

Department of the Interior
Bureau of Land Management
Brenda Williams
1620 L Street NW
Suite #1075
Washington DC 20036

December 29, 2007

RE: Protest of the Ely Proposed Resource Management Plan/Final Environmental Impact Statement.

Dear Ms. Williams:

Please accept the following submission of protest for the Ely Proposed Resource Management Plan/Final Environmental Impact Statement.

These protests are being filed by:

REMOVED

My standing to protest these issues include:

- A) Listing in Section 5.5 List of Agencies, Organizations, and Persons to whom Copies of this Statement are Sent, page 5.5-19, under Cindy McDonald – N. Las Vegas, Nevada, and
- B) Comments and Input submitted to the Ely Field Office and part of the public record regarding grazing authorizations and wild horse management actions in the Ely District and proposed Resource Management Plan area during the public planning process before the release of this PRMP.

These addressed current protest points that in all instances the Ely Field Office deemed “beyond the scope” of each proposal and refused to address lack of legal compliance to federal and state laws, BLM regulations and policies, multiple factors associated with the maintenance of a thriving ecological balance including wildlife management plans and population levels, livestock grazing within Herd Management Areas, lack of issuance of viable herd populations via non self-sustaining Appropriate Management Levels (AML) through the inequitable distribution and restrictions of critical habitat requirements

necessary to preserve and protect wild populations and their habitat, Special Status of Species, national cumulative impacts to wild horse and burro populations and their habitat,

and failure to provide management plans that contained mitigating measures to ensure balanced multiple use of public lands and resources to ensure their preservation.

Copies of the following submissions indicating my involvement and communication to the Ely Field Office regarding the administration and management of public resources and the specific issues of concern as with entered into public record are provided in Appendix I of this Protest.

1. Submitted November 6, 2006
Dry Lake Complex Wild Horse Gather Plan
EA #NV-040-07-002
2. Submitted June 28, 2007
Bennet Springs, Black Canyon, Klondike and Highland Peak Allotments Grazing
Renewal, EA# NV-040-07-21
3. Submitted June 28, 2007
Rattlesnake Allotment Grazing Renewal
EA#NV-040-07-016
4. Submitted July 3, 2007
Oak Wells Allotment Grazing Renewal
EA# NV-040-07-22
5. Submitted July 13, 2007
Moriah and Jakes Wash Wild Horse Gather Plan, EA# NV-040-07-002,
Jakes Wash Herd Management Area, EA NV-040-07-045,
Moriah Herd Management Area EA NV-040-07-044.
6. Submitted July 17, 2007
Geyser Ranch & Wilson Creek Allotments Grazing Renewal
EA# NV-040-07-28
7. Submitted July 18, 2007
Mallory Springs Grazing Allotment
EA# NV-040-06-013
8. Submitted July 20, 2007
Sheep Flat & Barclay Grazing Allotments
EA# NV-040-07-026

Interest/Adversely Effected

The “Interest” that I hold is the preservation of wild horses and burros and their habitat, as stated in Public Law 92-195, The Wild Free Roaming Horse & Burro Act, affirmed in the Federal Land Management Policy Act of 1976, the Public Range Improvements Act of 1978, BLM Code of Federal Regulations that require specific conditions to be adhered to in order to meet the requirements of these federal laws, the State of Nevada Revised Statutes that further enforce the protection and preservation of wild horse and burros with the State of Nevada qualifying them as a Special Status Species, the failure of this Proposal to adhere to these listed laws, policies and regulations or after over thirty years of “in depth monitoring of wild herds” have been unable to formulate even the most minimal management plans that ensures their future preservation and protection as deemed by Congress in 1971 “where presently found”.

I am adversely affected as both an American citizen and a Nevada resident for the following reasons:

Failure to adhere to the above requirements, policies and laws by the Department of the Interior, the Secretary of the Interior, the Bureau of Land Management, and various federal and state agencies has resulted in cumulative impacts that have severely impacted habitat preservation for wild horses and burros as well as their population and viable herds both in the State of Nevada and across the Nation.

I have attempted to address these issues in wild horse gather proposals, grazing allotment proposals that issue forage and critical habitat requirements, and wildlife population management and their impact to public rangelands and resources and the thriving ecological balance.

In all instances, the BLM has affirmed that they would not address these concerns, that each proposal commented on was not the proper place to address these concerns, that they were not “valid” and were always “beyond the scope of the proposal” and failed to apply due consideration to lawful mandates and policy that clearly outline how BLM must administer their duties in regards to multiple use management of public resources of which wild horse and burro preservation and habitat is a valid and legally affirmed use.

Surely, we have finally arrived at a proposal where these considerations can be addressed. Continued failure and refusal to address them will adversely affect myself, the American people, the residents of Nevada and clearly establish that BLM is no longer responding as public stewards of public resources but has now risen to the self-declared role of public masters and are willfully circumventing their legally defined roles and requirements.

Protest Point #1

Violation of CFR 1610.2 (7) requiring that a telephone number be included for personnel listed as the appropriate party to address questions too or provide additional information regarding the RMP/Final EIS.

The listed contacts in the Ely RMP are:

Jeff Weeks, Project Manager
U.S. Department of the Interior
Bureau of Land Management
Ely Field Office
HC 33 Box 33500
Ely, Nevada 89301

Ron Wenker
State Director, Nevada
Bureau of Land Management, Nevada State Office
1340 Financial Blvd.
Reno, NV 89502

Failure to include a telephone number denied the general public significant opportunity to inquire about specifics or generalities in the RMP. There is no accountability for this omission and no extension of the Protest Period due to this failure despite its potential impacts, which would circumvent meaningful public involvement.

According to BLMs CFR 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.

What remedy will BLM offer the public by this circumvention to NEPA compliance and BLMs own CFR requirements?

Protest Point #2

Proposed Areas of Critical Environmental Concern (ACECs) are required to provide a 60-day public comment period from the time of publishing in the Federal Register and the 30-day public protest period of the Proposed RMP/Final EIS is in violation of CFR 1610.7-2(b).

The Proposed Ely RMP/EIS Table 2.4-28, Management Prescriptions for Proposed ACECs, pages 2.4-101 through 2.4-106 fail to offer a 60 day public comment period regarding their designation and recommendations.

This is also in violation of the BLM Land Use Planning Handbook, H-1601-1, Appendix C, page 28, which clearly outlines the BLM policy regarding these designations and the need to review valid existing rights. The proposed actions cannot meet this standard of a 60-day public comment period and must be postponed and denied until the planning for the area is completed and a site specific case-by-case basis can be assessed.

Validity of Protest

The Ely RMP/Final EIS and the State Directors approval of ACEC designations is in error through the inability to offer public comments for 60 day period and therefore, must be postponed and denied until the planning process for the area is complete.

Protest Point #3

Neither the Bureau of Land Management nor the Secretary of the Interior has the Authority to Withdraw a Congressionally Designated Land Use for a Specific Purpose as Defined in Public Law 92-195 in regards to the removal of 1,587,600 Herd Management Acres of Congressionally reserved and designated habitat for wild horses protection and preservation that has affirmed valid existing rights on public lands.

The Proposed Ely RMP does not comply with the following national policy guidance, legal requirements, applicable laws, regulations, policies and/or planning procedures and proposes a major change in the use of resources in the area covered by the plan.

The Ely RMP/Final EIS, Section 2.4.8.2, Parameter – Herd Management Establishment, Management Actions, WH-5, page 2.4-28, proposes to remove wild horses and drop herd management status for those areas that do not provide sufficient habitat resources to sustain healthy populations and those HMAs to be dropped are listed on Table 2.4-12, page 2.4-29, which include Antelope (west of Highway 93), Applewhite, Blue Nose Peak, Cherry Creek (eastern portion), Clover Creek, Clover Mountains, Delamar Mountains, Highland Peak (southern 2/3s), Jakes Wash, Little Mountain, Meadow Valley Mountains, Miller Flat, Moriah, Rattlesnake (southern ½), Seaman and White River.

BLMs Land Use Planning Handbook, Appendix E
§ 1610.6 Management decision review by Congress.

The Federal Land Policy and Management Act requires that any Bureau of Land Management management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented.

In 1971, through the passage of The Wild Free-Roaming Horse & Burro Act, Public Law 92-195, Congress declared that the Secretary of the Interior and the BLM were required to “preserve wild horses and burros where presently found”. There is no authority, law, legislation or regulation that authorizes the reversal of this mandate or supercedes this federal public law.

Section 1331. Congressional Findings and declaration of policy

“Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that 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, as an integral part of the natural system of public lands.” (*emphasis added*)

Section 1333 Powers and duties of Secretary

Jurisdiction; management, ranges, ecological balance objectives, scientific recommendations; forage allocations adjustments

“All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purposes of management and **protection** in accordance with the provisions of the Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands.....

The Federal Lands Policy and Management Act of 1976, Public Law 94-579 reaffirms the rights of wild horses and burros and their habitat as being protected and preserved under the following:

Title 1, Definitions-

Sec. 102. [43 U.S.C. 1701] (a)

“The Congress declares that it is the policy of the United States that– (b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.” (*emphasis added*)

Title 1, Declaration of Policy, Section 102-(7):

“goals and objectives be established by law as guidelines for public land use planning, and that the management be on the basis of multiple use and sustained yield unless otherwise specified by law.” (*emphasis added*)

Title 1, (4):

“the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;” (*emphasis added*)

Congress has designated and dedicated these federal lands for a specified purpose and the BLM does not have the authority to withdraw or defy a Congressional mandate, a public law and a legally dedicated land use purpose.

Title 3, Administration, Section 302. [43 U.S.C. 1732] (a):

“The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” (*emphasis added*)

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701 note] (a):

“Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.” (*emphasis added*)

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] (f):

“Nothing in this Act shall be deemed to repeal any existing law by implication.” (*emphasis added*)

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] 6 (h) states:

“All actions by the Secretary concerned under this Act shall be subject to valid existing rights.” (*emphasis added*)

The valid existing rights of the protection of wild free-roaming horses and burros are further affirmed in the Code of Federal Regulations:

**Title 43 Public Lands: Interior Part 4700
Protection Management and Control of Wild Free-Roaming Horses and Burros**

Subpart 4700—General §4700.0–1 Purpose.

“The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.” (*emphasis added*)

This does NOT include a “management plan” of zero habitat or populations established as an AML of 0.

§4700.0–2 Objectives.

“The objectives of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use;”
(*emphasis added*)

Establishing a “management plan” that completely eradicates wild populations and their lawfully designated habitat as deemed by Congress to be preserved and protected as an integral part of the natural system of the public lands “where they were presently found” fails to comply with the very spirit and intent of the passage of The Wild Free-Roaming Horse and Burro Act, PL 92-195 and their lawfully designated rights to be conserved and sustained since they contribute to the diversity of life and enrich the lives of the American people.

§4700.0–6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat. (*emphasis added*)

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans. (*emphasis added*)

The Proposed RMP and all Alternatives DO NOT consider wild horses, their critical habitat needs and their lawfully designated land use authorizations in a manner comparable with other resource values.

§4710.3–1 Herd management areas.

Herd management areas shall be established for **the maintenance** of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, **the habitat requirements of the animals**, the relationships with other uses of the public and adjacent private lands, and the constraints contained in §4710.4....
(*emphasis added*)

The habitat requirements for wild horses and burros, though available, have instead been distributed to other uses thus rendering the necessary critical habitat requirements unavailable due to a failure to allocate or provide management plans that ensure their habitat requirements such as forage that is necessary to achieve the objective of preserving and protecting them.

Additional Considerations:

The proposed withdrawal of approximately 1.6 million acres of Congressionally declared and federally designated land use authorization for the preservation and protection of wild horses and burros and their habitat also fails to comply with:

(a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans. (emphasis added).

§ 1610.4-4 Analysis of the management situation.

The Field Manager, in collaboration with any cooperating agencies, will analyze the inventory data and other information available to determine the ability of the resource area to respond to identified issues and opportunities. The analysis of the management situation shall provide, consistent with multiple use principles, the basis for formulating reasonable alternatives, including the types of resources for development or protection. Factors to be considered may include, but are not limited to: (a) The types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation; (e) Specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes; (i) Critical threshold levels which should be considered in the formulation of planned alternatives.

Validity of Protest

The Nevada State Directors decision to approve of the Ely Districts Proposed RMP that plans to eliminate these federally protected and designated land use areas is in error based on the above cited legal requirements and failure to initiate mitigation measures and management proposals that adhere to these requirements of preserving and protecting wild horses and burros and their habitat as mandated by both federal law and BLMs own policies and regulations.

Protest Point #4

In Addition to Federal Protection Granted Wild Horses and Burros, they are also a Protected Species within the State of Nevada, as is their habitat and neither the Proposed Ely Final RMP/EIS nor the Nevada State Director acknowledge or comply with Nevada Revised Statutes mandating their protection and preservation.

In the State of Nevada, wild horses and burros and their habitat is protected under Nevada Revised Statutes NRS 504.430 through NRS 504.490 – Wild Horse Preservation. The proposed permanent and irrevocable elimination of these wild horse and burro herds and their habitat is in violation with Nevada State Laws, specifically Nevada Revised Statutes that has charged the Department of Conservation and Natural Resource which oversees the Commission for the Preservation of Wild Horses to preserve viable herds of wild horses on public lands within Nevada.

Nevada Revised Statues established for Wild Horse Preservation and their habitat clearly outlines that wild horses and burros are a state protected species and therefore may not be “managed” away

for exclusive alternative uses on their federal and state protected habitat and the RMP proposal to do so is inconsistent with State law requiring the preservation and protection of their habitat as well as the preservation and protection of viable free-roaming herds within Nevada.

Validity of Protest

The State Director's decision to approve the Proposed RMP removal of approximately 1.6 million acres recognized as habitat of wild free-roaming horses and the removal of their Herd Management Status is in error due to its failure to recognize lawful and valid existing rights within the State of Nevada that mandates the preservation of viable herds wild horses and burros and their habitat.

Protest Point # 5

The State of Nevada recognizes through the Opinion of their Attorney General under AGO 98-16, ANIMALS; CONSERVATION & NATURAL RESOURCES; WILD HORSES, that all Herd Management Areas located within the State are “sanctuaries” or specially designated ranges.

As such Herd Management Areas as defined within Nevada are required to be managed under Section 1332, Definitions, (c) “range” means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses or 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 concept for the public lands;” (*emphasis added*)

The designation of Herd Management Areas as sanctuaries or ranges within Nevada is established under NRS 504.470 Powers and duties of Commission,

1. The primary duties of the Commission are to preserve viable herds of wild horses on public lands designated by the Secretary of the Interior as sanctuaries for the protection of wild horses and burros pursuant to 16 U.S.C. § 1333(a), at levels known to achieve a thriving natural ecological balance, within the limitations of the natural resources of those lands and the use of those lands for multiple purposes, and to identify programs for the maintenance of those herds. To carry out these duties, the Commission shall:

Furthermore, the State of Nevada established the authority of the Commission's powers and duties in response to the question posed in 1998 by Nevada State Director of Conservation and Natural Resources, Mr. Pete G. Morros, that requested an interpretation of “sanctuaries” in relation to the Commission's authority.

The Nevada Attorney General concluded NRS 504.470 should be interpreted as the Commissions primary duties should focus on the preservation of wild horses on federally designated wild horse

management areas and that their authority and powers over designated “sanctuaries or ranges” were in fact the same as herd management areas. (See Attachment I – AGO 98-16)

Since the issuance of AGO 98-16 by Nevada’s Attorney General, the Nevada Commission for the Preservation of Wild Horses under the direction of the Nevada Department of Conservation and Natural Resources, has exercised its authority and duties in all Herd Management Areas found throughout the State and has firmly established that the State of Nevada considers all Herd Management Areas “sanctuaries”.

Validity of Protest

As such, the Ely RMP fails to present management plans that comply with the firmly established definition of “sanctuaries” as defined by the State of Nevada, which require Herd Management Areas are to be managed as “devoted principally to wild horse and burro welfare.”

The State Director decision to approve the Proposed RMP is in error due to the failure to recognize established definitions of Herd Management Areas within Nevada as “sanctuaries” as affirmed by Nevada’s Attorney General, which has remained unchallenged and unprotested by Nevada Legislature since the issuance of AGO 98-16 defining Nevada’s Herd Management Areas as adhering to these definitions and criteria of “sanctuaries”.

Protest Point #6

Failure to adhere to Special Species designations and requirements as cited in the Ely Proposed RMP/Final EIS, Section 2.4.7, Special Species Status, page 2.4-16, which states:

“Special status species include federally listed, proposed, or candidate species, state protected species, and BLM sensitive species.”

In addition to citing the requirements as mandated by Section 102(8) of the Federal Land Policy and Management Act of 1976, as amended, requiring that public land be managed to protect the quality of multiple resources and to provide habitat for fish, wildlife, domestic livestock and wild horses, this citing also specifically states that BLMs RMP must recognize a state protected species as a Special Status Species with the objective of managing suitable habitat for special status species in a manner that will benefit these species directly or indirectly and minimize loss of individuals or habitat from permitted activities.

Additionally, under Section 2.4.7.1 Parameter – Special Status Species Habitat, Management Actions, page 2.4-18, the current Proposed RMP/EIS fails to list the priority of management towards State protected species.

Wild horses and burros and their habitat are a state protected species under NRS, Preservation of Wild Horses, yet they are not acknowledged as a Special Status Species within this RMP/EIS as BLM is required to list them.

There is no management plans outlined under Special Species Status nor are there Parameters outlined that detail specific considerations necessary to ensure the conservation of populations or habitat, such as water developments or mitigation measures for loss of natural water sources, habitat loss or fragmentation, to reduce inter-specific competition of resources such as the reductions in livestock grazing within their designated sanctuaries (HMAs), or limits on big game species populations, introductions, expansions and management objectives or the introduction of species that would pose a significant threat to continued management and preservation of wild populations or their habitat.

Validity of Protest

The BLM Ely Field Office is required to acknowledge and appropriately manage for conservation a state protected species under a Special Species Status designation.

The State Director is in error for omitting wild horses and burros and their habitat from Special Species Status designations and management plans that would prioritize habitat conservation and viable free-roaming herds.

Protest Point #7

Based on the BLMs Land Use Planning Handbook, H-1601-1, Appendix C, D. Special Status Species, 3. Formal Consultation, (a), page 4, the BLM is required to re-initiating consultation in land use plans when there has been significant change since the original consultation was completed. Based on these criteria, consultation on land use plan and implementation decisions must be reinitiated for any new information shows that the plan decisions may affect Special Status Species or critical habitat in a way or to an extent not previously considered.

On August 2, 2007 the Interior Board of Land Appeals 172 IBLA 128 ruled that there is nothing in the Wild Free-Roaming Horse and Burro Act that prohibits the BLM from augmenting wild herds to prevent inbreeding and bolster genetic viability in wild populations.

The decision of the IBLA needs to be reviewed, revisited and incorporated in the currently proposed management plans that eliminate wild populations and their habitat in the 16 HMAs listed on Table 2.4-12, page 2.4-29 due to the State Special Status Species qualifications.

Validity of Protest

The Ely Proposed RMP/Final EIS has failed to consider and incorporate new information and administrative rulings from the IBLA regarding the management and preservation of wild horses and burro and their habitat, the establishment of AMLs based on the productive capacity of their habitat and resources, which allows the management of wild herds to be augmented to preserve healthy viable populations.

The State Directors decision is in error by failing to consider and incorporate this new information and direction into the Ely RMP/Final EIS.

Protest Point #8

Under Section 2.4.8.3, Parameter – Population Management, WH-7, page 2.4-28, the Ely RMP/Final EIS proposes a vague, fluctuating and open ended management plan on wild horse populations and their habitat through future “monitoring” of resources with emphasis on watershed analysis.

Wild horse and burro populations and their habitat needs, impacts and requirements have been monitored and recorded for over 30 years. As such, the BLM already has the necessary data and information required to firmly establish specific management plans that allocate required necessary critical habitat needs such as forage and water in all environmental conditions such as drought and need to clearly establish these guaranteed allocations and reservations through specific management plans that satisfy the protection and preservation of viable wild free-roaming herds with the planning area.

Validity of Protest

The Ely Proposed RMP/EIS is a Resource MANAGEMENT Plan and the current proposal fails to provide concise management plans that utilize existing data to establish specific management plans required to fulfill federal and state laws towards the objective of the preservation and conservation of wild horse and burro populations and their habitat.

The State Director’s decision is in error due to a failure to establish firm parameters towards conservation measures for viable wild horse populations, their habitat and the critical components necessary to ensure the future maintenance in the planning area.

Protest Point #9

Incomparable Resource Distribution and Failure to Allocate Necessary Habitat Requirements to Preserve Wild Horse & Burro Herds or Their Habitat As Mandated by Law, Regulation & Policy.

The current Proposed RMP/Final EIS proposes forage allocations to wild horses in the planning area issued at 20,340 AUMs while livestock grazing for the same area has been issued 545,267 AUMs under Section 2.4.16, Livestock Grazing, Management Actions, LG-1, page 2.4-67.

Under CFR 4700.0-6(b), Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.

Additionally, the CFR 4710.5(a) clearly outlines the legally mandated priorities in relation to public lands resource distribution and that within the federally declared Herd Areas all subsequent management plans in Herd Management Areas established for the maintenance of wild horse and burro herds:

§4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock. (emphasis added)

(c) Closure may be temporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

The Ely District Field Office has continued to issue forage allocations to livestock grazing in areas proposed to be zeroed out for all further wild horse use or management, allocations that if closed to livestock grazing as the authority and priority is made available and specified under to CFR 4710.5, would satisfy the necessary habitat requirements to preserve and protect wild horse and burro herds in self-sustaining and viable herds.

The Ely District Field Office has refused to address these concerns in their issuance of grazing allocations within the federally designated Herd Areas or Herd Management Areas and the current RMP is proposing to continue to allow exclusive livestock grazing in lieu of preserving wild horses and burros and their habitat.

This is also a failure to maintain multiple use relationships in the planning area and is non-compliant with various federal laws and BLM policy and regulations that affirm that management actions are required to preserve and protect them within their designated areas above livestock grazing uses, as livestock grazing use is still available under a much larger percentage of public lands than wild horse and burro habitat.

All the Herd Management Areas proposed for withdrawal of HMA status was deemed in prior land use plans as “suitable” for long-term management and granted HMA status. The following proposal to remove 16 HMAs from a once dedicated management area is a precedent setting departure from the existing resource management practices and former land use plans.

Furthermore, it clearly illustrates that through management actions that failed to adhere to proper laws and procedures, the results have been cumulative impacts and trends since the last RMP (over 20 years ago) in areas that were once deemed suitable and appropriate for HMA status are now no longer considered suitable and appropriate due to the management proposals and their implementation.

