

M 4-24-01



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

LAS VEGAS
BLM

April 24, 2001

Director, USDI Bureau of Land Management
Attn: Ms. Brenda Williams, Protest Coordinator
1849 C Street, NW
Washington, D.C. 20240

Re: Proposed Red Rock Canyon General Management Plan and Final Environmental Impact Statement(GMP/FEIS) and Red Rock Herd Management Area (RRHMA) Amendment to the Las Vegas Resource Management Plan (RMP)

Dear Ms. Williams:

In consideration of past verbal and written efforts to communicate our concerns to the Las Vegas Field Office of the Bureau of Land Management (Bureau), the Nevada Division of Wildlife (Division) now finds it necessary to protest both the GMP/FEIS and an amendment contained therein to the RMP to modify the RRHMA boundary. The Division does so on the grounds that:

- 1) In view of the NEPA process, actions as proposed were done so without proper consultation with the Division as mandated under Section 3(a) of the Wild Free-Roaming Horse and Burro Act of 1971 (P.L. 92-195; WHB ACT), Bureau policy per CFR Title 43 Section 4700.0-6(d), and Section 5(a)(2)(D) of the Red Rock Canyon National Conservation Establishment Act of 1990 (P.L. 101-621; NCA ACT), as amended.
- 2) The Bureau has again proposed to modify the RRHMA boundary recognized in the 1998 RMP without an ability to justifiably distinguish the Herd Area from the Herd Use Area or the Herd Management Area as indicated by available and conflicting documents; i.e. the Bureau is unable to provide any substantive information or data documenting *wild* horse or burro use occurring as of 1971 in the proposed modified and expanded area of the RRHMA as specified in the WHB ACT;
- 3) The Bureau failed to publish a Notice of Intent to amend the RMP as required by federal law;
- 4) The Bureau has failed to analyze a reasonable range of alternatives, including a No Action alternative;
- 5) The Bureau has failed to adequately assess the environmental consequences of the RRHMA Boundary Amendment under the NEPA process;
- 6) The Bureau has failed to provide for a public comment period following either proposal of the RRHMA boundary modification or a significant change from the proposed action identified in the Draft GMP; and,

- 7) The Bureau has failed to consult with the U.S. Fish and Wildlife Service even though the proposed RRHMA expansion occurs in habitat for the desert tortoise, a federally listed species under the Endangered Species Act of 1973, as amended.

To support the above points of protest, we will expand with the following experiences, observations, and comments.

Under the guidance of the National Environmental Policy Act (NEPA) of 1969, the Bureau is obligated to submit plans to the States for review. The Division then has the ability to review actions and provide comments on NEPA-covered actions initiated, for example, by the Las Vegas Field Office. The Division is responsible and maintains the authority for management of fish and resident wildlife on Federal lands as affirmed in CFR Title 43, Subtitle A, Part 24. Two years after the creation of NEPA, Congress adopted the Wild Free-Roaming Horse and Burro Act of 1971 (WHB ACT). Section 3(a) of the WHB ACT provides direction for federal agencies and states in part, "All management activities shall be at the minimal 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." This section necessarily extends beyond the provisions of NEPA to ensure that wildlife receives due consideration in those areas where resources are shared. Additionally, the Bureau and the Division are party to Supplement 5 to the Memorandum of Understanding between the two agencies, which directs, in part, "The Bureau shall consult with and coordinate its management of free-roaming horses and burros at the State and District levels with the appropriate division of the Nevada Department of Fish and Game."

Regarding the proposed modification to the Red Rock HMA, the one disjunct field trip occurring on January 12, 2000 with the theme of assembling an interdisciplinary workgroup to address RRHMA boundaries and Appropriate Management Levels (AML's) does not constitute proper consultation, particularly in dealing with this issue. The Division's comments provided earlier in the NEPA process for the Draft GMP/DEIS were not discussed nor mitigated as was expected under a consultation. Instead, discussion circled around to the Bureau's apparent bottom line which was to allow continued use of two springs by *wild* horses already in conflict with wildlife resources and get the buy-off from the Division for the drilling of two controversial wells to redistribute and increase use levels outside of the existing NCA and RRHMA. We can provide a more detailed account of that field tour and subsequent actions on the part of the Bureau should there be need.

We contend that the failure to recognize, analyze and recommend proper management of the effects of horse and burro management on wildlife constitute violations of both the Free Roaming Wild Horse and Burro Act of 1971 and NEPA.

The Bureau's failure to properly and adequately consult with the Division is a recurrent theme with the Bureau's Las Vegas Field Office. This lack of consultation was noted in our written comments to the RMP and the Draft GMP/DEIS for the Red Rock Canyon NCA. The Bureau has, in fact, implied that the Division is not a partner in the management of wildlife resources, but is simply another affected interest. Again, the State-Federal relationships between Interior agencies and state wildlife management agencies is detailed in CFR Title 43, Subtitle A, Part 24. The underlying tone is apparent in the attached letter dated November 9, 1999 from the Las Vegas Field Office regarding the Bureau's receipt of the Division's comments for the Draft GMP/DEIS. This becomes more apparent by comparing the Division's comments (see attached) to the various sections incorporated into the Proposed GMP/FEIS. For example, our many years of sharing information and advising the Bureau of short-term and long-term negative impacts consequential to increased access, levels, and diversity of recreational and other activities to wildlife, particularly bighorn sheep, have gone unheeded. The Bureau has yet to mitigate for the loss of water projects near La Madre many years ago, and leaves

unaddressed management issues elsewhere. Now, the Bureau suggests that bighorn sheep become an indicator species for measuring the impacts by these activities (page 162, Proposed GMP/FEIS). We believe that population and trend information for bighorn sheep have already provided substantive evidence of the consequences of other management activities in and about the NCA. To ignore this information and postpone addressing these impacts in order to monitor bighorn as an indicator species jeopardizes the likelihood of future actions being successful at reversing these adverse impacts. The Red Rock Canyon National Conservation Area Establishment Act of 1990 (NCA ACT), as amended, requires the Bureau to consult with the Nevada Division of Wildlife (Division) in preparing the Red Rock NCA General Management Plan (GMP). The Division has previously expressed a concern over bighorn sheep / wild horse conflicts in this area. Bird Spring is a critical wildlife water source. There is no evidence in the GMP, elsewhere or otherwise that the required consultation with NDOW was accomplished following the Bureau's decision to include the RMP Amendment (to expand the RRHMA boundary) within the Proposed GMP/FEIS. Another example is in regards to inadequate consideration for potential nesting habitat of the peregrine falcon in the north fork of Pine Creek. In this case, the Division provided logical and reasonable comments on the Draft GMP/DEIS regarding conflicts with climbing activities in the area. Despite these comments, the Bureau did not follow-up with the Division on this issue prior to printing of the Proposed GMP/FEIS. In fact, the Bureau offers no changes on page 31 of the Proposed GMP/FEIS than from the Draft GMP. How can nesting activity ever be determined when hazing or disruption of nesting activities by falcons is accomplished merely by allowing human presence within a quarter mile of potential nesting sites during the sensitive aerie selection period? A third example comes from the unchecked proliferation of climbing access activities in the Potosi Mountain area of the NCA. Here, wildlife guzzler SM-63 has literally become a parking lot for climbers. Not only are there conflicts with providing available water for upland species, including bighorn sheep, but with nesting golden eagles. The Bureau has not and appears not capable of discouraging recreational activities in areas sensitive to certain wildlife species. The Division can only deduce that recreation takes precedence over biodiversity and T&E conservation in view, for example, of statements made on pages 31, pages 118-119, and A-164 and elsewhere in the Proposed GMP/FEIS.

The Bureau's proposal to modify the RRHMA is unjustified and unsupportable. The Free-Roaming Wild Horse and Burro Act states: "wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area *where presently found* (emphasis ours), as an integral part of the natural system of the public lands." Where *wild* horses and burros were found as of December 15, 1971, is called their "range," which defined in the Act "means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally, but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for public lands; . . ." The range or known territory of *wild* horses and/or burros at the time of the WHB ACT, became defined as the Herd Area (HA) also referred to as the Herd Use Area (HUA). A Herd Management Area must fall within the HA (=HUA), but may not exceed that area. Without HA delineation, there is no understanding of the limits of the Herd Management Area. Therefore, the HA delineation should be required before any boundary alteration proposal is made.

Early on, the Division understood the term HMA as used locally by the Bureau to be synonymous with HA or HUA. This synonymy was demonstrated as the extent of horse use in the 1978 Stateline Resource Area MFP III. The Bureau has never identified 1971 horse or burro use as extending beyond the identified RRHMA/RRHUA. The Division finds it unlikely that any information could be supplied by the Bureau after 30 years which would expand the RRHMA or otherwise modify the RRHMA/RRHUA boundary.

The Amendment to the RMP justifies the RRHMA expansion with the single statement "...to incorporate an area commonly grazed by wild horses." There is no explanation as to how, after preparing an MFP III in 1978, draft RMP in 1992, a Supplement to the Draft in 1994 and a Final RMP in 1998, BLM failed to include this area in the HMA, if it is "commonly grazed". However, the record for the RMP does indicate that BLM did take a final and specific look at RRHMA boundaries as the State Director approved the RMP in 1998. In the Errata sheet attached to the Record of Decision for the RMP (State Director, October 1998), item 11 notes specific correction to the RMP HMA map.

The Division contends that the expansion of the RRHMA east of the Bird Spring Range does not represent *wild* horse use as part of the RRHMA circa 1971. By providing water storage at the springs and constantly hauling water, the Bureau has expanded horse use beyond the legally observed HMA.

In making the Red Rock HMA expansion proposal, the Bureau has re-opened the question as to the proper boundary for the unit. As such, the Division proposes that the Bureau re-examine the RRHMA and properly designate a RRHMA based upon unquestionably defensible data with regard to *wild* horse and burro ranges known as of December 15, 1971. The Bureau admits that unreliable data were used to originally delineate the Red Rock HMA in the Stateline Resource Area MFP III. The Division contests the assertion that horse and burro use was as extensive as even that portrayed by the previously designated Red Rock HMA. The Bureau has not provided any substantive information or data which would demonstrate that *wild* horses or burros occupied all but a small northern portion of the Bird Spring Range at the time of the Act.

An observation, improvements to both Bird and Tunnel Springs were made after 1991 to establish reliable water sources for *wild* horses. At the time of the WHB ACT, Bird Spring did not have an annually reliable surface flow and Tunnel Spring was an inconsistent, seasonal water source. Understanding the high water requirements of horses and burros, it is apparent that *wild* horses were unable to utilize the area as part of a known territory. The Bureau has made regular water hauls since that time to maintain horse use south of State Route 160. These water hauls were initially portrayed as an emergency action, but have been a regular occurrence due to the inability of the two springs to provide adequate water for high consumption, *wild* horses. Water was again hauled throughout the summer of 2000, supporting horse use at an inflated level that is beyond a "thriving natural ecological balance" and has resulted in expanded use areas far beyond the 1971 range. Had these springs been reliable, *wild* horses would have established home ranges and the east area proposed for the RRHMA expansion would have been included as part of the original RRHMA, based upon 1971 use.

