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8 Lawyers for plaintiffs.

9 IN THE UNITED STATES CLAIMS COURT

9 SUSAN L. FALLINI, and JOSEPH B.)
10 FALLINI, JR. in each of the)
11 following capacities: as an individual)
12 person and successor to the interest of)
13 Helen Fallini as sole heir of Helen)
14 Fallini, deceased, executor of the)
15 Last Will of Helen Fallini, and Trustee)
16 of the Helen Fallini Living Trust, and)
17 the Helen Fallini Living Trust as the)
18 sole distributee of the Last Will of)
19 Helen Fallini.)

20 v.)

21 UNITED STATES OF AMERICA; ~~MANUEL~~)
22 ~~SUSAN, JR. in his capacity as Secretary~~)
23 ~~United States Department of the~~)
24 ~~Interior; CY JAMISON in his capacity~~)
25 ~~as Director of the Bureau of Land~~)
26 ~~Management of the Department of the~~)
27 ~~Interior.~~)

28 Plaintiffs allege:

JURISDICTION

1. 28 U.S.C. Sec. 1491 provides that this Court shall have jurisdiction over any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, inter alia Jurisdiction over this claim is conferred by Section 1491 in the DEPARTMENT OF JUSTICE

Page 1-Complaint.
William F. Schroeder P.C.
P.O. Box 220
Vale, OR 97918
503/473-3141



JAN - 5 PM 12:50

92-809 C

FILED NOV 24 1992

Complaint for
Just Compensation.

(28 U.S.C.1491)

3	JAN - 5 1993	RECORDED
		LANDS

1 a. defendants are the United States and agents of the
2 United States acting for an on behalf of the United States;

3 b. defendants Lujan and Jamison and their predecessors
4 in Office are members of the executive department of the United
5 States, and have acted by and under the authority of the execu-
6 tive department of the United States;

7 c. the acts of defendants alleged herein constitute a
8 taking of property within the meaning of the Fifth Amendment of
9 the Constitution of the United States for which compensation is
10 due and owing. The causes of action alleging said taking is
11 founded upon the Constitution of the United States. The provi-
12 sions of the just compensation clause of the Fifth Amendment are
13 self-executing, and the remedy established is the payment of
14 compensation.

15 d. the claims herein stated involve management by
16 defendants Lujan, Jamison, and their predecessors in Office, of
17 wild free-roaming horses and in that management, requiring
18 plaintiffs to provide water to sustain such horses. The claims
19 involve the following Acts of Congress: Wild and Free Roaming
20 Horses and Burros Act, 85 Stat. 649, as amended by the Public
21 Rangelands Improvement Act of 1978, 92 Stat. 1803, 16 U.S.C.
22 1331-1340; Taylor Grazing Act of 1934, 48 Stat. 1269, as amended,
23 43 U.S.C. 315 et seq.; Federal Land Policy and Management Act of
24 1976, 90 Stat. 2743, 43 U.S.C. 1701, et seq.

25 PARTIES

26 2. Helen Fallini is the mother of Joseph B. Fallini,
27 Jr. On July 8, 1983 she conveyed to Joseph B. Fallini, as Trust-

28 Page 2-Complaint.

William F. Schroeder P.C.
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1 ee, all of her right, title and interest in the property which is
2 generally described in paragraph 3 pursuant to an agreement
3 entitled the Helen Fallini Living Trust. She died on April 29,
4 1989, leaving Joseph B. Fallini as her only heir, as the executor
5 of her last Will, and as said Trustee, the beneficiary by said
6 last Will, of such property. Susan L. Fallini is the wife of
7 Joseph B. Fallini, Jr.

8 3. On and after December 15, 1971 Helen Fallini was
9 until her death, and Joseph B. Fallini, Jr. and Susan L. Fallini
10 were and are citizens of the United States and residents of Nye
11 County, Nevada. On and after December 15, 1971 and until July 8,
12 1983 they conducted, and on and after July 8, 1983 plaintiffs
13 conducted and now conduct a livestock ranching business with
14 their private land, cattle, machinery, equipment, money, credit,
15 water rights, public land grazing preference, public land range
16 improvements, and other property in said County and State.

17 4. On December 15, 1971 the Wild Free-roaming Horses
18 and Burros Act, supra., was enacted as a law of the United
19 States, wherein and whereby (as applied to this complaint) all
20 wild free-roaming horses were declared to be under the jurisdic-
21 tion of the Secretary of the Interior for the purposes of manage-
22 ment as components of the public lands. Said Secretary adminis-
23 ters the public lands through the Bureau of Land Management, a
24 unit of the United States Department of the Interior. Defendant
25 Manuel Lujan, Jr. is presently Secretary of the Interior and
26 defendant Cy Jamison is presently Director of the Bureau of Land
27 Management. They are successors to previous Secretaries and
28

1 Directors under whose administrations some of the actions alleged
2 herein, occurred.

3 GENERAL ALLEGATIONS

4 6. The property described in paragraph 3 is, generally,
5 the Twin Springs Ranch, and the public land grazing preference
6 permits the owners to exclusively harvest forage with domestic
7 livestock upon the Reveille Allotment. The property owners sub-
8 stantially invested in the acquisition of the preference and
9 without it, the owners' property is valueless in the conduct of
10 the business.

11 7. The Reveille Allotment is an administrative unit of
12 public land within Nevada, administered by defendants. Within
13 said Allotment are natural and developed water sources upon
14 private and public lands which are necessary to sustain domestic
15 livestock, and on and after December 15, 1971 plaintiffs were and
16 are the exclusive owners of rights to appropriate all of such
17 water. By reason of such right, plaintiffs own said grazing
18 preference.