Examples of this failure and refusal to acknowledge valid existing rights through federal and state legislation and BLM regulations and national policy for wild horse and burro preservation include:

Recent renewals of livestock grazing allotments where wild horse herds have been proposed to be dropped from HMA status: Oakwells, Mallory Springs, Rattlesnake, Bennett Springs, Black Canyon, Klondike, and Highland Peak Grazing Allotments to name a few.

All of these I commented on in the public record as requiring adherence to equitable forage allocations, or if necessary to preserve and protect wild horses and burros and their habitat, the implementation of closure to livestock grazing as per CFR 4710.5 and all comments were deemed “beyond the scope” of multiple use management and livestock authorization use.

For example, the “Appropriate Management Level” for the Highland Peak HMA was set in 2003 at a time when livestock grazing was vacant within the Highland Peak allotment. Yet the BLM set an AML for the Highland Peak at a questionably low population number to manage self-sustaining viable herds, despite forage being available to issue a more compliant AML with the best available science that would promote viable herds in the Highland Peak HMA.

After establishing those AMLs, they approved a livestock grazing lease in the Highland Peak allotment for Jared Cornelius at 3,704 AUMs of forage, forage capable of sustaining an additional 308 wild horses within the HMA.

The currently approved AUMs for livestock grazing within the allotments connected to the Highland Peak HMA, currently proposed for complete elimination is 8,985 AUMs while forage allocations for the Highland Peak wild horses is merely a “high” of 396 AUMs – less than 5% of the available forage, forage allocations that are NOT comparable and do not support wild horse health and viability despite the availability of this necessary critical habitat requirement which is exclusively a result of BLM merely refusing to allocate this forage in order to preserve the areas designated for wild horse use in sustainable multiple-use management.

The exclusive forage allocations to livestock grazing within the planning area is in violation of Code of Federal Regulations CFR 1601.0-5 as mandated by FLMPA, Section 103 (c), which requires BLM to manage for multiple use of public lands, not exclusive use for livestock:

- (i) *Multiple use* means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the lands for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

Validity of Protest

The BLM Ely District is proposing to remove a valid and lawful multiple use of public lands to initiate exclusive use of livestock grazing in the Herd Management Areas being proposed for removal of HMA status despite BLM regulations that clearly establish the preservation of wild horse and burro habitat take precedence on public lands within their lawfully designated territories and to distribute critical habitat requirements in an inequitable and incomparable manner in violation of BLM Policy and regulations.

The State Director decision is in error by failing to approve a multiple use management plan or a management plan that exercises BLMs authority and policies that establish preservation of wild horse and burro populations, their habitat and the critical components necessary to ensure their survival as a higher priority than livestock grazing in the Herd Areas and Herd Management Areas as per CFR 4710.5 and BLM Land Use Planning Handbook, H-1601-1, Appendix C, B. Livestock Grazing, page 14, which requires BLM to identify lands available or not available for livestock grazing based on the considerations cited in

1. Other uses for the land, and
 5. the presence of other resources that may require special management or protection, such as special status species, special recreation management areas (SRMAs), or ACECs.
- Decisions identifying lands available, or not available, for livestock grazing may be revisited through the amendment or revision process if the grazing preference or permit on those lands has been voluntarily relinquished, or if there are outstanding requests to voluntarily relinquish the grazing preference or permit. If an evaluation of Land Health Standards identifies an allotment or group of allotments where Land Health Standards cannot be achieved under any level or management of livestock use, then decisions identifying those areas as available for livestock grazing need to be revisited.

Protest Point #10

Alternative A, 2.5.6.2 Parameter – Elk, Mule Deer, Pronghorn Antelope, and Rocky Mountain Bighorn Sheep Habitats, Management Actions, page 2.5-8, “Additional forage allocations would be divided 70 percent livestock and wild horses and 30 percent to wildlife in the historic Schell Resource Area” fails to define specific percentage of forage allocation for wild horses and leaves an open-ended management plan that will continue the trend of allocating critical habitat requirements necessary for their survival resulting in non self-sustaining viable populations due to this failure.

Specific percentage of forage and resource allocations need to be designated in all Alternatives and management plans that will preserve and protect wild horses and their habitat to ensure their protection and preservation as viable self sustaining herds.

Validity of Protest

Failure to specify resource allocations in terms of percentages that necessary to preserve viable self-sustaining wild populations and their habitat results in inappropriate determinations for Appropriate Management Levels and consequently, how BLM interprets “excess populations” that authorize the removals of wild populations down to non self-sustaining numbers.

The State Director is in error for omitting viable management plans that have specific forage and resource requirements to ensure the protection and preservation of viable self-sustaining free-roaming wild horse herds within the planning area.

Protest Point #11

BLM is required to manage public lands in a “thriving ecological balance”, to provide for multiple use of public lands, to preserve healthy rangelands, riparian areas and habitat for wildlife, wild horses and sustained yield. The BLM must be made accountable for disclosing and managing the totality of this thriving ecological balance in their management objectives, proposals and implementations.

Within BLM proposals, they cite the removal of “excess” wild horses to maintain a “thriving ecological balance” with other multiple uses of public lands, which includes the cited protection and maintenance of wildlife species to justify this “balance” while simultaneously refusing to set population limitations on big game animals, disclose wildlife management objectives or population levels, and allowing wildlife populations to degrade healthy rangelands and riparian areas by citing the BLM does not “manage” wildlife.

Within the BLM Ely District Planning Area, BLM reduced wild horse AML in the majority of the proposed HMAs to be dropped from HMA status in order to accommodate the 1999 Lincoln County Elk Management Plans to introduce and provide habitat for elk introductions that have an a population objective of elk alone that exceed wild horse population AML within the Elk Management Area by a ratio of 3-1.

Elk populations have been cited as damaging the only riparian area in the Rattlesnake Grazing Allotment and Herd Management Area since 2002 and preventing vegetative recovery from wildfire damage yet BLM refuses to address these critical wildlife management issues that are impacting the “thriving ecological balance” while scheduling removals of “excess” wild horse populations to accommodate further expansions of elk populations.

The Proposed RMP/Final EIS provides no management direction or goals to examine the “thriving ecological balance” that includes big game species and the significant impacts their introductions and population expansions may have to all rangeland users and habitat degradation.

The BLM must include some sort of specific goals and objectives that will include these “hidden” components of public lands resource utilizations, management plans, population and habitat limits in order to protect and preserve multiple use relationships and the thriving ecological balance wild horses are removed “to protect” while no accountability or disclosure is required of significant

impacts from ever increasing big game species, both within the Ely District and the State of Nevada as a whole.

Validity of Protest

BLM cites the necessity to remove wild horses and burros to protect the rangeland for deterioration associated with overpopulation while ignoring or allowing significantly greater population numbers of big game species to cause the same over-utilization of resources and habitat degradation with no accountability or disclosure of their impacts which prevent mitigation measures and management actions to restore the thriving ecological balance for all rangeland users and multiple use of public lands.

The State Director needs to address ever expanding wildlife populations, aka big game species, through specific limits and management goals that ensure the thriving ecological balance and protects public lands from documented rangeland deterioration associated with overpopulation of these species.

Appendix I

**Public Comments and Input
Submitted to BLMs Ely District**

Submitted November 6, 2006
Dry Lake Complex Gather Proposal, EA #NV-040-07-002

Environmental Assessment #NV-040-07-002 makes two proposals.

The first is to integrate management of wild horse populations from the Dry Lake HMA, the Rattlesnake HMA and the Highland Peak HMA into one complex to be referred to from now on as the Dry Lake Herd Management Complex.

I protest and oppose this proposal for the following reasons:

The history of BLM combining Herd Management Areas into complexes has led to a wide variety of problems for those who attempt to analyze, research and respond to various land use plans, FMUD's, allotment evaluations, and proper multiple-use implementation.

Once BLM declares HMA's to be managed as a single complex, the information about the herds within the area becomes diluted, obscure, and often, unmonitored.

Rangeland health assessments for one area within the HMA's are used as blanket assessments for the entire complex, often totaling hundreds of thousands of acres with wide variations in geography and environmental factors. Very few details are provided as to *specifics* of rangeland and riparian status, water quality, stubble heights and riparian area measurements, wildlife status within the HMA's, allocated livestock grazing use, etc. while generalized and often vague statements are issued such as "increased wild horse populations use *may* cause continued utilization of resources".

Through managing and combining herd populations into one "Appropriate Management Level", such as has been done with the proposed HMA's, though not officially until now, BLM often reduces population levels to obscene lows (such as Rattlesnake AML set in 2004 at 1 horse for 71,433 acres).

May I repeat that:

The BLM has determined that the *Appropriate* Management Level in the Rattlesnake HMA of 71,433 acres is one (1) horse, which is about to be eliminated.

This acreage was declared by Congress to be set aside for wild horse use, to be "devoted principally" for horses so as to ensure protection from capture, harassment, branding, and death. The BLM in its multiple-use wisdom has decided the appropriate amount of horses is one. When HMA's are officially managed as "Complexes", these glaring details become lost as the numbers get "combined".

Furthermore, this same HMA has two livestock grazing allotments within it, Rattlesnake and Oakspring. Even if the AUM's allotted was to equal 2 head of cattle (1 each and highly unlikely), it would still be double what is being allocated as "appropriate use" for horses. This is a common theme among "Complexes" that determine appropriate use level for horses at tremendously low allocations while the HMA's are often rich with livestock grazing allotments.

It has always been very difficult to acquire specific information about the Animal Unit Months (AUM's) and forage allocations that are implemented by BLM about these allotments within the HMA's.

While Environmental Assessments about horse AML reductions or gather proposals may cite reference material alluding to the specific environmental factors used in the "reduce and remove" proposals, attempting to access these references, especially within the 30 day period afforded the public for review, is close to impossible.

Often times, the referenced material and documents cited is extremely dated, unavailable in electronic formats, or can only be accessed for "reasonable costs" that can total hundreds of dollars.

I personally had requested the referenced material in the Silver Peak/Paymaster EA and relevant documents to a Las Vegas Field Office proposal, that is zeroing out 3HMA's (4 total in the last 6 months) and was sent a letter of response that quoted \$543.00 as the "reasonable fee" for getting copies of these documents.

To illustrate the significant impact of "officially designating" these HMA's as a Complex and its net affect to the general public, consider the fact that the Ely Field Office issued 12 FMUD's in 2004 regarding the HMA's it administers. Since they only manage 13, this is essential all of the HMA's within their jurisdiction.

Though I am not currently aware of the dates that each of these decisions were issued on, it does pose an average of one per month. The general public only has 30 days to review, input and comment on these publications. Now factor in that, before the 30-day comment period is closed, a new publication is issued requiring review, research and time to comment. Yet before that comment period closes, another publication is issued that requires review, as one can see, the pace of attempting to keep up with this information and attempting to respond in any significant manner becomes overwhelming.

However, as difficult as this process may be, it does distinguish itself from the "Complex" publications in that, when the environmental assessments are issued for each HMA, the public actually has access to thirty days of review of the information presented about *each* HMA by being able to examine them individually. This can considerably lengthen the publics' opportunity to be involved in land/resource management and decisions.

When the HMA's are combined into a "Complex" publication, the general public now must examine the same amount of material for each HMA but the timeframe to review and respond gets reduced to only a thirty day period.

When these considerations are added to the new grazing regulations only allowing an interested party to access grazing allotment information if they specify that allotment, proper review and input of multiple-use administration within the HMA's *will be impossible* when these HMA's are managed as a Complex.

It is interesting to note that, generally, the BLM's policy on opportunities for public involvement follows the procedure of a preliminary thirty day scoping period that allows the public to input and comment on proposals issued by the BLM. This is then followed by BLM's review of the public concerns and comments and adjustments are then made to the proposals, if warranted, and a second thirty day opportunity is afforded the public to review and comment on the proposals.

This process has been deviated from in this notification/proposal by combining both periods (or perhaps, complexing them) and thus reducing the public's opportunity to participate to only 30 days.

Another factor that can happen with "Complex" management is great tracks of land that formerly belonged to the HMA's or HA's (Herd Areas), start disappearing.

In ten years time, an individual unfamiliar with the history of the HMA may view its current 200,000 acres as a sizable sum. But when compared to the original 600,000 acres it started out as, the true management implementation becomes apparent.

The total effect of officially managing HMA's as Complexes causes relative harm to the interested public by denying them opportunities to participate in BLM's management, administrations, and implementation of rangeland health, resources, and of course, the actual horses in their designated herd management areas.

Since the BLM has stated that it already manages it as a complex then, "officially designating" it as a complex will make little difference to their current administrations and practices.

However, since officially designating these HMA's to be managed as a complex does have a significant adverse effect upon the general public and interested parties, it is recommended that the BLM continue their current administration practices and find in their decision that more harm than good will be achieved if they continue to attempt to implement this course of action.

I therefore protest and oppose officially designating these individual HMA's into the Dry Lake Complex.

The second proposal within this environmental assessment is the gathering and removal of horses within the Dry Lake HMA, the Rattlesnake HMA and the Highland Peak HMA.

The current total combined acreage of the proposed gather area equates to 695,445 acres. The total reported effected acreage within the HMA's due to wildfires is reported at 5,721 acres.

The current combined AML for the proposed areas are 128 horses. The current AML establishes the "Appropriate" management level for wild horse use at 1 horse per 5,433 acres. This equates to an approximate excess of horses due to the affected burned area within the HMA to:
1 horse.

Considering BLM has cited that the absolute MAXIMUM forage acreage a horse will consume in the most arid conditions is 25 acres per month, or 300 acres per year, the maximum amount of rangeland at stake is 300 acres.

The current combined estimated population, based on population estimates in February is 181 horses. Adding the 20% foaling rate estimates the population at 217 (EA reports population estimated at 220). Since 36 of the estimated population are under one year of age, forage requirements are not as stringent as for adult horses.

It is of the public's opinion that spending a minimum of tens of thousands of dollars for a wild horse gather at this time, as well as the estimated cost of transportation, holding and adoption, is fiscally irresponsible for a 1 horse increase in rangeland utilization.

The assertion that monitoring data has indicated moderate and heavy utilization by wild horses over the last four years is a classic example of "vague and generalized" statements made by BLM personnel regarding rangeland conditions and health when applied to a Complex assessment.

Pg. 4 states that:

"Most recently, heavy wild horse use has been documented in September 2006 along Highland Peak and Muleshoe. Moderate use by wild horses has been documented throughout the remainder of the Complex."

How many acres does this "documented area" cover? What is the percentage of acreage this utilization was catalogue as (moderate/heavy)? Was *one* acre noted for heavy utilization within the HMA's? Why is this area the only area cited for rangeland indications of "excessive animals" within the entire Complex, while the total acreage remaining within ALL HMA's is cited as "moderate use"? Much depends on how much acreage this "documented area" contains in order for any significant rangeland health evaluations to be ascertained.

To determine that "animals are excessive" based on *one* site in 695,000 acres is, frankly, absurd. Then, when it's factored in that, the actual size and scope of that site is unreported, yet it is used as the entire foundation for "excessive animal" assertions, it becomes fantastically ridiculous.

Furthermore, what analysis was offered within this proposal that cited known differences between rangeland deterioration from wild horses, livestock grazing and/or wildlife?

There are thirteen grazing allotments located within these HMA's. What other decisions are being implemented to counter-act this "emergency" situation to rangeland health?

Or would that be beyond the scope of this assessment? It seems that, while multiple-use is the mainstay of issuing decisions and their implementations in the WH&B program, actually reporting on any of these factors is always beyond the scope of the "reduce and remove" proposals.

This constant failure by BLM to report actual monitoring data, rangeland indicators, stubble heights, total AUM's available within the assessment areas as well as current allocated use, and a wide variety of other factors, is unbelievably frustrating to those in the public sector that wish to participate in and understand multiple-use relationships within the HMA's and on public lands.

If rangeland conditions are so "at-risk" that it justifies gathering wild horses for tens of thousands of dollars because their numbers have exceed 128 head on 695,00 acres, something's wrong with the current management decisions and strategies being implemented.

The combining of the scoping period AND the actual proposal has increased this frustration even further by preventing any research into BLM's omissions before public comments are due.

How is the public suppose to participate in land use planning, resource management, multiple-use relationships and the wide range of considerations that are part of the public land process when so little actual data is provided?

Why are complete AUMs listings, allocations, acreage and current usage provided in an oil and gas EA but not in an actual document that is supposed to be about the RANGE?

I protest these aggressive removal campaigns and significant wild horse population reductions, which are not based on science, studies, reports, information, or statistics. It is not good enough for BLM to issue proposals that assure the public that what they say is true and we should just take them at their word.

According to statistics found in An Economic Analysis of Alternative Fertility Control and Associated Management Techniques for Three BLM Wild Horse Herds by John M. Bartholow, pg. 6, Table 3, the estimated costs of this proposal (with all 140 horse removed, held in containment for one year, then each of them successfully adopted out) would be \$368,361.00.

The proposed gather is unnecessary at this time and does not justify the financial expenditures in an already over-burdened wild horse and burro program. It would be more prudent to apply these costs towards actual rangeland monitoring to determine the current environmental status before such costly proposals are implemented.

Therefore, I respectfully submit the “No Action” alternative be selected at this time.

Thank you for this opportunity to participate and your consideration.

Sincerely,

Cindy MacDonald

Submitted June 28, 2007

Bennet Springs, Black Canyon, Klondike and Highland Peak Allotments Grazing
Renewal, EA# NV-040-07-21

Department of the Interior
Bureau of Land Management
Ely Field Office
775 North Industrial Way
HC33 Box 33500
Ely, NV 89301-9408

June 28,2007

RE: Draft Environmental Assessment EA-NV-040-07-21

Grazing Renewal for: Bennett Springs, Black Canyon, Klondike and Highland Peak Allotments

Enclosed are my comments, input and concerns regarding the Bureau of Land Managements proposed action and environmental assessment of the renewal of the grazing permits for the Bennett Springs, Black Canyon, Klondike and Highland Peak Allotments.

I deeply appreciate the opportunity to participate in the management of our Nations resources and hope my input is useful in the preparation and evaluation of the proposed action.

Sincerely,

Cindy MacDonald
3605 Silver Sand Court
North Las Vegas, NV 89032

Summary & Conclusions

- After reviewing the draft environmental assessment, the current inequitable resource and forage allocation is non-compliant with special designations of reserved habitat on public lands for the preservation of wild horses as self-sustaining populations.
- An alternative must be presented that reduces the current proposals resource allocations for almost exclusive livestock utilization until sufficient levels of critical and necessary habitat is secured, such as forage allocations, to allow for optimum numbers of wild horses within the proposal area that ensure their continued preservation.
- The current wild horse AMLs established for the proposal area is noncompliant with established legal mandates that demand *how* the “appropriate management level” must be determined. Wild horses must be considered comparable in land use plans, managed for an optimum number, have self sustaining populations within the productive capacity of their habitat, and the BLM is authorized to reduce or remove all livestock grazing in order to ensure the preservation of viable and critical habitat requirements and self sustaining wild horses populations within these specially designated areas of public lands.
- The proposed action fails to accurately report and consequently assess, legal requirements in the administration, management and implementation of a federally protected habitat and species. All the grazing allotments in this proposal exist within this special land use designation and are subject to the reservations and legal requirements of grazing livestock within Herd Management Areas.
- Significant changes have transpired in wildlife population and management since the last grazing renewal, all adding increased competition and pressure on rangeland resources. Yet, the BLM has failed to make any significant adjustments in livestock use due to this increased pressure from wildlife introductions or expanding populations and has unfairly targeted all resource reductions exclusively to one species, the wild horses within the Highland Peak HMA.
- The introduction of elk and other wildlife species not present within the area at the time of the passage of the WFRHBA has been made in efforts to promote multiple use relationships and wildlife diversity within the area, therefore accommodations must be made with other rangeland users to balance resource utilization. The current tactic of continuing to proceed with no changes to livestock forage allocations, dramatically increasing species of wildlife within the proposal area that utilize significant amounts of resources and similar forage, while drastically reducing wild horse allocations until they are no longer a viable, self sustaining population, is illegal.
- The monitoring data is not current. An analysis of rangeland conditions must be reasonable current (within a year or two) before issuing another 10-Year permit.

Legal Requirements, Laws & Regulations

The Wild Free-Roaming Horse and Burro Act of 1971 Public Law 92-195

Section 1331. Congressional Findings and declaration of policy

"Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that 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, as an integral part of the natural system of public lands." (*emphasis added*)

Section 1332 Definitions

As used in this Act-

"(c) "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses or 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 concept for the public lands;" (*emphasis added*)

Section 1333 Powers and duties of Secretary

Jurisdiction; management, ranges, ecological balance objectives, scientific recommendations; forage allocations adjustments

"All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purposes of management and **protection** in accordance with the provisions of the Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 1337 of this Act deems such action desirable. The Secretary shall manage free-roaming wild horses and burros in a manner designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 1337 of this Act. All management activities shall be at the minimum 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. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands." (*emphasis added*)

(iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (I-iv) above on the basis of all information currently available to him, that an **overpopulation** exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving ecological balance to the range, and protect the range from the deterioration associated with **overpopulation.**

Federal Lands Policy and Management Act of 1976

Public Law 94-579

Title 1, Definitions-

Sec. 102. [43 U.S.C. 1701] (a)

"The Congress declares that it is the policy of the United States that- (b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law." (*emphasis added*)

Title 1, Definitions-

Section 103 [43 UUSC 1702] (c):

"The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." (*emphasis added*)

Title 1, Declaration of Policy, Section 102-(7):

"goals and objectives be established by law as guidelines for public land use planning, and that the management be on the basis of multiple use and sustained yield unless otherwise specified by law:" (*emphasis added*)

Title 1, (4):

"the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;" (*emphasis added*)

Title 1, Definitions, Section 103. [43 U.S.C. 1702]:

"Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act--"

Title 1, Definitions, Section 103. [43 U.S.C. 1702] (a):

"The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards" (*emphasis added*)

Title 2, Land Use Planning, Section 201 [43 U.S.C. 1711] (a):

"The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern."

Title 3, Administration, Section 302. [43 U.S.C. 1732] (a):

"The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law." (*emphasis added*)

Title 4, Grazing Leases and Permits, Section 402. [43 U.S.C. 1752] (h):

"Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits or leases."

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701 note] (a):

"Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act." (*emphasis added*)

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] (f):

"Nothing in this Act shall be deemed to repeal any existing law by implication." (*emphasis added*)

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] 6 (h) states:

"All actions by the Secretary concerned under this Act shall be subject to valid existing rights." (*emphasis added*)

Code of Federal Regulations
Title 43 Public Lands: Interior Part 4700
Protection Management and Control of Wild Free-Roaming Horses and Burros

Subpart 4700—General §4700.0—1 Purpose.

“The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.” (*emphasis added*)

§4700.0–2 Objectives.

“The objectives of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use;” (*emphasis added*)

§4700.0–6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat. (*emphasis added*)

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans. (*emphasis added*)

§4710.3–1 Herd management areas.

