

United States Department of the Interior
Bureau of Land Management
Director (210)
Brenda Hudgens-Williams
1620 L. Street, NW
Suite 1075
Washington, D.C. 20036

May 15, 2008

RE: Protest/Supplemental Material PP—NV-Ely 08-03
Cindy MacDonald - 3605 Silver Sand Court, North Las Vegas, NV 89032
Ely Proposed Resource Management Plan/Final Environmental Impact Statement

Dear Director Hudgens-Williams:

This is to serve as response to the letter received by the Bureau of Land Management dated May 6, 2008 regarding the opportunity to submit supplemental documentation of my standing and rights for consideration to Protest the Ely PRMP/EIS.

This opportunity is being provided due to Edwin L. Roberson, Assistant Director, Renewable Resources and Planning review of my Protest in relation and accordance with both the Dear Reader letter included in the PRMP/EIS and BLM's planning regulation 43 CFR 1610.5-2 (a), which states:

“Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process”

Based on these cited criteria, Mr. Roberson has asserted that my Protest is invalid due to BLMs records indicating that I did not participate in the planning process and therefore have no standing to Protest - yet he fails to specify under what legal basis his review determined my ineligibility.

Mr. Roberson cites the Dear Reader letter included in the PRMP/EIS as one of the measurements for determining eligibility for standing and Protest. The Dear Reader letter provides a specific time frame allowed for consideration and defines the “planning process” as:

“Only those persons or organizations who participated in the planning process leading to the PRMP may protest. The protesting party may raise only those issues submitted for the record during the planning process leading up to the publication of this PRMP.”

According to Mr. Roberson's own citation, the planning process time frame extended until the publication of the Proposed Resource Management Plan released in November 2007.

I submitted extensive comments and input during this "planning process time frame" of which I have provided dates, times and copies of regarding the issues raised in my Protest, the first being submitted almost a full year before the release of the PRMP.

How can BLM have "no records" of my participation prior to the PRMP's release as Mr. Roberson is now stating?

On February 22, 2007 BLM Ely Districts, Assistant Field Manager, Renewable Resources, William E. Dunn sent a confirmation email regarding my status in the PRMP/FEIS and my name was included in Section 5.0 Consultation and Coordination, page 5.5-19 as a result of this inclusion. (See Attachment I)

On August 11, 2007, BLMs Ely Districts Assistant Field Manager, Kyle Hansen sent a letter of acknowledgement and consideration of multiple public comments I had submitted to the Ely Field Office regarding resource management proposals, comments that contained the very issues submitted for Protest that Mr. Roberson has claimed there are no records for or standing to Protest in the PRMP/FEIS. (See Attachment II)

According to BLM regulations regarding Public Participation through 43 C.F.R 1610.2 (d), which states, "A list of individuals and groups known to be interested in or affected by a resource management plan shall be maintained by the Field Manager and those on the list shall be notified of public participation activities. Individuals or groups may ask to be placed on this list. Public participation activities conducted by the Bureau of Land Management shall be documented by a record or summary of the principle issues discussed and comments made."

Furthermore, there are multiple established regulations as well as federal laws that support the validity of my involvement, standing, and rights as a member of the public to participate and be considered in the planning process as well as my legal right to protest these same issues in the PRMP/FEIS.

These include:

43 1601.0-6 Environmental Impact Statement "Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the resource management planning process and, wherever possible, the proposed plan and related environmental impact statement shall be published in a single document."

This regulation does not state that the planning process is limited to an analysis of alternatives done over two years before the release of the PRMP. It clearly states the proposed plan, such as the PRMP, is part of the planning process, not the process in its entirety.

43 C.F.R. 1601.0-8 “The development, approval, maintenance, amendment and revision of resource management plans will provide for public involvement and shall be consistent with the principles described in section 202 of the Federal Land Policy and Management Act of 1976. Additionally, the impact on local economies and uses of adjacent or nearby non-Federal lands and on non-public surface over federally-owned mineral interests shall be considered”

43 C.F.R. 1610.2 (a) Public Participation, “The public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations.”

This regulation does not say ONE OPPORTUNITY several years removed from the issuance of the PRMP/FEIS. It states we shall be provided opportunities, as in plural, to meaningfully participate and comment on the management of our Nation’s resources.