19 8. Such water is made available by the owners at the
20 land surface to sustain domestic livestock by the expenditure of
21 money for buildings, machinery, fuel and other associated expend-
22 ables, electricity, equipment, tools, fences, gates, tanks,
23 containers, air and ground vehicles, animal and human labor,
24 public fees, and other service costs. On and after December 15,
25 1971 and through and including 1991 plaintiffs continuously
26 expended money, and did so in every year as scheduled within
27 Exhibit A, being an Analysis of Costs to Provide Water for Cattle

1 and Wild Horses, John S. Nalivka September 20, 1992.

2 9. Said Wild and Free Roaming Horses and Burros Act,
3 supra., authorizes defendants to manage numbers of wild horses
4 only to the extent that the natural ecological balance of the
5 public lands will be achieved and maintained, to remove the
6 excess, and prohibits defendants from relocating such animals to
7 areas of the public lands where wild horses did not exist at
8 enactment. By amendment enacted within the Public Rangelands Im-
9 provement Act of 1978, supra., defendants are required to immedi-
10 ately remove from a given area numbers which exceed those autho-
11 rized by the Act. On November 28, 1986 the United States District
12 Court for the District of Nevada required defendants to remove
13 wild horses from described areas of the Reveille Allotment to
14 which they had been relocated and to determine authorized numbers
15 within the wild horse use area at enactment. Defendants thereupon
16 determined that 165 horses was the maximum number of horses
17 permitted by the Act within the Reveille Allotment.

18 10. Notwithstanding plaintiffs' entreaties and demands,
19 defendants continuously failed and refused to provide water for
20 the wild horses within their management or to reimburse plain-
21 tiffs for doing so and defendants required plaintiffs to provide
22 water to wild horses whenever plaintiffs provided water to their
23 domestic livestock after December 17, 1971, on penalty of loss of
24 their grazing preference.

25 11. Notwithstanding plaintiffs' entreaties and demands,
26 defendants failed to remove from the Reveille Allotment wild
27 horses in excess of the number permitted by said Act and contin-

1 used to manage horses continuously and in each year in numbers
2 stated within Exhibit A.

3 FIRST COUNT

4 Taking of Property Without Just Compensation.

5 12. Paragraphs 1-11 are incorporated herein by refer-
6 ence as though fully set forth herein.

7 13. Assuming defendants' actions as alleged are lawful,
8 they constitute a taking of plaintiffs' property for which
9 compensation is due within the meaning of the Fifth Amendment to
10 the United States Constitution.

11 14. Defendants have taken plaintiffs' property continu-
12 ously to provide water to sustain wild horses managed by them in
13 excess of lawful limits during each of the years between 1972
14 and 1991, inclusive, to the extent that was not determinable
15 until November 28, 1986. The continuing taking in each year is
16 stated within Exhibit A, Water Cost Allocation, Excess Horse
17 Cost, Actual Cash Outlays.

18 SECOND COUNT

19 Taking of Property Without Just Compensation.

20 15. Paragraphs 1-11 and 13 are incorporated herein by
21 reference as though fully set forth herein.

22 16. The Wild and Free Roaming Horses and Burros Act.
23 supra., took plaintiffs' property to provide water to sustain
24 wild horses managed by defendants within lawful limits in each of
25 the years between 1972 and 1991, inclusive, to the extent that
26 was not determinable until November 28, 1986. The taking in each
27 year is stated within Exhibit A, Water Cost Allocation, (Total

1 Horse Cost, Actual Cash Outlays) less (Excess Horse Cost, Actual
2 Cash Outlays).

3 THIRD COUNT

4 Alternative (to First Count) Claim for
5 Taking of Property Without Just Compensation.

6 17. Paragraphs 1-11 and 13 are incorporated herein by
7 reference as though fully set forth herein.

8 18. Defendants have taken plaintiffs' property to
9 provide water to sustain wild horses managed by them in excess of
10 lawful limits in each of the years between 1987-1991, inclusive.
11 The taking in each year is stated within Exhibit A, Water Cost
12 Allocation, Excess Horse Cost, Actual Cash Outlays.

13 FOURTH COUNT

14 Alternative (to Second Count) Claim for
15 Taking of Property Without Just Compensation.

16 19. Paragraphs 1-11 and 13 are incorporated herein by
17 reference as though fully set forth herein.

18 20. The Wild Free-roaming Horses and Burros Act,
19 supra., took plaintiffs' property to provide water to sustain
20 wild horses managed by them within lawful limits in each of the
21 years between 1987-1991, inclusive. The taking in each year is
22 stated within Exhibit A, Water Cost Allocation, (Total Horse
23 Cost, Actual Cash Outlays) less (Excess Horse Cost, Actual Cash
24 Outlays).

COMPENSATION CLAIM

21. Paragraphs 1-20 are incorporated herein by reference as though fully set forth herein.

22. As a result of defendants' actions, plaintiffs are entitled to compensation in at least the following amounts:

a. For continuously taking plaintiffs' property to provide water to wild horses managed by defendant between 1972-1991, inclusive, in excess of the numbers authorized by law, \$757,922.

Or for the taking of plaintiffs' property to provide water to wild horses managed by defendant between 1987-1991, inclusive, in excess of the numbers authorized by law, \$94,204.

c. For continuously taking plaintiffs' property to provide water to wild horses managed by defendant within lawful limits between 1972-1991, inclusive, \$160,324.

Or for the taking of plaintiffs' property to provide water to wild horses managed by defendant within lawful limits between 1987-1991, inclusive, \$69,900.

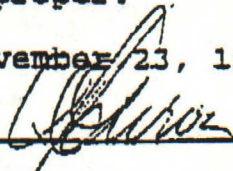
e. Interest on the compensation from the dates of the takings as determined by the Court.

