to resources without making unsubstantiated accusations with regard to what the investigator suspects is the cause.

We believe the question related to the boundary being raised between the two alternatives is obscured and confused and needs to be addressed before the final decision is made.

Sincerely,

Nancy Whitaker
Program Assistant

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September 8, 1989

Curtis Tucker
Area Manager
BLM
P.O. Box 237
Caliente, NV 89008

DRAFT

Dear Mr. Tucker:

This is in response to your letter dated August 31, 1989 regarding the information I requested, in early May, on the Nellis Removal Plan as well as in response to your invitation for an on-site inspection tour of the area.

I'm sorry that I am not able to make an on-site tour of the area, but I appreciate the invitation since I agree that on-site tours are vital to understanding the topographical features and evaluating the conflicts of a given area.

One of the major points in the IBLA ruling had to do with establishing an appropriate management level (AML) on monitoring data. The draft Resource Management Plan for Nellis says that BLM intended to begin monitoring at the time there were 2000 horses in the area in order to establish the AML. Since there are no livestock, the utilization data should give you a fair indication of the carrying capacity for establishing an AML. But the HMAP refers to also conducting population demography and habitat assessment studies that include seasonal movement and distribution patterns to be monitored on a regular basis--some every year, some every three years. As far as we can determine you have not collected any of these data in order to demonstrate a justification for removing horses or establishing an appropriate number to manage in a given area.

You've noted the average precipitation for the area as 6.3 inches; which ranges from a low of 2.38 to a high of 11.91 in a 12 month period. Your recent data show the annual average precipitation for 1988 in thirteen stations as a low of 4.36 to a high of 10.36 which would give a mean for the entire area of 6.00 inches. It gives a picture of February as light, while April

and August are heavy. Even though the 1989 information gives only January through May, we agree it appears to be a dry year thus far. However, without utilization and actual use data it's not possible to know the condition of the vegetation or the amount left over from the 1988 season and the amount of forage now available to horses.

We appreciate your figures on the traffic accidents involving horses. Since these accidents are not directly related to the primary purpose for which the land was withdrawn, we believe traffic incidents can be mitigated for wild horses the same as they are for wildlife by fencing blind curves, special restrictions on speeds, posting warning signs, or perhaps restricting use of roads in HMAs.

We question your statement that BLM management activities and wild horse usage are secondary to the military's use under the 1986 Military Land Withdrawal Act. The phrase in that Act that says: "subject to valid existing rights" and other language, such as "otherwise permitted nonmilitary uses of withdrawn land," appear to us to grant wild horses and other wildlife the same rights on this withdrawn land as they have elsewhere on public lands unless there is a direct interference with the specific purpose for which the land was withdrawn. Raising dust, for instance, is something we would question as actually interfering with the stated purpose for which the land was withdrawn and which we'd further question as actually caused by horses not their own vehicles or the normal meteorological condition of the area.

But the matter we are particularly concerned with is the fact that the original designation of the area where horses existed in 1971 was identified as encompassing 1,935,000 acres and known as the "Nellis Range Complex. (NRC)." According to your historical narrative "[the NRC] was grazed by livestock, wild horses, and wildlife... Livestock grazing continued until 1979."

We understand from the narrative in the HMAP, that the NWHR was established in 1962 by Cooperative Agreement. That agreement was subsequently canceled on December 12, 1973 and "a new agreement reached to comply with the 1971 Wild Horse Act." The new agreement was (and continues to be) between five government agencies. It provides for the protection, development and management of wildlife and wild horses and burros on the Air Force Range, the Nevada Test Site and the Tonopah Test Range. In the Environmental Assessment (EA) that accompanied the 1985 removal plan there is a reference to the development of a Herd Management Area Plan (HMAP) through a Consultation and Coordination process. It says that a Consultation and Coordination Committee visited part of the NRC and "becoming completely familiar with the existing data," recommended that 2,000 wild horses be managed initially on the Nevada Wild Horse Range ONLY, with future analysis of monitoring to be used to determine that appropriate management number. A representative from API was on that field trip. (See attached pages from an internal-API report by Craig Downer dated June 1980.) We have

no record of agreements reached regarding the boundaries or even any record of why API wasn't included in such an agreement. Is there a record of the C & C agreement stating that the area where horses existed in 1971 should be reduced from the 1,900,000 acres of the NRC to the 390,000 acres of the canceled NWHR? The indication we have from Craig's remarks is that he was under the impression that the 390,000 acres was the original NWHR and not an area officially designated to comply with the 1971 law. We believe the field trip report indicates that Craig thought the purpose of the field trip was to assess the condition of the vegetation and not as a boundary question at all.

There is also a reference in the EA related to comments submitted for consideration in the development of the HMAP but there is no indication of what those comments actually said. There is no clear indication in the HMAP narrative of exactly when, where, and how the 1,900,000 acres where horses were identified as existing in 1971 as the "NRC" returned to the 390,000 acres of the canceled "NWHR" and why.

There is no clear explanation of when boundary lines were identified as being where horses existed in 1971. In fact, the narrative is almost purposely vague on this crucial point. From our experience in other areas, we are aware that their Unit Resource Analysis served as the foundation for management planning and objectives, including the identification and mapping of resources prior to the grazing EISS. We understand that the URAs were the first step of Management Framework Plans and involved inventories and mapping. Mapping to comply with the 1971 Act in these URA records answer the boundary questions that arise today. Are there records in early MFP Stage 1 inventories, narratives, census reports, and maps for Nellis that identify the areas where horses existed in 1971?

If this ^{official} identification of horse use areas didn't occur back in 1971 then the formulation of the HMAP and the current draft Resource Management Plan are in fact official, formal steps establishing boundaries. While our attention was focused on the controversies of the removal plans of 1985 and 1987, this major decision regarding the elimination of one million acres of habitat area was evidently obscured in the confusion.

We oppose this elimination of habitat area and submit that BLM is in violation of directives in the 1971 Act to protect and manage wild horses in areas where they existed at the time the act was passed. We contend that BLM cannot arbitrarily eliminate habitat for "administrative convenience" or because certain public interest groups didn't realize decisions were being made on where boundaries were to be set when they agreed that BLM should begin monitoring studies to establish an AML.

Sincerely,

Nancy Whitaker
Program Assistant

the enclosed is from your earlier removal plan.