Herd management areas shall be established for **the maintenance** of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, **the habitat requirements of the animals**, the relationships with other uses of the public and adjacent private lands, and the constraints contained in §4710.4.... (*emphasis added*)

§4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock. (*emphasis added*)

(c) Closure may be temporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

§4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros. The authorized officer may establish conditions for the removal of unauthorized livestock from public lands adjacent to or **within areas occupied by wild horses or burros to prevent undue harassment of the wild horses or burros.** Liability and compensation for damages from unauthorized use shall be determined in accordance with subpart 4150 of this title. (*emphasis added*)

The current permitted use level proposed for livestock authorization is:

<u>Permittee</u>	<u>Allotment</u>	<u>Begin</u>	<u>End</u>	<u>Permitted Use</u>	<u>Hist. Susp. Use</u>	<u>Total Use</u>
Tom Williams	Bennett Spring	10/16	4/30	1,506	1,149	2,655
	Black Canyon	10/16	4/30	335	88	423
	Klondike	10/16	4/30	678	222	900
Bradley Guymon	Bennett Spring	10/16	4/30	1,992	1,518	3,510
	Black Canyon	10/16	4/30	770	176	946
Jared Cornelius	Highland Peak	10/16	5/15	3,704	804	4,508
Totals				8,985	3,957	12,942

The Highland Peak Herd Management Area (HMA) "allowable management level" (AML) was established in 2003 through a mass AML Determination for 12 Wild Horse HMAs throughout the Ely Districts jurisdiction.

The majority of these AMLs were established at non-self sustaining populations and genetically unviable numbers, which seriously threatens their general health and future preservation.

These AMLs were not established because of the productive capacity of their habitat, or the lack of it, but because BLM either failed to issue enough forage allocations to sustain them, preferring instead to distribute resources in an inequitable manner, or they were unable to do so due to the grazing commitments previously entered into.

However, when the AMLs were established in 2003, the Highland Peak grazing allotment was vacant. Despite no present livestock or utilization levels, BLM failed to issue forage allocations of sufficient nature to sustain and preserve the wild horses of the Highland Peak HMA.

The current wild horse "high" AML is 33 horses over 137,875 acres, an average of one horse per 4,178 acres with a maximum forage allocation of 396 AUMs. The livestock authorizations of permitted use total 8,985 AUMs while wild horse forage allocations don't even equate to 5% of the available forage within the area.

This forage allocation is not about the capacity of the habitat to sustain viable populations or preventing deterioration of the range from "overpopulation"; it's about illegally authorizing forage allocations so that a viable population cannot be sustained or preserved.

The 7-year old monitoring data presented within the assessment is much too old to be considered reasonably current and to honor BLMs mandates to insure proper rangeland health. However, even with this outdated information, BLM states that forage utilization is slight at present use levels, that 3/5ths of the rangeland health standards have been achieved and those that haven't are not attributable to livestock grazing and finally, that the livestock operators are only utilizing about 1/3 of their full resource allocations

The Highland Peak HMA is also within the boundaries of the 1999 Lincoln County Elk Management Plan and is part of 14 other HMAs spanning approximately 2.6 million acres within this relatively new wildlife management plan.

Elk were introduced into the Ely district in 1979 and the current 1999 Elk Management Plan calls for the maintenance of 1,850 elk throughout the planning area while "appropriate" wild horse populations have been slashed for all 14 HMAs to a *maximum* population of 644 wild horses.

Despite wild horse habitat reservation and protection having been legally established long before elk introductions, the elk population will exceed wild horse populations within the Elk Management Plan area by approximately 3-1.

Furthermore, the approval of the resources and forage allocations to this new and substantial elk population did not require an environmental assessment because it was "addressed specifically as a categorical exclusion".

One of the wildlife objectives in the BLM Caliente Management Framework Plan (MFP), completed in February 1982, states, "Return native fauna to historic ranges or improve population numbers in current use areas...The establishment of the species should be consistent with Bureau policy (i.e., Habitat Management Plans, environmental assessments, and proper forage allocation)." (*emphasis added*)

The United States of America, through several federal agencies, has established and reserved a variety of special designations and uses for public lands. These range from National Parks and Conservation Areas, Wilderness Areas, Wildlife Refuges, areas of special environmental concerns such as Threatened or Endangered Species habitat, Areas of Critical Environmental Concerns (ACEC), Cultural and Historic places, etc.

The passage of the Wild Free-Roaming Wild Horse and Burro Act in 1971 was one such designation, which reserved critical habitat, resource allocations and protection for the wild horses and burros that inhabited the areas dedicated for their preservation at the time of its passage.

Livestock grazing is authorized through BLM on approximately 159 million acres while wild horse and burro "protected habitat" is only 34.5 million acres - this is JUST BLM managed land, who oversees the vast majority of wild horses and burros habitat and populations. It also has not been adjusted to subtract the acreage of HMA's that have been zeroed out containing no current populations but are still being applied towards BLMs HMA statistics. Between just the United States Forest Service and BLM managed lands, livestock are authorized on a little over 332 million acres, almost ten times as much available acreage as wild horses and burros.

Yet, even despite significantly less habitat available to wild horses and burros, livestock still dominate the resource allocations, so much so that the majority of the "approved" populations (AML) BLM has authorized within their protected habitat has put most of the Nations remaining herds at serious risk of inbreeding and non self-sustaining populations.

The most current research available has come from Dr. Gus Cothran, a leader in the field of equine genetics and utilized by the BLM for studies regarding the genetic viability of wild horse and burro populations. Based on Dr. Cothrans research, a viable population of wild horses or burros must have a minimum of 150 animals in each Herd Area. This absolute minimum is only under ideal climatic conditions with no drought, harsh winters, fires or other "acts of God."

A significant portion of the National management strategy of our resources includes protection and resource allocations for wildlife and their habitat. Currently, under several federal agency umbrellas, approximately 630 million acres are managed for wildlife, which are protected in varying degrees, from generally to completely exclusive.

In the State of Nevada, home to over 50% of the Nations remaining wild horses (reduced from 74% since 1989), wildlife populations have thrived, and BLM repeatedly asserts that "mule deer, pronghorn antelope and bighorn sheep" are a *priority species* in their management decisions.

As of 2007, Nevada pronghorn antelope populations are estimated at the highest population ever recorded, with state management strategies and population targets that have continually increased as each new population "high" has been achieved. The Nevada pronghorn antelope population was estimated at 23,500 in 2007, almost equal to the entire National wild horse population target.

While those interested in big game production lament the current mule deer population estimated at 110,000, down from the unprecedented 1980's populations of 250,000, the current population is still four times higher than what is estimated as naturally and historically occurring within Nevada. This population is a result of management practices and policies that have artificially inflated mule deer populations from historic levels to satisfy demand for hunting opportunities.

The bighorn sheep population, though nearly extirpated from the Nevada at the time Congress declared wild horses and burros a federally protected species, now outnumber the states burro population by at least 9-1 and have achieved a population level of nearly two thirds of the state maximum wild horse state population target (AML). Remember, that is compared to the largest remaining wild horse population in the county.

According to the Wildlife Society Bulletin 32(2): In Press, titled Determination of Critical Habitat for the Endangered Nelson's Bighorn Sheep in Southern California (2003 Turner et al.), "Bighorn sheep (*Ovis canadensis*) populations have declined from being comparatively abundant in pristine times to **among the rarest ungulate species in North America** (Seton 1929, Buechner 1960, Valdez 1988, Valdex and Krausman 1999). Bighorn sheep inhabiting deserts of the Southwest currently number <20,000 animals in the contiguous United States (Krausman 2000)." That's just the estimated Southwest population.

The current BLM management strategy to preserve and protect wild horses and burros targets National populations not to exceed 24,556 wild horses and 2,956 wild burros. The actual populations are even lower due to two factors; the first being that during removal operations, the BLM cuts populations down to the minimal allowable levels, and the second being that AMLs are

being counted towards the National AML population target that have no existing populations present.

For example, within Nevada, a total of 467 animals (358 wild horses and 109 burros) and a total of 604,126 acres of habitat are being applied toward the state AML and habitat acreage where no populations are currently being reported. This is in addition to an approximate 1,000 wild horse and burro reduction in state AML since 2004.

If bighorn were considered one of the rarest ungulates in North America at an estimated Southwest population of 20,000 in the year 2000, what would the wild burro "managed" population target of less than 2,700 today be considered? Endangered?

Wild horses have a National population target that closely numbers the 2000 bighorn population of 20,000; would this cause wild horses to be included as "one of the rarest ungulates in North America too?"

Therefore, the overwhelming evidence indicates that the current forage allocations within the Bennett Springs, Black Canyon, Klondike and Highland Peak Allotments need to be reduced to accommodate both the "new" elk populations in the area as well as to increase critical habitat requirements, aka food, to support a genetically viable, self sustaining population of 150-200 wild horses within their legally designated historic herd areas, now known as the Highland Peak HMA.

The forage allocation of 200 wild horses would only equate to 2,400 AUMs spread out over four grazing allotments. This would still allow for 6,585 AUMS available, or 2.7 times more forage for livestock rather than the wild horses in Highland Peak, yet still attempt to preserve them in self sustaining populations. While still questionable as to their genetic viability due to periodic removals, at least the maximum population of 200 *would stand a chance* of preservation and the prevention of inbreeding.

It would also serve to even out grazing pressure; instead of all forage consumption being compacted into six months, consumption rates would be more evenly distributed, resulting in healthier vegetation and rangelands, which is of benefit to all species in the area and still complies with mandates to administer public lands under multiple use management of our Nations resources.

.Submitted June 28, 2007
Rattlesnake Allotment Grazing Renewal
EA#NV-040-07-016

Department of the Interior
Bureau of Land Management
Caliente Field Station
P.O. Box 237
Caliente, NV 89007
Attention: Shirley Johnson, Rangeland Management Specialist

June 28, 2007

RE: Preliminary Environmental Assessment
EA # NV-040-07-016
Rattlesnake Allotment Grazing Renewal

Enclosed are my comments and input regarding the information provided in the environmental assessment for the Rattlesnake Allotment grazing renewal.

I deeply appreciate the opportunity to participate in the management of our Nations resources and thank you for your consideration.

Sincerely,

Cindy MacDonald
3605 Silver Sand Court
North Las Vegas, NV 89032

The Caliente Field Station, in conjunction with the Ely Field Office, has effectively zeroed out all wild horse use in their legally established and “protected” habitat, also known as the Rattlesnake Herd Management Area (HMA).

The Rattlesnake HMA was deemed suitable for long-term wild horse management within the Caliente Management Framework Plan issued in 1983 and therefore established as a HMA. Yet no current populations exist because of BLMs management within the HMA area. For example, the Rattlesnake HMA was scheduled for wild horse removals in December 2006 but none could be found from prior wild horse removals.

Because the “official zeroing out” of the HMA is not compliant with the land use plans, BLM issued the HMA an “appropriate management level” (AML) of 1 wild horse spanning 71,429 acres in a mass AML determination for 12 HMAs within their jurisdiction, thereby circumventing what they believe to be the legal requirements of effectively eliminating the population without violating the management plans they are required to follow as established by the 1983 Caliente RMP.

Additionally, the Rattlesnake HMA is part of 14 HMAs within the 1999 Lincoln County Elk Management Plan, a plan that required no environmental assessment or environmental impact statement regarding the introduction of elk to the area because BLM authorized a “categorical exclusion”.

The 14 HMAs that coincide with the Elk Management Plan cover approximately 2.6 million HMA acres and BLM has collectively issued a maximum AML of 644 wild horses within the HMAs, while the population target for the newly introduced elk population aims for 1,850 animals, or a ratio that outnumbers wild horses by almost 3-1.

Currently the introduced elk have been cited as causing sever utilization and heavy degradation of the Rattlesnake Springs, the only natural water source in the allotment. Wild horses were removed because they were causing “resource degradation and riparian damage” and the Rattlesnake HMA was found to be “unsuitable” for wild horse use only after the initiation of the Elk Management Plan in 1999.

What management plans will BLM implement to reduce elk populations due to the heavy utilization and resource damage now occurring as a result of their overpopulation, beside forcing the livestock operator to accommodate the elk needs versus the livestock needs through this change of use within the new grazing renewal terms?

How does BLM justify replacing the wild horses with elk because the wild horses were destroying riparian areas, causing rangeland degradation and preventing a “thriving ecological balance” yet now it is the elk who are destroying riparian areas, causing rangeland degradation and preventing a “thriving ecological balance” with other rangeland users.

When are the elk scheduled for removals?

Will the elk be fenced out to protect the riparian area like wild horses and livestock are, or will Nevada Department of Wildlife just issue BLM a check “for damages” like they so often do regarding elk destruction?

Also, by the use of the term “feral horse” in a BLM assessment, I’m going to go out on a limb and say NDOW was also responsible for the proposal of this “new” grazing allotment plan.

The tactics employed by the BLM regarding the elimination of wild horses and their habitat, a federally protected species, for the exclusive use of high income generating elk for Nevada’s sole benefit, is illegal. It violates the 1983 Caliente Management Framework Plan, the Wild Free-Roaming Horse and Burro Act, The Code of Federal Regulations regarding policy in management and administration of wild horses and burros, the Federal Lands Policy Management Act regarding the administration and management of multiple-use of public lands and the National Environmental Protection Agency's policies and requirements.

The Rattlesnake Allotment is meeting NO RANGELAND HEALTH STANDARDS AND IS NOT MAKING IMPROVEMENT IN ANY AREA.

Yet BLMs only concern is to reduce competition in the spring between “wildlife and livestock”. The actual reduction in grazing time is only 15 days, yet BLM makes up for that loss by allowing the grazing of an additional 11 cattle, thus reducing no pressure or making no change to an allotment that is failing by every standard.

So while elk access and destroy the riparian area with “heavy utilization” in 2007, BLM stating that spring vegetation hasn’t recovered since 2002 because of elk abuse and livestock are utilizing the “burned area” moderately, wild horses have been illegally eliminated from their “protected habitat” and managed into extinction.

As long as this is still a legal HMA, according to BLMs own Code of Federal Regulations, CFR §4710.5 Closure to livestock grazing, states, (a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock. (*emphasis added*)

(c) Closure may be temporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

This policy obviously establishes the priority of wild horses and burros within their habitat over livestock. Since BLM is about to issue new grazing terms with exclusive use versus multiple use within a protected habitat and reserved designation of a federally protected species on public land, please review the following laws and mandates that pertain to BLMs management and administration regarding the Rattlesnake HMA and the exclusive forage allocations for livestock being presented within this environmental proposal.

Legal Requirements, Laws & Regulations

The Wild Free-Roaming Horse and Burro Act of 1971
Public Law 92-195

Section 1331. Congressional Findings and declaration of policy

“Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that 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, as an integral part of the natural system of public lands.” (*emphasis added*)

Section 1332 Definitions

As used in this Act-

“(c) “range” means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses or 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 concept for the public lands;” (*emphasis added*)

Section 1333 Powers and duties of Secretary

Jurisdiction; management, ranges, ecological balance objectives, scientific recommendations; forage allocations adjustments

“All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purposes of management and **protection** in accordance with the provisions of the Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 1337 of this Act deems such action desirable. The Secretary shall manage free-roaming wild horses and burros in a manner designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory

Board established in section 1337 of this Act. All management activities shall be at the minimum 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. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands. (*emphasis added*)

(iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (I-iv) above on the basis of all information currently available to him, that an **overpopulation** exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving ecological balance to the range, and protect the range from the deterioration associated with overpopulation.*

*overpopulation differs from zero population.

Federal Lands Policy and Management Act of 1976 Public Law 94-579

Title 1, Definitions-

Sec. 102. [43 U.S.C. 1701] (a)

“The Congress declares that it is the policy of the United States that– (b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.” (*emphasis added*)

Title 1, Definitions-

Section 103 [43 UUSC 1702] (c):

“The term “multiple use” means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” (*emphasis added*)

Title 1, Declaration of Policy, Section 102-(7):

“goals and objectives be established by law as guidelines for public land use planning, and that the management be on the basis of multiple use and sustained yield unless otherwise specified by law.” *(emphasis added)*

Title 1, (4):

“the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;” *(emphasis added)*

Title 1, Definitions, Section 103. [43 U.S.C. 1702]:

“Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act-“

Title 1, Definitions, Section 103. [43 U.S.C. 1702] (a):

“The term “areas of critical environmental concern” means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards” *(emphasis added)*

Title 2, Land Use Planning, Section 201 [43 U.S.C. 1711] (a):

“The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.”

Title 3, Administration, Section 302. [43 U.S.C. 1732] (a):

“The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” *(emphasis added)*

Title 4, Grazing Leases and Permits, Section 402. [43 U.S.C. 1752] (h):

“Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits or leases.”

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701 note] (a):

“Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.” *(emphasis added)*

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] (f):

“Nothing in this Act shall be deemed to repeal any existing law by implication.” *(emphasis added)*

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] 6 (h) states:

“All actions by the Secretary concerned under this Act shall be subject to valid existing rights.”
(*emphasis added*)

**Code of Federal Regulations Title 43 Public Lands: Interior
Part 4700-Protection Management and Control of Wild Free-Roaming Horses and Burros**

Subpart 4700—General §4700.0–1 Purpose.

“The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.” (*emphasis added*)

§4700.0–2 Objectives.

“The objectives of these regulations are management of wild horses and burros **as an integral part of the natural system of the public lands under the principle of multiple use;**”
(*emphasis added*)

§4700.0–6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat. (*emphasis added*)

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans. (*emphasis added*)

§4710.3–1 Herd management areas.

Herd management areas shall be established for the **maintenance** of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, **the habitat requirements of the animals**, the relationships with other uses of the public and adjacent private lands, and the constraints contained in §4710.4....
(*emphasis added*)

§4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock. (*emphasis added*)

(c) Closure may be temporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

§4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.

The authorized officer may establish conditions for the removal of unauthorized livestock from public lands adjacent to or **within areas occupied by wild horses or burros to prevent undue**

harassment of the wild horses or burros. Liability and compensation for damages from unauthorized use shall be determined in accordance with subpart 4150 of this title.
(emphasis added)

Submitted July 3, 2007
Oak Wells Allotment Grazing Renewal
EA# NV-040-07-22

Department of the Interior
Bureau of Land Management
Ely Field Office
775 North Industrial Way
HC33 Box 33500
Ely, NV 89301-9408

July 3, 2007

RE: Draft Environmental Assessment EA-NV-040-07-22
Grazing Renewal for Oak Wells Allotment

Enclosed are my comments, input and concerns regarding the Bureau of Land Managements proposed action and environmental assessment of the renewal of the grazing permit for the Oak Wells Allotment.

May I also add that despite being listed on the Interest Party mailing list within the EA, as well as keeping meticulous records of the proposed action notices received from the BLMs Ely Field Office, I am reasonably sure that I received no notice of this proposal.

Please provide a copy of the Certified Mail # issued for the notice sent from the Ely Field Office to me so that I may attempt to verify that I did indeed receive notification of this proposal for my records.

I deeply appreciate the opportunity to participate in the management of our Nations resources and hope my input is useful in the preparation and evaluation of the proposed action.

Sincerely,

Cindy MacDonald
3605 Silver Sand Court
North Las Vegas, NV 89032

This grazing renewal occurs in an area that the Ely Field Office recently issued new AMLs for 12 Wild Horse Herd Management Areas in 2003.

The BLM Ely Field Office has generally issued inequitable resource and forage allocations to the wild horses within its jurisdiction that are non-compliant with special designations of reserved habitat on public lands for the preservation of wild horses as self-sustaining populations.

An alternative must be presented that reduces the current proposals resource allocations for almost exclusive livestock utilization until sufficient levels of critical and necessary habitat is secured, such as forage allocations, to allow for optimum numbers of wild horses within the proposal area that ensure their continued preservation.

The current wild horse AMLs established for the proposal area is noncompliant with established legal mandates that demand *how* the “appropriate management level” must be determined. Wild horses must be considered comparable in land use plans, managed for an optimum number, have self sustaining populations within the productive capacity of their habitat, and the BLM is authorized to reduce or remove all livestock grazing in order to ensure the preservation of viable and critical habitat requirements and self sustaining wild horses populations within these specially designated areas of public lands.

The proposed action fails to accurately report and consequently assess, legal requirements in the administration, management and implementation of a federally protected habitat and species. The Oak Wells grazing allotment exists within a special land use designation and is subject to the reservations and legal requirements of grazing livestock within Herd Management Areas.

Significant changes have transpired in wildlife population and management since the last grazing renewal, all adding increased competition and pressure on rangeland resources.

Yet, the BLM has failed to make any significant adjustments in livestock use due to this increased pressure from wildlife introductions or expanding populations and has unfairly targeted all resource reductions exclusively to one species, the wild horses within the Ely district.

The introduction of elk and other wildlife species not present within the area at the time of the passage of the WFRHBA has been made in efforts to promote multiple use relationships and wildlife diversity within the area, therefore accommodations must be made with other rangeland users to balance resource utilization. The current tactic of continuing to proceed with no changes to livestock forage allocations, dramatically increasing species of wildlife within the proposal area that utilize significant amounts of resources and similar forage, while drastically reducing wild horse allocations until they are no longer a viable, self sustaining population, is illegal.

The monitoring data is not current. An analysis of rangeland conditions must be reasonable current (within a year or two) before issuing another 10-Year permit.

The current renewal of inequitable forage allocations through this proposal severely impacts the self-sustaining populations and preservation of the wild horses within the Ely district.

This is unacceptable and fails to conform to federal standards and laws.

To help refresh BLMs memory as to pertinent laws, mandates and regulations applicable to their requirements and policies of proper management and administrations of wild free-roaming horse and burros, please review the following:

Legal Requirements, Laws & Regulations

The Wild Free-Roaming Horse and Burro Act of 1971 Public Law 92-195

Section 1331. Congressional Findings and declaration of policy

“Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that 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, as an integral part of the natural system of public lands.” (*emphasis added*)

Section 1332. Definitions

As used in this Act-

“(c) “range” means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses or 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 concept for the public lands;” (*emphasis added*)

Section 1333 Powers and duties of Secretary

Jurisdiction; management, ranges, ecological balance objectives, scientific recommendations; forage allocations adjustments

“All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purposes of management and **protection** in accordance with the provisions of the Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 1337 of this Act deems such action desirable. The Secretary shall manage free-roaming wild horses and burros in a manner designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the

recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory

Board established in section 1337 of this Act. All management activities shall be at the minimum 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. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands. (*emphasis added*)

(iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (I-iv) above on the basis of all information currently available to him, that an **overpopulation** exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

Federal Lands Policy and Management Act of 1976 Public Law 94-579

Title 1, Definitions-

Sec. 102. [43 U.S.C. 1701] (a)

“The Congress declares that it is the policy of the United States that– (b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.”
(*emphasis added*)

Title 1, Definitions-

Section 103 [43 UUSC 1702] (c):

“The term “multiple use” means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not

necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” (*emphasis added*)

Title 1, Declaration of Policy, Section 102-(7):

“goals and objectives be established by law as guidelines for public land use planning, and that the management be on the basis of multiple use and sustained yield unless otherwise specified by law.” (*emphasis added*)

Title 1, (4):

“the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;” (*emphasis added*)

Title 1, Definitions, Section 103. [43 U.S.C. 1702]:

“Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act-“

Title 1, Definitions, Section 103. [43 U.S.C. 1702] (a):

“The term “areas of critical environmental concern” means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards” (*emphasis added*)

Title 2, Land Use Planning, Section 201 [43 U.S.C. 1711] (a):

“The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.”