1
2
3 Wherefore, plaintiffs pray as follows:

4 A. That the Court award compensation to plaintiffs for
5 a taking of property in each of the years 1972-1991, inclusive,
6 as alleged and in the aggregate, \$918,246, or in such amounts as
7 proved at trial, plus interest from the dates of taking as deter-
8 mined by the Court.

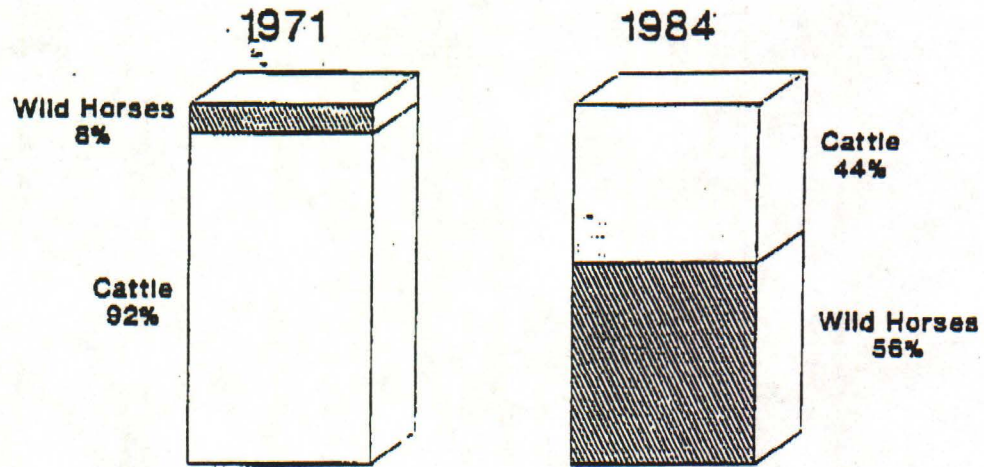
9 B. That the Court grant such other and further relief
10 as it deems proper.

11 November 23, 1992.

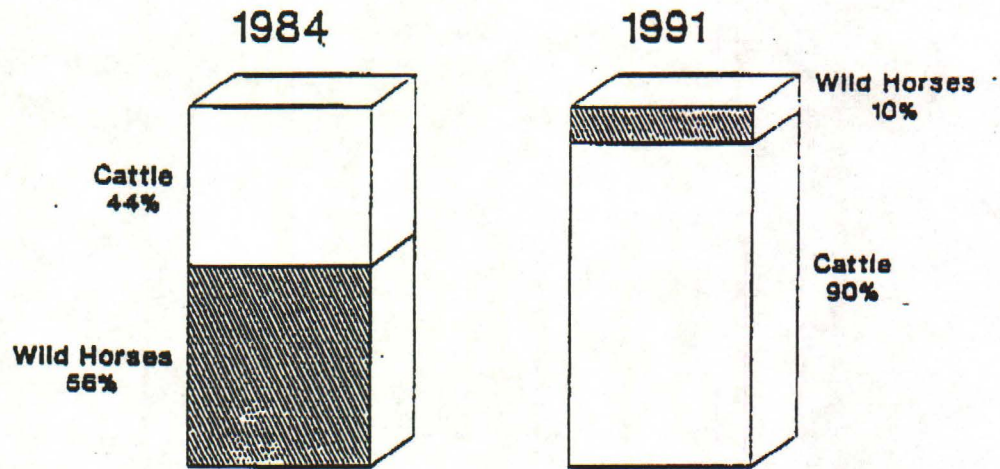
12 
13 _____
14 William F. Schroeder
 (503) 473-3141
 Lawyer for plaintiffs.