The Division believes that a reasonable and prudent person would understand from supportable information that: 1) the Bureau has managed *wild* horses south of State Route 160 beyond the RRHMA/RRHUA boundary, beyond the amount of naturally available water, and in excess of the natural thriving ecological balance mandated in the WHB ACT; and, 2) the Bird Spring Range should not be included in the RRHMA and expansion of the RRHMA east of the range has no legally based foundation.

The Bureau has failed to address the functional condition of the spring and associated riparian habitats. It is our observations that riparian habitat conditions are in a very degraded state as evidenced by the observations of trampling, occurrence of bare ground and upland plant species dominance. These are all impacts that have been associated with reducing flows and lowering of natural water tables. These conditions lead us to believe that minimum rangeland standards are not being met. This determination and the appropriate development of actions addressing these conditions are conspicuously absent.

The Bureau is required by NEPA and the Bureau's Handbook 1610 under III B. 1. to file a Notice of Intent (NOI) to amend the RMP or any plan requiring an Environmental Impact Statement. No NOI for the proposed

amendment of the RMP decision setting the boundary for the RRHMA was published to initiate public participation or circulated to State and other Federal agencies, Counties, and tribal governments as required.

The NOI published for the NCA GMP did not include, and could not have included, this amendment proposal since the GMP NOI was published prior to publication of the RMP in which the RRHMA boundary was established. There is no established procedure under NEPA, CEQ, or the Bureau's planning regulations to make "minor adjustments," as portrayed in the proposal that amend decisions in a Land Use Plan other than in a formal Land Use Plan amendment process, which requires the NOI. In February 2001, the Bureau published a notice of proposed amendment to the RMP (RRHMA boundary) separate from the notice of availability for the Proposed GMP. Since this is a new, unevaluated proposal, the process can neither be abbreviated nor avoid the evaluation and public comment periods.

The Bureau is required to prepare and provide for public review of planning criteria to ensure that decision making is tailored to the issues (43 CFR 1610.2(f)(2) and 1610.4-2, and Handbook 1610 III B. 2.). The record for the proposed amendment (included within the GMP) presents no planning criteria related to *wild* horses and burros, nor does it show evidence that any planning criteria were developed respective to an issue of expanding the RRHMA outside of the NCA. On the contrary, the Draft GMP Summary Table (page S2) is specific in its notation that changes proposed to the RRHMA boundary are limited to areas within the NCA.

The Solicitor's Opinion for Jack Morrow Hills CAP, the Council on Environmental quality (CEQ) regulations (supported by the Bureau's NEPA Handbook), and the Bureau's Land Use Planning Handbook require Bureau officials to rigorously consider a reasonable range of alternatives in environmental documents. The proposed expansion of the RRHMA is the only alternative analyzed for the RMP amendment. The Bureau has created the illusion of a range of alternatives by adding this action to the Wild Horse and Burro section in the Final EIS Summary Table (page S2). However, this table is merely a duplicate of the table in the Draft EIS with the category title edited and another alternative (RRHMA expansion) added. The other five alternatives were created prior to any consideration of expanding the RRHMA outside of the NCA and a reading of them shows they were in no way related to or developed in response to the proposal to expand the RRHMA outside the NCA. Nor were the original alternatives modified or expanded to discuss RRHMA boundary expansion. The proposal also lacks the discussion or inclusion of a No Action alternative, as required.

The discussion of Wild Horses and Burros and the RRHMA boundary found in the Proposed GMP/FEIS (page 28) further amplifies the Bureau's failure to properly develop alternatives or describe the significance of the proposed RRHMA boundary change. The first sentence in this section states that the Draft GMP/DEIS proposed to change the RRHMA boundary (within the NCA) has been dropped and the Proposed GMP/FEIS "...leaves the HMA intact." The very next sentence again states that the RRHMA boundary will be maintained as shown in the RMP "with 2 minor adjustments." The reader is left wondering how the boundary will be both maintained intact and adjusted at the same time.

The Bureau's NEPA process requires a review of environmental consequences; that for the Proposed Action assesses unavoidable adverse impacts, the relationship between short-term use and long-term productivity and irreversible or irretrievable commitment of resources. The entire assessment of the proposed RRHMA boundary amendment as stated on page 162 is, "The effect of the boundary change to the southeast will be the addition of prime forage land to the HMA, which will benefit the horses."

There is no other mention of this RRHMA amendment anywhere else in the Proposed GMP/FEIS. There is no discussion on impacts on the desert tortoise (a State and Federal listed Threatened species), on vegetation due to increased grazing, on the water resources of Bird Spring located only a few hundred feet west of the expansion area, on bighorn sheep, on recreational use of the area or any other resource concern. The amendment fails to discuss how the boundary changes on the southern tip of the RRHMA are justified other than the obvious use and convenience of the State Route as the boundary. The amendment fails to describe how *wild* horses will be kept in the new RRHMA or how they now will understand that they are not to cross south of the unfenced State Route any longer. It appears that this minor adjustment strategy may be used in the future to justify another expansion as *wild* horses are found to graze other areas outside the RRHMA.

The Bureau originally proposed in the Draft GMP/DEIS to reduce the size of the Red Rock HMA. The Bureau now proposes to increase the size of the RRHMA and expand its boundaries as they were established by decision in the RMP. The Proposed GMP/FEIS describes the changes as "Minor adjustments to the HMA south of State Route 160...", and "...to incorporate an area commonly grazed by wild horses."

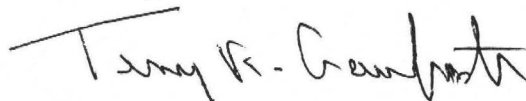
A review of the maps (M7 & M8) provided in the Proposed GMP/FEIS reveals that one of the minor adjustments appears to be approximately ten (10) miles long and up to two (2) miles wide. This would appear to be a significant change, not a minor adjustment. Since this change occurs directly east of Bird and Tunnel Springs, water sources shared with native wildlife, this change would seem all the more significant.

In 43 CFR 1610.2(e) and the Bureau's Planning Handbook require a 90 day comment period on draft EIS's. The failure to include the RRHMA expansion in the Draft GMP/DEIS, or to publish a RMP amendment NOI or to provide a 30 day comment period following significant change, has effectively eliminated any Division, other agencies, or public involvement other than the protest period. Because no comment forum of any type was held and no effort by the Bureau to inform the public of an amendment prior to issuing the Proposed Final EIS was made, no member of the public can have standing in or participate in the protest period.

Finally, the proposed RRHMA/RMP amendment is located in known desert tortoise habitat. The tortoise is protected under the federally Endangered Species Act of 1973 (ESA), as amended. The RRHMA was specifically excluded from the Biological Opinion for the RMP (B.O. 1-5-98-F-053, page 37) as it was to be covered in the Biological Opinion for the GMP. There is no obvious evidence in the Proposed GMP/FEIS record that the Bureau requested or completed a Consultation with the U.S. Fish & Wildlife Service for the proposed RMP / RRHMA amendment; this as part of the completion of the Proposed GMP/FEIS or as a separate Consultation for just the RMP Amendment. Compliance with section 7 of the ESA may not have occurred as we understand it.

The Division looks forward to your response.

Sincerely,



Terry Crawford, Administrator
Nevada Division of Wildlife

DBH/CS:dbh
Attachments

cc: R. Michael Turnupseed, PE, Director, Department of Conservation and Natural Resources
Ms. Heather Elliott, Nevada State Clearinghouse
Ms. Catherine Barcomb, Commission for the Preservation of Wild Horses



United States Department of the Interior

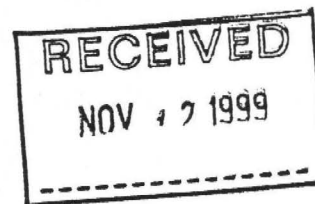
BUREAU OF LAND MANAGEMENT

Las Vegas Field Office
4765 Vegas Drive
Las Vegas, Nevada 89108
<http://www.nv.blm.gov>



9 November 1999

Mr. Brad Hardenbrook
State of Nevada, Division of Wildlife
4747 W. Vegas Dr.
Las Vegas, NV 89108



Dear Brad:

The Bureau of Land Management has received your comments regarding the draft *Proposed General Management Plan and Environmental Impact Statement for Red Rock Canyon National Conservation Area*. We appreciate your taking the time to provide us with your comments and concerns, and are currently reviewing all the comments we have received. All comments, along with a response to issues raised, will be included in the Final GMP, which should be completed in early 2000.

Please be advised that any comments received during this process, as well as your name and address, will be made available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not want your name and/or address made available to the public. Any determination by the BLM to release or withhold the names and/or home addresses of those who comment, will be made on a case-by-case basis. A commenter's request to have his or her name and/or address withheld from public release will be honored to the extent permissible by law.

If you have any further questions regarding the plan, you may contact Dave Wolf at 702/647-5074 or Gene Arnesen at 702/647-5068.

Sincerely,

Jo Starr
Comment Review Team



KENNY C. GUINN
Governor

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WILDLIFE

1100 Valley Road
P.O. Box 10678
Reno, Nevada 89520-0022
(775) 688-1500 • Fax (775) 688-1595

PETER G. MORROS
Director
Department of Conservation
and Natural Resources

TERRY R. CRAWFORTH
Administrator

SOUTHERN REGION
4747 W. Vegas Drive
Las Vegas, Nevada 89108
(702) 486-5127; 486-5133 FAX

October 29, 1999

Ms. Heather Elliott, Coordinator
Nevada State Clearinghouse
Department of Administration
Budget & Planning Division
209 East Musser Street, Room 200
Carson City, Nevada 89701-4298

Nevada SAI#: E1999-159; due October 26, 1999

Project: Proposed General Management Plan & Draft Environmental Impact Statement
(GMP/DEIS) for the Red Rock Canyon National Conservation Area (RRCNCA)

Division personnel have reviewed the GMP/DEIS. The RRCNCA, particularly the core area, encompasses the richest localized suite of geological, topographical, hydrological, and associated biological diversity in the Spring Mountain Range. In overview, the Bureau of Land Management (BLM) faces a difficult situation in addressing multi-faceted demands for this area, an area that is valued and marketed as both a convenient and popular visitor destination adjacent to the exponentially expanding urban centers in southern Nevada. RRCNCA's core area receives the most concentrated use by the visiting public.