Title 3, Administration, Section 302. [43 U.S.C. 1732] (a):

“The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” (*emphasis added*)

Title 4, Grazing Leases and Permits, Section 402. [43 U.S.C. 1752] (h):

“Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits or leases.”

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701 note] (a):

“Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.” (*emphasis added*)

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] (f):
“Nothing in this Act shall be deemed to repeal any existing law by implication.”
(*emphasis added*)

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] 6 (h) states:
“All actions by the Secretary concerned under this Act shall be subject to valid existing rights.”
(*emphasis added*)

Code of Federal Regulations
Title 43 Public Lands: Interior Part 4700
Protection Management and Control of Wild Free-Roaming Horses and Burros

Subpart 4700—General §4700.0–1 Purpose.

“The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.” (*emphasis added*)

§4700.0–2 Objectives.

“The objectives of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use;”
(*emphasis added*)

§4700.0–6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat. (*emphasis added*)

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans. (*emphasis added*)

§4710.3–1 Herd management areas.

Herd management areas shall be established for **the maintenance** of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, **the habitat requirements of the animals**, the relationships with other uses of the public and adjacent private lands, and the constraints contained in §4710.4....
(*emphasis added*)

§4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock. (*emphasis added*)

(c) Closure may be temporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

§4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros. The authorized officer may establish conditions for the removal of unauthorized livestock from public lands adjacent to or **within areas occupied by wild horses or burros to prevent undue harassment of the wild horses or burros.** Liability and compensation for damages from unauthorized use shall be determined in accordance with subpart 4150 of this title. *(emphasis added)*

The current permitted use level proposed for livestock authorization is:

Permittee	Allotment	Begin	End	Permitted Use	Hist. Susp. Use	Total Use
George I. Andrus	Oak Wells	3/1	2/28	511	2,862	3,373

The majority of the AMLs established during the mass AML determinations of 2003 were at non-self sustaining populations and genetically unviable numbers, seriously threatening the general health and future preservation of wild horses within the Ely district.

These AMLs were not established because of the productive capacity of their habitat, or the lack of it, but because BLM either failed to issue enough forage allocations to sustain them, preferring instead to distribute resources in an inequitable manner, or they were unable to due to the grazing commitments previously entered into.

Wild horse forage allocations were not about the capacity of the habitat to sustain viable populations or preventing deterioration of the range from “overpopulation”; it’s about illegally authorizing forage allocations so that a viable population cannot be sustained or preserved.

Elk were introduced into the Ely district in 1979 and the current 1999 Elk Management Plan calls for the maintenance of 1,850 elk throughout the planning area while “appropriate” wild horse populations have been slashed for all 14 HMAs to a *maximum* population of 644 wild horses.

Despite wild horse habitat reservation and protection having been legally established long before elk introductions, the elk population will exceed wild horse populations within the Elk Management Plan area by approximately 3-1.

Furthermore, the approval of the resources and forage allocations to this new and substantial elk population did not require an environmental assessment because it was “addressed specifically as a categorical exclusion”.

One of the wildlife objectives in the BLM Caliente Management Framework Plan (MFP), completed in February 1982, states, "Return native fauna to historic ranges or improve population numbers in current use areas...The establishment of the species should be consistent with Bureau policy (i.e., Habitat Management Plans, environmental assessments, and proper forage allocation)." *(emphasis added)*

The United States of America, through several federal agencies, has established and reserved a variety of special designations and uses for public lands. These range from National Parks and Conservation Areas, Wilderness Areas, Wildlife Refuges, areas of special environmental concerns such as Threatened or Endangered Species habitat, Areas of Critical Environmental Concerns (ACEC), Cultural and Historic places, etc.

The passage of the Wild Free-Roaming Wild Horse and Burro Act in 1971 was one such designation, which reserved critical habitat, resource allocations and protection for the wild horses and burros that inhabited the areas dedicated for their preservation at the time of its passage.

Livestock grazing is authorized through BLM on approximately 159 million acres while wild horse and burro "protected habitat" is only 34.5 million acres - this is JUST BLM managed land, who oversees the vast majority of wild horses and burros habitat and populations. It also has not been adjusted to subtract the acreage of HMA's that have been zeroed out containing no current populations but are still being applied towards BLMs HMA statistics. Between just the United States Forest Service and BLM managed lands, livestock are authorized on a little over 332 million acres, almost ten times as much available acreage as wild horses and burros.

Yet, even despite significantly less habitat available to wild horses and burros, livestock still dominate the resource allocations, so much so that the majority of the "approved" populations (AML) BLM has authorized within their protected habitat has put most of the Nations remaining herds at serious risk of inbreeding and non self-sustaining populations.

The most current research available has come from Dr. Gus Cothran, a leader in the field of equine genetics and utilized by the BLM for studies regarding the genetic viability of wild horse and burro populations. Based on Dr. Cothrans research, a viable population of wild horses or burros must have a minimum of 150 animals in each Herd Area. This absolute minimum is only under ideal climatic conditions with no drought, harsh winters, fires or other "acts of God."

A significant portion of the National management strategy of our resources includes protection and resource allocations for wildlife and their habitat. Currently, under several federal agency umbrellas, approximately 630 million acres are managed for wildlife, which are protected in varying degrees, from generally to completely exclusive.

In the State of Nevada, home to over 50% of the Nations remaining wild horses (reduced from 74% since 1989), wildlife populations have thrived, and BLM repeatedly asserts that "mule deer, pronghorn antelope and bighorn sheep" are a *priority species* in their management decisions.

As of 2007, Nevada pronghorn antelope populations are estimated at the highest population ever recorded, with state management strategies and population targets that have continually increased as each new population "high" has been achieved. The Nevada pronghorn antelope population was estimated at 23,500 in 2007, almost equal to the entire National wild horse population target.

While those interested in big game production lament the current mule deer population estimated at 110,000, down from the unprecedented 1980's populations of 250,000, the current population is still four times higher than what is estimated as naturally and historically occurring within Nevada. This population is a result of management practices and policies that have artificially inflated mule deer populations from historic levels to satisfy demand for hunting opportunities.

The bighorn sheep population, though nearly extirpated from the Nevada at the time Congress declared wild horses and burros a federally protected species, now outnumber the states burro population by at least 9-1 and have achieved a population level of nearly two thirds of the state maximum wild horse state population target (AML). Remember, that is compared to the largest remaining wild horse population in the county.

According to the Wildlife Society Bulletin 32(2): In Press, titled Determination of Critical Habitat for the Endangered Nelson's Bighorn Sheep in Southern California (2003 Turner et al.), "Bighorn sheep (*Ovis canadensis*) populations have declined from being comparatively abundant in pristine times to **among the rarest ungulate species in North America** (Seton 1929, Buechner 1960, Valdez 1988, Valdez and Krausman 1999). Bighorn sheep inhabiting deserts of the Southwest currently number <20,000 animals in the contiguous United States (Krausman 2000)." That's just the estimated Southwest population.

The current BLM management strategy to preserve and protect wild horses and burros targets National populations not to exceed 24,556 wild horses and 2,956 wild burros. The actual populations are even lower due to two factors; the first being that during removal operations, the BLM cuts populations down to the minimal allowable levels, and the second being that AMLs are being counted towards the National AML population target that have no existing populations present.

For example, within Nevada, a total of 467 animals (358 wild horses and 109 burros) and a total of 604,126 acres of habitat are being applied toward the state AML and habitat acreage where no populations are currently being reported. This is in addition to an approximate 1,000 wild horse and burro reduction in state AML since 2004.

If bighorn were considered one of the rarest ungulates in North America at an estimated Southwest population of 20,000 in the year 2000, what would the wild burro "managed" population target of less than 2,700 today be considered? Endangered?

Wild horses have a National population target that closely numbers the 2000 bighorn population of 20,000; would this cause wild horses to be included as "one of the rarest ungulates in North America too?"

Therefore, the overwhelming evidence indicates that the current forage allocations within the Oak Wells allotment need to be reduced to accommodate both the "new" elk populations in the area as well as to increase critical habitat requirements, aka food, to support a genetically viable, self sustaining population of wild horses within the Ely district planning area.

The BLM is required to manage for self-sustaining populations of wild horses within their legally designated and reserved habitat. In order to do this, regulations have been established that close areas to livestock grazing if necessary to preserve and protect wild horses within the HMAs. This is one such example of the need to comply with livestock closure to maintain and preserve wild horses as self-sustaining populations.

Current forage allocations available within the Oak Wells allotment would support an additional 42 horses within the areas, bring the managed population into much greater alignment with BLMs mandates to preserve optimum numbers before they can be deemed excessive and removed for the range.

Therefore, a proposed action needs to be developed that does not renew the current grazing permit and re-issues forage allocations to support self-sustaining viable wild horse herds within their federally protected habitat, as well as to accommodate the introductions of a heavy grazing species such as elk.

Submitted July 13, 2007

Moriah and Jakes Wash Wild Horse Gather Plan, EA# NV-040-07-002,
Jakes Wash Herd Management Area, EA NV-040-07-045,
Moriah Herd Management Area EA NV-040-07-044

Department of the Interior
Bureau of Land Management
Ely Field Office
775 North Industrial Way
HC33 Box 33500
Ely, NV 89301-9408

July 13, 2007

RE: Moriah and Jakes Wash Wild Horse Gather Plan and
Preliminary Environmental Assessment NV-040-07-002
Jakes Wash Herd Management Area EA NV-040-07-045
Moriah Herd Management Area EA NV-040-07-044
Removal of "Excess" Populations

Enclosed are my comments, input and concerns regarding the Bureau of Land Managements proposed action and environmental assessment of the removal of "excess" wild horses within the Jakes Wash and Moriah Herd Management Areas (HMA) and wild horses residing outside the boundaries of the HMAs in National Forest Service administrative lands.

Based on the research of the assessment and proposed action, I strongly urge the "No Action" alternative as the only legally compliant management action offered.

I deeply appreciate the opportunity to participate in the management of our Nations resources and hope my input is useful in the preparation and evaluation of the proposed action.

Sincerely,

Cindy MacDonald
3605 Silver Sand Court
North Las Vegas, NV 89032

Jakes Wash & Moriah HMA Wild Horse Gather Proposal

Based on research and review of the wild horse removal proposal presented in EA# NV-040-07-002 for the removal of wild horses in the Jakes Wash and Moriah Herd Management Areas, the summary of the issues are as follows:

- The removal proposal is based on reducing wild horses to a dubiously established Appropriate Management Level that fails all required criteria beside BLMs rubber-stamping of their own authority to issue it.
- The proposal fails to be compliant with BLMs mandates and the applicable policies and laws that require them to:
“preserve wild horses and burros with an optimum number for self-sustaining populations within the productive capacity of their habitat, to be considered an integral component of the public lands, to protect them because they contribute to the diversity of life forms within the Nation, to prevent them from “fast disappearing”, to consider them comparable in resource allocations when implementing and approving land use plans and appropriate management decisions, to secure their free-roaming migration routes though the minimal implementation of fencing, to reduce livestock grazing if necessary to preserve wild horse and burro habitat, populations, and to prevent unnecessary capture, branding, harassment and death within these specially designated areas of public lands.”
- The reported population within the environmental assessment asserts unprecedented reproduction rates since the last round up conducted in 2003 that is not supported by any other documentation or the Population Modeling software trial runs.
- The Bureau of Land Management Ely District has historically demonstrated intent and actions that are aimed at circumventing federal laws regarding public stewardship of National resources in attempts to benefit local and politically motivated proposals.

These actions include but are not limited to, circumvention of NEPA requirements, working with state agencies and organizations to “sell” preferred allocations to the highest bidder, attempting to circumvent land use plans, refusing to issue forage allocations that support self-sustaining and genetically viable wild horse populations within the productive capacity of their habitat, managing for exclusive use versus multiple use, distorting reported statistics in efforts to support non-compliant positions, causing unnecessary burdens to the Nation and American taxpayer to support hidden agendas, and failing to consider humane handling procedures as a priority within the proposal.

- The approval of the proposed action will result in blatant defiance of BLMs mandates to preserve wild horses and burros for future generations, will cause irrevocable harm and loss of a federally protected species, a National resource of cultural and aesthetic value to the American people, and will present the opportunity for the American public to demand restitution for the premeditated act of “managed extinction” of the Jakes Wash and Moriah wild horse herds.

The Jakes Wash Herd Management Acreage is 153,662 acres with an AML of 21 horses or one horse per 7,317 acres.

After the 2004 round ups, 41 wild horses were estimated as remaining in the HMA. Based on the estimated remaining population, the wild horses within Jakes Wash HMA achieved a stunning 32.5% reproduction rate in the three years since the last round up. At one time, BLM claimed that wild horse populations *could* double every five years. In other words, the possibility existed of reproduction rates as high as 20%. The Jakes Mountain wild horses not only doubled in 3 years, they exceeded even this amazing reproductive rate.

Perhaps the Ely Field Office should consider keeping these wild horses for further research since they have made an amazing evolutionary leap in unprecedented prolific reproduction. This is all the more amazing since the round up of 2004 probably took a majority of the foals and younger wild horses, leaving behind mostly the “unadoptable” older wild horses, as has been BLMs policy and criteria for removals for the last several years.

Within the Population Modeling Appendix provided, no reproduction percentages were listed. However, in the posted trial runs, the lowest percentile had a starting population of 12, averaged 29, which reflects less than 10% reproduction rate, and a high of 127, or 30% reproduction rate after 11 years. This reflected a reproduction rate of less than 10%.

The average trial runs reflected a population increase of 10%, not 32.5% or 25% or 20%.

According to BLMs own trial runs, the reproduction rates for the wild horses in question could not possibly reach the population levels being published in this assessment.

Either BLM is not accurately reporting post-gather populations or they are not accurately reporting reproduction rates. Which is it?

The *only* criterion BLM is citing for the authority to implement this proposal is that established AMLs have been exceeded. However, researching the laws, regulations and policies that establish the requirements in determining wild horse AMLs by BLM, these AMLs are not legally compliant as they did not follow very specific mandates for determining what is “appropriate” in multiple use administrations.

The current forage allocations to the wild horses within the Jakes Wash HMA are not to exceed 252 AUMs while livestock forage allocations for all four grazing allotments total 15,725 AUMs with a projected use level within the HMA itself as 9,294 AUMs. This is almost 37 times the forage issued for livestock than for wild horses within the HMA.

The current forage allocations to the wild horses within the Moriah HMA with an established AML of 29 wild horses and is not to exceed 348 AUMs, while livestock forage allocations for the grazing allotments within the HMA total 4,546 AUMs. This well over ten times more forage than has been issued the Moriah wild horses and consequently has denied them the critical habitat requirements necessary for self-sustaining and genetically viable populations

The Environmental Assessment states that a 2002 Rangeland Health Assessment determined that rangeland health was not meeting “standards” due to the over utilization by livestock and wild horses in the area. It further adds that changes in grazing practices have been implemented in order to conform to achieving healthy rangeland standards.

Yet according to the Ely districts 2005 Livestock Grazing Use tables, no AUMs have been suspended from use and all forage allocations for the allotments is permitted, in other words, no reductions have been implemented as a result of the BLMs rangeland health determinations.

In order for wild horses to be determined “excessive”, BLM must first establish AMLs based on the following criteria;

BLM must manage and preserve wild horses and burros with an optimum number for self-sustaining populations within the productive capacity of their habitat, to be considered an integral component of the public lands, to protect them because they contribute to the diversity of life forms within the Nation, to prevent them from “fast disappearing”, to consider them comparable in resource allocations when implementing and approving land use plans and appropriate management decisions, to secure their free-roaming migration routes through the minimal implementation of fencing, to reduce livestock grazing if necessary to preserve wild horse and burro habitat, populations, and to prevent unnecessary capture, branding, harassment and death within these specially designated areas of public lands.

Please explain how BLM believes it is fulfilling the required mandates of wild horse management and AML establishment within the Jakes Wash and Moriah HMAs?

The proposal also states that due to projected decisions in an upcoming new land use plan, the likelihood of completely zeroing these two Herd Management Areas out for any future wild horse management is very high.

Though BLM does not formally commit to this “zeroing out” and leave themselves the “option” of continued management under HMA status, they also state that they will only leave the very oldest of all the wild horses in the area due to considerations of the likelihood of withdrawal from any wild horse use and are expecting complete removals in the near future.

The reason that BLM is not taking them all now and leaving the “option” open is that to zero the HMAs out without supporting land use plans is illegal. Therefore, BLM is intending on circumventing the law by leaving only a handful of non self-sustaining wild horses that are well past reproduction prime in order to zero out the handful left, regardless of the final decision issued in the new land use plans.

Until the land use plans have been approved of, the BLM is required to leave a viable mix of age groups of wild horses to insure the herds future preservation. Please revise the current plan to align BLMs activities with its legal mandates to preserve the wild horses in their legally established and federally protected habitat.

Due to researching the BLM Ely Field Office's management activities, several disturbing trends have become apparent, most notably their introduction and approval of elk within their administrative area through the circumvention of Environmental Impact Statements and Environmental Assessments of the 1999 Lincoln County Elk Management Plan that was approved of under a "categorical exclusion".

According to this plan, some of the planned activities and goals of the Nevada Department of Wildlife that they are working hand in hand with BLM include:

- "Evaluate options and develop solutions to secure adequate monies to outsource BLM NEPA clearances for water developments."
- "On maintenance of existing vegetation conversion projects, any previous cooperative agreement or range improvement permit will be taken into consideration by the team when allocating additional forage."
- "Prior to any habitat enhance project, all parties will be given the opportunity to participate in funding the project. This will be taken into consideration during the allocation process."

Though the elk management plan does not currently cover the Jakes Wash and Moriah HMAs, BLM Ely District has approved of elk populations that outnumber wild horses by a ratio of at least 3-1 within the elk management area.

In 2003, the Ely District initiated and approved of a mass AML determination for the majority of HMAs within the 1999 Lincoln County Elk Management Plan that set wild horse AMLs at incredibly low, non self-sustaining and genetically unviable populations, such as the Clover Mountains HMA, which spans 173,087 acres with an AML determination of a maximum population of 16 wild horses or one wild horse per every 10,817 acres.

The Clover Mountains HMA had a reported population of 40 wild horses as of February 2006. A 20% reproductive rate would have placed the estimated population at 48 wild horses prior to the December 2006 removals.

The Ely District reported removing 17 wild horses in December but the estimated post-gather population is again 40 wild horses, despite removing almost half of the prior population.

The Ely Field Office also conducted round ups in December 2006 throughout the Dry Lake HMA, the Highland Peak HMA and Rattlesnake HMA to remove "excess" wild horses and all of these HMAs fall within the Lincoln County Elk Management Area.

Within two weeks of removing the wild horses in the Dry Lake "Complex", over 1,000 domestic sheep replaced the wild horses that had just been removed. The majority of these sheep were the result of the Ely District recently approving a vacant livestock allotment being re-opened for grazing that had 3,704 AUMS available for "lease". This vacant unused forage was available when they issued the AML decisions for Highland Peak that only allowed for a wild horse maximum utilization of 33 wild horses over 137,875 acres or 396 AUMs.

This AML established at non-self sustaining population and genetically unviable number, which seriously threatens the general health and future preservation of the Highland Peak herd.

These AMLs were not established because of the productive capacity of their habitat, or the lack of it, but because the BLM Ely District failed to issue enough forage allocations to sustain them, preferring instead to distribute resources in an inequitable manner, even though it was available to issue and despite no present livestock or livestock commitments.

Records show that the Ely Field Office has made little or no adjustments to the livestock allotments forage allocation within the elk management area and since they circumvented environmental impact statements and environmental assessments to introduce and manage the elk, the elk must be obtaining forage from somewhere else; the evidence points to the extreme reductions of wild horses to support elk population expansion and circumventing legal requirements to do it.

The Rattlesnake HMA was “unofficially zeroed out” by issuing an AML of one wild horse. Meanwhile, livestock are still permitted and utilize the HMA despite the Code of Federal Regulations mandating that if needed to preserve and protect wild horses and their habitat, livestock grazing closures or reductions may be implemented in the HMAs.

The cattle have been documented as utilizing the burned areas and the elk populations have been documented as severely degrading the only riparian area in the HMA with both species activities resulting in a lack of recovery from wildfire damage because of excessive utilization levels since 2002.

While these activities are not directly involved in the Jakes Wash and Moriah HMAs, it points to how the Ely Field Office is administering the public resources under their care and there is no question that they are issuing decisions that are both blatantly defying legal requirements of public resource management as well as attempting to find every available means to “manage” the wild horses within their district to extinction in efforts to replace them with income generating elk to increase revenue for the state of Nevada at the expense of their federal mandates.

There is also the added bonus of charging the entire national taxpayer to capture and maintain the wild horses removed while replacing them with elk for the state.

According to the BLM Caliente Management Framework Plan (MFP), completed in February 1982, when BLM is managing for wildlife within the area they are required to:
"The establishment of the species should be consistent with Bureau policy (i.e., Habitat Management Plans, environmental assessments, and proper forage allocation)." (*emphasis added*).

It appears that the Ely Field Office is administrating its duties as a state agency instead of a federal agency, managing resources from local directives versus national directives and has some how managed to exclude themselves from federal oversight.

To help refresh the Ely Districts memory of what exactly **BLMs federal policy** is regarding the management of wild horses and burros, as established by Congress and public law, included is the following reminders:

The BLM is required to preserve wild horses and burros with an optimum number for self-sustaining populations, to consider them an integral component of the public lands, to protect them because they contribute to the diversity of life forms within the Nation, to prevent them from “fast disappearing”, to consider them comparable in resource allocations when implementing and approving land use plans and appropriate management decisions, to secure their free-roaming migration routes though the minimal implementation of fencing, to reduce livestock grazing if necessary to preserve wild horse and burro habitat, populations, and to prevent unnecessary capture, branding, harassment and death”.

Wild horses and burros are a federally protected species, as is their habitat. BLM is only authorized to remove “excess” wild horses and burros; removal for any other reason is illegal.

“Excess” must meet certain requirements before they can be deemed “excessive”. The most important of these are, within the legally established boundaries of the historical herd areas, wild horses must be considered comparable to other resources in the area and issued resource allocations that allow them to be preserved in self-sustaining populations. It is only once they exceed this limit that BLM has authorization to remove them.

Currently, the BLM is attempting to use the policies established in the Federal Lands Management Policy Act (FLMPA) to supersede the legal rights of wild horses and burros within their protected habitat.

