

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,

MacDonald
REMOVED

According to this environmental assessment, (EA-NV-040-07-22, Grazing Renewal for Oak Wells Allotment), the grazing allotment is located within the Miller Flat Herd Management Area.

On page 9 of this EA, it states that the Ely Field Office removed wild horses within the Miller Flat HMA in December of 2006.

Having researched and submitted extensive comments on that environmental assessment and gather plan released by the Ely Field Office for the December 2006 removals, records indicate that BLM failed to include wild horse removals from the Miller Flat HMA or Oak Wells allotment during its evaluations and presentations to the public, thereby circumventing required NEPA standards and requirements.

The Wild Horse Gather Plan for the December removals was published as the Dry Lake Complex Wild Horse Gather Plan, E.A. #NV-040-07-002, and only cited the Dry Lake HMA, the Rattlesnake HMA and the Highland Peak HMA as included within the proposed action. No mention or information was provided that the Miller Flat HMA would also be involved in the wild horse removals of December 2006.

Additionally, after having obtained the “official” gather results from the Ely Field Office in follow up research, no removals for the Miller Flat HMA were included in the gather results.

Yet, according to this grazing renewal, the BLM removed wild horses from the Miller Flat HMA but provided no records of these removals, how many were removed or how many are still estimated within the HMA.

Please explain these omissions.

As for the grazing renewal itself, 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. 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 Miller Flat 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.

The current renewal of inequitable forage allocations through this proposal severely impacts the self-sustaining populations and preservation of the wild horses within the Miller Flat HMA, currently allowed at a maximum population of 15 wild horses over 91,988 acres, or one horse per every 6,132 acres.

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 included on the next page.

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 sacturaries 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 fee-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>
George I. Andrus	Oak Wells	3/1	2/28	511	2,862	3,373

The Miller Flat 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 due to the grazing commitments previously entered into.

The current wild horse “high” AML is 15 horses over 91,988 acres for the Miller Flat HMA, an average of one horse per 6,132 acres with a maximum forage allocation of 180 AUMs.

The livestock authorizations of permitted use total 511 AUMs for the Oak Wells Allotment, almost 3x what has been authorized for the wild horses within the entire HMA.

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.

Additionally, according to what rangeland standards and monitoring data is presented within the Oak Wells allotment, all utilizations within the Key Area was rated as light use, grazing within the pipeline was mostly moderate use and the remainder of the allotment was exhibiting slight use.

The EA states that, prior to the December wild horse removals, the estimated wild horse population was 50, or over 333% of the newly established “high” AMLs. Yet, even with this high rate of use, no significant impacts or excessive levels of utilization are noted within the Oak Wells allotment.

The Miller Peak HMA and Oak Wells Allotment is also within the boundaries of the 1999 Lincoln County Elk Management Plan, 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, 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 their legally designated historic herd areas, now known as the Miller Flat HMA.

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 the wild horses within the Miller Flat HMA as self-sustaining populations.

Current forage allocations available within the Oak Wells allotment would support an additional 42 horses within the HMA, 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 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 within the allotment and the HMA.