Water Demand By Cattle and Wild Horses

Twin Springs Ranch



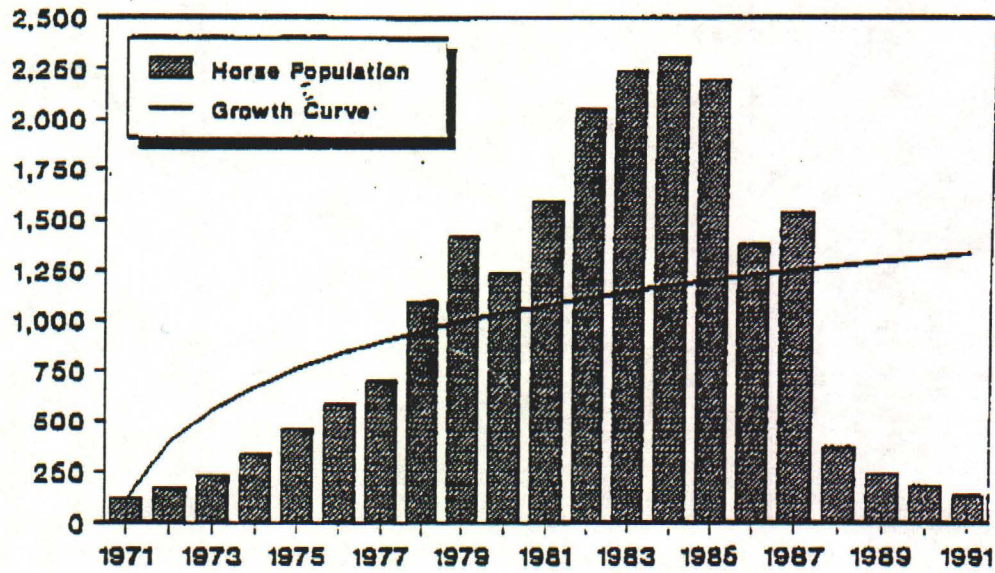
Percent of Total



Percent of Total

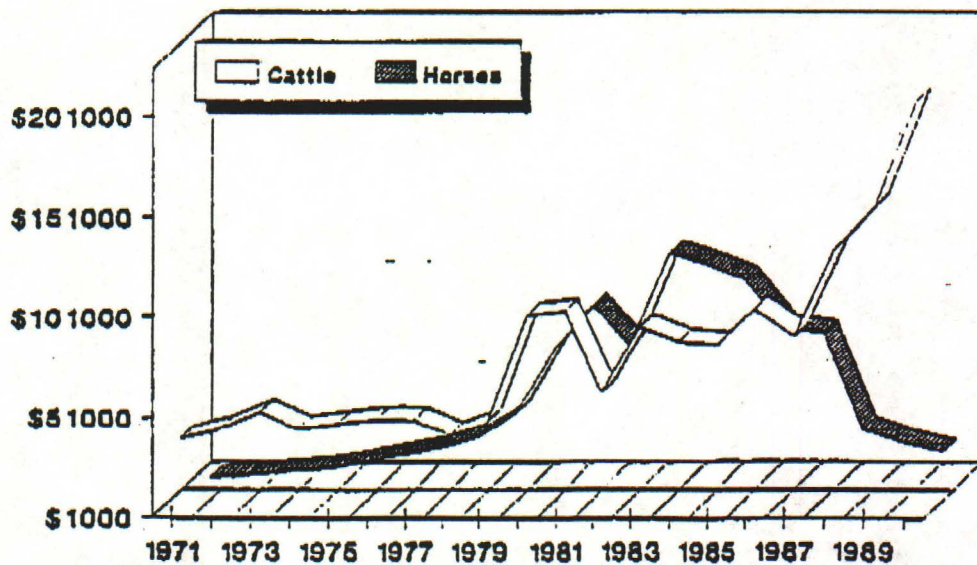
John Nalivka
Sterling Marketing, Inc.

Wild Horse Population Twin Springs Ranch



Prepared by John Nallvka
Sterling Marketing, Inc.
Lenexa, KS

Total Cost to Provide Water Twin Springs Ranch



Prepared by John Nallvka
Sterling Marketing, Inc.
Lenexa, KS

WATER COST ALLOCATION: Cattle and Wild Horses

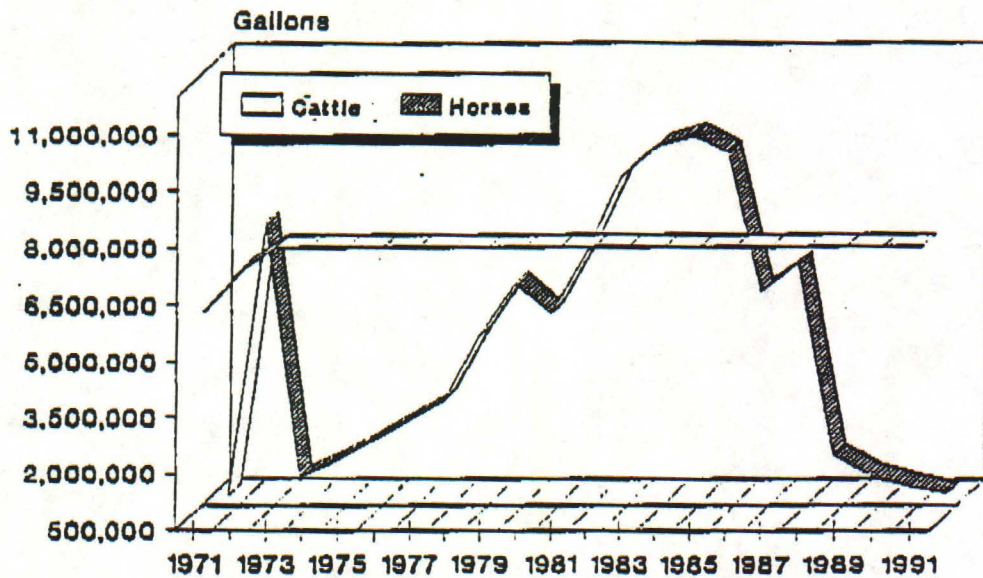
According to Annual Water Demand

Twin Springs Ranch

Year	Variable Cost	Fixed Cost	Total Cost	Cattle Demand	Total Cattle Cost	Horse Demand		Total Horse Cost			Excess Horse Cost		
						Total	Over legal number	Actual Cash Outlays	Opportunity Cost of Funds	Total Cost	Actual Cash Outlays	Opportunity Cost of Funds	Total Cost
				Percent		----- Percent -----							
1970	\$18,603	\$20,364	\$38,967										
1971	17,199	23,145	40,344	92%	\$37,004	8%	0%	\$3,340	\$202	\$3,542	\$0	\$0	\$0
1972	24,042	22,638	46,680	90%	42,124	10%	1%	4,556	236	4,792	1,333	17	349
1973	29,827	26,980	56,807	88%	50,130	12%	4%	6,677	580	7,257	2,048	173	2,221
1974	22,184	27,808	49,992	84%	41,961	16%	8%	8,031	758	8,789	4,157	381	4,538
1975	32,977	23,237	56,214	79%	44,846	21%	13%	11,569	878	12,445	7,448	556	8,002
1976	41,698	20,086	61,782	75%	46,563	25%	18%	15,219	898	16,217	10,919	711	11,630
1977	39,276	25,133	64,409	72%	46,223	28%	22%	18,186	1,140	19,326	13,918	869	14,787
1978	35,425	27,460	62,885	62%	38,990	38%	32%	23,916	2,102	26,018	20,315	1,777	22,093
1979	52,695	28,824	81,519	56%	45,507	44%	39%	36,012	3,674	39,686	31,810	3,238	35,048
1980	78,718	87,406	166,124	59%	98,295	41%	35%	67,829	6,185	74,014	58,752	5,362	64,115
1981	97,402	92,048	189,450	53%	100,245	47%	42%	89,204	14,995	104,199	79,947	13,411	93,358
1982	96,749	31,050	127,799	47%	59,485	53%	49%	68,314	11,030	79,344	62,821	10,093	72,914
1983	129,401	78,237	207,638	44%	92,181	56%	52%	115,457	13,281	128,739	106,945	12,289	119,234
1984	115,080	78,864	193,944	44%	84,670	56%	52%	109,273	14,743	124,017	101,454	13,683	115,138
1985	103,959	81,514	185,473	45%	83,229	55%	51%	102,243	9,195	111,438	94,558	8,508	103,065
1986	103,599	75,414	179,012	57%	101,356	43%	38%	77,656	5,446	83,102	68,296	4,816	73,112
1987	107,249	55,584	162,833	54%	87,641	46%	41%	75,192	5,387	80,579	67,099	4,804	71,903
1988	103,188	55,482	158,670	83%	131,450	17%	10%	27,220	2,527	29,747	15,081	1,541	16,622
1989	112,136	61,908	174,044	88%	153,208	12%	4%	20,836	1,843	22,679	6,688	649	7,337
1990	128,572	82,820	221,392	91%	200,620	9%	1%	20,772	1,796	22,567	2,246	230	2,475
1991	122,452	81,660	204,112	90%	184,028	10%	2%	20,084	1,381	21,464	3,090	209	3,299
1971-1991													
Total	\$1,593,826	\$1,097,318	\$2,691,144		\$1,769,558			\$921,586	\$98,374	\$1,019,961	\$757,922	\$83,318	\$841,240

