



Title

Five-Party Cooperative Agreement (USAF, USDO, BLM, State of Nevada & DOE/NV)

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NTS EIS
ADMINISTRATIVE RECORD # 02.05.01.037

Dear Mr. Monroe

Attached is the draft update to the 1977 Five-Party Agreement. Your comments would be appreciated. Once we have received other members' inputs/comments, we will correct and formalize.

Several changes were made due to comments made in the Five-Party meeting, 11 May 94. In this meeting a request for a suspense of 30 Jun 94 was made.

If you have any questions, my point of contact is Capt Bert Pridham, 554 RANS/RSXF, (702) 652-3650.

Sincerely

Row E. Wain

For

WARREN A. BENNETT, JR.
Colonel, USAF
Commander

Attachment:
Draft Five-Party Cooperative Agreement,
24 May 94

cc:
USAF/DOE Liaison Office
BLM - CRA
USAFWTC/EV
558 CES/CERR
554 TRANS/TRR

FIVE-PARTY COOPERATIVE AGREEMENT

PURPOSE AND AUTHORITY

This Five-Party Cooperative Agreement is specifically for the purpose of protecting, rehabilitating and managing the natural resources of fish (aquatic vertebrate organisms, crustaceans and mollusks), watershed and wild horses and habitat on the Nellis Air Force Range, the Desert National Wildlife Refuge, and the Nevada Test Site. The agreement also describes how to protect and preserve habitat used by endangered and threatened flora and fauna species and how to address consultations with the US Fish and Wildlife Service, Reno Office. The following five government agencies from the Federal Government and State of Nevada are parties to this agreement:

1. Department of the Air Force (USAF) functioning through the Weapons and Tactics Center Commander, Nellis Air Force Base (NAFB), under the authority contained in the Military Lands Withdrawal Act of 1986, 5 USC 101, 10 USC 2671, and 16 USC 670a-670f, hereinafter referred to as the USAF Weapons and Tactics Center (WTC).
2. The US Department of Interior (USDOI) functioning through the Regional Director of the US Fish and Wildlife Service under the authority contained in 5 USC 101 and 16 USC 668dd et seq, hereinafter referred to as the Service.
3. The Department of Interior (USDOI), Bureau of Land Management (BLM), functioning through the District Manager, Las Vegas District Office, under the authority contained in the Federal Lands Policy and Management Act (43 USC 1731-1733) and 5 USC 101, hereinafter referred to as the Bureau.
4. The State of Nevada functioning through the Director, Nevada Department of Conservation and Resources, Division of Wildlife, under the authority contained in Nevada, Revised Statutes and Nevada, State Board Commission Regulations, hereinafter referred to as the Division.
5. The Department of Energy, Nevada Field Office, functioning through the Manager Field Office, Nevada, hereinafter referred to as DOE/NV, also representing the Department of Energy, Albuquerque Field Office (DOE/AL), for the Tonopah Test Range.

APPLICABLE LAWS:

PL 85-337 (10 USC 2671) (Hunting on Military Installations)
PL 85-624, Fish and Wildlife Coordination Act of 1965
PL 86-517, Multiple Use Sustained Yield Act of 1960 (16 USC 528-531)
PL 86-797, the Sikes Act, as amended by PL 93-452 and PL 99-561 (16 USC 670 a-m)
PL 88-577, Wilderness Act (16 USC 1131-1136)
PL 96-366, The Fish and Wildlife Conservation Act of 1980 (16 USC 2901 et seq)
PL 94-579, Federal Lands Management and Policy Act of 1976 (43 USC 1701 et seq)
PL 99-606, Military Lands Withdrawal Act of 1986
PL 100-338, Groom Mountain Addition to the Nellis Air Force Range (Amended PL 99-606)
Intergovernmental Coordination Act of 1968 (Title IV)
Section 21, Internal Security Act of 1950 (50 USC 797)
Section 161, Atomic Energy Act of 1954
National Wildlife Refuge System Administration Act of 1966 (16 USC 668dd et seq)
Recreation Use of Wildlife Areas Act of 1962 (16 USC 460 et seq)

APPLICABLE EXECUTIVE ORDERS:

EO 1117, 16 USC 17k, Outdoor Recreations Resources - Recreation Advisory Council
EO 11237, 16 USC 4601-8, Prescribing Regulation for Coordinating Planning and the Acquisition of Land Under the Outdoor Recreation Program of the Department of Interior and the Open Space Program of the Housing and Home Finance Agency
EO 11514, 42 USC 4321, Protection and Enhancement of Environmental Quality
EO 11643, 42 USC 4321, Environmental Safeguards on Activities for Animal Damage Control on Federal Lands
EO 11644, 42 USC 4321, Use of Off Road Vehicles on Public Lands
EO 11870, 42 USC 4321, (Amends EO 11643)
EO 11917, 42 USC 4321, (Amends EO 11643)
EO 11987M, 42 USC 4321, Exotic Organism
EO 12372, Intergovernmental Review of Federal Programs