Furthermore, it states the resource management planning process shall conform to the requirements of the National Environmental Policy Act, which include:

Sec. 101 [42 USC 4331] (a), “The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment....declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans”

Sec. 101 [42 USC 4331] (b), “In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may-

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

Sec. 101 [42 USC 4331] (c), “The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.”

Section 102 [42 USC 4332], “The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall - -

Section 102 [42 USC 4332] (e), “study, develop and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;”

Section 103 [42 USC 4333], “ All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.”

In reference to the Department of the Interior’s obligations to conform to NEPA standards as set forth in 43 C.F.R. 1610.2 (a) Public Participation, the BLM Director is not relieved of their responsibilities to assure compliance with the purpose and intent of NEPA during the protest period but rather, just the opposite – they are to administer and take every available consideration and action to the fullest extent possible to resolve conflicts, to assure resources are managed in a manner that assures multiple use of resources on public lands and that these renewable resources are planned for and managed in a manner to preserve and protect them for future generations in accordance with their responsibilities as trustees and stewards of the environment and our public lands.

Additional regulations set forth affording me the opportunity to be involved throughout the planning process in its entirety and establishes the validity of standing and right to protest also include:

43 C.F.R. 1610.2 (f), states, “Public notice and opportunity for participation in resource management plan preparation shall be appropriate to the areas and people involved and shall be provided at the following specific points in the planning process: (4) Publication of the proposed resource management plan and final environmental impact statement which triggers the opportunity to protest (See 1610.4-8 and 1610.5-1(b))

43 C.F.R. 1610.5-1 (b) states: “No earlier than 30 days after the Environmental Protection Agency publishes a notice of the filing of the final environmental impact statement in the Federal Register and pending final action on any protest that may be filed, the State Director shall approve the plan. Approval shall be withheld on any portion of a plan or amendment being protested until final action has been completed on such protest. Before such approval is given, there shall be public notice and opportunity for public comment on any significant change made to the proposed plan. The approval shall be documented in a concise public record of the decision, meeting the requirements of regulations for the National Environmental Policy Act of 1969 (40 CFR 1505.2).

There is not a single BLM regulation cited or in the Dear Reader section of the PRMP, which provided detailed, specific instructions for filing protests that support Mr. Roberson's assessment or decision as to my lack of standing. The reasons set forth used to describe my protest as being invalid appears to be little more than a rejection based on Mr. Roberson's opinion while failing to contain any legal basis for his decision.

I cannot help that the Ely Field Office used their authority to dismiss my input, deny my points in resource management plans for the area though they were legally valid, or abuse their authority through their repetitive and consistent citing of "outside the scope" of each proposal when these points, also raised in my protest, were both legally significant and addressed the very heart of multiple use management on public lands.

However, there decision to dismiss my input does not indicate that my participation was invalid nor excuse BLM from complying with public participation laws and mandates in the planning process for public lands under their jurisdiction.

Further support for BLMs obligations to consider the points raised in my protest of the PRMP/FEIS and the necessity of consideration and required action to resolve these points, include the most recent and current guidance available through the Revised NEPA Handbook just released last month, Section 9.6.1, pg 102, which states:

"Any comments received may be addressed in the ROD. However, review any comments on the final EIS, to determine if they have merit; for example, if they identify significant new circumstances or information relevant to environmental concerns and bear upon the proposed action. If so, the decision-maker preparing the EIS must determine whether to supplement the draft or the final EIS or if minor changes can be made to the existing EIS."

Firstly, the reference to the ROD (Record of Decision) clearly indicates that this guidance relates specifically to comments received before the ROD is issued. The ROD has yet to be issued and therefore, any comments received may be addressed.

All my comments, input and involvement have consistently cited the same points over and over again, are a matter of public record with the majority of them introduced long before the release of the PRMP, much less the protest points raised six month ago, and are extremely relevant to environmental concerns affecting the PRMP/FEIS. Failing to consider these points will cause irreparable damage and irreversibly impacts to renewable resources through management plans that propose to permanently eliminate these resources merely through an abuse of discretion, abuse perpetuated by denying legally valid due process or consideration of these resources or their legally affirmed and valid existing rights on public lands in a variety of proposals firmly established through public law 92-195, not just the PRMP/FEIS.