Initially, the BLM's stated preference for a management concept, relative to other alternatives, placing greater emphasis on wildlife resources through biodiversity considerations was welcomed. And, the Division appreciates the accommodation of hunting opportunities as per previous agreements. However, the use of biodiversity in the context of the GMP/DEIS is unconventional and a disappointment. The BLM may have identified its Proposed GMP - DEIS Alternative 3 as the most likely to confer environmentally compatible guidance relative to other management alternatives in the GMP/DEIS, yet BLM's management preference is unquestionably flawed. Two overriding points are noted. Under the pretext of biodiversity, the BLM proposes 1) greater diversity and levels of recreational activities to be accommodated without determining what the visitor carrying capacity is before sustainable ecosystem health is irreparably damaged; and, 2) a method for management of feral horses and burros which conflicts with healthy sustainment of biodiversity for the RRCNCA and the Free Roaming Wild Horse and Burro Act. Given that,

evaluation of BLM's Preferred Alternative became the primary focus of the Division's review. Prominent points supporting the Division's assertions include but are not limited to:

RECREATION

General

- The 1976 Master Plan encouraged expansion of recreation dominated uses. In view of the changing Red Rock Canyon environment, the RRCNCA enabling legislation redirected planning to address other significant values such as conservation of Red Rock Canyon's biodiversity. As part of this goal, the potential for other conflicting land uses such as mineral development were diminished. Unfortunately, the tone of BLM's Preferred Alternative furthers the theme of the 1976 Master Plan. This is readily apparent throughout the GMP/DEIS.
- The relatively recent "thrill" pursuits of rock climbing and mountain biking pose additional concerns for wildlife habitat. A core of participants in these pursuits are constantly pioneering climbing routes and bike trails on lands throughout southern Nevada, notably within the RRCNCA, without regard for regulations, the impacts to wildlife, or degradation of the land. Because the area is a National Conservation Area, the BLM is not obligated to provide space for every recreational pursuit (Section 4.(e) of H.R. 4559 - P.L. 101-621).

Hunting

- Hunting outside of the RRCNCA core area is a historical use of the greater RRCNCA area and adjoining public lands. Water developments for upland game and bighorn sheep were established prior to RRCNCA boundary expansion and continue to be the destination of hunters and wildlife enthusiasts. The Division appreciates the BLM to respect prior agreements (Templeton 1993) to allow hunting to continue within certain areas of the present RRCNCA.
- Particulars for clarifying and informing the visiting public and cooperating agencies about hunting activities in the RRCNCA are the following:
 - a) The Division will be involved in discussions should public safety and/or private property concerns resulting from RRCNCA use conflicts and/or urban encroachment become an issue for hunting opportunities in the future.
 - b) BLM will develop and post signage and disseminate handout type maps to advise the public of hunting opportunities and restrictions. The Division encourages periodic review and involvement in design of any maps, brochures, and signs developed for the general public regarding hunting/shooting advisements.
 - c) The Division will assist BLM by providing game management unit maps,

- d) distributing hunting/shooting maps, and information available to the public, and by having its law enforcement personnel patrol Cottonwood Valley on the opening of small game (dove, quail, chukar partridge, cottontail rabbit) seasons.
- e) The Division encourages BLM to facilitate advising the cooperating law enforcement community about hunting/shooting opportunities and restrictions.
- f) BLM will deny mountain bike and equestrian use in that portion of the RRCNCA south of SR-160 during the week prior to the opening of quail/chukar/cottontail season and extend that closure through the second Sunday of the quail/chukar/cottontail season.

Rock Climbing / Mountaineering

- Forming advisory groups (Liaison Council), as is suggested in the GMP, is vestige of the Bureau's failed Coordinated Resource Management process. A special interest council is unable to objectively and critically evaluate the impacts of its preferred activity on the natural resources or competing activities. And, information from such groups is generally not well-distributed to other affected interests. Should creation of an advisory panel be pursued, the Division recommends that panel represent the interests of the public and local, state, and federal agencies. Continuing to allow the horse enthusiasts, hunters, mountain bikers, and climbers to champion every special interest will only result in further degradation of RRCNCA's resources.
- The climbing restrictions proposed in the GMP are reactionary and not adequately protective of wildlife resources. For example, Peregrine falcons (*Falco peregrinus anatum*) were documented in the north fork of Pine Creek Canyon within the last five years, and likely use the south fork. Nesting aeries were not located in the north fork of Pine Creek, but attempts by falcons to establish nesting territories in the upper reaches of Pine Creek may have been foiled consequential to heavy use by rock climbers (bolts were evident throughout Pine Creek Canyon during recent surveys). The BLM's proposal to monitor and evaluate effects of rock climbing *after* a nest is found is unproductive and unacceptable, especially when the presence of rock climbers at some distance (e.g. 1/4 mile) can discourage area use by falcons. Because falcons use the RRCNCA, Division recommends restricting rock climbing activities to east of the confluence of the north and south forks of Pine Creek (outside of the Pine Creek WSA) regardless of time of year to avoid disturbance to falcons.
- The Division recommends that climbing, particularly bivouacs, be prohibited within 100 yards of point water sources (springs and seeps) to reduce impacts to cliff nesting birds and other wildlife dependent on the waters and associated habitat. The unchecked pioneering of climbing routes in the RRCNCA, regardless of wildlife status or impacts thereto, is justification for the Bureau to establish zones which exclude or restrict climbing activities. BLM should be mindful and consider NRS 503.660 which states:

Unlawful manner of camping near water hole. It is unlawful for any person to camp within 100 yards of a water hole in such manner that wildlife or domestic stock will be denied access to such water hole.

Bicycling

- The logic behind constructing a paved route between Sandstone Quarry and someplace near Willow Spring/Ice Box Canyon (Page 53 and map M5) for use by all bicyclists, hikers, and equestrian visitors escapes the Division. This suggestion is a compromise to public safety (e.g. bicyclist/hiker/horse collisions) and contributes another unnecessary cause of wildlife mortality activities associated with the route. Though the proposed return road from Sandstone Quarry to the Visitor Center also would cause additional wildlife mortality (vehicle collisions) and is also not favored by the Division, it provides a more sensible solution for motorists and bicyclists alike to shorten their trips consequential to their physical limitations or poorly planned time budgets.
- There exists an excess of mountain bike trails in Cottonwood Valley, many of which lead directly to the same destination and to springs which may preclude use by wildlife. These springs include Mud Spring #1 & #2, and Lone Grapevine Spring (Map M45). In coordination with the Division, elimination of selected bike trails, particularly those in and adjacent to springs, should occur.
- Page DEIS 26. Forty-eight miles of mountain bike trails is excessive for a National Conservation Area. No mountain bike trails should be authorized for the area north SR-156 given the pattern of unregulated proliferation of mountain bike trails experienced in the Cottonwood Valley area.
- Trails (see identical maps M21, M26, M31, M36, M41) suggested for mountain bike use are truncated so as to distort the actual extent of trails. Alternative 3 does not mention how all the trails, legitimate and illegal, will be treated. Will trails be designated other than those included in the Cottonwood Valley Mountain Bike and Equestrian EA? If so, that does not benefit wildlife. Further, by sanctioning the "Twilight Zone" trails as BLM has sanctioned the illegally developed Cottonwood Valley system, promotes continuing unauthorized/illegal trail building which led to the Cottonwood Valley trails. If a trail system is to be created, the BLM must continually monitor and actively discourage the creation of new bike trails consequential to unauthorized actions.
- Anticipated increases in area use of the "Twilight Zone" trails by bicyclists likely will cause horses and burros to seek new avoidance routes. As in Cottonwood Valley, this results in trail braiding and additional habitat degradation. The new "Twilight Zone" trails will also focus activity on Grapevine Spring and will reduce the value of the water sources to the biota of the area.

ROAD ACCESS

- Roads 16 and 17 in the LaMadre area should not be closed. The BLM has no basis for making the statement "they were not in use prior to the WSA designation." Red Rock #3 water development (installed prior to FLPMA) still exists off of road #17. Red Rock #2 water development was removed from the LaMadre Ridge saddle on road #16 due to vandalism. This proposed action is unjustified, unless the Bureau plans to abandon or relocate the remaining water project elsewhere in the WSA.

BIODIVERSITY

- Biodiversity as used in the context of the Proposed GMP/DEIS is the marriage of natural and endemic species diversity and ecosystems with proposed feral horse and burro management. In addition to recreational pursuits, it is also a convenient rationalization for legitimizing activities deleterious to the long-term health of native and endemic species and associated ecosystems. Should the BLM continue to purport this connotation, then the public will be misled as to what exactly BLM's management will manifest in terms of RRCNCA's *Desired Future Condition*.
- Definition of "core" bighorn sheep habitat is unclear. What aspect of bighorn sheep biology and habitat is inferred? As an amendment to the Las Vegas Resource Management Plan, bighorn management for the RRCNCA should complement bighorn management in adjacent areas, not just north of SR-160. The unauthorized proliferation of trails and climbing routes, expropriation of waters for feral horses and burros, and lack of commitment by the Bureau to past bighorn sheep projects are underlying symptoms for this concern.
- Division concurs with BLM that allocation and diversion of waters for purposes other than riparian maintenance and wildlife use should be limited to 25% of historic low flow measurements.
- No water will be developed without adequate water for wildlife at the source (NRS 533.367). Riparian or spring developments (e.g. Tunnel Spring) which involve exclosures which preclude use by wildlife (e.g. bighorn sheep) will not be tolerated.
- Page DEIS 29 - A bat gate was recommended for Wounded Knee Cave. Townsend's big-eared bats were documented at Desert Cave in May 1996 (M.K. Ramsey 1997), yet they apparently no longer use the site. Unrestricted visitation to Desert Cave may have discouraged use of the cave by these bats. The Townsend's big-eared bat (*Corynorhinus townsendii*) has a tendency to abandon roosts after even slight disturbances (M.K. Ramsey 1997). Division encourages that inventory for suitable caves and abandoned mines in the RRCNCA continue to determine bat roosting sites. Sites should then be monitored to

verify use between April and July. Should vulnerability to visitor disturbance be of concern, then site evaluation and scheduled installment of gates on an as-needed priority basis is warranted. Thereafter, gated bat roosts could be monitored periodically to evaluate use by bats and effectiveness of gates. The Division wishes to assist in coordinating such efforts.

- The Division supports protection of the north fork of Pine Creek Canyon (see comments in above Rock Climbing section).
- Page DEIS 30: GMP does not conserve gila monster habitat at Red Spring or the adjacent proposed education/administration site in Calico Basin. Habitat degradation is implied through increased use.
- Pages 80-82, 84-85 of Proposed Plan. Monitoring and Evaluation section fails to meet tangible measurement needs or time certain accomplishments.
- Appendix 1: Special Status Species, add the following:

DEIS-A2		
<u>Phainopepla nitens</u>	NDOW/95	Pine Creek (Adult w/ 2 immatures)
DEIS-A5		
<u>Piranga rubra</u> (Summer Tanager)	NDOW/95	Pine Creek
- Species lists need to be updated and edited. Not all localities are listed, and some species recently have experienced changes in assigned nomenclature such as the collared lizard, *Crotaphytus collaris* = *C. insularis*

HORSE AND BURRO MANAGEMENT

BLM's proposal regarding feral horse and burro management is problematic and stems from management situations pre-dating the current RRCNCA. This failure to properly address the impacts of such activities on wildlife is reflective of the GMP approach to biodiversity management. Such conflicts are entwined in the BLM's Preferred Alternative.