FLMPA was a law designated by Congress to be applied to ALL public lands under BLMs management. However, there are clear stipulations in several areas that provide for “exceptions” and acknowledgement of “valid, existing rights” that prevent BLM from legally erasing these lawfully established entitlements. The protection and preservation of wild horses and burros and their habitat on public lands is a valid existing right and a lawfully established entitlement.

Please explain how BLM believes it has complied with the legal requirement of considering wild horse resource allocation within their protected habitat as “comparable” to other resource users in order for horses to be deemed “excessive” within the thriving ecological balance?

Also please see Appendix I at the back of this submission for a listing of applicable laws that BLM is required to adhere to in their management and decisions regarding wild horses and burros and their habitat.

The BLM is required to treat wild horses and burros as humanely as possible to “prevent unnecessary capture, branding, harassment and death” yet there is mounting evidence that BLM is ignoring their own operating procedures, turning a blind-eye towards the inhumane methods being employed by contractors, and generally failing to adhere to humane handling procedures.

Historically, BLM makes little or no changes in their wild horse and burro removal proposals, AML decisions, forage allocations, capture methods or management decisions.

BLM has become emboldened by the “Full Force and Effect” clause that was originally established to prevent emergency rangeland conditions from developing while litigation proceedings transpired. The BLM now routinely issues all decisions as “Full Force and Effect” and effectively circumvents the public's right to “Request a Stay” of the proposed action.

They always immediately remove the wild horses and burros, regardless of how non-compliant the proposals may be, and always render a “moot point” verdict from the Interior Board of Land Appeals because the wild horses and burros have been permanently removed, branded, adopted, and dispersed.

This absolute “trend” in wild horse and burro removal proposals has resulted in no accountability to the laws for their actions and there is no doubt that the BLM will issue a Finding of No Significant Impact decision and continue to remove the Jakes Wash and Moriah wild horses despite the significant lack of legal compliance regarding the proposal.

BLM will leave only the very old, will render the remaining population non self-sustaining (if it has not already done so through prior management activities), and using its absolute unchallengeable authority, will attempt to zero out this federally protected heritage species whether the land use plans issues a final decision to “officially” do it or not.

While it may be very apparent that I oppose the proposed action and urge BLM to begin management actions towards the Jakes Wash and Moriah wild horses that are in alignment with the original intent of the laws, I also know from prior experience that every issue brought to BLM's attention will most likely be ignored and the capture and removal operations will proceed.

Therefore, I would like to also urge BLM to utilize lure trapping to remove the wild horses that have no business being removed in the first place because the removal numbers are so small anyway.

BLM dismissed lure trapping in their analysis of the proposed actions and alternatives because it is *too hard on them*, regardless of how hard or dangerous the helicopter removals will be to the wild horses placed within their care. In the interests of the wild horses versus yourselves, please re-consider this alternative.

In conclusion, let it be clearly stated that the proposed action, as well as the prior management decisions that have attempted to authorize the Ely Districts administrations of the wild horse and burro program within their jurisdiction, are clearly non-compliant with the laws of our Nation, Bureau policies, the Code of Federal Regulations, and the requirement to support multiple use versus exclusive use of our public resources.

The proposed action is a premeditated and willful act to “manage” the Jakes Mountain and Moriah wild horses into extinction and the permanent loss of this federally protected species valued by the American people for their cultural and aesthetic values will result in irreparable harm to both those values and the laws established to prevent their extirpation.

As such, the American people will be legally entitled to restitution for the BLMs premeditated actions that blatantly ignored the laws that require the wild horses and burros of our Nation to be preserved for future generations.

Appendix I

Legal Requirements, Laws & Regulations

The Wild Free-Roaming Horse and Burro Act of 1971 Public Law 92-195

Section 1331. Congressional Findings and declaration of policy

“Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that 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, as an integral part of the natural system of public lands.” (*emphasis added*)

Section 1332 Definitions

As used in this Act-

“(c) “range” means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses or 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 concept for the public lands;” (*emphasis added*)

Section 1333 Powers and duties of Secretary

Jurisdiction; management, ranges, ecological balance objectives, scientific recommendations; forage allocations adjustments

“All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purposes of management and protection in accordance with the provisions of the Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 1337 of this Act deems such action desirable. The Secretary shall manage free-roaming wild horses and burros in a manner designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory

Board established in section 1337 of this Act. All management activities shall be at the minimum 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. Any adjustments in forage

allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands. (emphasis added)

(iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (I-iv) above on the basis of all information currently available to him, that an **overpopulation** exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving ecological balance to the range, and protect the range from the deterioration associated with **overpopulation**.

Federal Lands Policy and Management Act of 1976

Public Law 94-579

Title 1, Definitions-

Sec. 102. [43 U.S.C. 1701] (a)

“The Congress declares that it is the policy of the United States that– (b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.” (emphasis added)

Title 1, Definitions-

Section 103 [43 UUSC 1702] (c):

“The term “multiple use” means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” (emphasis added)

Title 1, Declaration of Policy, Section 102-(7):

“goals and objectives be established by law as guidelines for public land use planning, and that the management be on the basis of multiple use and sustained yield unless otherwise specified by law.” (emphasis added)

Title 1, (4):

“the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;” (*emphasis added*)

Title 1, Definitions, Section 103. [43 U.S.C. 1702]:

“Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act-“

Title 1, Definitions, Section 103. [43 U.S.C. 1702] (a):

“The term “areas of critical environmental concern” means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards” (*emphasis added*)

Title 2, Land Use Planning, Section 201 [43 U.S.C. 1711] (a):

“The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.”

Title 3, Administration, Section 302. [43 U.S.C. 1732] (a):

“The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” (*emphasis added*)

Title 4, Grazing Leases and Permits, Section 402. [43 U.S.C. 1752] (h):

“Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits or leases.”

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701 note] (a):

“Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.” (*emphasis added*)

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] (f):

“Nothing in this Act shall be deemed to repeal any existing law by implication.” (*emphasis added*)

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701] 6 (h) states:

“All actions by the Secretary concerned under this Act shall be subject to valid existing rights.” (*emphasis added*)

Code of Federal Regulations
Title 43 Public Lands: Interior Part 4700
Protection Management and Control of Wild Free-Roaming Horses and Burros

Subpart 4700—General §4700.0–1 Purpose.

“The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.” (*emphasis added*)

§4700.0–2 Objectives.

“The objectives of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use;” (*emphasis added*)

§4700.0–6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat. (*emphasis added*)

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans. (*emphasis added*)

§4710.3–1 Herd management areas.

Herd management areas shall be established for **the maintenance** of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, **the habitat requirements of the animals**, the relationships with other uses of the public and adjacent private lands, and the constraints contained in §4710.4.... (*emphasis added*)

§4710.5 Closure to livestock grazing.

(a) **If necessary to provide habitat** for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock. (*emphasis added*)

(c) Closure may be temporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

§4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.

The authorized officer may establish conditions for the removal of unauthorized livestock from public lands adjacent to or **within areas occupied by wild horses or burros to prevent undue harassment of the wild horses or burros.** Liability and compensation for damages from unauthorized use shall be determined in accordance with subpart 4150 of this title. (*emphasis added*)

Submitted July 17, 2007

Geyser Ranch & Wilson Creek Allotments Grazing Renewal
EA# NV-040-07-28

Department of the Interior
Bureau of Land Management
Ely Field Office
775 North Industrial Way
HC33 Box 33500
Ely, NV 89301-9408

July 17, 2007

RE: Environmental Assessment EA-NV-040-07-28
Grazing Renewal for Geysers Ranch & Wilson Creek Allotments

Enclosed are my comments, input and concerns regarding the Bureau of Land Management's proposed action and environmental assessment of the grazing permit issuance for Lake Valley Cattle LLC. for the Geysers Ranch and Wilson Creek Allotments.

I deeply appreciate the opportunity to participate in the management of our Nation's resources and hope my input is useful in the preparation and evaluation of the proposed action.

Sincerely,

Cindy MacDonald
3605 Silver Sand Court
North Las Vegas, NV 89032

Issues to Be Addressed

General Overview

Wild Horses, Burros and Habitat

Due to the proposal areas overlapping boundaries within the federally protected wild horse habitats identified as the Dry Lake Herd Management Area and the Wilson Creek Herd Management Area, it is necessary to evaluate the proposed action and its conformance to federal mandates and policies regarding wild horse habitat and populations, both locally and nationally.

At the turn of the century, wild horses were estimated at 2-3 million strong but the results of the 1974 Bureau of Land Management (BLM) census recorded that their numbers had dwindled to merely 60,000 nationwide, 14,000 of those were estimated to be wild burros.

After the passage of 1971 Wild Free-Roaming Horse and Burro Act, the BLM became the lead agency charged with the mission of protecting wild horses and burros on public lands and 53.3 million acres of critical habitat was reserved for their future preservation.

The BLM was charged to “preserve wild horses and burros with an optimum number for self-sustaining populations, to be considered an integral component of the public lands, to protect them because they contribute to the diversity of life forms within the Nation, to prevent them from “fast disappearing”, to consider them comparable in resource allocations when implementing and approving land use plans and appropriate management decisions, to secure their free-roaming migration routes through the minimal implementation of fencing, to reduce livestock grazing if necessary to preserve wild horse and burro habitat, populations, and to prevent unnecessary capture, branding, harassment and death”.

Today, BLM oversees approximately 262 million public acres, yet nearly 20 million acres of the original territory set aside for wild horse and burro preservation has been deemed no longer deemed suitable for management and only 34.4 million acres of their historical Herd Areas still allow any populations at all. If they leave these imaginary boundaries, they are considered nuisance animals and removed.

For example, in 1980 Southern California BLM managed over 3.5 million acres with an “allowable population level” of over 2,700 wild burros. California now has only three remaining BLM managed herds with a *maximum* “appropriate population target” for the entire state of merely 345 burros. Southern California itself has seen a 90% reduction in both acres and burros.

The current BLM management strategy to preserve and protect wild horses and burros targets National populations not to exceed 24,556 wild horses and 2,956 wild burros. The actual populations are even lower due to two factors; the first being that during removal operations, the BLM cuts populations down to the minimal allowable levels, and the second being that AMLs are being counted towards the National AML population target that have no existing populations present.

For example, within Nevada, a total of 467 animals (358 wild horses and 109 burros) and a total of 604,126 acres of habitat are being applied toward the state AML and habitat acreage where no populations are currently being reported. This is in addition to an approximate 1,000 wild horse and burro reduction in state AML since 2004.

What wild horse and burro populations are now left have been reduced to such low “managed” numbers that over 70% of the remaining herds now risk inbreeding. It is projected that within the next decade, BLM will begin declaring them non self-sustaining populations due to the very management and decisions they themselves have made, issuing the final orders to have the remaining handfuls zeroed out.

In 2001, a comprehensive Five-Year Management Plan was launched, which included experimental fertility control injections on the wild horses returned to the range in order to bring them “under control”.

Between October 2001 and March 2007, the BLM has removed over 70,000 wild horse and burros from public land in order to achieve a national target not to exceed 24,500 wild horses or 2,700 wild burros.

As of December 2006, there are more wild horses and burros being held in containment than roam free on public lands.

Yet the BLM claims they are merely maintaining a “thriving ecological balance”, a balance that issues only 10% or less of available resources to mustangs and burros within their own protected habitat.

Livestock and Public Grazing

One of the major issues of contention is resource competition with livestock. BLM manages approximately 159 million public acres for grazing and combined with United States Forest Service managed lands, livestock are authorized on a little over 332 million acres or almost ten times as much as wild horses and burros.

The Western States livestock industry supports 9 million cattle alone, not including sheep, and continues to dominate public land resources despite significant loss to taxpayers. It is estimated that public land ranchers pay 98.5% less for the privilege of grazing public lands than private land ranchers do and a 1999 article published by the *San Jose Mercury News* stated that “the top 10% of grazing-permit holders control a striking 65% of all livestock on BLM property.”

The Bush Administration has provided additional cuts in public grazing fees over the last few years as well as attempting to implement new pro-livestock Grazing Regulations in July 2006. The new regulations have been subject to lawsuits challenging both their legal compliances as well as the science that supposedly supported these new regulations.

Erick Campbell and Bill Brookes, two recently retired scientists and each with more than 30 years experience at the BLM, characterized the edits of their contributions to the new regulations as an attempt to suppress scientific information. Campbell termed the matter "a whitewash" and "a crime" and stated, "They took all of our science and reversed it 180 degrees". Brookes agreed, adding, "Everything I wrote was totally rewritten and watered down."

In addition to the significant issue of costs to the American people of government sanctioned welfare ranching, as well as the questionable science that too often supports it, there are other serious concerns regarding the sheer numbers of this exotic species that continue to dominate land use, both in America and abroad.

As of January 2007, the United States Department of Agriculture reported 97.1 million cattle were within the United States, up 400,000 from last year's number, with a total world population estimated at 1.3 billion head.

Within the eleven Western States dedicated to animal agriculture, 70% of the available water is used for livestock production purposes, 85% of all soil erosion is directly attributed to the livestock industry, their overall waste output creates vast amounts of pollution that often ends up in waterways and rivers, and methane, the second leading cause of global warming and rated in the livestock sectors as CO₂, is estimated at generating 18% more greenhouse gas emissions than transport.

While livestock are one of the most major contributors to serious environmental health problems today, meat and milk production are expected to more than double by the year 2050. Livestock now use 30% of the earth's entire land surface and the need to meet the constantly growing demand has also resulted in severe deforestation, requiring more and more old growth forests be cleared in order to create the much needed pasture for their ever-increasing numbers.

In the 1990 Government Accounting Office (GAO) Report to the Secretary of the Interior, *Rangeland Management, Improvements Needed in Federal Wild Horse Program*, the section titled, Principal Findings, Wild Horse Removals Are Not Linked to Rangeland Conditions, the GAO found that BLM proceeded with horse removals using targets based on perceived population levels dating back to 1971 and/or recommendations from BLM advisory groups comprised largely of livestock permittees.

Under Related GAO Products, the GAO cited the primary cause of the degradation in rangeland resources is poorly managed domestic livestock (primarily cattle and sheep) grazing. Although recognizing that overgrazing was occurring, BLM range managers reported that no adjustments in the authorized livestock grazing levels were scheduled in 75 percent of the allotments threatened with further damage. These managers cited insufficient data on specific range conditions and resistance by livestock permittees as the primary reasons why action had not been taken. The GAO further testified that BLM has been more concerned with the immediate needs of livestock interests or budget reductions than with ensuring the long-term health of the range.

While BLM quotes the mandate of preserving self sustaining populations with the productive capacity of their environment, the forage allocations given to livestock indicate that the productive capacity is high, certainly high enough to issue AMLs that support self sustaining populations and genetically viable numbers, the BLM just won't *allow* any more forage to be utilized by wild horses within the proposal area, regardless of the threat to their long term preservation and survival.

Livestock permittees who graze on public lands have enjoyed two reductions in livestock grazing fees over the last few years, between 1980 and 2004, fees for private land grazing increased by 78%. Public lands "ranchers" are paying 98.5% below market value.

According to the *San Jose Mercury News*, which ran an in-depth piece in 1999 on livestock grazing on BLM lands, "The top 10 percent of grazing-permit holders control a striking 65% of all livestock on BLM property".

In September 2005, the Government Accountability Office reported that the government lost a minimum of \$123 million on the livestock-grazing program, with 10 federal agencies spending at least \$144 million and collecting only \$21 million in grazing fees in return. The BLM and the USFS manage more than 98 percent of the lands used for grazing, and the two agencies lost almost \$115 million on this program in Fiscal Year 2004 alone.

Wildlife

In addition to the “costs” of public lands ranching, state wildlife agencies, such as Nevada Department of Wildlife urge for further reductions in wild horse and burro populations and habitat to increase big game populations and habitat instead.

Over 630 million acres is now controlled by some sort of federal agency such as National Park Service, United States Fish and Wildlife Service, United States Forest Service as well as Bureau of Land Management itself, and this figure omits any state controlled land, all of it is managed for wildlife species and preservation.

In the State of Nevada, home to over 50% of the Nations wild horses (reduced from 74% since 1989), wildlife populations have thrived and BLM cites that “mule deer, pronghorn antelope and bighorn sheep” are a *priority species* in their management decisions.

As of 2007, Nevada pronghorn antelope populations are estimated at the highest population ever recorded, with state management strategies and population targets that have continually increased as each new population “high” has been achieved. The Nevada pronghorn antelope population was estimated at 23,500 in 2007, almost equal to the entire National wild horse population target.

While those interested in big game production lament the current mule deer population estimated at 110,000, down from the unprecedented 1980’s populations of 250,000, the current population is still four times higher than what is estimated as naturally and historically occurring within Nevada. This population is a result of management practices and policies that have artificially inflated mule deer populations from historic levels to satisfy demand for hunting opportunities.

While the current wild horse and burro national population objectives of 24,556 wild horses and 2,695 wild burros may still seem significant, to help grasp how low these populations are from a national perspective, according to the Wildlife Society Bulletin 32(2), in the year 2000, desert bighorn sheep were estimated at 20,000 animals just within the Southwest and cited as one of the “*rarest ungulate species in North America*” - that’s almost the equivalent of the entire National “managed” wild horse population, and despite their federally protected status, the 2,700 or less remaining burros could actually qualify as a candidate for petitioning under the guidelines of the Endangered Species Act.

In an article published on July 6, 2007 by biologists at Washington State University, the most recent bighorn sheep population estimates have been cited as approximately 50,000 throughout the West, over twice as much as the national population objectives for wild horses and almost twenty times higher for the national population objectives for wild burros.

The bighorn sheep population, though nearly extirpated from the Nevada at the time Congress declared wild horses and burros a federally protected species, now outnumber Nevada's burro population by at least 9-1 and have achieved a population level of nearly two thirds of the state maximum wild horse state population target (AML). Remember, that is compared to the largest remaining wild horse population in the county.

While the taxpayer as a whole gets to pick up the national and federal cost of removing wild horses and burros from public lands plus years of containment to accommodate more "wildlife habitat", the state gets to pocket the revenue generated by these big game species, as well as license fees and all manner of hunting related revenue.

For example, bighorn sheep, cited as a priority species in BLM and other wildlife management programs, auctioned off bighorn hunting tags in 2005 for \$199,000 in Arizona, \$177,800 for New Mexico, \$130,000 for Oregon, etc. The kind of people that can afford to pay for this "hunting privilege" do not reflect the average American taxpayer.

To further compound the expense, the American taxpayer gets to "sponsor" billions of dollars in wildlife recovery efforts, securing habitat, restoration projects, reintroductions, studies and research, etc. while the majority of these financial benefits also go into the states coffers. In many ways, it has become nothing more than a government shell game similar to elaborate money laundering schemes, as finances are shuffled from state to federal to state again, all with a significant portion of "public resources" benefiting the "few".

The cost of holding our mustangs and burros has skyrocketed with BLM spending \$19.6 million in 2006 for containment costs alone.

BLM is also on record as supporting the need to leave the newly passed "For Sale Authority" in tact as a necessary management tool even though it stripped the marginal protection from slaughter wild horses and burros had secured with the passage of the 1971 Act.

Resource Management Plan

The proposed action is cited as in conformance within an array of options identified as alternatives the Environmental Impact Statement issued for the Final Schell Grazing EIS in July 1983.

Please provide which option is being utilized through this proposal and the complete outline of its implementation and the associative impacts as provided within the 1983 Schell EIS.

1999 Lincoln County Elk Management Plan

Due to researching the BLM Ely Field Office's management activities, several disturbing trends have become apparent, most notably their introduction and approval of elk within their administrative area through the circumvention of Environmental Impact Statements and Environmental Assessments of the 1999 Lincoln County Elk Management Plan that was approved of under a "categorical exclusion".

According to this plan, some of the planned activities and goals of the Nevada Department of Wildlife that they are working hand in hand with BLM include:

- "Evaluate options and develop solutions to secure adequate monies to outsource BLM NEPA clearances for water developments."
- "On maintenance of existing vegetation conversion projects, any previous cooperative agreement or range improvement permit will be taken into consideration by the team when allocating additional forage."
- "Prior to any habitat enhance project, all parties will be given the opportunity to participate in funding the project. This will be taken into consideration during the allocation process."

The elk management plan has approved of elk populations that outnumber wild horses within the planning area by a ratio of at least 3-1.

In 2003, the Ely District initiated and approved of a mass AML determination for the majority of HMAs within the 1999 Lincoln County Elk Management Plan that set wild horse AMLs at incredibly low, non self-sustaining and genetically unviable populations of which the Wilson Creek HMA was part of.

These AMLs were not established because of the productive capacity of their habitat, or the lack of it, but because the BLM Ely District failed to issue enough forage allocations to sustain them, preferring instead to distribute resources in an inequitable manner, even though it was available to issue and despite no present livestock or livestock commitments.

Records show that the Ely Field Office has made little or no adjustments to the livestock allotments forage allocation within the elk management area and since they circumvented environmental impact statements and environmental assessments to introduce and manage the elk, the elk must be obtaining forage from somewhere else; the evidence points to the extreme reductions of wild horses to support elk population expansion and circumventing legal requirements to do it.

Final Multiple Use Decision

The Final Multiple Use Decision (FMUD) issued on July 11, 1990 for the Geyser Ranch Allotment was a significant guide for management, structure and changes to increase and improve rangeland resources. Though monitoring data was utilized through 2005, the 1990 FMUD established the desired future actions needed to improve rangeland conditions for the allotment.

This blueprint for rangeland management within the allotment is now outdated and several factors have changed since the FMUD was established, the most significant of which is the 1999 Lincoln County Elk Management Plan that introduced goals and resource utilizations that were not initially evaluated within the FMUD.

The 1999 Lincoln County Elk Management Plan is being implemented through the circumvention of environmental assessments and environmental impact statements by approving its formulation and implementation under a “categorical exclusion”.

Resource utilization levels and associative impacts have failed to be analyzed or examined in the context of multiple use relationships, riparian areas, Animal Unit Month allocations, elk or other wildlife population objectives, desired future conditions, or conformance with existing land use plans.

The current proposal provides little information regarding this significant change to resource utilizations nor does it provide any adjustments to accommodate the unknown current or future population of elk or other noted wildlife populations.

This assessment merely states that Geyser spring is used heavily by elk and deer and that cattle use in the area is not an issue.

What is “heavy use”? What is the estimated current population? What are the population objectives for elk, mule deer, and pronghorn antelope in the area? What are the recorded forage utilization levels and how has BLM determined what the consumption rate of each species is?

Why is cattle use not an issue for the Geyser spring area? Has the area been subject to fencing to exclude livestock or wild horses?

These kinds of questions need to be addressed, analyzed, and recorded regarding the proposed actions to determine if the current proposal is in conformance with wildlife objectives and other multiple-use relationships within the area.

Since the establishment of the 1990 FMUD, state wildlife populations are generally experiencing all time population highs and management objectives have continually been increasing as each new goal is achieved.