OTHER DOCUMENTS:

50 CFR, Part 402, Interagency Cooperation -- Endangered Species Act of 1973

The approved NAFR Resource Plan and Record of Decision, Feb 92

Memorandum of Understanding (MOU) between the Department of the Air Force (USAF) and the USDOJ for use of the Desert National Wildlife Range (currently in revision)

MOU between the Department of the Air Force, Tactical Air Command, Fighter Weapons Center and the Department of Energy, Nevada Operations Office for the use of Pahute Mesa dated 1982

MOU between the Department of Energy, Nevada Operations Office, and Department of Energy, Field Office, Albuquerque, for management of environmental programs, 14 Dec 89

Permit number DACA 09-4-89-64 for use of the Tonopah Test Range. Issued by the Department of the Air Force for Department of Energy, Albuquerque Operations Office (DOE/AL) use

LAND DESCRIPTION:

The Nellis Air Force Range hereinafter referred to as the NAFR. Those lands withdrawn for military use under PL 99-606, the Military Lands Withdrawal Act of 1986, as amended. The Tonopah Test Range (TTR) is a permit agreement between the Air Force and DOE/Albuquerque Field Office through the Corps of Engineers. The TTR is a subset of the NAFR.

The southern portion of the NAFR is under co-withdrawal with the USFWS. The USFWS withdrawal is known as the Desert National Wildlife Range. The co-management of these lands is addressed in the MOU between the USAF and USDOJ.

The Desert National Wildlife Range (DNWR), hereinafter referred to as the DNWR. Those lands withdrawn for a wildlife refuge under Executive Order 7373 and Public Land Order 4079.

The Nevada Test Site, hereinafter referred to as the NTS. Those lands withdrawn under Public Land Orders 805, 1662 and 2568. Includes Pahute Mesa as transferred for DOE use under the MOU between WTC and DOE/NV.

RECITALS:

Whereas, the WTC has use of NAFR for military purposes. Those portions of NAFR which are common to the DNWR are managed by the Air Force under the current Memorandum of Understanding between the USDOJ and USAF. The Environmental Management Directorate, WTC/EV, manages environmental concerns on behalf of WTC; and

Whereas, the Service is the agency of the federal government primarily responsible for the welfare of wildlife resources, wildlife research, management of migratory birds and protection of threatened and endangered species on the DNWR. The Service retains management of natural resources on the DNWR; and

Whereas, the Bureau is the agency of the federal government primarily responsible for land management. The Bureau retains management for the welfare of wild horses and burros, habitat, and other natural resources, on the NAFR but outside the DNWR; and

Whereas, the Division, under the laws of the State of Nevada, provides a system of control, propagation, protection and regulation of all fish and wildlife in Nevada; and

Whereas, DOE/NV has management of the NTS and is the agency of the federal government primarily responsible for research of atomic energy and other new energy forms, and has trusteeship responsible for restoration conservation and protection of the wildlife habitat thereon; and

Whereas, DOE/AL has management of the TTR under Air Force permit and is the agency of the federal government responsible for munitions, ordnance, rocketry, and electronic warfare testing on behalf of the Department of Defense; and

Whereas, the Environmental Restoration Division (DOE/NV/ERD) of DOE/NV manages the environmental programs and natural resources on behalf of DOE/NV and DOE/AL; and

Whereas, it is the mutual desire of the above five parties to work in harmony for the common purpose of protecting, rehabilitating and managing the natural resources of fish, wildlife, wild horses and habitat for the best interest of the people of Nevada and the United States. Therefore, it is mutually agreed that:

RESPONSIBILITIES:

SECTION I. Mutual Areas for the Five Parties

1. Consistent with their primary objectives and responsibilities and funding limitations, all parties shall cooperate in conducting resource inventory(s) of the area and developing resource management plan(s) for wild horses, burros and wildlife based on the inventory data.
2. All parties agree not to introduce exotic plant or animal species on NAFR or NTS without the prior written approval of the party member(s) who have jurisdiction for natural resources in the subject lands.
3. All parties will meet jointly, at least annually, to discuss matters relating to management plans. The Bureau, or any interested party, will issue a call for a meeting.
4. All hunting on the NAFR will be conducted under separate MOU between the WTC and respective parties. Hunting on the DNWR shall be conducted in accordance with the National Wildlife Refuge System Administration Act of 1966, the Recreation Use of Wildlife Areas Act of 1962 and other laws applicable to the National Wildlife Refuge System (reference the MLWA of 1986, Section 11). The WTC will allow limited access for hunts under AFR 126-1, paragraph 1-9, category A as administrated by the Department and/or Services under separate MOU to include:
 - a. Bighorn sheep hunt on the DNWR per the current MOU between the USDOJ and USAF.
 - b. Bighorn sheep hunt on Stonewall Mountain per the current MOU between the State of Nevada and USAF (to be developed).