Additionally, the new NEPA Handbooks guidance is clearly written to provide consideration for new and relevant information regarding management of resources in the proposal area, invalidating BLMs assertion that only the issues brought to bear two years before the release of the PRMP can be considered.

Protest Point #7 addresses new information that has immediate and significant bearing on the PRMP/FEIS, information that the public had no opportunity to address or provide input on as it only became available through a recent decision issued by the Interior Board of Land Appeals (172 IBLA 128) issued on August 2, 2007, which provides specific guidance as to the management of wild horses and burros based on public law 92-195, the Wild Free-Roaming Horse and Burro Act of 1971.

The entire crux of the PRMP/FEIS asserts that habitat is insufficient for wild horses and burros while still being sufficient for livestock grazing with documented increases in livestock AUM authorizations after decreases in wild horse and burro AMLs, that habitat is sufficient to support a variety of large ungulates, big game animals and wildlife species within the planning area but again, is insufficient to support wild horse and burro populations, and that the “appropriate management levels” set forth under prior management plans based solely on insufficient allocation of resources to preserve viable self-sustaining herds is the justification for eliminating almost 1.6 million acres of a Congressionally dedicated land use due to “unviable” herds.

Yet IBLA has affirmed that herds may be augmented if necessary to preserve them and this ruling and new information completely invalidates BLMs reasoning for eliminating Herd Management Areas and their wild populations established for over twenty years in prior land use plans with over a thirty-seven year history of preservation and protection where “they were presently found” when public laws were established in 1971 to assure their preservation as a natural component of the public lands system.

While I can be sympathetic to BLMs desire to not incorporate this new information, as it radically alters the entire basis of the wild horse and burro management plans they have spent several years trying to develop and now requires them to reformulate new plans based on this ruling, their higher obligation is to be good stewards of public resources and to adhere to applicable laws, regulations and mandates when approving the final ROD, as this will be the guiding framework of our Nation’s resources for the next 10-20 years.

In summary, my protest is valid, my documentation on public record cannot be denied, my inclusion as an interested member of the public adversely affected by the PRMP/FEIS is legal, my opportunity to participate and be considered is affirmed in multiple laws, regulations and policies and Mr. Roberson is in error for attempting to exercise nothing more than an opinion as the legal basis for attempting to dismiss the crucial points raised in my protest.

My involvement is appropriate, timely, specific, legal, valid, long-standing and requires consideration as I am and have continuously been, adversely affected by agency actions that continue to deny and dismiss their legal obligations to the public, to our Nation’s resources and to future generations.

Anything less at this stage of the planning process will provide further evidence that the BLM and their authorized officers have both acted and failed to act as required by federal law, regulations, policies and their own internal mandates for guidance in resource management plans and will constitute continued egregious abuse of their authority, which is clearly not supported by the laws of the United States of America governing public participation, public resources or proper stewardship of the same.

Attachment I

Confirmation by BLM Ely District – February 22, 2007
William E Dunn, Assistant Field Manager/Renewable Resources

----- Original Message -----

From: [William E Dunn@blm.gov](mailto:William_E_Dunn@blm.gov)

To: [cindy & steven](#)