The BLM believes that issuing the current terms of use for the livestock allocations will provide healthy rangelands, increase plant vigor and forage production even though no assessments, objectives or changes are being proposed to accommodate the growing elk and other wildlife populations.

The assessment provides no alternative that considers a reduction in livestock allocations to accommodate the expanding wildlife populations, which in turn places the federally protected wild horse herds and their reserved habitat increasingly at risk due to heightened resource competition and may result in insufficient resources and critical habitat requirements necessary to maintain self-sustaining populations within the productive capacity of their environment.

BLM cites that in some of the pastures within the proposal area, a 60-80% resource utilization level is expected when all species and their combined use is taken into account. This utilization level is extremely high and leaves little room for variance, recovery, or compliance with accepted healthy rangeland utilization levels.

Additionally, the 1990 FMUD evaluation initiated rotation and rest cycles and the creation of additional pastures to facilitate better grazing management practices to achieve rangeland health standards.

Yet the implementation of fencing to accomplish these objectives throughout the proposal area may be in violation of BLM policy to limit fencing within Herd Management Areas, a policy established in order to prevent wild horses from becoming confined to limited resource access and causing excessive utilization levels due to the wild horse herds inability to migrate and disperse grazing pressure.

The assessment states that “identified concerns were wild horse use in the southern portions of the use area along the Fairfield and Muleshoe pastures. This area lies within the Dry Lake HMA and has a heavy concentration of wild horses due to water and feed. No livestock grazing takes place there due to heavy utilization by horses.”

Yet the Muleshoe pastures are issued one of the highest livestock forage allocations within the allotment. How is it that no livestock grazing takes place because of heavy utilization by wild horses when so much more AUMs of forage is issued for livestock grazing purposes?

Is BLM able to assert this because wild horses can't get out and livestock can't get in?

Have the wild horses been relegated to a small area through the implementation of fencing projects that deny them access to a higher quality pasture?

The current ratio of forage allocations cited for the Muleshoe and Fairview pastures, which are cited as occurring within the Dry Lake HMA, allows 816 cattle (4,601 AUMs) and 1,531 sheep (1,832 AUMs) for a total livestock consumption rate of 6,433 AUMs compared to 44 wild horses (533 AUMs).

The significant disparity between resource allocations combined with BLMs assertion that the “southern *portions*” are heavily and exclusively utilized by wild horses would indicate that perhaps a large public lands “pen” has been erected to contain the wild free-roaming population, resulting in the heavy resource utilization being reported.

Is the wild horse confinement to the southern portions a result of grazing management practices, specifically fencing, implemented due to the recommended changes of the 1990 FMUD?

BLM states that, “cattle use is not an issue” in the Geyser spring area nor do they make any mention that the area has any wild horse utilization. Geyser spring is also cited as the main water source for pasture 4.

What is the current allowable wild horse utilization of this pasture and spring?

What factors determine the exclusive citation of the presence of merely elk and deer? More fencing?

Additionally, changes in policy regarding wild horse management have also transpired since the issuance of the 1990 FMUD, studies have been concluded that determine viable population numbers for wild horse herds by qualified scientists, wild horse and burro populations and habitat have seen dramatic declines both nationally as well as within Nevada itself, overall wildlife populations have dramatically increased on state and national levels, wildfires have resulted in significant habitat loss to all rangeland users as noted in pasture 9 and 10, the Dry Lake Valley was split into pastures in 1992, recreational use is on the rise, and the proposal area falls within a major land use change that is expected to result in decreased water availability and its associative impacts due to the construction of the water pipeline by the Southern Nevada Water Authority.

In light of all these factors, as well as BLMs own conclusion that combined rangeland utilization levels of 60-80% are expected at the current use level being proposed, as well as the newest studies indicating that a 50% utilization level is often too high to promote healthy and productive rangelands, the proposal needs to reduce forage allocations to the livestock operations in order to ensure good stewardship of national resources for future use and preservation.

BLM states that the allowable use levels are as follows: Utilization on grasses and forbs will not exceed 60% of current years growth. Since BLM has also determined that combined utilization levels of all rangeland users may exceed this to a projected 80% use level, what methods does or will BLM employ that differentiate between wild horse, elk and cattle use since all species have overlapping diets?

Furthermore, the monitoring data from pasture 10 is being reported from 1981 and 1986, obviously much too old to be of any use in determining any current trends or possible necessary adjustments. Current monitoring data is necessary before approval of the issuance of ten more years of utilization.

BLM also needs to provide the *purpose, impacts and details* of the current proposals intention to remove the four pastures that are currently within the Wilson Creek Allotment which are Muleshoe/Maloy, Pony Seeding, Fairview and Atlanta and place them with the Geysers Ranch Allotment.

These pastures are cited as the areas being utilized by wild horses.

Will rearranging their jurisdiction invalidate the 1990 FMUD decisions?

Please provide a detailed analysis of this inclusion within the proposal.

Under Management Practices to Conform with Guidelines and Achieve Standards, the current proposal provides extremely vague and open-ended powers to deviate from the proposal based on seasons, attainment of shared goals, the multiple-use objectives and the standards for grazing administration.

This broad based undefined authority is unacceptable, especially so in light of the Ely Districts propensity to issue and initiate resource plans of “shared goals” that circumvent NEPA requirements, such as the 1999 Lincoln County Elk Management Plan implemented under a “categorical exclusion” clause or the State Director having the ability to list species under Special Status or Priority Species privileges without studies, reports or reviews that attempt to usurp federally protected species and habitat such as the wild free-roaming horses and burros within the area.

Please provide specific details as to what the actions are being approved of within the management practices cited above and clearly define what rights to public resources are being authorized through the approval of this proposal.

BLM should also initiate plans to develop a current Final Multiple Use Decision that more accurately reflects the current trends and changes within the proposal area.

A proposed action needs to be developed that does not renew the current grazing permit and re-issues forage allocations to support self-sustaining viable wild horse herds within their federally protected habitat, as well as to accommodate the introductions of a heavy grazing species such as elk.

Submitted July 18, 2007
Mallory Springs Grazing Allotment
EA# NV-040-06-013

Department of the Interior
Bureau of Land Management
Ely Field Office
775 North Industrial Way
HC33 Box 33500
Ely, NV 89301-9408

July 18, 2007

RE: Environmental Assessment EA-NV-040-06-013
Grazing Permit for Pleasant Valley Enterprises
Mallory Springs Grazing Allotment

Enclosed are my comments, input and concerns regarding the Bureau of Land Managements proposed action and environmental assessment of the grazing permit issuance for Pleasant Valley Enterprises Mallory Springs Grazing Allotment.

I deeply appreciate the opportunity to participate in the management of our Nations resources and hope my input is useful in the preparation and evaluation of the proposed action.

Sincerely,

Cindy MacDonald
3605 Silver Sand Court
North Las Vegas, NV 89032

Issues to Be Addressed

General Overview

Wild Horses, Burros and Habitat

Due to the proposal areas overlapping boundaries within the federally protected wild horse habitats identified as the Moriah Herd Management Area, it is necessary to evaluate the proposed action and its conformance to federal mandates and policies regarding wild horse habitat and populations, both locally and nationally.

At the turn of the century, wild horses were estimated at 2-3 million strong but the results of the 1974 Bureau of Land Management (BLM) census recorded that their numbers had dwindled to merely 60,000 nationwide, 14,000 of those were estimated to be wild burros.

After the passage of 1971 Wild Free-Roaming Horse and Burro Act, the BLM became the lead agency charged with the mission of protecting wild horses and burros on public lands and 53.3 million acres of critical habitat was reserved for their future preservation.

The BLM was charged to “preserve wild horses and burros with an optimum number for self-sustaining populations, to be considered an integral component of the public lands, to protect them because they contribute to the diversity of life forms within the Nation, to prevent them from “fast disappearing”, to consider them comparable in resource allocations when implementing and approving land use plans and appropriate management decisions, to secure their free-roaming migration routes though the minimal implementation of fencing, to reduce livestock grazing if necessary to preserve wild horse and burro habitat, populations, and to prevent unnecessary capture, branding, harassment and death”.

Today, BLM oversees approximately 262 million public acres, yet nearly 20 million acres of the original territory set aside for wild horse and burro preservation has been deemed no longer deemed suitable for management and only 34.4 million acres of their historical Herd Areas still allow any populations at all. If they leave these imaginary boundaries, they are considered nuisance animals and removed.

For example, in 1980 Southern California BLM managed over 3.5 million acres with an “allowable population level” of over 2,700 wild burros. California now has only three remaining BLM managed herds with a *maximum* “appropriate population target” for the entire state of merely 345 burros. Southern California itself has seen a 90% reduction in both acres and burros.

The current BLM management strategy to preserve and protect wild horses and burros targets National populations not to exceed 24,556 wild horses and 2,956 wild burros. The actual populations are even lower due to two factors; the first being that during removal operations, the BLM cuts populations down to the minimal allowable levels, and the second being that AMLs are being counted towards the National AML population target that have no existing populations present.

For example, within Nevada, a total of 467 animals (358 wild horses and 109 burros) and a total of 604,126 acres of habitat are being applied toward the state AML and habitat acreage where no populations are currently being reported. This is in addition to an approximate 1,000 wild horse and burro reduction in state AML since 2004.

What wild horse and burro populations are now left have been reduced to such low “managed” numbers that over 70% of the remaining herds now risk inbreeding. It is projected that within the next decade, BLM will begin declaring them non self-sustaining populations due to the very management and decisions they themselves have made, issuing the final orders to have the remaining handfuls zeroed out.

In 2001, a comprehensive Five-Year Management Plan was launched, which included experimental fertility control injections on the wild horses returned to the range in order to bring them “under control”.

Between October 2001 and March 2007, the BLM has removed over 70,000 wild horse and burros from public land in order to achieve a national target not to exceed 24,500 wild horses or 2,700 wild burros.

As of December 2006, there are more wild horses and burros being held in containment than roam free on public lands.

Yet the BLM claims they are merely maintaining a “thriving ecological balance”, a balance that issues only 10% or less of available resources to mustangs and burros within their own protected habitat.

Livestock and Public Grazing

One of the major issues of contention is resource competition with livestock. BLM manages approximately 159 million public acres for grazing and combined with United States Forest Service managed lands, livestock are authorized on a little over 332 million acres or almost ten times as much as wild horses and burros.

The Western States livestock industry supports 9 million cattle alone, not including sheep, and continues to dominate public land resources despite significant loss to taxpayers. It is estimated that public land ranchers pay 98.5% less for the privilege of grazing public lands than private land ranchers do and a 1999 article published by the *San Jose Mercury News* stated that “the top 10% of grazing-permit holders control a striking 65% of all livestock on BLM property.”

The Bush Administration has provided additional cuts in public grazing fees over the last few years as well as attempting to implement new pro-livestock Grazing Regulations in July 2006. The new regulations have been subject to lawsuits challenging both their legal compliances as well as the science that supposedly supported these new regulations.

Erick Campbell and Bill Brookes, two recently retired scientists and each with more than 30 years experience at the BLM, characterized the edits of their contributions to the new regulations as an attempt to suppress scientific information. Campbell termed the matter "a whitewash" and "a crime" and stated, "They took all of our science and reversed it 180 degrees". Brookes agreed, adding, "Everything I wrote was totally rewritten and watered down."

In addition to the significant issue of costs to the American people of government sanctioned welfare ranching, as well as the questionable science that too often supports it, there are other serious concerns regarding the sheer numbers of this exotic species that continue to dominate land use, both in America and abroad.

As of January 2007, the United States Department of Agriculture reported 97.1 million cattle were within the United States, up 400,000 from last year's number, with a total world population estimated at 1.3 billion head.

Within the eleven Western States dedicated to animal agriculture, 70% of the available water is used for livestock production purposes, 85% of all soil erosion is directly attributed to the livestock industry, their overall waste output creates vast amounts of pollution that often ends up in waterways and rivers, and methane, the second leading cause of global warming and rated in the livestock sectors as CO₂, is estimated at generating 18% more greenhouse gas emissions than transport.

While livestock are one of the most major contributors to serious environmental health problems today, meat and milk production are expected to more than double by the year 2050. Livestock now use 30% of the earth's entire land surface and the need to meet the constantly growing demand has also resulted in severe deforestation, requiring more and more old growth forests be cleared in order to create the much needed pasture for their ever-increasing numbers.

In the 1990 Government Accounting Office (GAO) Report to the Secretary of the Interior, *Rangeland Management, Improvements Needed in Federal Wild Horse Program*, the section titled, Principal Findings, Wild Horse Removals Are Not Linked to Rangeland Conditions, the GAO found that BLM proceeded with horse removals using targets based on perceived population levels dating back to 1971 and/or recommendations from BLM advisory groups comprised largely of livestock permittees.

Under Related GAO Products, the GAO cited the primary cause of the degradation in rangeland resources is poorly managed domestic livestock (primarily cattle and sheep) grazing. Although recognizing that overgrazing was occurring, BLM range managers reported that no adjustments in the authorized livestock grazing levels were scheduled in 75 percent of the allotments threatened with further damage. These managers cited insufficient data on specific range conditions and resistance by livestock permittees as the primary reasons why action had not been taken. The GAO further testified that BLM has been more concerned with the immediate needs of livestock interests or budget reductions than with ensuring the long-term health of the range.

While BLM quotes the mandate of preserving self sustaining populations with the productive capacity of their environment, the forage allocations given to livestock indicate that the productive capacity is high, certainly high enough to issue AMLs that support self sustaining populations and genetically viable numbers, the BLM just won't *allow* any more forage to be utilized by wild horses within the proposal area, regardless of the threat to their long term preservation and survival.

Livestock permittees who graze on public lands have enjoyed two reductions in livestock grazing fees over the last few years, between 1980 and 2004, fees for private land grazing increased by 78%. Public lands "ranchers" are paying 98.5% below market value.

In September 2005, the Government Accountability Office reported that the government lost a minimum of \$123 million on the livestock-grazing program, with 10 federal agencies spending at least \$144 million and collecting only \$21 million in grazing fees in return. The BLM and the USFS manage more than 98 percent of the lands used for grazing, and the two agencies lost almost \$115 million on this program in Fiscal Year 2004 alone.

Wildlife

In addition to the “costs” of public lands ranching, state wildlife agencies, such as Nevada Department of Wildlife urge for further reductions in wild horse and burro populations and habitat to increase big game populations and habitat instead.

Over 630 million acres is now controlled by some sort of federal agency such as National Park Service, United States Fish and Wildlife Service, United States Forest Service as well as Bureau of Land Management itself, and this figure omits any state controlled land, all of it is managed for wildlife species and their preservation.

In the State of Nevada, home to over 50% of the Nations wild horses (reduced from 74% since 1989), wildlife populations have thrived and BLM cites that “mule deer, pronghorn antelope and bighorn sheep” are a *priority species* in their management decisions.

As of 2007, Nevada pronghorn antelope populations are estimated at the highest population ever recorded, with state management strategies and population targets that have continually increased as each new population “high” has been achieved. The Nevada pronghorn antelope population was estimated at 23,500 in 2007, almost equal to the entire National wild horse population target.

While those interested in big game production lament the current mule deer population estimated at 110,000, down from the unprecedented 1980’s populations of 250,000, the current population is still four times higher than what is estimated as naturally and historically occurring within Nevada. This population is a result of management practices and policies that have artificially inflated mule deer populations from historic levels to satisfy demand for hunting opportunities.

While the current wild horse and burro national population objectives of 24,556 wild horses and 2,965 wild burros may still seem significant, to help grasp how low these populations are from a national perspective, according to the Wildlife Society Bulletin 32(2), in the year 2000, desert bighorn sheep were estimated at 20,000 animals just within the Southwest and cited as one of the “*rarest ungulate species in North America*” - that’s almost the equivalent of the entire National “managed” wild horse population, and despite their federally protected status, the 2,700 or less remaining burros could actually qualify as a candidate for petitioning under the guidelines of the Endangered Species Act.

In an article published on July 6, 2007 by biologists at Washington State University, the most recent bighorn sheep population estimates have been cited as approximately 50,000 throughout the West, over twice as much as the national population objectives for wild horses and almost twenty times higher for the national population objectives for wild burros.

The bighorn sheep population, though nearly extirpated from the Nevada at the time Congress declared wild horses and burros a federally protected species, now outnumber Nevada's burro population by at least 9-1 and have achieved a population level of nearly two thirds of the state maximum wild horse state population target (AML). Remember, that is compared to the largest remaining wild horse population in the county.

While the taxpayer as a whole gets to pick up the national and federal cost of removing wild horses and burros from public lands plus years of containment to accommodate more "wildlife habitat", the state gets to pocket the revenue generated by these big game species, as well as license fees and all manner of hunting related revenue.

For example, bighorn sheep, cited as a priority species in BLM and other wildlife management programs, auctioned off bighorn hunting tags in 2005 for \$199,000 in Arizona, \$177,800 for New Mexico, \$130,000 for Oregon, etc. The kind of people that can afford to pay for this "hunting privilege" do not reflect the average American taxpayer.

To further compound the expense, the American taxpayer gets to "sponsor" billions of dollars in wildlife recovery efforts, securing habitat, restoration projects, reintroductions, studies and research, etc. while the majority of these financial benefits also go into the states coffers. In many ways, it has become nothing more than a government shell game similar to elaborate money laundering schemes, as finances are shuffled from state to federal to state again, all with a significant portion of "public resources" benefiting the "few".

The cost of holding our mustangs and burros has skyrocketed with BLM spending \$19.6 million in 2006 for containment costs alone.

BLM is also on record as supporting the need to leave the newly passed "For Sale Authority" in tact as a necessary management tool even though it stripped the marginal protection from slaughter wild horses and burros had secured with the passage of the 1971 Act.

Resource Management Plan

The 1983 Schell Management Framework Plan requires that BLM manage wild horses and burros within their federally protected habitat for self-sustaining populations within the productive capacity of their environment.

Additionally, CFR §4710.5 expresses policy and intent that, if necessary to preserve habitat for wild horses and burros within the established Herd Management Areas, the authorized officers may reduce or close all livestock grazing within the affected area.

The wild horse populations established AMLs for the Moriah HMA is exceedingly low and if at all possible, allowable wild horse populations need to be increased to fulfill BLMs mandates to maintain self-sustaining viable populations.

1999 Lincoln County Elk Management Plan

Due to researching the BLM Ely Field Office's management activities, several disturbing trends have become apparent, most notably their introduction and approval of elk within their administrative area through the circumvention of Environmental Impact Statements and Environmental Assessments of the 1999 Lincoln County Elk Management Plan that was approved of under a "categorical exclusion".

According to this plan, some of the planned activities and goals of the Nevada Department of Wildlife that they are working hand in hand with BLM include:

- "Evaluate options and develop solutions to secure adequate monies to outsource BLM NEPA clearances for water developments."
- "On maintenance of existing vegetation conversion projects, any previous cooperative agreement or range improvement permit will be taken into consideration by the team when allocating additional forage."
- "Prior to any habitat enhance project, all parties will be given the opportunity to participate in funding the project. This will be taken into consideration during the allocation process."

The elk management plan has approved of elk populations that outnumber wild horses within the planning area by a ratio of at least 3-1.

In 2003, the Ely District initiated and approved of a mass AML determination for the majority of HMAs within the 1999 Lincoln County Elk Management Plan that set wild horse AMLs at incredibly low, non self-sustaining and genetically unviable populations.

These AMLs were not established because of the productive capacity of their habitat, or the lack of it, but because the BLM Ely District failed to issue enough forage allocations to sustain them, preferring instead to distribute resources in an inequitable manner.

Records show that the Ely Field Office has made little or no adjustments to the livestock allotments forage allocation within the elk management area and since they circumvented environmental impact statements and environmental assessments to introduce and manage the elk, the elk must be obtaining forage from somewhere else; the evidence points to the extreme reductions of wild horses to support elk population expansion and circumventing legal requirements to do it.

Final Multiple Use Decision

No Final Multiple Use Decision (FMUD) has been issued for the proposal area.

While the Moriah HMA is being considered for removal of HMA status and reverted to a Herd Area with no allowable populations, the BLM is continuing to issue livestock allowances that result in exclusive livestock utilizations versus multiple-use as well as continuing to reserve forage allocations that have not been utilized for over a decade.

Wildlife

Additionally, the Mallory Springs Allotment falls within the Nevada Division of Wildlife Big Game Management Area 11, Unit 113. Since no FMUD has been issued for the area, wildlife populations and objectives are completely open-ended and not subject to any limitations with Nevada Department of Wildlife stating that potential exists for further population expansion of pronghorn antelope in Hunt Units 111-113 and the proposal area cites elk populations within the area.

The 1999 Lincoln County Elk Management Plan was implemented through the circumvention of environmental assessments and environmental impact statements by approving its formulation and implementation under a “categorical exclusion”.

Resource utilization levels and associative impacts have failed to be analyzed or examined in the context of multiple use relationships, riparian areas, Animal Unit Month allocations, elk or other wildlife population objectives, desired future conditions, or conformance with existing land use plans.

The current proposal provides little information regarding this significant change to resource utilizations nor does it provide any adjustments to accommodate the unknown current or future population of elk or other noted wildlife populations.

A current and valid FMUD should be initiated that provides population objectives for wildlife species inhabiting the area.

Forage Allocations

The BLM believes that issuing the current terms of use for the livestock allocations will provide healthy rangelands, increase plant vigor and forage production even though no assessments, objectives or changes are being proposed to accommodate the growing elk and other wildlife populations.

The assessment provides no alternative that considers a reduction in livestock allocations to accommodate the expanding wildlife populations, which in turn places the federally protected wild horse herds and their reserved habitat increasingly at risk due to heightened resource competition and may result in insufficient resources and critical habitat requirements necessary to maintain self-sustaining populations within the productive capacity of their environment.

The proposal states that 940 AUMs are being reserved and issued for the Mallory Springs Allotment yet the average livestock utilization level for the last 7 years has been 205 AUMs with a maximum utilization in 2004 of 321 AUMs.

The issuance of reduced available AUMs for the purpose of livestock grazing should be implemented to allow higher levels of available resources to support self-sustaining populations of wild horses without impacting the permitted or actual livestock utilizations for the areas.

Therefore, recommendations include issuing livestock AUMs for 500 AUMs and re-allocating the remaining 440 AUMs to help increase wild horse populations to sustainable and viable levels that insure their future preservation.

Fencing

The Mallory Spring Allotment was subject to a temporary fencing project to allow rangeland recovery from wildfire damage that this proposal is seeking to institute on a permanent basis.

No impacts to wild horses and their free-roaming behavior were analyzed within the assessment. BLM is required to keep fencing within HMAs at an absolute minimum due to the known impacts to wild horse and burro populations within their federally protected habitat.

Please provide an analysis of the associative and cumulative impacts to the wild horses of the Moriah HMA as a result of the permanent inclusion of this fence within the allotment.

Significant Cumulative Impacts

It is the General Overviews intent to increase the BLMs individual field offices awareness of the significant cumulative impacts that have resulted to wild horse and burro herds and their habitat through seemingly insignificant decisions such as the forage allocations for the Mallory Springs Allotment.