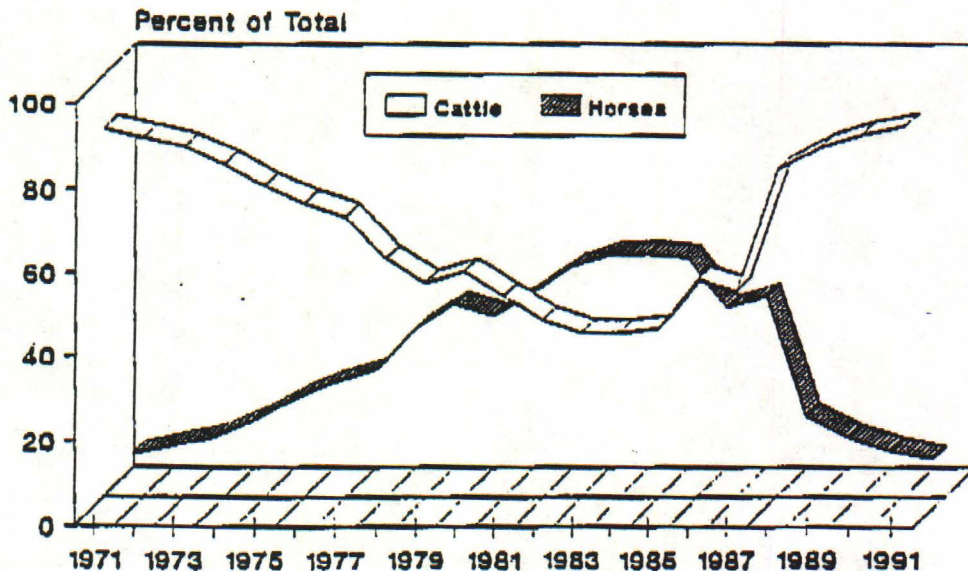
The opportunity cost of funds is calculated using the mid-year 1 year T-Bill rate.

Water Demand By Cattle and Wild Horses Twin Springs Ranch



Prepared by John Nallvka
Sterling Marketing, Inc.
Lenexa, KS

Water Allocation to Cattle & Wild Horses Twin Springs Ranch



Prepared by John Nallvka
Sterling Marketing, Inc.
Lenexa, KS

WATER DEMAND BY CATTLE AND WILD HORSES

Reveille Grazing Unit
Twin Springs Ranch

Year	Cattle AUM's	Cattle Water Demand Gal. per yr.	Horses (Number)	Allowed Under 1986 Court Order	Horse AUM's		Horse Water Demand		Total Water Demand	% Cattle	% Horses	
					Total	Over legal number	Total	Over legal number			Total	Over legal number
1971	20,100	6,113,750	126		1,512		551,880		6,665,630	92%	8%	
1972	23,700	7,208,750	178	165	2,136	156	779,640	56,940	7,988,390	80%	10%	1%
1973	25,730	7,826,208	238	165	2,856	878	1,042,440	319,740	8,868,648	88%	12%	4%
1974	25,730	7,826,208	342	165	4,104	2,124	1,497,860	775,260	9,324,168	84%	16%	8%
1975	25,730	7,826,208	463	165	5,556	3,576	2,027,940	1,305,240	9,854,148	79%	21%	13%
1976	25,730	7,826,208	584	165	7,008	5,028	2,557,920	1,835,220	10,384,128	75%	25%	18%
1977	25,730	7,826,208	703	165	8,436	6,456	3,079,140	2,356,440	10,905,348	72%	28%	22%
1978	25,730	7,826,208	1,096	165	13,152	11,172	4,800,480	4,077,780	12,628,688	62%	38%	32%
1979	25,730	7,826,208	1,414	165	16,968	14,988	6,193,320	5,470,620	14,019,528	56%	44%	39%
1980	25,730	7,826,208	1,233	165	14,796	12,816	5,400,540	4,677,840	13,226,748	59%	41%	35%
1981	25,730	7,826,208	1,590	165	19,080	17,100	6,964,200	6,241,500	14,790,408	53%	47%	42%
1982	25,730	7,826,208	2,052	165	24,624	22,644	8,987,760	8,265,060	16,813,968	47%	53%	49%
1983	25,730	7,826,208	2,238	165	26,856	24,876	9,802,440	9,079,740	17,828,648	44%	56%	52%
1984	25,730	7,826,208	2,306	165	27,672	25,692	10,100,280	9,377,580	17,926,488	44%	56%	52%
1985	25,730	7,826,208	2,195	165	26,340	24,360	9,814,100	8,891,400	17,440,308	45%	55%	51%
1986	25,730	7,826,208	1,369	165	16,428	14,448	5,996,220	5,273,520	13,822,428	57%	43%	38%
1987	25,730	7,826,208	1,533	165	16,396	16,416	6,714,540	5,991,840	14,540,748	54%	46%	41%
1988	25,730	7,826,208	370	165	4,440	2,460	1,620,600	897,900	9,446,808	63%	17%	10%
1989	25,730	7,826,208	243	165	2,916	936	1,064,340	341,640	8,890,548	68%	12%	4%
1990	25,730	7,826,208	185	165	2,220	240	810,300	67,600	8,636,508	91%	9%	1%
1991	25,730	7,826,208	195	165	2,340	360	854,100	131,400	8,680,308	90%	10%	2%