- BLM developed Tunnel and Bird springs for horses circa 1990. These are the only water sources in the Bird Spring range. Decisions were made by BLM regarding plumbing such that horses and burros benefitted while wildlife needs suffered. Bird Spring has proven inadequate to support even a small portion of the HMA's herd. Tunnel Spring demonstrated an unreliable flow rate to support inflated horse numbers in the Red Rock HMA. In 1998, a BLM operations crew under direction of the wild horse and burro specialist, attempted to dig out Tunnel Spring to increase the flow. The flow increased for

a few days, then stopped all together. As Don Siebert (BLM hydrologist) had warned, increasing the flow had drained the perched water table. Remedial actions, wildlife drinker at Tunnel Spring and horse exclosures at both springs, do not meet wildlife needs, especially those of wildlife. There is no certainty that the Tunnel Spring source will self-heal, and the availability of this spring to wildlife which historically used the spring source will be precluded. Waters (wells) developed away from the lost or damaged natural sources may attract some wildlife, but will in no way mitigate the loss of water to wildlife which used Tunnel Spring.

- The Division disagrees to modification of HMA boundaries. There is no mechanism in the Free Roaming Wild Horse and Burro Act for such an action. Any attempt to reduce or expand an HMA is not allowed under the Act. What is permitted is management of horse numbers as set by Appropriate Management Level (AML). The number can be zero or some number that is determined to be consistent with *thriving ecological balance*.
- * AML should be set to account for worst case scenarios (i.e. drought ca. 1986-1991.) Pronouncements of a minimum viable population are baseless when dealing with feral livestock where genes may be purchased at any horse auction or provided through transplants as the BLM did in 1992.
- Developing waters for burros east of SR-159 and creating water hauls may be good for horse and burro viewing, but at what point does water development become livestock ranching rather than meeting the "thriving ecological balance" pronouncement under the Free Roaming Wild Horse and Burro Act?
- * There is no basis for setting a lower limit of 50 horses, even for avoidance of deleterious inbreeding effects. Interchange of animals between HMAs is an alternative. However, to meet *thriving ecological balance* there can be no minimum number in an HMA and animals should not be managed for the maximum number when an AML is set.
- Alternative 3 shows the southern portion of the RRCNCA, west of SR-159, as being joint horse and burro use area. This is unacceptable. The Division previously supplied the Bureau with information from the 1970's which identified no burro use in the Bird Spring Range. Compared to horses, burros present a greater threat of competitive exclusion to bighorn sheep because of their mobility and agonistic behavior (Weaver, 1972). Burros should be limited to those areas where they existed in 1971, i.e. at the enactment of the Free Roaming Wild Horse and Burro Act.
- In addition to neglect of affected wildlife, relocation of water sources (wells) to the south will alter the distribution of horses and will lead to a *de facto* expansion of the HMA. Drilling wells will establish reliable, permanent waters which Division anticipates BLM to justify inflating horse AML, but more importantly preclude the option for zero number

management. Fencing the southern HMA boundary is not acceptable because of its negative effect on bighorn sheep movement corridors.

- Although Alternative 1 was not the focus of comment, Division is amazed by the horse recommendations therein.
 - a) Wells and water hauls do not fit in with the term *thriving ecological balance*. Water rights to Potosi Spring are privately held and on private land. This source can not be utilized to account for expanded horse and burro numbers. All spring developments proposing movement of water away from the source will be protested by the Division.
 - b) Alternative 1 also proposes prohibition of organized events occurring within ½ mile of waters except for equestrian events which avoid times when feral horses and burros seek water will be permitted. There is no consideration for wildlife use of these waters.

COMMERCIAL

- The increasing level of commercial activity such as allowing vehicle tours to drive through Tunnel Spring is disturbing. The BLM's short-term solution for minimizing harassment to horses was moving the water trough further away from the source. This action was to the detriment of wildlife and contrary to biodiversity management.
- While the number of commercial permits proposed are a starting point, This suggests a trial and error approach which is inefficient and places the natural resources at long-term risk.
 - a) There is no visitor carrying capacity identified;
 - b) *Future Desired Condition* is ill-defined;
 - c) The ability to evaluate unlimited accommodation of some recreational activities is not clear;
 - d) There is no time-certain schedule identifying activity plans development or monitoring strategies to fully implement the guidance in the GMP/DEIS.

What will trigger evaluations of permitted activities as part of attaining GMP goals?

LAW ENFORCEMENT AND RESOURCE PROTECTION

- Relative to the marginally compatible uses occurring in the RRCNCA is an enforcement deficiency of regulations protecting the RRCNCA and wilderness study areas.

- a) Under the Climbing Restrictions Section (see DEIS 36), the plan calls for coordination on proposals for replacement of climbing bolts in wilderness (WSA). Climbing was not addressed in the 1987 IMP, leading to excessively broad interpretations. However, the utilization of power tools (drills) to place bolts and the extent to which bolts have been utilized were clearly not allowed in the 1987 IMP. Furthermore, whatever interpretation was used to permit the retention of existing bolt systems in the Pine Creek and LaMadre WSAs, it clearly exceeds allowances within the current (1995) IMP. If the bolts are not removed or a middle ground is negotiated, the BLM demonstrates inconsistent adherence to the existing IMP.
- b) The Division has periodically performed evening surveys on the Scenic Drive since 1991 during hours when the road is closed to the public. The Division selected the Scenic Drive this past year specifically to perform population surveys on nocturnal reptiles because it is perhaps the only road in southern Nevada closed to access at night. However, Division observed that BLM's ability to secure closure at stated times has become compromised. This is an unnecessary compromise of public safety and wildlife. In a larger sense it is demonstrative of BLM's chronic staffing problem affecting regulation enforcement. Construction of capital improvements to accommodate an increase in visitation rate and volume without adequate staff is a prescription for ecological disruption. How does BLM propose to efficaciously overcome staffing obstacles such as Federal Service ceiling levels for Full-Time-Equivalent positions (FTE's) regardless of funding levels. Additional positions are needed to offset current staffing deficits.

CLOSING COMMENTS

On pages 79-88 of the Proposed GMP, sections summarizing *Implementation, Funding, and Costs; Monitoring and Evaluation;* and, *Standard Operating Procedures* implicit to the GMP are provided. BLM makes two statements within these sections:

The process of implementation of the GMP is gradual and takes place throughout the life of the GMP on a project by project basis, with priority based on need and available funding.

Some program areas have monitoring systems developed or in place while others would need to have monitoring techniques developed and tested to determine how to best evaluate conditions and implementation results.

The Division is not optimistic about the Proposed Plan. Factors stressing ecological components of the RRCNCA were introduced by past management. The current spectrum of proposed

October 29, 1999

management will likely accelerate erosion of the RRCNCA's biodiversity richness. Should these management inequities persist unresolved, then the Division will further evaluate the level of protest which warrants pursuit.

Sincerely,

TERRY R. CRAWFORTH, ADMINISTRATOR



D. Bradford Hardenbrook
Supervisory Habitat Biologist

DBH:dbh

cc: Southern Region Manager, NDOW
Habitat Bureau, NDOW
Game Bureau, NDOW

references

Ramsay, M.A. 1997. Final Report on the Maternity Roost Study and Status of Bat Species of Concern of the Spring Mountains, Nevada. United States Fish and Wildlife Service, unpublished report. Reno, Nevada. 49 pp w/ Appendices.

Templeton, B. 1993. Final supplementary rules for certain public lands managed by the Bureau of Land Management within the Red Rock Canyon National Conservation Area, Las Vegas District, Nevada. NV-050-03-4333-04. *Federal Register* Vol. 58, No. 97, pages 29625-29633.

Weaver, R.A. 1972. Feral burro survey. California Dept. Fish & Game. PR Project #W-51-R-17. Completion Report July 1, 1968-June 30, 1972. 14 pp.



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

April 24, 2001

Director, USDI Bureau of Land Management
Attn: Ms. Brenda Williams, Protest Coordinator
1849 C Street, NW
Washington, D.C. 20240

Re: Proposed Red Rock Canyon General Management Plan and Final Environmental Impact Statement(GMP/FEIS) and Red Rock Herd Management Area (RRHMA) Amendment to the Las Vegas Resource Management Plan (RMP)

Dear Ms. Williams:

In consideration of past verbal and written efforts to communicate our concerns to the Las Vegas Field Office of the Bureau of Land Management (Bureau), the Nevada Division of Wildlife (Division) now finds it necessary to protest both the GMP/FEIS and an amendment contained therein to the RMP to modify the RRHMA boundary. The Division does so on the grounds that:

- 1) In view of the NEPA process, actions as proposed were done so without proper consultation with the Division as mandated under Section 3(a) of the Wild Free-Roaming Horse and Burro Act of 1971 (P.L. 92-195; WHB ACT), Bureau policy per CFR Title 43 Section 4700.0-6(d), and Section 5(a)(2)(D) of the Red Rock Canyon National Conservation Establishment Act of 1990 (P.L. 101-621; NCA ACT), as amended.
- 2) The Bureau has again proposed to modify the RRHMA boundary recognized in the 1998 RMP without an ability to justifiably distinguish the Herd Area from the Herd Use Area or the Herd Management Area as indicated by available and conflicting documents; i.e. the Bureau is unable to provide any substantive information or data documenting *wild* horse or burro use occurring as of 1971 in the proposed modified and expanded area of the RRHMA as specified in the WHB ACT;
- 3) The Bureau failed to publish a Notice of Intent to amend the RMP as required by federal law;
- 4) The Bureau has failed to analyze a reasonable range of alternatives, including a No Action alternative;
- 5) The Bureau has failed to adequately assess the environmental consequences of the RRHMA Boundary Amendment under the NEPA process;
- 6) The Bureau has failed to provide for a public comment period following either proposal of the RRHMA boundary modification or a significant change from the proposed action identified in the Draft GMP; and,

- 7) The Bureau has failed to consult with the U.S. Fish and Wildlife Service even though the proposed RRHMA expansion occurs in habitat for the desert tortoise, a federally listed species under the Endangered Species Act of 1973, as amended.

To support the above points of protest, we will expand with the following experiences, observations, and comments.