With almost 20 million acres of original habitat lost, over 100 Herd Areas being eliminated from use, and over 70% of the remaining wild horse and burro populations AMLs established at non self-sustaining or genetically viable populations, significant impacts have been made in the overall protections and preservation of the wild horses and burros of America.

The Moriah HMA is poised on the edge of joining the numbers of zeroed out herds and herd areas and decisions for resource allocations to insure the Moriah wild horses future preservation and protection have become imperative.

Cultural and Historic Resources

As stated in the cumulative impacts, the Moriah wild horses are in eminent danger of total loss of all wild populations and their protected habitat. The failure of BLM to issue resource allocations to support self-sustaining populations will result in the permanent destruction and loss of a federally protected species established due to their cultural, historic and aesthetic values and importance to the American people.

Please re-evaluate the proposal and provide an alternative that includes additional forage and resources to support the preservation of the Moriah wild horses and their habitat.

Submitted July 20, 2007
Sheep Flat & Barclay Grazing Allotments
EA# NV-040-07-026

Department of the Interior
Bureau of Land Management
Ely Field Office
775 North Industrial Way
HC33 Box 33500
Ely, NV 89301-9408

July 20, 2007

RE: Environmental Assessment EA-NV-040-07-026
Grazing Permit for Newby Cattle Co.
Sheep Flat and Barclay Grazing Allotments

Enclosed are my comments, input and concerns regarding the Bureau of Land Managements proposed action and environmental assessment of the grazing permit issuance for Newby Cattle Co. Sheep Flat and Barclay Grazing Allotment.

I deeply appreciate the opportunity to participate in the management of our Nations resources and hope my input is useful in the preparation and evaluation of the proposed action.

Sincerely,

Cindy MacDonald
3605 Silver Sand Court
North Las Vegas, NV 89032

Issues to Be Addressed

General Overview

Wild Horses, Burros and Habitat

Due to the proposal areas overlapping boundaries within the federally protected wild horse habitats identified as the Clover Mountains and Miller Flat Herd Management Area, it is necessary to evaluate the proposed action and its conformance to federal mandates and policies regarding wild horse habitat and populations, both locally and nationally.

At the turn of the century, wild horses were estimated at 2-3 million strong but the results of the 1974 Bureau of Land Management (BLM) census recorded that their numbers had dwindled to merely 60,000 nationwide, 14,000 of those were estimated to be wild burros.

After the passage of 1971 Wild Free-Roaming Horse and Burro Act, the BLM became the lead agency charged with the mission of protecting wild horses and burros on public lands and 53.3 million acres of critical habitat was reserved for their future preservation.

The BLM was charged to “preserve wild horses and burros with an optimum number for self-sustaining populations, to be considered an integral component of the public lands, to protect them because they contribute to the diversity of life forms within the Nation, to prevent them from “fast disappearing”, to consider them comparable in resource allocations when implementing and approving land use plans and appropriate management decisions, to secure their free-roaming migration routes through the minimal implementation of fencing, to reduce livestock grazing if necessary to preserve wild horse and burro habitat, populations, and to prevent unnecessary capture, branding, harassment and death”.

Today, BLM oversees approximately 262 million public acres, yet nearly 20 million acres of the original territory set aside for wild horse and burro preservation has been deemed no longer deemed suitable for management and only 34.4 million acres of their historical Herd Areas still allow any populations at all. If they leave these imaginary boundaries, they are considered nuisance animals and removed.

For example, in 1980 Southern California BLM managed over 3.5 million acres with an “allowable population level” of over 2,700 wild burros. California now has only three remaining BLM managed herds with a *maximum* “appropriate population target” for the entire state of merely 345 burros. Southern California itself has seen a 90% reduction in both acres and burros.

The current BLM management strategy to preserve and protect wild horses and burros targets National populations not to exceed 24,556 wild horses and 2,956 wild burros. The actual populations are even lower due to two factors; the first being that during removal operations, the BLM cuts populations down to the minimal allowable levels, and the second being that AMLs are being counted towards the National AML population target that have no existing populations present.

For example, within Nevada, a total of 467 animals (358 wild horses and 109 burros) and a total of 604,126 acres of habitat are being applied toward the state AML and habitat acreage where no populations are currently being reported. This is in addition to an approximate 1,000 wild horse and burro reduction in state AML since 2004.

What wild horse and burro populations are now left have been reduced to such low “managed” numbers that over 70% of the remaining herds now risk inbreeding. It is projected that within the next decade, BLM will begin declaring them non self-sustaining populations due to the very management and decisions they themselves have made, issuing the final orders to have the remaining handfuls zeroed out.

In 2001, a comprehensive Five-Year Management Plan was launched, which included experimental fertility control injections on the wild horses returned to the range in order to bring them “under control”.

Between October 2001 and March 2007, the BLM has removed over 70,000 wild horse and burros from public land in order to achieve a national target not to exceed 24,500 wild horses or 2,700 wild burros.

As of December 2006, there are more wild horses and burros being held in containment than roam free on public lands.

Yet the BLM claims they are merely maintaining a “thriving ecological balance”, a balance that issues only 10% or less of available resources to mustangs and burros within their own protected habitat.

Livestock and Public Grazing

One of the major issues of contention is resource competition with livestock. BLM manages approximately 159 million public acres for grazing and combined with United States Forest Service managed lands, livestock are authorized on a little over 332 million acres or almost ten times as much as wild horses and burros.

The Western States livestock industry supports 9 million cattle alone, not including sheep, and continues to dominate public land resources despite significant loss to taxpayers. It is estimated that public land ranchers pay 98.5% less for the privilege of grazing public lands than private land ranchers do and a 1999 article published by the *San Jose Mercury News* stated that “the top 10% of grazing-permit holders control a striking 65% of all livestock on BLM property.”

The Bush Administration has provided additional cuts in public grazing fees over the last few years as well as attempting to implement new pro-livestock Grazing Regulations in July 2006. The new regulations have been subject to lawsuits challenging both their legal compliances as well as the science that supposedly supported these new regulations.

Erick Campbell and Bill Brookes, two recently retired scientists and each with more than 30 years experience at the BLM, characterized the edits of their contributions to the new regulations as an attempt to suppress scientific information. Campbell termed the matter "a whitewash" and "a crime" and stated, "They took all of our science and reversed it 180 degrees". Brookes agreed, adding, "Everything I wrote was totally rewritten and watered down."

In addition to the significant issue of costs to the American people of government sanctioned welfare ranching, as well as the questionable science that too often supports it, there are other serious concerns regarding the sheer numbers of this exotic species that continue to dominate land use, both in America and abroad.

As of January 2007, the United States Department of Agriculture reported 97.1 million cattle were within the United States, up 400,000 from last year's number, with a total world population estimated at 1.3 billion head.

Within the eleven Western States dedicated to animal agriculture, 70% of the available water is used for livestock production purposes, 85% of all soil erosion is directly attributed to the livestock industry, their overall waste output creates vast amounts of pollution that often ends up in waterways and rivers, and methane, the second leading cause of global warming and rated in the livestock sectors as CO₂, is estimated at generating 18% more greenhouse gas emissions than transport.

While livestock are one of the most major contributors to serious environmental health problems today, meat and milk production are expected to more than double by the year 2050. Livestock now use 30% of the earth's entire land surface and the need to meet the constantly growing demand has also resulted in severe deforestation, requiring more and more old growth forests be cleared in order to create the much needed pasture for their ever-increasing numbers.

In the 1990 Government Accounting Office (GAO) Report to the Secretary of the Interior, *Rangeland Management, Improvements Needed in Federal Wild Horse Program*, the section titled, Principal Findings, Wild Horse Removals Are Not Linked to Rangeland Conditions, the GAO found that BLM proceeded with horse removals using targets based on perceived population levels dating back to 1971 and/or recommendations from BLM advisory groups comprised largely of livestock permittees.

Under Related GAO Products, the GAO cited the primary cause of the degradation in rangeland resources is poorly managed domestic livestock (primarily cattle and sheep) grazing. Although recognizing that overgrazing was occurring, BLM range managers reported that no adjustments in the authorized livestock grazing levels were scheduled in 75 percent of the allotments threatened with further damage. These managers cited insufficient data on specific range conditions and resistance by livestock permittees as the primary reasons why action had not been taken. The GAO further testified that BLM has been more concerned with the immediate needs of livestock interests or budget reductions than with ensuring the long-term health of the range.

While BLM quotes the mandate of preserving self sustaining populations with the productive capacity of their environment, the forage allocations given to livestock indicate that the productive capacity is high, certainly high enough to issue AMLs that support self sustaining populations and genetically viable numbers, the BLM just won't *allow* any more forage to be utilized by wild horses within the proposal area, regardless of the threat to their long term preservation and survival.

Livestock permittees who graze on public lands have enjoyed two reductions in livestock grazing fees over the last few years, between 1980 and 2004, fees for private land grazing increased by 78%. Public lands "ranchers" are paying 98.5% below market value.

In September 2005, the Government Accountability Office reported that the government lost a minimum of \$123 million on the livestock-grazing program, with 10 federal agencies spending at least \$144 million and collecting only \$21 million in grazing fees in return. The BLM and the USFS manage more than 98 percent of the lands used for grazing, and the two agencies lost almost \$115 million on this program in Fiscal Year 2004 alone.

Wildlife

In addition to the “costs” of public lands ranching, state wildlife agencies, such as Nevada Department of Wildlife urge for further reductions in wild horse and burro populations and habitat to increase big game populations and habitat instead.

Over 630 million acres is now controlled by some sort of federal agency such as National Park Service, United States Fish and Wildlife Service, United States Forest Service as well as Bureau of Land Management itself, and this figure omits any state controlled land, all of it is managed for wildlife species and their preservation.

In the State of Nevada, home to over 50% of the Nations wild horses (reduced from 74% since 1989), wildlife populations have thrived and BLM cites that “mule deer, pronghorn antelope and bighorn sheep” are a *priority species* in their management decisions.

As of 2007, Nevada pronghorn antelope populations are estimated at the highest population ever recorded, with state management strategies and population targets that have continually increased as each new population “high” has been achieved. The Nevada pronghorn antelope population was estimated at 23,500 in 2007, almost equal to the entire National wild horse population target.

While those interested in big game production lament the current mule deer population estimated at 110,000, down from the unprecedented 1980’s populations of 250,000, the current population is still four times higher than what is estimated as naturally and historically occurring within Nevada. This population is a result of management practices and policies that have artificially inflated mule deer populations from historic levels to satisfy demand for hunting opportunities.

While the current wild horse and burro national population objectives of 24,556 wild horses and 2,965 wild burros may still seem significant, to help grasp how low these populations are from a national perspective, according to the Wildlife Society Bulletin 32(2), in the year 2000, desert bighorn sheep were estimated at 20,000 animals just within the Southwest and cited as one of the “*rarest ungulate species in North America*” - that’s almost the equivalent of the entire National “managed” wild horse population, and despite their federally protected status, the 2,700 or less remaining burros could actually qualify as a candidate for petitioning under the guidelines of the Endangered Species Act.

In an article published on July 6, 2007 by biologists at Washington State University, the most recent bighorn sheep population estimates have been cited as approximately 50,000 throughout the West, over twice as much as the national population objectives for wild horses and almost twenty times higher for the national population objectives for wild burros.

The bighorn sheep population, though nearly extirpated from the Nevada at the time Congress declared wild horses and burros a federally protected species, now outnumber Nevada's burro population by at least 9-1 and have achieved a population level of nearly two thirds of the state maximum wild horse state population target (AML). Remember, that is compared to the largest remaining wild horse population in the county.

While the taxpayer as a whole gets to pick up the national and federal cost of removing wild horses and burros from public lands plus years of containment to accommodate more "wildlife habitat", the state gets to pocket the revenue generated by these big game species, as well as license fees and all manner of hunting related revenue.

For example, bighorn sheep, cited as a priority species in BLM and other wildlife management programs, auctioned off bighorn hunting tags in 2005 for \$199,000 in Arizona, \$177,800 for New Mexico, \$130,000 for Oregon, etc. The kind of people that can afford to pay for this "hunting privilege" do not reflect the average American taxpayer.

To further compound the expense, the American taxpayer gets to "sponsor" billions of dollars in wildlife recovery efforts, securing habitat, restoration projects, reintroductions, studies and research, etc. while the majority of these financial benefits also go into the states coffers. In many ways, it has become nothing more than a government shell game similar to elaborate money laundering schemes, as finances are shuffled from state to federal to state again, all with a significant portion of "public resources" benefiting the "few".

The cost of holding our mustangs and burros has skyrocketed with BLM spending \$19.6 million in 2006 for containment costs alone.

BLM is also on record as supporting the need to leave the newly passed "For Sale Authority" in tact as a necessary management tool even though it stripped the marginal protection from slaughter wild horses and burros had secured with the passage of the 1971 Act.

Resource Management Plan

The 1982 Caliente Management Framework Plan requires that BLM manage wild horses and burros within their federally protected habitat for self-sustaining populations within the productive capacity of their environment.

Additionally, CFR §4710.5 expresses policy and intent that, if necessary to preserve habitat for wild horses and burros within the established Herd Management Areas, the authorized officers may reduce or close all livestock grazing within the affected area.

The wild horse populations established AMLs for the Clover Mountains and Miller Flat HMAs are exceedingly low and if at all possible, allowable wild horse populations need to be increased to fulfill BLMs mandates to maintain self-sustaining viable populations.

Clover Mountains Herd Management Area

The Clover Mountains HMA spans 173,087 public acres and was determined to be suitable for long-term wild horse management through the granting of HMA status.

This HMA was part of a mass Appropriate Management Level Decision issued in 2003 for twelve HMAs that issued a new appropriate management level (AML) of 16 wild horses. Prior to the 2003 decision, records dating from 1997 state that the Clover Mountains HMA had an appropriate management level of 60 wild horses, indicating the 2003 decision resulted in a loss of 44 wild horses. The newly issued AML has established that only one horse per 10,817 acres is appropriate.

The Clover Mountains wild horses were also subjected to two round ups in 2006, one in February and one in December, both as a result of a declared “emergency situation” due to wildfire damage of 3,634 acres to rangeland resources.

Population

Records from the National Program Office (NPO) reported a population for the HMA of 14 wild horses as of February 2004, yet in 2005 wild horse populations were reported as now numbering 41.

In 2006, after the February round ups, the NPO reported removing 11 wild horses with an estimated remaining post-gather population of 40 wild horses.

The Environmental Assessment (EA ## NV-040-07-001) Wild Horse Gather plan released on October 2006 reported an estimated total population within the HMA of 50 wild horses with the burned area proposed for removals containing 45 of the estimated 50 wild horses.

The December 2006 round ups reported removing 19 additional wild horses with a post-round up population again being reported of 40 wild horses remaining.

According to BLMs Ely Field Office’s reported wild horse removals, only wild horses from the Clover Mountain HMA were removed, not the Clover Creek or Seaman HMAs, as also proposed in the October 2006 Wild Horse Removal Plan implemented in December 2006.

Yet, in the recently issued environmental assessment for the Oakwells Grazing Allotment (NV-040-07-22, pg. 9), the following statement was issued that, “*a wild horse gather was conducted in December 2006 within the Miller Flat HMA.*”

This is the only known reference to wild horses being removed from the Miller Flat HMA, as this HMA was not included in either wild horse removal proposal conducted by the Ely Field Office in December 2006 (Clover/Seaman Complex or Dry Lake Complex).

The Oakwells grazing EA cited no removal numbers, no estimated remaining population, no wild horses removed from the Miller Flat HMA were listed in the Ely Field Offices official post-gather results nor were there any listings of wild horses removed “outside the HMAs” of the proposal areas.

The following gather summary table was supplied by BLM as the post-gather results for the areas gathered in December 2006.

Table 1. Ely Field Office Gather Summary December 2006

**Ely Field Office
Gather Summary
Dry Lake Complex and Fire Gathers
December, 2006**

FY 2007

HMA	Captured Horses	Shipped Horses	Released Horses	Died/Destroyed Horses	Removed	Left on Range
Dry Lake	181	134	45	1/1	136	75
Highland Peak	64	64	0	0/0	64	25
Clover Mtn. (fire)	19	17	2 (jumped)	0/0	17	40
Seaman (fire)	0	0	0	0/0	0	145
Rattlesnake	0	0	0	0/0	0	0
Total	264	215	47	1/1	217	285

Wildfire Issues

The Ely Field Office stated in the October 2006 Wild Horse Removal Proposal that wild horses needed to be removed from the burned areas for the one of the following reasons.

“removing wild horses from the burned areas is expected to minimize the potential impacts to vegetation recovery”.

Table 2 provided on the following page has a map of the Clover Mountains HMA, as well as the adjacent HMAs, which includes Miller Flat HMA, and that also highlights the burned areas subject to wild horse removals.

The boundaries between Miller Flat, Clover Mountains and Clover Creek HMAs are nowhere near the wildfires burned areas that supposedly initiated the “necessary wild horse removals”.

Table 2. Clover Mountains HMA and Wildfire Map



Inaccurate, find the Allotment for the Elk and burned areas.

Additionally, the Oakwells grazing renewal EA stated that recovery of prior burned areas vegetation had failed to sufficiently recover due to grazing on the areas by livestock and elk.

Also, that the only known riparian area for the Oakwell allotment had

Livestock Grazing

A map provided within the October 2006 Wild Horse Removal Plan provides a list of livestock allotments within the gather area.

According to the current proposal to renew livestock authorizations for the Sheep Flat and Barclay allotments, these allotments fall within the Clover Mountains HMA and yet they were not listed as occurring or being affected in the October 2006 EA Wild Horse Gather Plan.

One of the statements made by the BLM Ely Field Office in the October 2006 EA gather proposal stated that, *“allowing wild horses to slowly starve before becoming prey is cruel and inhumane when viable options exist such as gather/removal before individual animal and herd health is jeopardized.”*

The summary of the BLMs Ely Field Office’s wild horse gather plan implemented in December 2006 is that the removal of an additional 17 wild horses with the Clover Mountains HMA was necessary for rangeland recovery, to prevent the inhumane suffering caused by slow starvation due to lack of available forage, and to reduce competition with wildlife.

“Livestock grazing closures are in place, no authorized livestock grazing would occur in the burned areas until stabilization objectives are met.”

The EA also stated that “Invasive, non-native plant species would increase and invade new areas following increased soil disturbance and reduced native plant vigor and abundance.”

“Reduction of wild horse numbers would result in reduced competition between wild horses and wildlife as soon as the gather is completed. This would result in improved habitat conditions by increasing forage availability, herbaceous cover, and quality. In addition, it would reduce competition between wild horses and wildlife for available forage and water resources.”

Under the No Action Alternative, the Ely Field Office claims that “There would be continued competition with wild horses for water and forage resources. This competition would increase as wild horse numbers increased annually. Wild horses are aggressive around water sources, and some wildlife species may not be able to compete. The competition for resources may lead to increased stress or dislocation of native wildlife species, or possible death of individual animals”

“With reduced horse numbers, there would be less hoof action around riparian spring areas where cultural resources can often be high. This could lead to decreased damage to cultural resources by wild horses.”

The No Action Alternative stated that, “...however, high numbers of wild horses could cause damage to cultural resources due to trampling, especially around water sources, where the occurrence of cultural resources can often be high.”

1999 Lincoln County Elk Management Plan

Due to researching the BLM Ely Field Office’s management activities, several disturbing trends have become apparent, most notably their introduction and approval of elk within their administrative area through the circumvention of Environmental Impact Statements and Environmental Assessments of the 1999 Lincoln County Elk Management Plan that was approved of under a “categorical exclusion”.

According to this plan, some of the planned activities and goals of the Nevada Department of Wildlife that they are working hand in hand with BLM include:

- “Evaluate options and develop solutions to secure adequate monies to outsource BLM NEPA clearances for water developments.”
- “On maintenance of existing vegetation conversion projects, any previous cooperative agreement or range improvement permit will be taken into consideration by the team when allocating additional forage.”
- “Prior to any habitat enhance project, all parties will be given the opportunity to participate in funding the project. This will be taken into consideration during the allocation process.”

The elk management plan has approved of elk populations that outnumber wild horses within the planning area by a ratio of at least 3-1.

In 2003, the Ely District initiated and approved of a mass AML determination for the majority of HMAs within the 1999 Lincoln County Elk Management Plan that set wild horse AMLs at incredibly low, non self-sustaining and genetically unviable populations.

These AMLs were not established because of the productive capacity of their habitat, or the lack of it, but because the BLM Ely District failed to issue enough forage allocations to sustain them, preferring instead to distribute resources in an inequitable manner.

Records show that the Ely Field Office has made little or no adjustments to the livestock allotments forage allocation within the elk management area and since they circumvented environmental impact statements and environmental assessments to introduce and manage the elk, the elk must be obtaining forage from somewhere else; the evidence points to the extreme reductions of wild horses to support elk population expansion and circumventing legal requirements to do it.

Final Multiple Use Decision

No Final Multiple Use Decision (FMUD) has been issued for the proposal area.

While the Moriah HMA is being considered for removal of HMA status and reverted to a Herd Area with no allowable populations, the BLM is continuing to issue livestock allowances that result in exclusive livestock utilizations versus multiple-use as well as continuing to reserve forage allocations that have not been utilized for over a decade.

Wildlife

Additionally, the Mallory Springs Allotment falls within the Nevada Division of Wildlife Big Game Management Area 11, Unit 113. Since no FMUD has been issued for the area, wildlife populations and objectives are completely open-ended and not subject to any limitations with Nevada Department of Wildlife stating that potential exists for further population expansion of pronghorn antelope in Hunt Units 111-113 and the proposal area cites elk populations within the area.

The 1999 Lincoln County Elk Management Plan was implemented through the circumvention of environmental assessments and environmental impact statements by approving its formulation and implementation under a “categorical exclusion”.

Resource utilization levels and associative impacts have failed to be analyzed or examined in the context of multiple use relationships, riparian areas, Animal Unit Month allocations, elk or other wildlife population objectives, desired future conditions, or conformance with existing land use plans.

The current proposal provides little information regarding this significant change to resource utilizations nor does it provide any adjustments to accommodate the unknown current or future population of elk or other noted wildlife populations.

A current and valid FMUD should be initiated that provides population objectives for wildlife species inhabiting the area.

Forage Allocations

The BLM believes that issuing the current terms of use for the livestock allocations will provide healthy rangelands, increase plant vigor and forage production even though no assessments, objectives or changes are being proposed to accommodate the growing elk and other wildlife populations.

The assessment provides no alternative that considers a reduction in livestock allocations to accommodate the expanding wildlife populations, which in turn places the federally protected wild horse herds and their reserved habitat increasingly at risk due to heightened resource competition and may result in insufficient resources and critical habitat requirements necessary to maintain self-sustaining populations within the productive capacity of their environment.

