

U.S. Department of the Interior
Office of Hearings & Appeals
Interior Board of Land Appeals
801 N. Quincy St., MS 300-QC
Arlington, VA 22203

U.S. Department of the Interior
Office of the Solicitor
Nancy S. Zahedi, Assistant Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-2753
Sacramento, CA 95825-1890

July 18, 2008

**RE: BLM REQUEST FOR EXPEDITED MOTION TO DISMISS PETITION FOR STAY
DATED JULY 16, 2008**

**APPELLANT REQUESTS PROPER ADMINISTRATIVE REVIEW
FINAL DECISION, FONSI/DR
WATER DEVELOPMENTS RECONSTRUCTION
NEVADA WILD HORSE RANGE HERD MANAGEMENT PLAN
ENVIRONMENTAL ASSESSMENT #NV-052-2008-223
DATED JUNE 23, 2008**

-APPELLANT-

Cindy MacDonald

The Bureau of Land Management's Attorney, Assistant Regional Solicitor Nancy S. Zahedi, has requested an Expedited Motion to Dismiss the Request for Stay, urging the Court to both review and grant such a dismissal by July 21, 2008, the practical equivalent of one days time.

Ms. Zahedi is partially correct in her contention that it is my desire to see BLM actually implement water development construction. However, Ms. Zahedi's urging for such expedited dismissal is of great concern to me as this dismissal may be inappropriate before proper administrative review.

There has been a variety of conflicting information from BLM regarding this decision as well as from the Nevada Wild Horse Range Herd Management Area Plan, EA# #NV-052-2008-223, as to whether it's implementation is actually tiered to the HMAP or not.

On July 16, 2008, BLM Nevada Wild Horse & Burro Lead Specialist Susie Stokke requested I contact her by phone via email, which I did shortly after receiving her request. (See Exhibit I) Shortly after discussing the issue with Ms. Stokke, I was then contacted by Ms. Zahedi by phone and presented with basically the same information regarding my "error" of appealing this decision as Ms. Stokke presented and which is outlined in the current Expedited Request For Dismissal filed by Ms. Zahedi.

Both parties have maintained the purpose of issuing a separate decision was so that the reconstruction of water developments can immediately go forward while the merits of the HMAP are reviewed under the appeal process and that this approval is unconnected to the actual approval of the HMAP itself. Additionally, both parties urged me to withdraw my Request For Stay and Appeal of the Water Developments.

However, there is much information contained in the HMAP and through other sources that indicates this is not the case, that the HMAP is serving as the necessary NEPA examination before implementation, that it's authorization is part of a comprehensive overall management strategy for management of the Nevada Wild Horse Range wild horses, and that its implementation is only authorized through one Alternative BLM presented in the Preliminary HMAP and consequent FONSI/DR.

During the telephone conversation with Ms. Stokke, she explained that though the 2004 ROD for the Nevada Test & Training Range authorized reconstruction, design and development of water sources for the Nevada Wild Horse Range wild horses, she also stated that the BLM was incapable of implementation until a site specific proposal was issued as required by NEPA.

Yet on December 18, 2007, BLM issued a public letter stating that they were attempting to install six water tanks at Cedar Wells. BLM went on to say, "However, due to frozen ground conditions completion of this project is on hold. The LVFO is monitoring the ground condition and will complete the installation of the tanks when the weather will permit. Upon completion, the tanks will hold approximately 12,000 gallons of water. Plans are also being developed to extend the pipeline and add water storage at the Cactus Springs development, and to add water storage capability in the Silverbow Pipeline." (See Exhibit II)

While BLM is currently maintaining that water developments cannot begin without the FONSI/DR issued under the HMAP on June 23, 2008, no NEPA analysis was published prior to the December 18, 2007 letter regarding BLMs plans to add water tanks at Cedar Wells nor were any authorized through a site specific analysis or decision and it is unclear if BLMs statement could have legally been implemented or if this was just a smoke screen to postpone further public involvement until BLM could tier it the Nevada Wild Horse Range HMAP.

The maintenance and reconstruction of water developments had been previously authorized in the 2004 ROD/Final EIS for the Nevada Test and Training Range, so it is possible that no other NEPA document was necessary for BLM to implement this decision.

When speaking with Ms. Zahedi on the phone on July 16, 2008, I stated that if BLM re-issued a separate EA completely unconnected to the HMAP under a 15 day review time with a Full Force and Effect Decision, I would not challenge it and would also withdraw my Request For Stay of the FONSI/DR Water Development Reconstruction issued from the HMAP.

Ms. Zahedi barely allowed me to finish the sentence and informed that under no uncertain terms would BLM consider writing another document to authorize this action. While this may have just been Ms. Zahedi's opinion that failed to reflect the actuality of BLMs own position or decisions, if BLM really cared and the need was as severe as all parties are making it out to be, this should have been a reasonable and timely alternative to satisfy all legal requirements and still provide water while clearly disconnecting this action from the HMAP.

Furthermore, while BLM and Ms. Zahedi maintain that the reconstruction of water developments is imminently necessary due to the severity of the water situation that has been long developing on the Nevada Wild Horse Range, which they maintain must be immediately addressed, the BLM has stated the military has been hauling water since 2005 due to BLMs prior failures to act and now suddenly, the situation is so dire that a decision to dismiss must be made in one day.

