



IDAHO CHAPTER  
**THE WILDLIFE SOCIETY**

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Boise, Idaho  
83706

March 20, 1987

Director, Bureau of Land Management  
Department of the Interior  
18th and C Streets, N.W.  
Washington, D.C. 20240

Dear Sir:

I am writing on behalf of the Idaho Chapter of The Wildlife Society to protest the decision of the Idaho State Director of the BLM concerning the Egin-Hamer plan amendment to the Medicine Lodge Resource Management Plan. As you know, The Wildlife Society is an international organization of professional wildlife biologists. One of the primary goals of both The Wildlife Society and the Idaho Chapter is to promote the sound stewardship of wildlife resources and the habitat upon which it depends. This stewardship goal warrants both our continuing interest in the Egin-Hamer proposal and this official protest of the decision put forth in the Final Environmental Impact Statement (FEIS), herein after referred to as the decision. Our members participated in the planning process and the Idaho Chapter submitted comments on the Draft Environmental Impact Statement.

The Nine Mile Knoll Area of Critical Environmental Concern (ACEC) was designated in accordance with the Federal Land Policy and Management Act for the primary purpose of protecting critical winter range for approximately 2000 elk as well as other big game animals and many other resource values. The Federal Land Policy and Management Act requires that the BLM give top priority to protecting the resource values for which the ACEC was established. Construction of the Egin-Hamer road, as proposed by the BLM, would not only fail to protect the primary resource values of the Nine Mile Knoll ACEC but would ultimately result in their demise. The reasons for our concerns with the BLM's proposal are discussed below.

The BLM's proposed action, construction of the road with a four-month winter closure, will not protect the critical resources of the ACEC. If the proposed action is implemented, protection of these resources values would depend on two principal features of the BLM's proposal. The first is that the Applicants, Jefferson

and Fremont Counties, would establish a road closure ordinance and aggressively enforce the four-month winter closure. The second is that the right-of-way would be revoked by the BLM if the Applicants fail to enforce the road closure. Granting the right-of-way on the assumption that these two critical features of the BLM's proposed action will be implemented, thereby protecting the ACEC's resource values, is pure folly. Without both of these elements, the BLM's proposal is no different from that of the Applicant's and would result in severe impacts to the resource values of the Nine Mile Knoll ACEC; impacts not unlike those attributed to Alternative A in the FEIS. Let us further explore the facts supporting our argument.

The premise upon which the BLM bases the determination of minimal impact attributed to its own proposal is the four-month winter road closure. Yet a quote from pages 54 and 55 of the FEIS reveals the fallacy of this premise. The BLM states, "Closing this route from December 1 to March 31 is expected to be difficult. The applicants have stated that they will not accept a four-month winter closure on this road if they invest the money to build it. It is expected that there would be little or no cooperation from Fremont County in putting an ordinance on record that would allow Idaho peace officers (i.e., IDFG, Idaho State Police, etc.) to enforce an annual closure from December 1 through March 31. This has been demonstrated by their unwillingness to place the Juniper ORV closure on the county records to help protect this wintering big game population. This Federal closure has been in effect since 1975. All enforcement actions have been carried out by the BLM."

Furthermore, it is our understanding that the Applicants have already been involved in trespass violations along portions of the proposed route. The applicants have clearly demonstrated their unwillingness to accept a winter closure, have neither officially recognized nor enforced the Juniper ORV closure (FEIS:55), and are guilty of trespass violations along the proposed route. In light of their past records why should the applicants be expected to enforce the winter closure on the proposed road? We would like you to realistically answer this question in your response to this protest.

Consider, if you will, a hypothetical but not unlikely scenario. In order to get this road constructed, the applicants acquiesce and accept the proposed winter closure on paper, all the while intending to not enforce the closure. What incentive is there for them to close the road during the winter at their own expense? According to the FEIS, the incentive is the BLM's threat to revoke the right-of-way grant for failure to comply with its terms. The next questions at hand are 1) how valid is the BLM's threat to revoke the right-of-way grant and, if it is not a real threat, 2) how can this it be expected to force the applicants to enforce the closure?

How often has a BLM right-of-way grant been revoked in Idaho for failure of a permittee to comply with the terms and conditions of the right-of-way? We would also like an answer to this specific question. Our discussion with numerous BLM personnel around Idaho failed to identify even a single instance where a right-of-way has been revoked by the BLM for non-compliance. Why should one expect that violations of the terms of the Egin-Hamer right-of-way grant would result in its revocation when that action appears to have never occurred in the past? We would like an answer to this specific question as well.