Sent: Thursday, February 22, 2007 12:44 PM

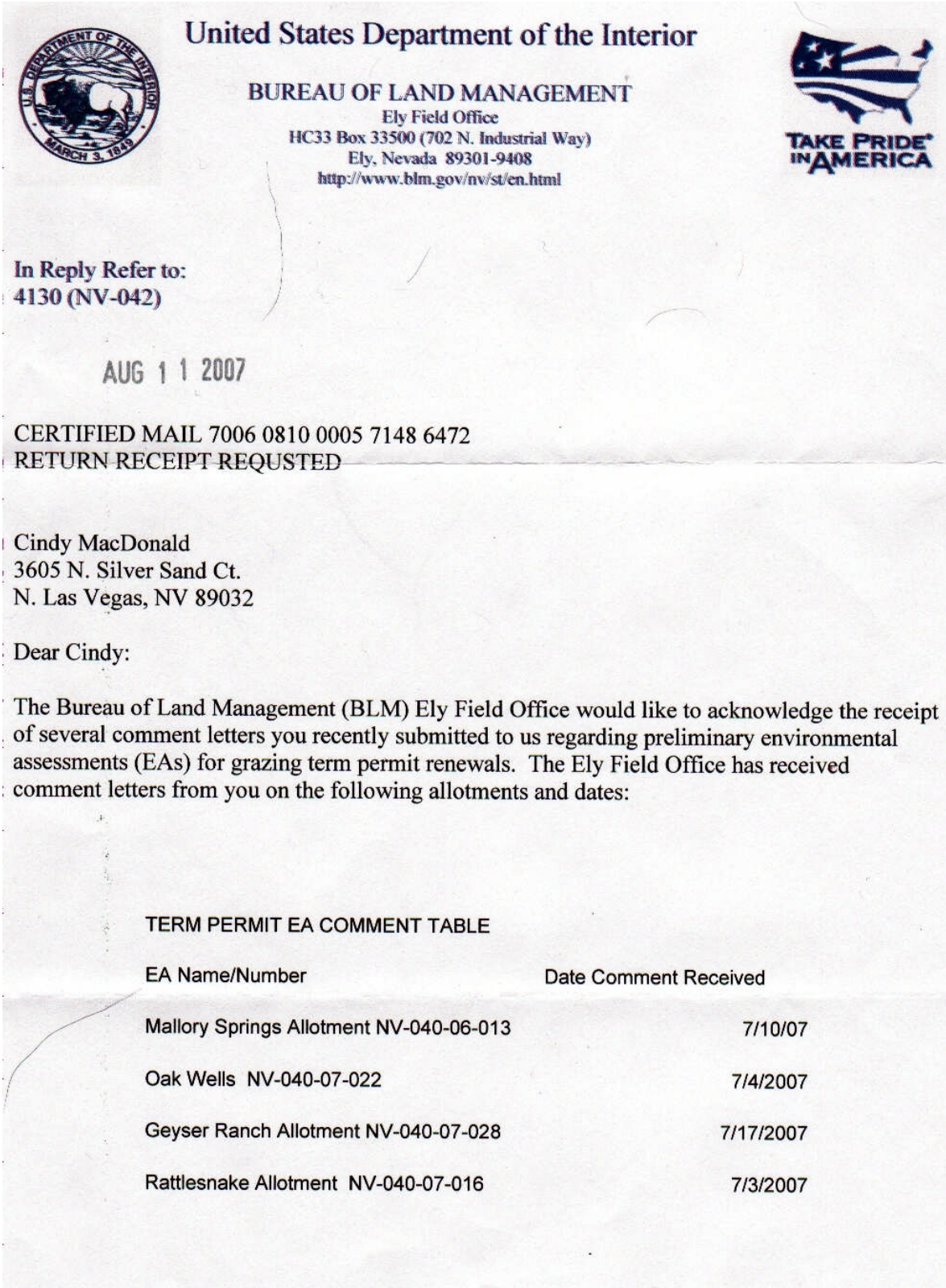
Subject: Re: Sheep Numbers

Cindy,

In response to your question regarding sheep numbers, 6600 sheep were authorized in the allotments, which is approximately one third of what they could run. Since they are grazing in the winter, the sheep should be off by the end of March. With regards to the RMP, the draft has already gone out last year. I will get you on the mailing list to receive the Proposed RMP and Final EIS.

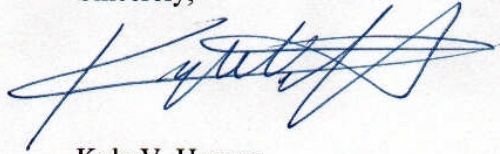
Attachment II

Confirmation by BLM Ely District -August 11, 2007
Kyle Hansen, Assistant Field Manager/Renewable Resource
Letter of Acknowledgement of Multiple Public Comments/Public Record



We are currently in the process of reviewing your comments and incorporating relevant, substantive comments into our final EAs. We expect to be forwarding you the final EAs in the near future for your review. Thanks again for your comments and your participation in the public coordination process for grazing term permit renewals.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle V. Hansen", written in a cursive style.

Kyle V. Hansen
Assistant Field Manager
Renewable Resources