

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:

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, _____ 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
Geysers 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 1/2), 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:

BLMs Land Use Planning Handbook, H-1601-1, Appendix E

§ 1610.3-2 Consistency requirements

(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 Statutes 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.