The proposal states that 940 AUMs are being reserved and issued for the Mallory Springs Allotment yet the average livestock utilization level for the last 7 years has been 205 AUMs with a maximum utilization in 2004 of 321 AUMs.

The issuance of reduced available AUMs for the purpose of livestock grazing should be implemented to allow higher levels of available resources to support self-sustaining populations of wild horses without impacting the permitte or actual livestock utilizations for the areas.

Therefore, recommendations include issuing livestock AUMs for 500 AUMs and re-allocating the remaining 440 AUMs to help increase wild horse populations to sustainable and viable levels that insure their future preservation.

Fencing

The Mallory Spring Allotment was subject to a temporary fencing project to allow rangeland recovery from wildfire damage that this proposal is seeking to institute on a permanent basis.

No impacts to wild horses and their free-roaming behavior were analyzed within the assessment. BLM is required to keep fencing within HMAs at an absolute minimum due to the known impacts to wild horse and burro populations within their federally protected habitat.

Please provide an analysis of the associative and cumulative impacts to the wild horses of the Moriah HMA as a result of the permanent inclusion of this fence within the allotment.

Significant Cumulative Impacts

It is the General Overviews intent to increase the BLMs individual field offices awareness of the significant cumulative impacts that have resulted to wild horse and burro herds and their habitat through seemingly insignificant decisions such as the forage allocations for the Mallory Springs Allotment.

With almost 20 million acres of original habitat lost, over 100 Herd Areas being eliminated from use, and over 70% of the remaining wild horse and burro populations AMLs established at non self-sustaining or genetically viable populations, significant impacts have been made in the overall protections and preservation of the wild horses and burros of America.

The Moriah HMA is poised on the edge of joining the numbers of zeroed out herds and herd areas and decisions for resource allocations to insure the Moriah wild horses future preservation and protection have become imperative.

Cultural and Historic Resources

As stated in the cumulative impacts, the Moriah wild horses are in eminent danger of total loss of all wild populations and their protected habitat. The failure of BLM to issue resource allocations to support self-sustaining populations will result in the permanent destruction and loss of a federally protected species established due to their cultural, historic and aesthetic values and importance to the American people.

Please re-evaluate the proposal and provide an alternative that includes additional forage and resources to support the preservation of the Moriah wild horses and their habitat.

Attachment I

**Nevada Attorney General's Opinion -AGO 98-16,
ANIMALS; CONSERVATION & NATURAL RESOURCES; WILD HORSES,**

ATTORNEY GENERAL OPINION
NEVADA COMMISSION FOR THE PRESERVATION OF WILD HORSES
Copied from the AGO Opinions Issued in 1998

AGO 98-16 ANIMALS; CONSERVATION & NATURAL RESOURCES; WILD HORSES:
Amendment to Wild Horse Commission's primary duties should be interpreted to mean the Commission should focus on the preservation of wild horses on federally designated wild horse management areas.

Carson City, June 1, 1998

Mr. Peter G. Morros, Director, Department of Conservation and Natural Resources, Capitol Complex, Carson City, Nevada 89710

Dear Mr. Morros:

This opinion is in response to your question regarding an amendment to [NRS 504.470](#) on the Wild Horse Commission.

QUESTION

How does the 1997 amendment to [NRS 504.470](#), declaring a primary duty of the Commission for the Preservation of Wild Horses (Commission) to preserve viable herds of wild horses on lands federally designated as *sanctuaries*, affect the authority of the commission?

ANALYSIS

The Commission was established after the Governor's Wild Horse Committee issued its report on November 26, 1984. Governor's Wild Horse Committee, Report to the Governor, November 26, 1984, at 1 (Governor's Committee Report). The purpose of the Governor's committee was to determine how funds from the will of Leo Heil should be spent to preserve wild horses in Nevada.²⁹ *Id.* The committee recommended that a Heil Trust (Trust) be created, but the Trust should not be expended rapidly and should be spent only in Nevada. *Id.* at 1-7. The committee recommended the governor appoint a 3-member committee to oversee the activities of a director. *Id.* at 7-13.

In 1985, the Legislature directed the governor to appoint a three person commission based on the recommendations of the Governor's committee.³⁰ Act of June 10, 1985, ch. 594, § 3, 1985 Nev. Stat. 1887. The Legislature created a trust fund for proceeds from the Heil will and other sources of funds for wild horses, and authorized the Commission to administer the fund.³¹ The primary duty of the Commission was to preserve the herds of wild horses. Eleven directives were drawn from the Governor's committee to direct the Commission on how to accomplish its primary duty. Act of June 10, 1985, ch. 594, §§ 6-8, 1985 Nev. Stat. 1888. The Commission was also empowered to make grants, adopt regulations necessary to further its directives, and enter into agreements with the federal government to conduct research, create a preserve, finance improvements, and apprehend violators of laws regarding wild horses. *Id.*

In 1991, statutes pertaining to the Commission were amended. Act of June 14, 1991, ch. 350, § 1-11, 1991 Nev. Stat. 910-14. The Legislature required state agencies which consult with the Secretary of Interior pursuant to 16 U.S.C.S. 1333(b)(1) (1997) regarding wild horses, to confer with the Commission prior to those consultations. The Legislature augmented the Commission's primary duty by stating the Commission must also "identify programs to maintain the herds in a thriving ecological balance." *Id.*

In 1997, statutes relating to the Commission were amended through S.B. 211. The Commission was placed within the Department of Conservation and Natural Resources (DCNR) and the ability of the Commission's administrator to file grazing appeals was restricted.³² Act of July 16, 1997, ch. 537, §§ 3-5, 1997 Nev. Stat. 2533. The focus of this opinion is on the amendment which states the Commission's primary duties are "to preserve viable herds of wild horses on public lands *designated by the Secretary of Interior as sanctuaries for the protection of wild horses and burros pursuant to 16 U.S.C.S. 1333(a).*" *Id.* at § 6, 1997 Nev. Stat. at 2534-35 (emphasis added). The Commission is directed to do this "within the limitations of the natural resources of those lands and the use of those lands for multiple purposes, and to identify programs for the maintenance of those herds." *Id.* The Commission was also directed to prepare a statewide plan for submission to the Legislature in 1999, describing how it will carry out its statutory obligations and spend the Trust. *Id.* at § 9-11, 1997 Nev. Stat. at 2537. To prepare the plan, the Commission was given \$75,000 and directed to conduct public meetings. *Id.*

A. The Plain Meaning of [NRS 504.470](#).

If the language of a statute is plain and unambiguous, there is no room for construction of its meaning. *Nevada Power Co. v. Public Serv. Comm'n*, 102 Nev. 1, 4, 711 P.2d 867, 869 (1986). The words in a statute should be given their plain meaning unless the spirit of the act is violated. *Rodgers v. Rodgers*, 110 Nev. 1370, 1373, 887 P.2d 269, 271 (1994).

The plain meaning of amended [NRS 504.470](#) is that a primary duty of the Commission is to preserve viable herds on *sanctuaries* that have been designated by the Secretary of Interior. The Wild Free-Roaming Horse and Burro Act (Act), 16 U.S.C. 1331-1340, was enacted by Congress in 1971.³³ The Act gave the Secretary of Interior the authority to designate and maintain specific ranges on public lands as *sanctuaries* for the protection of wild horses and burros. 16 U.S.C.S. 1333(a) (1997). The Act also mandated that the Secretary manage horses in a manner designed to achieve and maintain a thriving ecological balance on public lands. *Id.* The Secretary uses herd management areas and ranges to fulfill his responsibilities under the Act.³⁴ 43 C.F.R. 4700.0-2 (1997). The Secretary of Interior has not promulgated regulations dealing with *sanctuaries*, and has not created *sanctuaries* in Nevada. ³⁵

Since *sanctuaries* do not exist in Nevada, the Commission's duties would be drastically curtailed if the plain meaning on [NRS 504.470](#) were embraced. This office concludes the Legislature could not have intended the plain meaning of [NRS 504.470](#) because the result of the plain meaning would be absurd and would render many other statutes meaningless.

B. Plain Meaning Of NRS 504.470 Leads To Absurd Result

Statutory construction should avoid absurd or unreasonable results. *Alsenz v. Clark Co. School Dist.*, 109 Nev. 1062, 1065, 864 P.2d 285, 286-87 (1993); *McCrackin v. Elko County School Dist.*, 103 Nev. 655, 658, 747 P.2d 1373, 1375 (1987); *State v. Webster*, 102 Nev. 450, 453, 726 P.2d 831, 833 (1986). A statute should not be construed to produce an unreasonable result when another construction will produce a reasonable result. *Breen v. Caesar's Palace*, 102 Nev. 79, 82, 715 P.2d 1070, 1073 (1986).

The Commission was created to oversee the Trust for the purpose of preserving wild horses in Nevada, and it retains significant authority for the preservation of wild horses. Nothing from the legislative history of S.B. 211 indicates the Legislature intended to dramatically strip the Commission of its traditional function. Therefore, interpreting amended NRS 504.470 in a manner that would strip the commission of its authority would be absurd. *See State, Dep't of Motor Vehicles & Public Safety v. Lovett*, 110 Nev. 473, 477, 874 P.2d 1247, 1250 (1994) (statutes are generally construed with view of promoting, rather than defeating, legislative policy behind them); *State, Dep't of Motor Vehicles & Public Safety v. Brown*, 104 Nev. 524, 526, 762 P.2d 882, 884 (1988) (statutes must be given reasonable construction with view to promoting rather than defeating legislative policy).

Further, the Heil Will left money to the state for the preservation of wild horses and a Trust was created in which the state acts as trustee.³⁶ NRS 504.450. The language of the will's residual clause stated expressly that the intent of the bequest was for the preservation of wild horses in Nevada. Since no *sanctuaries* exist in Nevada, a plain meaning interpretation of amended NRS 504.470 would restrict the Commission from taking the action necessary to further the intent of the trust, and the director of DCNR could not administer the Trust for the benefit of wild horses in Nevada. Such restrictions on the state's ability to administer the Trust would subject the state to litigation for failing in its trust obligations.

The plain meaning of amended NRS 504.470 would lead to the absurd result of the Commission being unable to participate in wild horse preservation, and the state being subject to litigation for failing in its trust responsibilities. This office concludes such an interpretation of amended NRS 504.470 is inappropriate because a reasonable interpretation of the amendment is available. *See Las Vegas Sun, Inc. v. Eighth Judicial Dist. Court*, 104 Nev. 508, 511, 761 P.2d 849, 851 (1988) (interpretation of statute should be reasonable and avoid absurd results).

C. Plain Meaning of NRS 504.470 Would Render Many Other Statutes Meaningless.

A statute should not be interpreted in a fashion that would render another statute nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided. *Rodgers*, 110 Nev. at 1373, 887 P.2d at 271. Statutory interpretation should avoid a reading which would render part of a statute redundant or meaningless when a substantive interpretation of that part can be given. *Board of County Comm'rs Clark County v. White*, 102 Nev. 587, 590, 729 P.2d 1347, 1350 (1986); *Board of County Comm'rs Clark County v. CMC of Nevada*, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983).

The Commission retains directives given to it to carry out its duties, and can adopt regulations to carry out those duties.³⁷ *See* NRS 504.470(1)(a)-(k), NRS 504.470(2)(b). If the Commission's primary duties were limited to *sanctuaries*, the Commission could not fulfill its directives and its authority to promulgate regulations would be meaningless because *sanctuaries* do not exist in Nevada.

S.B. 211 added a procedure for filing protests, petitions, and appeals by the Commission's administrator, and provided \$75,000 for the commission to prepare a plan. *See*

[NRS 504.460\(3\)](#); Act of July 16, 1997, ch. 537, § 11, 1997 Nev. Stat. 2534, 36. If the Commission's primary duties were limited to *sanctuaries*, the [NRS 504.460\(3\)](#) appeal procedure would be meaningless because no appeals will arise regarding *sanctuaries*, and the plan would be meaningless because it could only focus on *sanctuaries*.

The Commission retains its authority to enter into agreements with the federal government to conduct research, create a range for studying and viewing wild animals, finance improvements to benefit wild horses, and coordinate efforts to prosecute offenders for wild horse crimes. See [NRS 504.480](#). If the Commission's primary duties were limited to *sanctuaries*, the Commission could not enter these agreements, rendering [NRS 504.480](#) meaningless.

The commission retains its right to have other wildlife agencies in the state confer with the commission regarding consultation with the Secretary of Interior when the Secretary prepares wild horse inventories, or determines when removal is necessary, what the appropriate management levels are on public lands, and whether appropriate management levels should be met through removal, destruction, or other control methods. See [NRS 504.485](#). If the Commission's primary duties were limited to *sanctuaries*, the [NRS 504.485](#) consultation process would be meaningless because state agencies will never consult with the Secretary regarding *sanctuaries*.

This office concludes a plain meaning interpretation of amended [NRS 504.470](#) is inappropriate because it would render the Commission's retained authority meaningless and a separate substantive interpretation is available. *Bd. of County Comm'rs*, 99 Nev. at 744, 670 P.2d at 105 (a reading of legislation should not render any part thereof meaningless, if that part may be given a separate substantive interpretation).

D. Reasonable Interpretation of Amended [NRS 504.470](#).

Given the inappropriate result of the plain meaning of amended [NRS 504.470](#), it is necessary to look beyond the statute to find a reasonable meaning of the amendment. *Breen*, 102 Nev. at 82, 715 P.2d at 1070 (a statute will not be construed to produce an unreasonable result when another construction will produce a reasonable result). S.B. 211 should be construed to give meaning to all of its parts and language. *State ex rel. List v. AAA Auto Leasing*, 93 Nev. 483, 568 P.2d 1230 (1977); *Nevada State Personnel Division v. Haskins*, 90 Nev. 425, 529 P.2d 795 (1974). Each sentence, phrase, and word should be interpreted to render it meaningful within the context of the purpose of the S.B. 211. *State Gen. Obligation Bond v. Koontz*, 84 Nev. 130, 437 P.2d 72 (1968).

The purposes of S.B. 211 were to bring the Commission into DCNR, require the Commission to prepare a plan, tailor the administrator of the commission's ability to object to grazing decisions, and characterize the meaning of preservation.³⁸

1. Legislative History of Sanctuary Language

The first draft of S.B. 211 contained a proposed definition for “management area,” defining it as “any area in the state in which wild horses are controlled and managed by the Federal Government pursuant to the provisions of the Wild Free-Roaming Horses and Burros Act.” S.B. 211, March 13, 1997, at § 1, pp. 1-2. At the first hearing on S.B. 211, Eureka County proposed amendments to S.B. 211 that included a definition for “management area” as “any area in the state designated by the Secretary of Interior as a *sanctuary* for the protection and preservation of wild horses.” *Hearing on S.B. 211 Before Senate Committee on Natural Resources*, 1997 Legislative Session, Exhibit N (May 7, 1997). This appears to be the origin of the *sanctuary* language.

Amendments to S.B. 211 on June 18, 1997, defined preservation as the perpetuation of viable wild horse herds, within Bureau of Land Management delineated wild horse and burro herd areas, at management levels known to achieve a thriving natural ecological balance between the limits of natural resources and multiple use of the public lands. At the second reading of S.B. 211 in the Senate, the language used to define preservation was moved to the explanation of the primary duties of the commission. *Senate Daily Journal*, June 29, 1997, p. 101.

On July 5, 1997, three days before the end of the legislative session, the second reading of S.B. 211 in the Assembly amended the commission’s primary duties by inserting, “on public lands designated by the Secretary of the Interior as *sanctuaries* for the protection of wild horses and burros pursuant to 16 U.S.C. § 1333(a)” *Assembly Daily Journal*, July 5, 1997, p 55-57. This is the first appearance of the *sanctuary* language in a version of S.B. 211. No testimony or discussions exist in the record to explain why this language was added.³⁹

2. Legislative Intent of Sanctuary Language

It appears the Legislature amended the Commission’s primary duties to refine what preservation means. Given that intent, it is essential to examine the context of the primary duties language.

Absent the *sanctuary* term, amended [NRS 504.470](#) stated the Commission’s primary duty is to preserve viable herds of wild horses on public lands designated by the Secretary of Interior, at levels known to achieve a thriving natural ecological balance within the limitations of natural resources of those lands and the use of those lands for multiple purposes, and identify programs for the maintenance of those herds. The Legislature intended to direct the Commission to focus on preservation of wild horses on federally designated lands, and to focus on management that achieves a thriving ecological balance given multiple uses and demands for public lands. These three concerns were included in all of the drafts of S.B. 211 before the *sanctuary* language appeared.

The Secretary of Interior uses herd management areas and ranges to manage horses to achieve and maintain a thriving ecological balance on public land, and to manage wild horses while managing lands for multiple uses.⁴⁰ 16 U.S.C.S. 1333(a) (1997); 43 C.F.R. 4700.0-2 (1997). Management areas have been adopted pursuant to the authority of 16 U.S.C.S. 1333(a) (1997), and exist in Nevada.

The Legislature’s intent to have the Commission’s primary duties focus on federally designated areas, management for a thriving ecology, and the balance of multiple uses of public

land would be furthered if amended [NRS 504.470](#) were interpreted to mean the Commission's primary duties are to preserve wild horses on federally designated wild horse management areas. This interpretation also furthers the Legislature's desire to articulate the concept of preservation. Accordingly, this office concludes amended [NRS 504.470](#) was intended to change the Commission's primary duties to preserving wild horses on federally designated wild horse management areas. *See Maine v. Thiboutot*, 88 U.S. 1, 14, 100 S. Ct. 2502, 2509 (1980) (statutes are to be construed not only based upon their words, but by considering, as well, the context, the purposes of the law, and the circumstances under which the words were employed).

CONCLUSION

The plain meaning of amended [NRS 504.470](#) is that the primary duty of the Commission is to preserve viable herds on *sanctuaries* that have been designated by the Secretary of Interior. Since no *sanctuaries* exist in Nevada, this interpretation would lead to the absurd result of the Commission being unable to participate in wild horse preservation, the state being subject to litigation for failing in its trust responsibilities, and would render the Commission's retained authorities meaningless. This office concludes such an interpretation of amended [NRS 504.470](#) is inappropriate because a separate, reasonable interpretation is available.

The Legislature intended to refine the concept of preservation and have the Commission's primary duties focus on federally designated areas, management for a thriving ecology, and the balance of multiple uses of public land. That intent is furthered by interpreting S.B. 211 to direct the Commission to focus on federally designated horse management areas. Accordingly, this office concludes amended [NRS 504.470](#) was intended to change the Commission's primary duties to preserving wild horses on federally designated wild horse management areas.

Given the complexity of this question, and the adoption of the contested language during the closing days of the 69th Legislature, this office strongly urges the Commission to consider requesting clarification of the amendment to [NRS 504.470](#).

FRANKIE SUE DEL PAPA
Attorney General

By: PAUL G. TAGGART
Deputy Attorney General

30 A Research Analyst for the Legislative Counsel Bureau, stated “this bill is a result of the recommendations of a committee appointed by Governor Bryan in November, 1984.” *Hearing on S.B. 485 before Senate Committee on Natural Resources*, 1985 Legislative Session, 2 (May 30, 1985).

31 The Commission was not authorized to expend funds if the trust principal would go below \$900,000. The Commission was authorized to appoint a director with expertise in issues confronting wild horses and whose duty it was to carry out the policies of the Commission. Act of June 10, 1985, ch. 594, §§ 4-5, 1985 Nev. Stat. 1887-88.

32 The Legislature made the director of the Commission an administrator under the director of DCNR and provided the director of DCNR, not the Commission, with the authority to appoint the commission’s administrator and administer the Heil Trust. Act of July 16, 1997, ch. 537, §§ 3-5, 1997 Nev. Stat. 2533. As for appeals, before they can be filed, the director of DCNR must provide his approval and a copy of the protest, petition or appeal must be provided to 1) any person authorized to graze livestock on public land subject to the protest, petition or appeal, 2) the chairman of the county commission in each county containing public land subject to the protest, petition or appeal, and 3) each member of the commission. *Id.*

33 Congress found free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West and they should be protected from capture and considered an integral part of the public lands. 16 U.S.C.S. 1331 (1997).

34 Herd management *areas* are established for the maintenance of wild horse and burro herds, by managing herds in those areas with consideration given to the habitat requirements of the herds, the relationship between the herd and other uses of the public and adjacent private lands, and limiting the animals’ distribution to herd areas. 43 C.F.R. 4710.3-4710.4 (1997). Wild horse and burro *ranges* may be designated where the range should be managed principally, but not necessarily exclusively, for wild horse and burro herds. *Id.*

35 While the Bureau of Land Management (“BLM”) has established a number of *sanctuaries* in the United States, those *sanctuaries* are established on private land, through contract, with the exclusive use of the sanctuary being horse and burro use. These sanctuaries were not established pursuant to the Secretary’s authority from the Act.

36 The Commission is responsible for taking any action necessary to further the intent of the trust, and the director of DCNR is responsible for administering the trust. *Id.*; NRS 504.470(1)(k).

37 Those directives include 1) promoting the management and protection of wild horses; 2) acting as liaison between the state, the general public and horse protection groups; 3) advising the governor on issues involving wild horses; 4) soliciting and accepting contributions for the trust fund; 5) recommending legislation consistent with federal law; 6) developing and managing programs to study wild horses and their habitat; 7) monitoring the activities of federal, state and military agencies which affect wild horses; 8) participating in programs designed to protect wild horses; 9) developing a plan to educate the public about the activities of the Commission; 10) reporting biannually to the Legislature; and 11) taking any action necessary to fulfill the intent of the Heil bequest. NRS 504.470(1)(a)-(k).

38 The legislature was clearly concerned with defining preservation. Senate Committee Chairman Dean Rhoads asked Eureka County lobbyist Mike Baughman and Commission Chairman Jackson to define preservation. *Hearing on S.B. 211 Before Senate Committee on Natural Resources*, 1997 Legislative Session, 10, 13 (May 7, 1997). Mr. Baughman and Chairman Jackson agreed to report back to the Committee with definitions of preservation. *Id.* At an Assembly committee hearing on A.B. 645, the committee discussed S.B. 211 and the definition of preservation. *Hearing on A.B. 645 Before Assembly Committee on Natural Resources, Agriculture and Mining*, 1997 Legislative Session, 8-9 (June 26, 1997). Stephanie Licht, representing the Nevada Farm Bureau, urged the Committee to develop a definition of preservation that would provide direction. *Id.*

39 On July 6, 1997, the Assembly amendments were read in the Senate, including the change involving *sanctuaries*. Senate Daily Journal, July 5, 1997, p 38-41. After the reading of the amendments, Senator Rhoads made a motion for the Senate to concur in the Assembly amendments. His motion passed, and S.B. 211 was ordered enrolled. *Id.* On July 7, 1997, the legislature adjourned.

40 Management areas are used to manage wild horses as an integral *part* of the public lands to keep horse populations *in balance with other uses and the productive capacity of their habitat*. 43 C.F.R. 4700.0-2; 43 C.F.R. 4700.0-6(a) (1997).