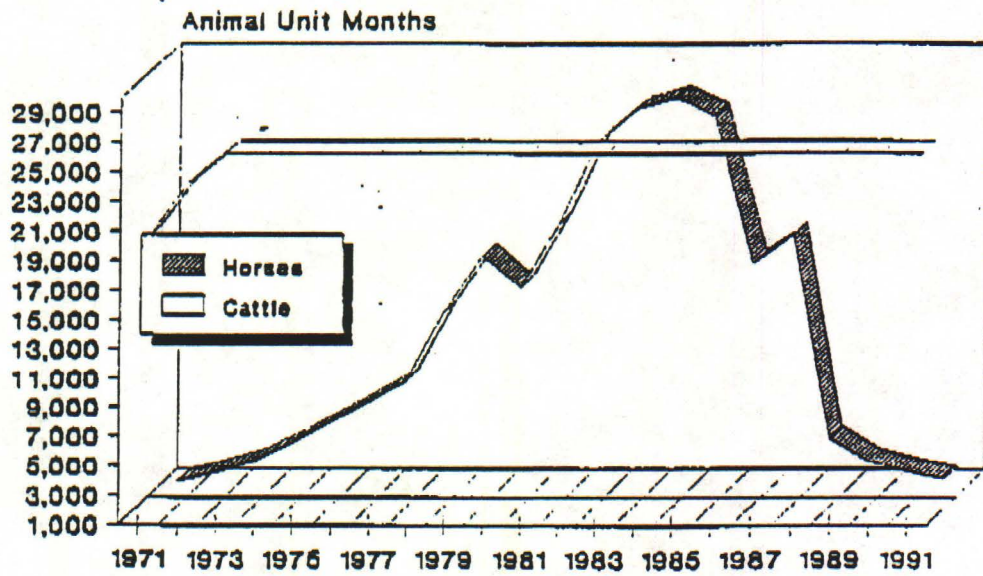
WATER DEMAND BY CATTLE AND WILD HORSES

Reveille Grazing Unit

Twin Springs Ranch

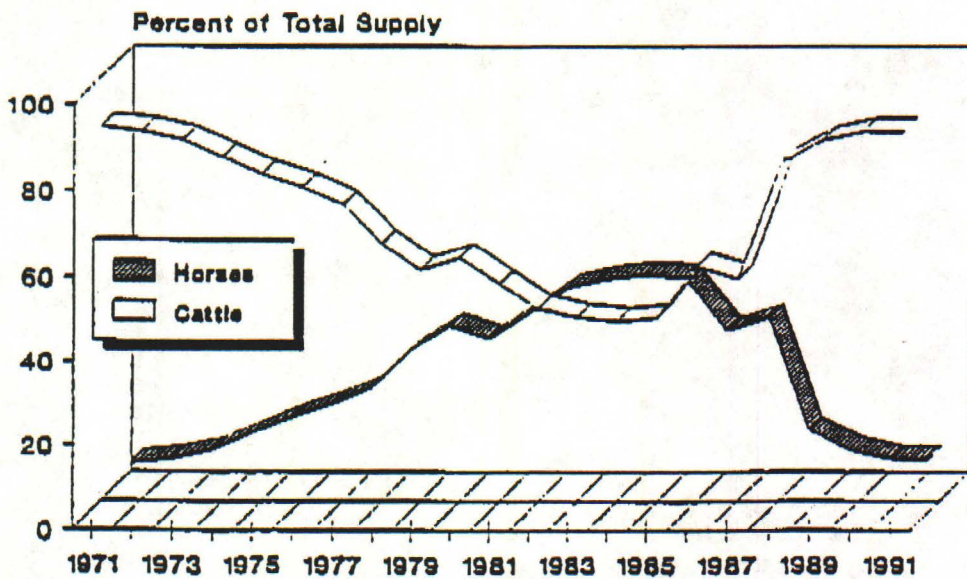
Year	Cattle AUM's	Horses (Number	Horse AUM's	Cattle Demand	Percent Increase		Horse Demand	Percent Increase		Total Water	Percent of Total	
					Yr/Yr	From 1971		Yr/Yr	From 1971		Cattle	Horses
				Gal. / yr.					Gal. / yr.			
1971	20,100	126	1,512	6,113,750			551,880			6,665,630	92%	8%
1972	23,700	178	2,136	7,208,750	18%	18%	779,640	41%	41%	7,988,390	90%	10%
1973	25,730	238	2,856	7,826,208	9%	28%	1,042,440	34%	89%	8,868,648	88%	12%
1974	25,730	342	4,104	7,826,208	0%	28%	1,497,960	44%	171%	9,324,168	84%	16%
1975	25,730	463	5,556	7,826,208	0%	28%	2,027,940	35%	267%	9,854,148	79%	21%
1976	25,730	584	7,008	7,826,208	0%	28%	2,557,920	26%	363%	10,384,128	75%	25%
1977	25,730	703	8,436	7,826,208	0%	28%	3,079,140	20%	458%	10,905,348	72%	28%
1978	25,730	1,096	13,152	7,826,208	0%	28%	4,800,480	56%	770%	12,626,688	62%	38%
1979	25,730	1,414	16,968	7,826,208	0%	28%	6,193,320	29%	1022%	14,019,528	56%	44%
1980	25,730	1,233	14,796	7,826,208	0%	28%	5,400,540	-13%	879%	13,226,748	59%	41%
1981	25,730	1,590	19,080	7,826,208	0%	28%	6,964,200	29%	1162%	14,790,408	53%	47%
1982	25,730	2,052	24,624	7,826,208	0%	28%	8,987,760	29%	1529%	16,813,968	47%	53%
1983	25,730	2,238	26,856	7,826,208	0%	28%	9,802,440	9%	1676%	17,628,648	44%	56%
1984	25,730	2,306	27,672	7,826,208	0%	28%	10,100,280	3%	1730%	17,926,488	44%	56%
1985	25,730	2,195	26,340	7,826,208	0%	28%	9,614,100	-5%	1642%	17,440,308	45%	55%
1986	25,730	1,369	16,428	7,826,208	0%	28%	5,996,220	-38%	987%	13,822,428	57%	43%
1987	25,730	1,533	18,396	7,826,208	0%	28%	6,714,540	12%	1117%	14,540,748	54%	46%
1988	25,730	370	4,440	7,826,208	0%	28%	1,620,600	-76%	194%	9,446,808	83%	17%
1989	25,730	243	2,916	7,826,208	0%	28%	1,064,340	-34%	93%	8,890,548	86%	12%
1990	25,730	185	2,220	7,826,208	0%	28%	810,300	-24%	47%	8,636,508	91%	9%
1991	25,730	195	2,340	7,826,208	0%	28%	854,100	5%	55%	8,680,308	90%	10%