The facts are these: 1) the applicants have not enforced or even recognized road closures in the past and therefore, cannot be expected to enforce this closure, regardless of what they say; 2) the BLM has never, or at the very least rarely, revoked a right-of-way grant in Idaho and cannot be expected to reverse this philosophy at this point in time; 3) items 1 and 2 in combination would mean that the applicants would get their road, have no incentive to enforce the winter closure, and would not risk revocation of the right-of-way grant. The BLM's proposal then essentially becomes indistinguishable from Alternative A, the applicants proposal. This alternative would have severe and totally unacceptable impacts to wintering elk and other resource values of the Nine Mile Knoll ACEC. We then question how the BLM's proposal is compatible with the principal resource values of the ACEC. Please address this issue.

In light of these facts, facts that totally discredit the BLM's assertion that their proposal would protect the resource values of the Nine Mile Knoll ACEC, the Idaho Chapter of The Wildlife Society requests that the decision adopting the Egin-Hamer Plan Amendment be reversed. We further request that the Idaho State Director adopt either Alternative B or Alternative B-1. Alternative B-1 was proposed by the Idaho Chapter in our comments on the DEIS.

Should the decision not be reversed, we request that a series of restrictive conditions be incorporated into the right-of-way grant. These conditions would 1) dictate performance standards to be met by the Applicants before the road could be built, 2) describe responsibilities of both the Applicants and the BLM, 3) specify actions that would constitute a violation of the terms of the right-of-way grant, and 4) require that immediate and automatic revocation of the right-of-way for any infraction of its terms and conditions. These points will be more fully developed below.

The BLM's decision places the burden of proof on the resources of the Nine Mile Knoll ACEC. Those resources will undoubtedly suffer, probably severely, as a result of the decision. Rather, the burden of proof must be placed on the Applicants. The Applicants must prove their willingness and intent to aggressively enforce the four-month winter road closure; without this commitment the BLM is condoning the demise of the principal resource of

the ACEC, which we believe is in clear violation of the Federal Land Policy and Management Act. The Applicants willingness to enforce road closures should be tested for several years prior to granting the right-of-way. This could be assessed by monitoring their willingness to enforce the Juniper ORV closure and a winter closure of the Pole Line trail that follows the proposed route.

To be effective in minimizing impacts to elk, any road closure must be total excluding passenger vehicles as well a snowmobiles and all-terrain vehicles. The applicants must prove their willingness and ability to exclude all vehicles during the seasonal road closure before they are granted a conditional right-of-way. The applicants must also enact appropriate road closure ordinances prior to granting of the right-of-way. All these actions must occur prior to granting the right-of-way. If the road is built and the BLM then recognizes its error, the damage will have been done. This premise will be more fully explored.

The BLM's apparent inability or unwillingness to revoke rights-of-way must also be addressed if the BLM's decision is not reversed. Numerous questions remain unanswered. For instance, what would constitute a violation of the terms of the right-of-way? What is the BLM's procedure for revoking the right-of-way? As political pressure, and not facts, is the driving force behind the present decision, would that same pressure prevent the BLM from revoking the right-of-way? If the right-of-way were revoked, who would pay the costs of removing the road and re-establishing the native vegetation that presently exists on the site? Without road removal, the area would have to be policed at taxpayer expense indefinitely to keep it from being used in the winter. Also, who would pay depredation costs for elk that are displaced from the ACEC onto adjacent private farm lands? This should clearly be the applicants responsibility. Where is the discussion of mitigation of impacts? These and other remaining unanswered questions must be addressed and resolved before the right-of-way grant can be considered.

If the decision is not reversed, restrictive and very precise conditions must be incorporated into the right-of-way grant to address these and many other unanswered questions. We urge that these conditions stipulate that the right-of-way would be immediately and automatically revoked at the slightest violation of its terms and conditions and that the revocation be permanent, with no appeal process for the applicants or any other party. Immediate and automatic revocation of the right-of-way grant would remove the cloud of political pressure from over BLM decision makers. It would also send a clear message to the applicants that the BLM is serious about enforcement of the winter road closure and the threat of right-of-way revocation.

If the applicants are not willing to build their road while adhering to these conditions, then the road must not be built. Without these strict conditions the BLM will be a party to the illegal destruction of the resource values for which the Nine Mile Knoll Area of Critical Environmental Concern was established.

Sincerely yours,

*Charles L. Blair*

Charles L. Blair  
President, Idaho Chapter  
The Wildlife Society