Additionally, both Ms. Stokke and Ms. Zahedi stated that just because BLM has the funding right now to implement water reconstruction, they could not guarantee this same funding would be available in six weeks during proper administrative review.

As I told Ms. Zahedi over the phone, if indeed she is correct in the fact that BLM can reconstruct water developments and provide much needed water to the Nevada Wild Horse Range wild horses without ANY legal relation too and completely separate from the HMAP, I am completely supportive of that action and have been urging, nay demanding, the BLM address their failures in this area of management that have resulted in emergency gathers, undue stress and suffering and inappropriate utilization of the remaining rangeland resources surrounding the few water sources that have not been fenced, removed or became dysfunction for wild horse use on the Nevada Test and Training Range.

Yet because BLM failed to install the Cedar Wells tanks "when the ground thawed" despite their December announcement, failed to issue a separate NEPA document from the HMAP to implement the water development reconstruction, BLMs prior refusal to address previous communications demanding resolutions long before they issued the HMAP but instead insisted it would be addressed only in the HMAP, (See Exhibit III), has failed to include the HMAP as part of their Exhibits for review and is urging expedited dismissal, their cumulative actions have caused their motives to become suspect.

As a result, I therefore urge the court to properly scrutinize the water development reconstruction decision in relation to the HMAP to verify the accuracy of the Ms. Zahedi's statement, that the FONSI/DR is truly unrelated and can be implemented with no connection and subsequent authorization of the Nevada Wild Horse Range HMAP.

Water hauling has been being implemented on the Nevada Wild Horse Range for three years, one more month should NOT make a significant impact to this action.

However, if the court issues a premature dismissal without proper in depth review of the facts, the consequences could be irreparable by unknowingly approving the implementation of the HMAP through their decision to affirm water reconstruction that was part of an overall comprehensive wild horse management strategy.

While Ms. Zahedi argues that "...BLM has not made reconstruction of those water sources contingent on its selected Herd Management Plan alternative and final Herd Management Plan decision," the BLM stated in their NWHR Herd Management Area Plan and Water Developments Reconstruction, Questions and Answers (See Exhibit IV) that,

Q. Why has BLM approved a Herd Management Area Plan (HMAP) for the NWHR herd?

A. BLM has approved the HMAP for the NWHR herd in order to address the herd's management over the long-term. As a result of the approved HMAP, the existing water developments will be reconstructed and maintained annually thereafter, or as needed.

Additionally, in the Nevada Wild Horse Range Herd Management Plan Environmental Assessment, EA#NV-052-2008-23, HMAP FONSI/DR, under Decision, first bullet point, (See Exhibit V) BLM states, "The selected management strategy would incorporate a number of population control methods, **together** with maintenance and/or reconstruction of existing water developments. Under this strategy, wild horses would be managed within the established AML range of 300-500 animals over the life of the plan".

Furthermore, while the court probably does not have this authority, perhaps it could consider issuing a statement to the BLM that the funding currently available for water reconstruction be properly secured for the next six weeks as this failure to assure funding was available would constitute inhumane treatment in violation of both federal and state law while the court reviews if indeed my Request for Stay is in error, if the accuracy of Ms. Zahedi's statement that implementation is not contingent on the approved HMAP and finally, providing permanent water sources through this authorization will not automatically authorize the HMAP as written.

Thank you for your consideration.

Sincerely,

Cindy MacDonald

July 18, 2008

Exhibit I

Personal Email Communication from BLM Nevada Wild Horse and Burro Lead, Susie Stokke Requesting Contact and Discussion of Request for Stay and Partial Appeal of Water Development Reconstruction, July 16, 2008.

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

From: [Susie Stokke@blm.gov](mailto:Susie_Stokke@blm.gov)

To: cindy

Sent: Wednesday, July 16, 2008 10:10 AM

Subject: Appeal of NWHR Water Development Reconstruction

Cindy,

If you could give me a call at 775-861-6469 as soon as possible to discuss your appeal of the proposed water development reconstruction for the Nellis horses, I would very much appreciate it.

I believe I have some additional information about the decision process, why BLM elected to issue two separate decisions (one for the water, and one for the HMAP) and also the implications to the Nellis horses.

You may still elect to go forward with your appeal, but I do have some additional information which may be important in weighing your final decision.

Thank you.

Exhibit II

BLM Letter Dated 12/18/07 to Install Water Tanks at Cedar Wells

Exhibit III

Personal Email Communication from BLM Nevada Wild Horse and Burro Lead, Susie Stokke Regarding the Need to Develop Water Sources Before Summers Potential “Emergency Conditions” and BLMs Postponement of Providing This Critical Resource Until August 2008 - Dated February 1, 2008.

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

From: [Susie Stokke@nv.blm.gov](mailto:Susie_Stokke@nv.blm.gov)

To: cindy

Sent: Friday, February 01, 2008 3:16 PM

Subject: Re: Nellis Water Issues

As I mentioned yesterday, this will all be part of the HMAP planning process. We will do our best to display the information you are requesting in that document. Unfortunately, other priorities are not going to enable us to get this to you any sooner than that. That's going to be the best we can do for now.

Exhibit IV

**NWHR Herd Management Area Plan and Water Developments Reconstruction,
Questions and Answers.**

Exhibit V

**NWHR Herd Management Area Plan FONSI/DR
Decision, First Bullet Point**