

Bureau of Land Management
Douglas W. Furtado
Battle Mountain Field Office
50 Bastian Road
Battle Mountain, Nevada 89820

August 20, 2007

RE: Protest of Proposed Decision JD Allotment
Birch-Willow Drift Fence # 4160 (NV062)

Dear Mr. Furtado:

I would like to protest the proposed decision to implement the Birch-Willow Drift Fence for the following reasons:

1. No timely access was provided to members of the interested public regarding pertinent documents relating too or effecting the implementation and impacts of the current proposal.

The documents cited within this notification as analyzing and supporting the current proposal are: 2004 Environmental Assessment #EA NV-062-EA04-78 and Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) #NV062-DNA07-076.

The general public and interested parties have been supplied a notification of this proposal in a consolidated manner that combined the introduction of the proposal, references to pertinent documents supporting the proposal as well as the decision to implement the proposal through a one-time notification letter.

It is therefore requested that an opportunity be provided to review the referenced documents cited as supporting the current proposal before implementation proceeds in conjunction with a 30-day comment period to allow for analysis of the impacts and public input of the proposed action.

2. On March 28, 2007, the Bureau of Land Management sent a letter of solicitation for public comments regarding the proposed action of construction of a drift fence around Birch-Willow Creek in the Roberts Mountain Pasture portion of the JD grazing allotment. BLMs letter clearly states that following the public comment period, the Battle Mountain Field Office would prepare an Environmental Assessment, which was to be sent out for public review.

On April 9, 2007, I submitted comments, questions and input regarding the proposed action in response to BLMs solicitation in a timely manner.

On August 9, 2007, the Battle Mountain Field Office issued a proposed decision to interested members of the public to implement a drift fence that effects the same creeks, in the same grazing allotment, for the same reasons as the proposal I commented on with the only distinguishable difference being a reference number issued by BLM.

The proposal I commented on, Birch Creek-Willow Creek Drift Fencing Proposal #4120 (NV-062) stated that an environmental assessment would be prepared to analyze the impacts of the proposal. This would indicate that the current proposed action, which is either the same one I commented or a very similar proposal, would also qualify as requiring necessary analysis of the proposed impacts since no current environmental assessment has been completed for the area.

BLM stated in March that an EA was necessary and would be prepared regarding this proposal and its impacts, yet in August, the BLM believes that a three-year old assessment is now sufficient and has circumvented a current assessment of the proposed action by citing Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) is all that is required.

Is the BLM Battle Mountain Field Office attempting to circumvent the issues, comments, input and legal compliance regarding the Birch Creek-Willow Creek Fencing proposal by failing to prepare a current environmental assessment that addresses the questions and concerns raised during the solicitation period in March/April of 2007?

NEPA requirements include Sec. 102 [42 USC § 4332], C, (i) an environmental impact of the proposed action (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented (such as closing of necessary migratory routes or access to critical habitat requirements for free-roaming horses or burros), (iii) alternatives to the proposed action (there is no access or reference to mitigation measures if wild horses and burros are being prevented from accessing water sources nor reducing livestock grazing if it is threatening the wild horse and burro populations from being self-sustaining), (iv) the relationship between local short-term uses versus long-term (what impacts or studies does BLM have that will support no adverse impacts to viable, self-sustaining wild horse and burro herds – also a federally protected species), (v) any irreversible and irretrievable commitments to resources which would be involved if the proposed action was implemented (the loss of a critical habitat requirement such as water to wild horses and burros, especially so in the West, is a serious matter), and Section E, which requires attempts to resolve conflicts concerning alternative uses and methods. Currently it is unknown if there are any unresolved conflicts with this proposal and wild horses and burros because the BLM has failed to provide any current information to the public regarding its impacts.

§ 51.45 Environmental report, (c) requires that an environmental report include economic and cost factors as does CFR § 4120.3-1 (a) require specifics be provided on the costs or labor, or both and how they will be divided between the United States and cooperators(s).

§ 51.45, (d) also requires that a list be provided of all federal permits, licenses, approvals and other entitlements which must be obtained in connection with the proposed action and shall describe the status of compliance with these requirements as does CFR § 4120.3-1 (b), which requires a cooperative agreement or a approved range improvement permit, none of which can be evaluated or reviewed from a “current status” by using a three-year old environmental assessment.

CFR § 4120.3-4 requires specifics construction and design details be supplied to the public regarding the range improvement project, § 4100.0-5 (1) (i) supports my rights as an interested member of the public to be provided an opportunity to review and comment on the proposal and § 4120.3-1, (a) Conditions for range improvements requires the range improvements to be consistent with multiple-use management, and I had specifically requested information on projected impacts to wild free-roaming horses and burros in my prior comments about this proposal, a required multiple-use objective.

I hope in light of the issues raised, you will reconsider your decision to implement the proposed action without further review or opportunity for public participation.

Thank you for your consideration.

Sincerely,
REMOVED