Under the guidance of the National Environmental Policy Act (NEPA) of 1969, the Bureau is obligated to submit plans to the States for review. The Division then has the ability to review actions and provide comments on NEPA-covered actions initiated, for example, by the Las Vegas Field Office. The Division is responsible and maintains the authority for management of fish and resident wildlife on Federal lands as affirmed in CFR Title 43, Subtitle A, Part 24. Two years after the creation of NEPA, Congress adopted the Wild Free-Roaming Horse and Burro Act of 1971 (WHB ACT). Section 3(a) of the WHB ACT provides direction for federal agencies and states in part, "All management activities shall be at the minimal 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." This section necessarily extends beyond the provisions of NEPA to ensure that wildlife receives due consideration in those areas where resources are shared. Additionally, the Bureau and the Division are party to Supplement 5 to the Memorandum of Understanding between the two agencies, which directs, in part, "The Bureau shall consult with and coordinate its management of free-roaming horses and burros at the State and District levels with the appropriate division of the Nevada Department of Fish and Game."

Regarding the proposed modification to the Red Rock HMA, the one disjunct field trip occurring on January 12, 2000 with the theme of assembling an interdisciplinary workgroup to address RRHMA boundaries and Appropriate Management Levels (AML's) does not constitute proper consultation, particularly in dealing with this issue. The Division's comments provided earlier in the NEPA process for the Draft GMP/DEIS were not discussed nor mitigated as was expected under a consultation. Instead, discussion circled around to the Bureau's apparent bottom line which was to allow continued use of two springs by *wild* horses already in conflict with wildlife resources and get the buy-off from the Division for the drilling of two controversial wells to redistribute and increase use levels outside of the existing NCA and RRHMA. We can provide a more detailed account of that field tour and subsequent actions on the part of the Bureau should there be need.

We contend that the failure to recognize, analyze and recommend proper management of the effects of horse and burro management on wildlife constitute violations of both the Free Roaming Wild Horse and Burro Act of 1971 and NEPA.

The Bureau's failure to properly and adequately consult with the Division is a recurrent theme with the Bureau's Las Vegas Field Office. This lack of consultation was noted in our written comments to the RMP and the Draft GMP/DEIS for the Red Rock Canyon NCA. The Bureau has, in fact, implied that the Division is not a partner in the management of wildlife resources, but is simply another affected interest. Again, the State-Federal relationships between Interior agencies and state wildlife management agencies is detailed in CFR Title 43, Subtitle A, Part 24. The underlying tone is apparent in the attached letter dated November 9, 1999 from the Las Vegas Field Office regarding the Bureau's receipt of the Division's comments for the Draft GMP/DEIS. This becomes more apparent by comparing the Division's comments (see attached) to the various sections incorporated into the Proposed GMP/FEIS. For example, our many years of sharing information and advising the Bureau of short-term and long-term negative impacts consequential to increased access, levels, and diversity of recreational and other activities to wildlife, particularly bighorn sheep, have gone unheeded. The Bureau has yet to mitigate for the loss of water projects near La Madre many years ago, and leaves

unaddressed management issues elsewhere. Now, the Bureau suggests that bighorn sheep become an indicator species for measuring the impacts by these activities (page 162, Proposed GMP/FEIS). We believe that population and trend information for bighorn sheep have already provided substantive evidence of the consequences of other management activities in and about the NCA. To ignore this information and postpone addressing these impacts in order to monitor bighorn as an indicator species jeopardizes the likelihood of future actions being successful at reversing these adverse impacts. The Red Rock Canyon National Conservation Area Establishment Act of 1990 (NCA ACT), as amended, requires the Bureau to consult with the Nevada Division of Wildlife (Division) in preparing the Red Rock NCA General Management Plan (GMP). The Division has previously expressed a concern over bighorn sheep / wild horse conflicts in this area. Bird Spring is a critical wildlife water source. There is no evidence in the GMP, elsewhere or otherwise that the required consultation with NDOW was accomplished following the Bureau's decision to include the RMP Amendment (to expand the RRHMA boundary) within the Proposed GMP/FEIS. Another example is in regards to inadequate consideration for potential nesting habitat of the peregrine falcon in the north fork of Pine Creek. In this case, the Division provided logical and reasonable comments on the Draft GMP/DEIS regarding conflicts with climbing activities in the area. Despite these comments, the Bureau did not follow-up with the Division on this issue prior to printing of the Proposed GMP/FEIS. In fact, the Bureau offers no changes on page 31 of the Proposed GMP/FEIS than from the Draft GMP. How can nesting activity ever be determined when hazing or disruption of nesting activities by falcons is accomplished merely by allowing human presence within a quarter mile of potential nesting sites during the sensitive aerie selection period? A third example comes from the unchecked proliferation of climbing access activities in the Potosi Mountain area of the NCA. Here, wildlife guzzler SM-63 has literally become a parking lot for climbers. Not only are there conflicts with providing available water for upland species, including bighorn sheep, but with nesting golden eagles. The Bureau has not and appears not capable of discouraging recreational activities in areas sensitive to certain wildlife species. The Division can only deduce that recreation takes precedence over biodiversity and T&E conservation in view, for example, of statements made on pages 31, pages 118-119, and A-164 and elsewhere in the Proposed GMP/FEIS.

The Bureau's proposal to modify the RRHMA is unjustified and unsupportable. The Free-Roaming Wild Horse and Burro Act states: "wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area *where presently found* (emphasis ours), as an integral part of the natural system of the public lands." Where *wild* horses and burros were found as of December 15, 1971, is called their "range," which defined in the Act "means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally, but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for public lands; . . ." The range or known territory of *wild* horses and/or burros at the time of the WHB ACT, became defined as the Herd Area (HA) also referred to as the Herd Use Area (HUA). A Herd Management Area must fall within the HA (=HUA), but may not exceed that area. Without HA delineation, there is no understanding of the limits of the Herd Management Area. Therefore, the HA delineation should be required before any boundary alteration proposal is made.

Early on, the Division understood the term HMA as used locally by the Bureau to be synonymous with HA or HUA. This synonymy was demonstrated as the extent of horse use in the 1978 Stateline Resource Area MFP III. The Bureau has never identified 1971 horse or burro use as extending beyond the identified RRHMA/RRHUA. The Division finds it unlikely that any information could be supplied by the Bureau after 30 years which would expand the RRHMA or otherwise modify the RRHMA/RRHUA boundary.

The Amendment to the RMP justifies the RRHMA expansion with the single statement "...to incorporate an area commonly grazed by wild horses." There is no explanation as to how, after preparing an MFP III in 1978, draft RMP in 1992, a Supplement to the Draft in 1994 and a Final RMP in 1998, BLM failed to include this area in the HMA, if it is "commonly grazed". However, the record for the RMP does indicate that BLM did take a final and specific look at RRHMA boundaries as the State Director approved the RMP in 1998. In the Errata sheet attached to the Record of Decision for the RMP (State Director, October 1998), item 11 notes specific correction to the RMP HMA map.

The Division contends that the expansion of the RRHMA east of the Bird Spring Range does not represent *wild* horse use as part of the RRHMA circa 1971. By providing water storage at the springs and constantly hauling water, the Bureau has expanded horse use beyond the legally observed HMA.

In making the Red Rock HMA expansion proposal, the Bureau has re-opened the question as to the proper boundary for the unit. As such, the Division proposes that the Bureau re-examine the RRHMA and properly designate a RRHMA based upon unquestionably defensible data with regard to *wild* horse and burro ranges known as of December 15, 1971. The Bureau admits that unreliable data were used to originally delineate the Red Rock HMA in the Stateline Resource Area MFP III. The Division contests the assertion that horse and burro use was as extensive as even that portrayed by the previously designated Red Rock HMA. The Bureau has not provided any substantive information or data which would demonstrate that *wild* horses or burros occupied all but a small northern portion of the Bird Spring Range at the time of the Act.

An observation, improvements to both Bird and Tunnel Springs were made after 1991 to establish reliable water sources for *wild* horses. At the time of the WHB ACT, Bird Spring did not have an annually reliable surface flow and Tunnel Spring was an inconsistent, seasonal water source. Understanding the high water requirements of horses and burros, it is apparent that *wild* horses were unable to utilize the area as part of a known territory. The Bureau has made regular water hauls since that time to maintain horse use south of State Route 160. These water hauls were initially portrayed as an emergency action, but have been a regular occurrence due to the inability of the two springs to provide adequate water for high consumption, *wild* horses. Water was again hauled throughout the summer of 2000, supporting horse use at an inflated level that is beyond a "thriving natural ecological balance" and has resulted in expanded use areas far beyond the 1971 range. Had these springs been reliable, *wild* horses would have established home ranges and the east area proposed for the RRHMA expansion would have been included as part of the original RRHMA, based upon 1971 use.

The Division believes that a reasonable and prudent person would understand from supportable information that: 1) the Bureau has managed *wild* horses south of State Route 160 beyond the RRHMA/RRHUA boundary, beyond the amount of naturally available water, and in excess of the natural thriving ecological balance mandated in the WHB ACT; and, 2) the Bird Spring Range should not be included in the RRHMA and expansion of the RRHMA east of the range has no legally based foundation.

The Bureau has failed to address the functional condition of the spring and associated riparian habitats. It is our observations that riparian habitat conditions are in a very degraded state as evidenced by the observations of trampling, occurrence of bare ground and upland plant species dominance. These are all impacts that have been associated with reducing flows and lowering of natural water tables. These conditions lead us to believe that minimum rangeland standards are not being met. This determination and the appropriate development of actions addressing these conditions are conspicuously absent.

The Bureau is required by NEPA and the Bureau's Handbook 1610 under III B. 1. to file a Notice of Intent (NOI) to amend the RMP or any plan requiring an Environmental Impact Statement. No NOI for the proposed

amendment of the RMP decision setting the boundary for the RRHMA was published to initiate public participation or circulated to State and other Federal agencies, Counties, and tribal governments as required.

The NOI published for the NCA GMP did not include, and could not have included, this amendment proposal since the GMP NOI was published prior to publication of the RMP in which the RRHMA boundary was established. There is no established procedure under NEPA, CEQ, or the Bureau's planning regulations to make "minor adjustments," as portrayed in the proposal that amend decisions in a Land Use Plan other than in a formal Land Use Plan amendment process, which requires the NOI. In February 2001, the Bureau published a notice of proposed amendment to the RMP (RRHMA boundary) separate from the notice of availability for the Proposed GMP. Since this is a new, unevaluated proposal, the process can neither be abbreviated nor avoid the evaluation and public comment periods.

The Bureau is required to prepare and provide for public review of planning criteria to ensure that decision making is tailored to the issues (43 CFR 1610.2(f)(2) and 1610.4-2, and Handbook 1610 III B. 2.). The record for the proposed amendment (included within the GMP) presents no planning criteria related to *wild* horses and burros, nor does it show evidence that any planning criteria were developed respective to an issue of expanding the RRHMA outside of the NCA. On the contrary, the Draft GMP Summary Table (page S2) is specific in its notation that changes proposed to the RRHMA boundary are limited to areas within the NCA.