Forage Demand By Cattle and Wild Horses Twin Springs Ranch



Prepared by John Nalivka
Sterling Marketing, Inc.
Lenexa, KS

Forage Allocation to Cattle and Horses Twin Springs Ranch



Prepared by John Nalivka
Sterling Marketing, Inc.
Lenexa, KS

FORAGE DEMAND

Cattle and Wild Horses
Reveille Grazing Unit
Twin Springs Ranch

Year	Cattle AUM's	Total Horses	Allowed Under 1986 Court Order	Horse AUM's		Total AUM's	% Cattle	% Horses	
				Total	Over legal number			Total	Over legal number
1971	20,100	126		1,512		21,612	93%	7%	0%
1972	23,700	178	165	2,136	156	25,836	92%	8%	1%
1973	25,730	238	165	2,858	876	28,588	90%	10%	3%
1974	25,730	342	165	4,104	2,124	29,834	86%	14%	7%
1975	25,730	463	165	5,556	3,576	31,286	82%	18%	11%
1976	25,730	584	165	7,008	5,028	32,738	79%	21%	15%
1977	25,730	703	165	8,436	6,456	34,166	75%	25%	19%
1978	25,730	1,096	165	13,152	11,172	38,882	66%	34%	29%
1979	25,730	1,414	165	16,968	14,988	42,698	60%	40%	35%
1980	25,730	1,233	165	14,796	12,816	40,526	63%	37%	32%
1981	25,730	1,590	165	19,080	17,100	44,810	57%	43%	38%
1982	25,730	2,052	165	24,624	22,544	50,354	51%	49%	45%
1983	25,730	2,238	165	26,856	24,876	52,586	49%	51%	47%
1984	25,730	2,306	165	27,572	25,692	53,402	48%	52%	48%
1985	25,730	2,195	165	25,340	24,360	52,070	49%	51%	47%
1986	25,730	1,369	165	16,428	14,448	42,158	61%	39%	34%
1987	25,730	1,533	165	18,396	16,416	44,126	58%	42%	37%
1988	25,730	370	165	4,440	2,460	30,170	85%	15%	8%
1989	25,730	243	165	2,916	936	28,646	90%	10%	3%
1990	25,730	185	165	2,220	240	27,950	92%	8%	1%
1991	25,730	195	165	2,340	360	28,070	92%	8%	1%