5. For hunting on the NAFR and outside the DNWR, a separate fee structure may be developed for WTC reimbursement. In addition to state and federal fees and stamps, a use fee for on-range hunting may be charged under the authority contained in Public Law 86-797 (16 USC 670a) at a rate determined by the WTC and concurred by the Division. These moneys shall be accounted for by WTC and used exclusively for the purpose of wildlife conservation, to include habitat development and wildlife census. The WTC waives claims to hunting fees for a five-year period after this MOU is in effect.

6. Wild horses on the NAFR will be managed by the NAFR resource plan and implementation schedule. The horses on the NAFR are "nonpublic" as determined by the BLM director's decision, Jun 91. The authorized wild horse use area is stated as the Nellis Wild Horse Range at attachment one. The WTC shall allow horses in the allowable use areas as long as the mission of the Air Force is not degraded. If, at the sole opinion of the WTC, the military mission is degraded, the Bureau will be notified and the resource plan changed. Only the horses native to the Nellis herd will be allowed on the NAFR. Once horses are removed from the NAFR, they shall not be returned. No other horses shall be introduced from outside the NAFR or NTS. The allowable number of horses shall be stated as the appropriate management level (AML) in the resource plan. The maximum number of horses shall be 1,300 head (the 1977 count based on aerial survey) to allow a balanced ecological system. The Nellis Wild Horse Range shall be free of wild burros.

7. Other wildlife on the NAFR will be accommodated in the habitat areas as shown in the resource plan (see attachment 2). A minimum of 200 head of deer, a minimum of 100 bighorn sheep, a minimum of 100 head of antelope and a minimum of 150 chukar partridge are desired. The actual wildlife levels will prorate limited habitat and water sources. The Division shall have first authority on wildlife levels. The Nellis Wild Horse Range has been adjusted to allow bighorn sheep, chukar partridge, antelope and mule deer better use of habitat. The habitat around Stonewall Mountain and Stonewall Springs will be reserved for wildlife other than wild horses and burros. The habitat in the Desert and Pintwater Ranges is used per Service plans. The primary use is for management of bighorn sheep.

8. Wild horses on the NTS will be managed in areas agreeable between DOE/NV/ERD and Bureau.

9. Wildlife populations on the DNWR are per USFWS management plans.

10. Stocking programs, if required, shall be conducted at the joint concurrence of the parties who have responsibility for land jurisdiction and natural resource jurisdiction.

11. The use of chemical toxicants for the control of nuisance wildlife species on the NAFR and NTS will be in accordance with current state and federal laws, regulations and policies.

12. All parties agree to protect and conserve threatened and endangered (T & E) species, when managing this program. Consultation will be made with the Service under Section 7 of the Endangered Species Act for actions that may affect federally listed species on their critical habitats. The WTC and DOE/NV/ERD shall follow consultation procedures in 50 CFR, Part 402. Each federal agency will maintain liaison with the USFWS--Reno Office for the T & E species. Known endangered species and candidate species have been identified by the Bureau. The Nature Conservancy prepared a south range plant inventory under the Legacy Resource Management Program, Jan 94. A north range inventory is scheduled for Fall 94. The NTS plant inventory is overseen by the DOE contractors.

13. All parties shall abide by access requirements on the NAFR and NTS. Airspace is restricted under R4807, R4806, R4808 and R4809. Access is controlled on NAFR lands under the Internal Security Act of 1950 and AFR 125-37. Access to DOE-controlled lands, both the NTS and TTR, is controlled under the Atomic Energy Act of 1954.
14. Public access: General public access to the NAFR and NTS is not authorized due to safety and security requirements necessitated by agency mission(s). Public access to NTS is not possible. The NAFR under AFR 126-1, paragraph 1-9 is normally considered category E, closed except for specified hunts.
15. Off-road vehicle use is controlled by USAF, USDOJ or DOE directives. Most lands within the DNWR are considered wilderness study areas. These wilderness study areas have special off-road vehicle restrictions.
16. Nothing in the cooperative agreement is intended to modify in any manner other agreements with public agencies, or modify rights granted by treaty or otherwise to any Indian tribe(s) or member thereof.
17. Each federal agency will have their own agreements with the State of Nevada for cultural resource management and the workings with the state historical preservation office. Each federal agency will have their own agreement for intergovernmental coordination with the state or other federal agency, as needed.
18. The WTC has requirements for an Air Force/State Environmental and Natural Resource MOU to exchange environmental information. If the governor of the state of Nevada elects, this MOU becomes part of the DOD/State MOU under DOD Directive 4165.61 and EO 12372. The governor will transfer a letter to the Air Force Deputy Assistant Secretary for Environmental, Safety, and Occupational Health indicating concurrence, and whether or not this MOU should become an attachment to the DOD/State MOU.
19. Supplemental agreements may be developed as required by any or all of the cooperators to cover other programs. This agreement does not supersede any other agreements involving the cooperators that are now in force.
20. This agreement may be modified or amended by mutual agreement by the authorized representatives of the aforementioned parties. This agreement may be terminated in whole, or in part, upon provision of written notice of same by one of the signatories to the other signatories.