The Solicitor's Opinion for Jack Morrow Hills CAP, the Council on Environmental quality (CEQ) regulations (supported by the Bureau's NEPA Handbook), and the Bureau's Land Use Planning Handbook require Bureau officials to rigorously consider a reasonable range of alternatives in environmental documents. The proposed expansion of the RRHMA is the only alternative analyzed for the RMP amendment. The Bureau has created the illusion of a range of alternatives by adding this action to the Wild Horse and Burro section in the Final EIS Summary Table (page S2). However, this table is merely a duplicate of the table in the Draft EIS with the category title edited and another alternative (RRHMA expansion) added. The other five alternatives were created prior to any consideration of expanding the RRHMA outside of the NCA and a reading of them shows they were in no way related to or developed in response to the proposal to expand the RRHMA outside the NCA. Nor were the original alternatives modified or expanded to discuss RRHMA boundary expansion. The proposal also lacks the discussion or inclusion of a No Action alternative, as required.

The discussion of Wild Horses and Burros and the RRHMA boundary found in the Proposed GMP/FEIS (page 28) further amplifies the Bureau's failure to properly develop alternatives or describe the significance of the proposed RRHMA boundary change. The first sentence in this section states that the Draft GMP/DEIS proposed to change the RRHMA boundary (within the NCA) has been dropped and the Proposed GMP/FEIS "...leaves the HMA intact." The very next sentence again states that the RRHMA boundary will be maintained as shown in the RMP "with 2 minor adjustments." The reader is left wondering how the boundary will be both maintained intact and adjusted at the same time.

The Bureau's NEPA process requires a review of environmental consequences; that for the Proposed Action assesses unavoidable adverse impacts, the relationship between short-term use and long-term productivity and irreversible or irretrievable commitment of resources. The entire assessment of the proposed RRHMA boundary amendment as stated on page 162 is, "The effect of the boundary change to the southeast will be the addition of prime forage land to the HMA, which will benefit the horses."

There is no other mention of this RRHMA amendment anywhere else in the Proposed GMP/FEIS. There is no discussion on impacts on the desert tortoise (a State and Federal listed Threatened species), on vegetation due to increased grazing, on the water resources of Bird Spring located only a few hundred feet west of the expansion area, on bighorn sheep, on recreational use of the area or any other resource concern. The amendment fails to discuss how the boundary changes on the southern tip of the RRHMA are justified other than the obvious use and convenience of the State Route as the boundary. The amendment fails to describe how *wild* horses will be kept in the new RRHMA or how they now will understand that they are not to cross south of the unfenced State Route any longer. It appears that this minor adjustment strategy may be used in the future to justify another expansion as *wild* horses are found to graze other areas outside the RRHMA.

The Bureau originally proposed in the Draft GMP/DEIS to reduce the size of the Red Rock HMA. The Bureau now proposes to increase the size of the RRHMA and expand its boundaries as they were established by decision in the RMP. The Proposed GMP/FEIS describes the changes as "Minor adjustments to the HMA south of State Route 160...", and "...to incorporate an area commonly grazed by wild horses."

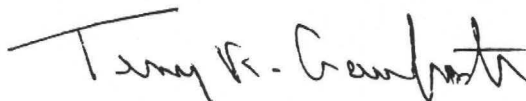
A review of the maps (M7 & M8) provided in the Proposed GMP/FEIS reveals that one of the minor adjustments appears to be approximately ten (10) miles long and up to two (2) miles wide. This would appear to be a significant change, not a minor adjustment. Since this change occurs directly east of Bird and Tunnel Springs, water sources shared with native wildlife, this change would seem all the more significant.

In 43 CFR 1610.2(e) and the Bureau's Planning Handbook require a 90 day comment period on draft EIS's. The failure to include the RRHMA expansion in the Draft GMP/DEIS, or to publish a RMP amendment NOI or to provide a 30 day comment period following significant change, has effectively eliminated any Division, other agencies, or public involvement other than the protest period. Because no comment forum of any type was held and no effort by the Bureau to inform the public of an amendment prior to issuing the Proposed Final EIS was made, no member of the public can have standing in or participate in the protest period.

Finally, the proposed RRHMA/RMP amendment is located in known desert tortoise habitat. The tortoise is protected under the federally Endangered Species Act of 1973 (ESA), as amended. The RRHMA was specifically excluded from the Biological Opinion for the RMP (B.O. 1-5-98-F-053, page 37) as it was to be covered in the Biological Opinion for the GMP. There is no obvious evidence in the Proposed GMP/FEIS record that the Bureau requested or completed a Consultation with the U.S. Fish & Wildlife Service for the proposed RMP / RRHMA amendment; this as part of the completion of the Proposed GMP/FEIS or as a separate Consultation for just the RMP Amendment. Compliance with section 7 of the ESA may not have occurred as we understand it.

The Division looks forward to your response.

Sincerely,



Terry Crawford, Administrator
Nevada Division of Wildlife

DBH/CS:dbh
Attachments

cc: R. Michael Turnupseed, PE, Director, Department of Conservation and Natural Resources
Ms. Heather Elliott, Nevada State Clearinghouse
Ms. Catherine Barcomb, Commission for the Preservation of Wild Horses



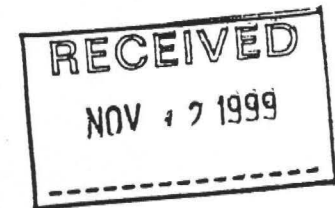
United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Las Vegas Field Office
4765 Vegas Drive
Las Vegas, Nevada 89108
<http://www.nv.blm.gov>



9 November 1999

Mr. Brad Hardenbrook
State of Nevada, Division of Wildlife
4747 W. Vegas Dr.
Las Vegas, NV 89108



Dear Brad:

The Bureau of Land Management has received your comments regarding the draft *Proposed General Management Plan and Environmental Impact Statement for Red Rock Canyon National Conservation Area*. We appreciate your taking the time to provide us with your comments and concerns, and are currently reviewing all the comments we have received. All comments, along with a response to issues raised, will be included in the Final GMP, which should be completed in early 2000.

Please be advised that any comments received during this process, as well as your name and address, will be made available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not want your name and/or address made available to the public. Any determination by the BLM to release or withhold the names and/or home addresses of those who comment, will be made on a case-by-case basis. A commenter's request to have his or her name and/or address withheld from public release will be honored to the extent permissible by law.

If you have any further questions regarding the plan, you may contact Dave Wolf at 702/647-5074 or Gene Arnesen at 702/647-5068.

Sincerely,

Jo Starr
Comment Review Team



KENNY C. GUINN
Governor

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WILDLIFE

1100 Valley Road
P.O. Box 10678
Reno, Nevada 89520-0022
(775) 688-1500 • Fax (775) 688-1595

PETER G. MORROS
Director
Department of Conservation
and Natural Resources

TERRY R. CRAWFORTH
Administrator

SOUTHERN REGION
4747 W. Vegas Drive
Las Vegas, Nevada 89108
(702) 486-5127; 486-5133 FAX

October 29, 1999

Ms. Heather Elliott, Coordinator
Nevada State Clearinghouse
Department of Administration
Budget & Planning Division
209 East Musser Street, Room 200
Carson City, Nevada 89701-4298

Nevada SAI#: E1999-159; due October 26, 1999

Project: Proposed General Management Plan & Draft Environmental Impact Statement
(GMP/DEIS) for the Red Rock Canyon National Conservation Area (RRCNCA)

Division personnel have reviewed the GMP/DEIS. The RRCNCA, particularly the core area, encompasses the richest localized suite of geological, topographical, hydrological, and associated biological diversity in the Spring Mountain Range. In overview, the Bureau of Land Management (BLM) faces a difficult situation in addressing multi-faceted demands for this area, an area that is valued and marketed as both a convenient and popular visitor destination adjacent to the exponentially expanding urban centers in southern Nevada. RRCNCA's core area receives the most concentrated use by the visiting public.

Initially, the BLM's stated preference for a management concept, relative to other alternatives, placing greater emphasis on wildlife resources through biodiversity considerations was welcomed. And, the Division appreciates the accommodation of hunting opportunities as per previous agreements. However, the use of biodiversity in the context of the GMP/DEIS is unconventional and a disappointment. The BLM may have identified its Proposed GMP - DEIS Alternative 3 as the most likely to confer environmentally compatible guidance relative to other management alternatives in the GMP/DEIS, yet BLM's management preference is unquestionably flawed. Two overriding points are noted. Under the pretext of biodiversity, the BLM proposes 1) greater diversity and levels of recreational activities to be accommodated without determining what the visitor carrying capacity is before sustainable ecosystem health is irreparably damaged; and, 2) a method for management of feral horses and burros which conflicts with healthy sustainment of biodiversity for the RRCNCA and the Free Roaming Wild Horse and Burro Act. Given that,

evaluation of BLM's Preferred Alternative became the primary focus of the Division's review. Prominent points supporting the Division's assertions include but are not limited to:

RECREATION

General

- The 1976 Master Plan encouraged expansion of recreation dominated uses. In view of the changing Red Rock Canyon environment, the RRCNCA enabling legislation redirected planning to address other significant values such as conservation of Red Rock Canyon's biodiversity. As part of this goal, the potential for other conflicting land uses such as mineral development were diminished. Unfortunately, the tone of BLM's Preferred Alternative furthers the theme of the 1976 Master Plan. This is readily apparent throughout the GMP/DEIS.
- The relatively recent "thrill" pursuits of rock climbing and mountain biking pose additional concerns for wildlife habitat. A core of participants in these pursuits are constantly pioneering climbing routes and bike trails on lands throughout southern Nevada, notably within the RRCNCA, without regard for regulations, the impacts to wildlife, or degradation of the land. Because the area is a National Conservation Area, the BLM is not obligated to provide space for every recreational pursuit (Section 4.(e) of H.R. 4559 - P.L. 101-621).

Hunting

- Hunting outside of the RRCNCA core area is a historical use of the greater RRCNCA area and adjoining public lands. Water developments for upland game and bighorn sheep were established prior to RRCNCA boundary expansion and continue to be the destination of hunters and wildlife enthusiasts. The Division appreciates the BLM to respect prior agreements (Templeton 1993) to allow hunting to continue within certain areas of the present RRCNCA.
- Particulars for clarifying and informing the visiting public and cooperating agencies about hunting activities in the RRCNCA are the following:
 - a) The Division will be involved in discussions should public safety and/or private property concerns resulting from RRCNCA use conflicts and/or urban encroachment become an issue for hunting opportunities in the future.
 - b) BLM will develop and post signage and disseminate handout type maps to advise the public of hunting opportunities and restrictions. The Division encourages periodic review and involvement in design of any maps, brochures, and signs developed for the general public regarding hunting/shooting advisements.
 - c) The Division will assist BLM by providing game management unit maps,

- d) distributing hunting/shooting maps, and information available to the public, and by having its law enforcement personnel patrol Cottonwood Valley on the opening of small game (dove, quail, chukar partridge, cottontail rabbit) seasons.
- e) The Division encourages BLM to facilitate advising the cooperating law enforcement community about hunting/shooting opportunities and restrictions.
- f) BLM will deny mountain bike and equestrian use in that portion of the RRCNCA south of SR-160 during the week prior to the opening of quail/chukar/cottontail season and extend that closure through the second Sunday of the quail/chukar/cottontail season.

Rock Climbing / Mountaineering

- Forming advisory groups (Liaison Council), as is suggested in the GMP, is vestige of the Bureau's failed Coordinated Resource Management process. A special interest council is unable to objectively and critically evaluate the impacts of its preferred activity on the natural resources or competing activities. And, information from such groups is generally not well-distributed to other affected interests. Should creation of an advisory panel be pursued, the Division recommends that panel represent the interests of the public and local, state, and federal agencies. Continuing to allow the horse enthusiasts, hunters, mountain bikers, and climbers to champion every special interest will only result in further degradation of RRCNCA's resources.
- The climbing restrictions proposed in the GMP are reactionary and not adequately protective of wildlife resources. For example, Peregrine falcons (*Falco peregrinus anatum*) were documented in the north fork of Pine Creek Canyon within the last five years, and likely use the south fork. Nesting aeries were not located in the north fork of Pine Creek, but attempts by falcons to establish nesting territories in the upper reaches of Pine Creek may have been foiled consequential to heavy use by rock climbers (bolts were evident throughout Pine Creek Canyon during recent surveys). The BLM's proposal to monitor and evaluate effects of rock climbing *after* a nest is found is unproductive and unacceptable, especially when the presence of rock climbers at some distance (e.g. 1/4 mile) can discourage area use by falcons. Because falcons use the RRCNCA, Division recommends restricting rock climbing activities to east of the confluence of the north and south forks of Pine Creek (outside of the Pine Creek WSA) regardless of time of year to avoid disturbance to falcons.
- The Division recommends that climbing, particularly bivouacs, be prohibited within 100 yards of point water sources (springs and seeps) to reduce impacts to cliff nesting birds and other wildlife dependent on the waters and associated habitat. The unchecked pioneering of climbing routes in the RRCNCA, regardless of wildlife status or impacts thereto, is justification for the Bureau to establish zones which exclude or restrict climbing activities. BLM should be mindful and consider NRS 503.660 which states:

Unlawful manner of camping near water hole. It is unlawful for any person to camp within 100 yards of a water hole in such manner that wildlife or domestic stock will be denied access to such water hole.

Bicycling

- The logic behind constructing a paved route between Sandstone Quarry and someplace near Willow Spring/Ice Box Canyon (Page 53 and map M5) for use by all bicyclists, hikers, and equestrian visitors escapes the Division. This suggestion is a compromise to public safety (e.g. bicyclist/hiker/horse collisions) and contributes another unnecessary cause of wildlife mortality activities associated with the route. Though the proposed return road from Sandstone Quarry to the Visitor Center also would cause additional wildlife mortality (vehicle collisions) and is also not favored by the Division, it provides a more sensible solution for motorists and bicyclists alike to shorten their trips consequential to their physical limitations or poorly planned time budgets.
- There exists an excess of mountain bike trails in Cottonwood Valley, many of which lead directly to the same destination and to springs which may preclude use by wildlife. These springs include Mud Spring #1 & #2, and Lone Grapevine Spring (Map M45). In coordination with the Division, elimination of selected bike trails, particularly those in and adjacent to springs, should occur.
- Page DEIS 26. Forty-eight miles of mountain bike trails is excessive for a National Conservation Area. No mountain bike trails should be authorized for the area north SR-156 given the pattern of unregulated proliferation of mountain bike trails experienced in the Cottonwood Valley area.
- Trails (see identical maps M21, M26, M31, M36, M41) suggested for mountain bike use are truncated so as to distort the actual extent of trails. Alternative 3 does not mention how all the trails, legitimate and illegal, will be treated. Will trails be designated other than those included in the Cottonwood Valley Mountain Bike and Equestrian EA? If so, that does not benefit wildlife. Further, by sanctioning the "Twilight Zone" trails as BLM has sanctioned the illegally developed Cottonwood Valley system, promotes continuing unauthorized/illegal trail building which led to the Cottonwood Valley trails. If a trail system is to be created, the BLM must continually monitor and actively discourage the creation of new bike trails consequential to unauthorized actions.
- Anticipated increases in area use of the "Twilight Zone" trails by bicyclists likely will cause horses and burros to seek new avoidance routes. As in Cottonwood Valley, this results in trail braiding and additional habitat degradation. The new "Twilight Zone" trails will also focus activity on Grapevine Spring and will reduce the value of the water sources to the biota of the area.

ROAD ACCESS

- Roads 16 and 17 in the LaMadre area should not be closed. The BLM has no basis for making the statement "they were not in use prior to the WSA designation." Red Rock #3 water development (installed prior to FLPMA) still exists off of road #17. Red Rock #2 water development was removed from the LaMadre Ridge saddle on road #16 due to vandalism. This proposed action is unjustified, unless the Bureau plans to abandon or relocate the remaining water project elsewhere in the WSA.

BIODIVERSITY

- Biodiversity as used in the context of the Proposed GMP/DEIS is the marriage of natural and endemic species diversity and ecosystems with proposed feral horse and burro management. In addition to recreational pursuits, it is also a convenient rationalization for legitimizing activities deleterious to the long-term health of native and endemic species and associated ecosystems. Should the BLM continue to purport this connotation, then the public will be misled as to what exactly BLM's management will manifest in terms of RRCNCA's *Desired Future Condition*.
- Definition of "core" bighorn sheep habitat is unclear. What aspect of bighorn sheep biology and habitat is inferred? As an amendment to the Las Vegas Resource Management Plan, bighorn management for the RRCNCA should complement bighorn management in adjacent areas, not just north of SR-160. The unauthorized proliferation of trails and climbing routes, expropriation of waters for feral horses and burros, and lack of commitment by the Bureau to past bighorn sheep projects are underlying symptoms for this concern.
- Division concurs with BLM that allocation and diversion of waters for purposes other than riparian maintenance and wildlife use should be limited to 25% of historic low flow measurements.
- No water will be developed without adequate water for wildlife at the source (NRS 533.367). Riparian or spring developments (e.g. Tunnel Spring) which involve exclosures which preclude use by wildlife (e.g. bighorn sheep) will not be tolerated.
- Page DEIS 29 - A bat gate was recommended for Wounded Knee Cave. Townsend's big-eared bats were documented at Desert Cave in May 1996 (M.K. Ramsey 1997), yet they apparently no longer use the site. Unrestricted visitation to Desert Cave may have discouraged use of the cave by these bats. The Townsend's big-eared bat (*Corynorhinus townsendii*) has a tendency to abandon roosts after even slight disturbances (M.K. Ramsey 1997). Division encourages that inventory for suitable caves and abandoned mines in the RRCNCA continue to determine bat roosting sites. Sites should then be monitored to

verify use between April and July. Should vulnerability to visitor disturbance be of concern, then site evaluation and scheduled installment of gates on an as-needed priority basis is warranted. Thereafter, gated bat roosts could be monitored periodically to evaluate use by bats and effectiveness of gates. The Division wishes to assist in coordinating such efforts.

- The Division supports protection of the north fork of Pine Creek Canyon (see comments in above Rock Climbing section).
- Page DEIS 30: GMP does not conserve gila monster habitat at Red Spring or the adjacent proposed education/administration site in Calico Basin. Habitat degradation is implied through increased use.
- Pages 80-82, 84-85 of Proposed Plan. Monitoring and Evaluation section fails to meet tangible measurement needs or time certain accomplishments.
- Appendix 1: Special Status Species, add the following:

DEIS-A2		
<u>Phainopepla nitens</u>	NDOW/95	Pine Creek (Adult w/ 2 immatures)
DEIS-A5		
<u>Piranga rubra</u> (Summer Tanager)	NDOW/95	Pine Creek
- Species lists need to be updated and edited. Not all localities are listed, and some species recently have experienced changes in assigned nomenclature such as the collared lizard, *Crotaphytus collaris* = *C. insularis*

HORSE AND BURRO MANAGEMENT

BLM's proposal regarding feral horse and burro management is problematic and stems from management situations pre-dating the current RRCNCA. This failure to properly address the impacts of such activities on wildlife is reflective of the GMP approach to biodiversity management. Such conflicts are entwined in the BLM's Preferred Alternative.

- BLM developed Tunnel and Bird springs for horses circa 1990. These are the only water sources in the Bird Spring range. Decisions were made by BLM regarding plumbing such that horses and burros benefitted while wildlife needs suffered. Bird Spring has proven inadequate to support even a small portion of the HMA's herd. Tunnel Spring demonstrated an unreliable flow rate to support inflated horse numbers in the Red Rock HMA. In 1998, a BLM operations crew under direction of the wild horse and burro specialist, attempted to dig out Tunnel Spring to increase the flow. The flow increased for

a few days, then stopped all together. As Don Siebert (BLM hydrologist) had warned, increasing the flow had drained the perched water table. Remedial actions, wildlife drinker at Tunnel Spring and horse exclosures at both springs, do not meet wildlife needs, especially those of wildlife. There is no certainty that the Tunnel Spring source will self-heal, and the availability of this spring to wildlife which historically used the spring source will be precluded. Waters (wells) developed away from the lost or damaged natural sources may attract some wildlife, but will in no way mitigate the loss of water to wildlife which used Tunnel Spring.

- The Division disagrees to modification of HMA boundaries. There is no mechanism in the Free Roaming Wild Horse and Burro Act for such an action. Any attempt to reduce or expand an HMA is not allowed under the Act. What is permitted is management of horse numbers as set by Appropriate Management Level (AML). The number can be zero or some number that is determined to be consistent with *thriving ecological balance*.
- * AML should be set to account for worst case scenarios (i.e. drought ca. 1986-1991.) Pronouncements of a minimum viable population are baseless when dealing with feral livestock where genes may be purchased at any horse auction or provided through transplants as the BLM did in 1992.
- Developing waters for burros east of SR-159 and creating water hauls may be good for horse and burro viewing, but at what point does water development become livestock ranching rather than meeting the "thriving ecological balance" pronouncement under the Free Roaming Wild Horse and Burro Act?
- * There is no basis for setting a lower limit of 50 horses, even for avoidance of deleterious inbreeding effects. Interchange of animals between HMAs is an alternative. However, to meet *thriving ecological balance* there can be no minimum number in an HMA and animals should not be managed for the maximum number when an AML is set.
- Alternative 3 shows the southern portion of the RRCNCA, west of SR-159, as being joint horse and burro use area. This is unacceptable. The Division previously supplied the Bureau with information from the 1970's which identified no burro use in the Bird Spring Range. Compared to horses, burros present a greater threat of competitive exclusion to bighorn sheep because of their mobility and agonistic behavior (Weaver, 1972). Burros should be limited to those areas where they existed in 1971, i.e. at the enactment of the Free Roaming Wild Horse and Burro Act.
- In addition to neglect of affected wildlife, relocation of water sources (wells) to the south will alter the distribution of horses and will lead to a *de facto* expansion of the HMA. Drilling wells will establish reliable, permanent waters which Division anticipates BLM to justify inflating horse AML, but more importantly preclude the option for zero number

management. Fencing the southern HMA boundary is not acceptable because of its negative effect on bighorn sheep movement corridors.