SECTION II, WTC Responsibilities: Within the limitations of the assigned military mission and the availability of funds and manpower, the WTC agrees to:

1. Provide access to authorized agents and employees of the other parties in the execution of this cooperative agreement, unless security or other military purpose should prevent the granting of such access.
2. Cooperate to maintain favorable habitat for wildlife and wild horses through the coordination of other land use as identified in the approved Resource Plan and Implementation Schedule.
3. Cooperate to protect and conserve the habitat of threatened, endangered and candidate species.

4. Be lead agency for aerial census of the north range wildlife, wild horses and burros.
5. Maintain water rights within the NAFR, but outside the DNWR, with the State of Nevada for wildlife use of spring sources and spring diversions.
6. Use local ecological factors and species' requirements when controlling bird populations. Bird Aircraft Strike Hazards (BASH) will be reduced by bird control techniques around operational airfields.

SECTION III, Service Responsibilities: Consistent with its primary objectives and responsibilities, the Service agrees within the limitation of funds and personnel for lands within the DNWR to:

1. Make technical consulting recommendation in concert with the Division for DNWR fish and wildlife programs.
2. Enforcing federal game regulations on the DNWR.
3. Be lead agency on wildlife census on the DNWR.
4. Further an understanding of wildlife conservation by cooperating in related research to solve field problems and assisting in related training programs on the DNWR. Studies may require a special use permit by the DNWR Manager.
5. Maintain water rights within the DNWR with the State of Nevada for wildlife use of spring sources and spring diversions.

SECTION IV, Division Responsibilities: Consistent with its primary objectives and responsibilities and within the availability of funds and personnel, the Division agrees to:

1. Conduct an annual bighorn sheep census on Stonewall Mountain to determine yearly population trends and management recommendations for restoring or maintaining resident species.
2. Adjust resident game species or make recommendations for adjustment as feasible to avoid damage to public health, safety and other resource values, and to furnish each year a statement of current state hunting season dates, and all state hunting laws and revisions.
3. Make available wardens for the normal enforcement of state game laws per agreements with the Division and other parties.

SECTION V, Bureau Responsibilities: Consistent with its primary objectives and responsibilities, the Bureau agrees within the limitation of funds and personnel for lands outside the NAFR to:

1. Take action for resource plans and implementation schedule outside the DNWR per the Federal Lands Policy and Management Act.

2. Make available, as requested, the services of the State of Nevada Commission on the Preservation of Wild Horses to aid in resolution of special problems that may arise.
3. Provide technical consulting assistance in managing wild horse programs. Establish the appropriate management level for wild horses. Be lead party in wild horse census surveys and documentation.
4. Coordinate in related research to solve field problems with other parties.

SECTION VI, DOE/NV Responsibilities: Consistent with its primary objectives and responsibilities, DOE/NV through the Environmental Restoration Division (ERD), agrees within the limitations of funds and personnel to:

1. Provide access to authorized agents and employees of the other parties in execution of the management plan and cooperative agreement unless security or personal safety should prevent the granting of such access.
2. Cooperate to maintain favorable habitat for species of fish and wildlife and wild horse through the coordination of other land uses.
3. Cooperate to protect and conserve habitat of threatened, endangered and candidate species.
4. Be lead agency for aerial census of the NTS wildlife and wild horses.

FIVE-PARTY COOPERATIVE AGREEMENT
Signature Page

For the Department of the Air Force,
USAF Weapons and Tactics Center,
Air Combat Command

Date

For the Department of Interior,
Bureau of Land Management,
Las Vegas District

Date

For the Department of Interior,
US Fish and Wildlife Service,
Desert National Wildlife Range

Date

For the Department of Energy,
Nevada Operations Office

Date

For the State of Nevada,
Department of Conservation and Natural Resources,
Division of Wildlife

Date