- Although Alternative 1 was not the focus of comment, Division is amazed by the horse recommendations therein.
 - a) Wells and water hauls do not fit in with the term *thriving ecological balance*. Water rights to Potosi Spring are privately held and on private land. This source can not be utilized to account for expanded horse and burro numbers. All spring developments proposing movement of water away from the source will be protested by the Division.
 - b) Alternative 1 also proposes prohibition of organized events occurring within ½ mile of waters except for equestrian events which avoid times when feral horses and burros seek water will be permitted. There is no consideration for wildlife use of these waters.

COMMERCIAL

- The increasing level of commercial activity such as allowing vehicle tours to drive through Tunnel Spring is disturbing. The BLM's short-term solution for minimizing harassment to horses was moving the water trough further away from the source. This action was to the detriment of wildlife and contrary to biodiversity management.
- While the number of commercial permits proposed are a starting point, This suggests a trial and error approach which is inefficient and places the natural resources at long-term risk.
 - a) There is no visitor carrying capacity identified;
 - b) *Future Desired Condition* is ill-defined;
 - c) The ability to evaluate unlimited accommodation of some recreational activities is not clear;
 - d) There is no time-certain schedule identifying activity plans development or monitoring strategies to fully implement the guidance in the GMP/DEIS.

What will trigger evaluations of permitted activities as part of attaining GMP goals?

LAW ENFORCEMENT AND RESOURCE PROTECTION

- Relative to the marginally compatible uses occurring in the RRCNCA is an enforcement deficiency of regulations protecting the RRCNCA and wilderness study areas.

- a) Under the Climbing Restrictions Section (see DEIS 36), the plan calls for coordination on proposals for replacement of climbing bolts in wilderness (WSA). Climbing was not addressed in the 1987 IMP, leading to excessively broad interpretations. However, the utilization of power tools (drills) to place bolts and the extent to which bolts have been utilized were clearly not allowed in the 1987 IMP. Furthermore, whatever interpretation was used to permit the retention of existing bolt systems in the Pine Creek and LaMadre WSAs, it clearly exceeds allowances within the current (1995) IMP. If the bolts are not removed or a middle ground is negotiated, the BLM demonstrates inconsistent adherence to the existing IMP.
- b) The Division has periodically performed evening surveys on the Scenic Drive since 1991 during hours when the road is closed to the public. The Division selected the Scenic Drive this past year specifically to perform population surveys on nocturnal reptiles because it is perhaps the only road in southern Nevada closed to access at night. However, Division observed that BLM's ability to secure closure at stated times has become compromised. This is an unnecessary compromise of public safety and wildlife. In a larger sense it is demonstrative of BLM's chronic staffing problem affecting regulation enforcement. Construction of capital improvements to accommodate an increase in visitation rate and volume without adequate staff is a prescription for ecological disruption. How does BLM propose to efficaciously overcome staffing obstacles such as Federal Service ceiling levels for Full-Time-Equivalent positions (FTE's) regardless of funding levels. Additional positions are needed to offset current staffing deficits.

CLOSING COMMENTS

On pages 79-88 of the Proposed GMP, sections summarizing *Implementation, Funding, and Costs; Monitoring and Evaluation;* and, *Standard Operating Procedures* implicit to the GMP are provided. BLM makes two statements within these sections:

The process of implementation of the GMP is gradual and takes place throughout the life of the GMP on a project by project basis, with priority based on need and available funding.

Some program areas have monitoring systems developed or in place while others would need to have monitoring techniques developed and tested to determine how to best evaluate conditions and implementation results.

The Division is not optimistic about the Proposed Plan. Factors stressing ecological components of the RRCNCA were introduced by past management. The current spectrum of proposed

management will likely accelerate erosion of the RRCNCA's biodiversity richness. Should these management inequities persist unresolved, then the Division will further evaluate the level of protest which warrants pursuit.

Sincerely,

TERRY R. CRAWFORTH, ADMINISTRATOR



D. Bradford Hardenbrook
Supervisory Habitat Biologist

DBH:dbh

cc: Southern Region Manager, NDOW
Habitat Bureau, NDOW
Game Bureau, NDOW

references

- Ramsay, M.A. 1997. Final Report on the Maternity Roost Study and Status of Bat Species of Concern of the Spring Mountains, Nevada. United States Fish and Wildlife Service, unpublished report. Reno, Nevada. 49 pp w/ Appendices.
- Templeton, B. 1993. Final supplementary rules for certain public lands managed by the Bureau of Land Management within the Red Rock Canyon National Conservation Area, Las Vegas District, Nevada. NV-050-03-4333-04. *Federal Register* Vol. 58, No. 97, pages 29625-29633.
- Weaver, R.A. 1972. Feral burro survey. California Dept. Fish & Game. PR Project #W-51-R-17. Completion Report July 1, 1968-June 30, 1972. 14 pp.



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
COMMISSION FOR THE
PRESERVATION OF WILD HORSES

885 Eastlake Boulevard
Carson City, Nevada 89704
Phone (775) 849-3625 • Fax (775) 849-2391

April 12, 2001

Bob Abbey, State Director
Bureau of Land Management
1340 Financial Blvd.
Reno, Nevada 89502

GMP/FEIS
Red Rock
VEGAS

Dear Mr. Abbey

We appreciate the many changes that have been made relative to the management of wild horses and burros. Considerable more attention has been given to their management and many of the final determinations have been appropriately deferred to the subsequent appropriate management level (AML) planning effort and Herd Management Plan to be prepared for the area. The summary of public comment and BLM responses found in Appendix 25, pages A-170 through A-173, satisfies many of the most significant concerns stated in our comment letter on the proposed GMP and Draft Environmental Impact Statement in 1999. To emphasize our continuing interest in this important area we submit the following comments.

With regard to the names of the various HMAs we appreciate retaining the name for the Red Rock and the Wheeler Pass HMAs. However, we strongly believe it is important to make reference to the Lucky Strike, Blue Diamond, Bird Springs and Potisi HMAs as well. It may be appropriate to refer to the area as a complex (e.g. Spring Mountain Complex), however, we recommend that each HMA keep its original name to facilitate better record keeping. In addition, managing the area as a complex provides greater flexibility and specifically gives an opportunity to avoid potential genetic issues sometimes raised relative to herd size.

We do not concur that the Calico Basin is not part of the HMA. When the original HMA boundary was drawn from the HA, a significant portion of the HA was deleted, including the town of Calico Basin. We realize that portions of this area may not be suitable for use by horses and burros, however, that is not a rationale to eliminate all of the area. These lands were acquired after 1971 your records indicate that they were used by wild burros. In other HMAs and other BLM programs formerly private lands which have been acquired by BLM have been incorporated into the scheme of management. We believe this principle should be applied to the Calico Basin surrounding area and final determination of wild burro use should be made during completion of the HMP for the area.

Bob Abbey, State Director
April 12, 2001
Page 2

Although not stated specifically, we interpret the language regarding water development on pages 162-164 to mean that wells and pipelines can be developed for wild horses and burros in the RRNCA and adjacent HMA lands; that they will not have to rely only on naturally occurring water (springs and streams). This is appropriate and consistent with the policy in other parts of Nevada. We appreciate this change from the DEIS. We also hope that this has allowed installation of a water source on the pipeline west of SR 159 in the vicinity of the Red Rock Vista. Such a water would greatly facilitate safe public viewing of wild burros and other wildlife west of the fenced portion of SR 159 at a very low cost. In addition, such a water would improve distribution and reduce utilization in environmentally sensitive areas further to the west. We support increasing water supplies throughout the HMA for better distribution and health of the herd in conjunction with recreation.

We specifically appreciate the willingness of BLM to include protective stipulations to reduce the chances for introduction of equine diseases from domestic horses. Care should be taken that this consideration not be inadvertently lost through poor internal coordination between the recreation and wild horse programs. We continue to be willing to work with BLM and other State agencies to provide language already in use for horse show, rodeos and other events where horses are brought into close proximity to each other. An outbreak of any equine disease among wild horses or burro would be disastrous to the population as well as to the BLM's adoption program. Such stipulations could include a requirement for a current Coggins test for all participants, separate water sources away from water frequented by wild horses and burros and other simple precautions. This same stipulation regarding separate water sources should apply to casual use by domestic horses. We recognize that this would be difficult to enforce and may merely serve as a reminder for horseback riders. Reiterating our continued concern is prompted by lack of action to prevent co-mingling of the wild horse and the domestic horses held in the facility on BLM administered land immediately north of the Blue Diamond townsite. We would appreciate an assurance in your planning document that "recreational competition take into consideration criteria for protection of wild horses and burro's within their HMA with special attention to water availability and foaling season".

We do not believe you meant to use the word "feral" in the second paragraph on page 99. Undoubtedly this is intended to be "wild" horse and burro use rather than feral horse and burro use. In addition, in the third paragraph on page 163 we believe you meant to use the word "population" rather than AML. AML being a number established through a specific process involving vegetative studies and other component steps.

One last issue of concern and we will borrow and fully support the concerns issued by the National Wild Horse Association as presented by Billie Young, their President: "The Triple underpass parking lot on SR160 has not been closed and relocated. All parties are determined to find a new location to leave as little impact on wildlife/environment as possible while accommodating the user groups and growth at the same time." The Commission recently toured this area and are concerned that the unauthorized parking lot be relocated as soon as possible light

Bob Abbey, State Director

April 12, 2001

Page 3

of the fact that spring and summer weather is upon us creating much more recreational traffic and impacts to the area.

We appreciate the opportunity to comment on the proposed GMP and FEIS. We compliment the authors and managers on their work. When monitoring data is being collected and subsequent planning documents are being prepared we would appreciate an opportunity to participate in the process. We appreciate the fact that you have abandoned the concept regarding only relying on natural water sources in support of wild horse and burro management. Further we anticipate that setting of AML will be done through the allotment evaluation process used in other areas.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Barcomb".

Catherine Barcomb
Administrator