FORAGE DEMAND

Cattle and Wild Horses
Reveille Grazing Unit
Twin Springs Ranch

Year	Cattle AUM's	Percent Increase		Horses (Number)	Percent Increase		Horse AUM's	Percent Increase		Total AUM's	Percent of Total	
		Yr/Yr	From 1971		Yr/Yr	From 1971		Yr/Yr	From 1971		Cattle	Horses
1971	20,100			126			1,512			21,612	93%	7%
1972	23,700	18%	18%	178	41.3%	41.3%	2,136	41.3%	41%	25,836	92%	8%
1973	25,730	9%	28%	238	34%	89%	2,856	34%	89%	28,586	90%	10%
1974	25,730	0%	28%	342	44%	171%	4,104	44%	171%	29,834	86%	14%
1975	25,730	0%	28%	463	35%	267%	5,556	35%	267%	31,286	82%	18%
1976	25,730	0%	28%	584	26%	363%	7,008	26%	363%	32,738	79%	21%
1977	25,730	0%	28%	703	20%	458%	8,436	20%	458%	34,166	75%	25%
1978	25,730	0%	28%	1,096	56%	770%	13,152	56%	770%	38,882	66%	34%
1979	25,730	0%	28%	1,414	29%	1022%	16,968	29%	1022%	42,698	60%	40%
1980	25,730	0%	28%	1,233	-13%	879%	14,796	-13%	879%	40,526	63%	37%
1981	25,730	0%	28%	1,590	29%	1162%	19,080	29%	1162%	44,810	57%	43%
1982	25,730	0%	28%	2,052	29%	1529%	24,624	29%	1529%	50,354	51%	49%
1983	25,730	0%	28%	2,238	9%	1676%	26,856	9%	1676%	52,586	49%	51%
1984	25,730	0%	28%	2,306	3%	1730%	27,672	3%	1730%	53,402	48%	52%
1985	25,730	0%	28%	2,195	-5%	1642%	26,340	-5%	1642%	52,070	49%	51%
1986	25,730	0%	28%	1,369	-38%	987%	16,428	-38%	987%	42,158	61%	39%
1987	25,730	0%	28%	1,533	12%	1117%	18,396	12%	1117%	44,126	58%	42%
1988	25,730	0%	28%	370	-76%	194%	4,440	-76%	194%	30,170	85%	15%
1989	25,730	0%	28%	243	-34%	93%	2,916	-34%	93%	28,646	90%	10%
1990	25,730	0%	28%	185	-24%	47%	2,220	-24%	47%	27,950	92%	8%
1991	25,730	0%	28%	195	5%	55%	2,340	5%	55%	28,070	92%	8%

BUREAU OF LAND MANAGEMENT
NATIONAL WILD HORSE & BURRO PROGRAM OFFICE



F A X



FROM: (702) 785-6602

DATE 1/14/93	NUMBER OF PGS (inc. cover) 9	CONFIRMATION PHONE # (702) 785-6583	DISPOSITION OF ORIGINAL
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TO (Name, Office, FAX #) MARK ETCHART
Solicitor's Office
202 - 219 - 1792

FROM (Name, Office) Tom Pogacnik
NV 960
785 - 6476

SUBJECT/SPECIAL INSTRUCTIONS:

Attached is our response to the allegations contained in the Fallini v. United States Cl. Ct. No. 92-809 C. As we discussed, the time available to use has precluded our supporting much of our discussion with documented facts. Our main emphasis is that Fallini does not control all of the available waters within the Reveille allotment, the stipulations to his permit require him to provide water for other uses while his livestock are present, and wild horses using non-publicly owned resources has been determined to not represent a takings.

Much of this argument has already been heard in Mountain States Legal Foundation v. Andrus, Civil No. C-79-275K; DeMar Dahl v. Watt, et al. Civil No. R-82-124-BRT; and Fallini, et al. v. Clark et al., Civil No. CV-LV-84-040-HEC.

WILD HORSE & BURRO PROGRAM MISSION STATEMENT

To affirm wild free-roaming horses and burros are a living legacy of our American heritage, ensuring that they are recognized and maintained as a part of the natural ecosystem, and are valued for their biological, social and cultural attributes.

FALLINI COMPLAINT FOR COMPENSATION

1. We disagree with the suite being filed in the United States Court of Claims. Fallini has yet to exhaust his administrative remedies since he has yet to file a tort claim with BLM.
 2. NA
 3. Need a review of the Fallini grazing preference:
When was the preference established?
Describe the base preference AUMs/Base Water?
What's the land status of the Base Waters?
Summary of the Reveille Allotment....
How much federal acres? How much private, (fenced and unfenced)

What's the status of the range improvements? How many by type "date authorized", is it a well (air or diesel), fence, spring development, gravity pipeline etc..
 4. Agree
- No number 5.

General Allegations

6. Need to explain that this is base water, the preference is attached to waters on public land, which were developed pursuant to Range Improvement permits. (Get copies of all RIs,, need to see the language on the specific permits..as they pertain to consistency with current and future laws/regulations).

The grazing preference for use on the public land in the Reveille Allotment is attached to "base waters" , that is water that is , "controlled by an applicant to be base property if:..It serves as a base for a livestock operation which utilizes public lands within a grazing district..." 43 CFR 4110.2-1 (a) (1). The total grazing preference for the Fallini operation on the Reveille Allotment is 25,730 Animal Unit Months (AUMs). This grazing preferences is attached to 46 separate "waters" or water sources that occur on both public and private lands. Approximately 5 of these waters occur on private lands and 41 occur on the public lands.

Of the waters that occur on public lands the developments ie. wells, pipelines, stock tanks, are authorized by virtue of a Range Improvement Permit. The Bureau of Land Management has issued 57 separate range improvement permits for water development on the Reveille Allotment to Mr. Fallini. The specific language on the various Range Improvement Permits issued on these improvements were issued subject to certain conditions. Examples of these conditions follow:

Lone Tree Reservoir, approved in 1954,
condition number 2. It is subject to cancellation in whole or in part if the lands are withdrawn by Executive Order or Public Land Order and the land is needed for use in connection with the purpose of such withdrawal, or withdrawn by provisions of any public-land law providing for more valuable use of the land.

condition number 3. It does not accord to the permittee and preference, privilege, or consideration of any kind except as expressly provided herein.

condition number 4. It is subject to cancellation for noncompliance with the rules and regulations now or hereafter approved by the Secretary of the Interior.

Five Mile Spring, approved in 1963,
condition number 2. The permit does not accord to the permittee and preference, privilege, or consideration of any kind except as expressly provided herein.

condition number 5. Any public lands or impounded waters will be available for wildlife use and open to the public for hunting and fishing in accordance with State regulations. Such lands and waters will also be open for other authorized public use to the extent that such use is consistent with the purpose for which the permit is granted.

condition number 7. The permit is subject to cancellation for noncompliance with the rules and regulations now or hereafter approved, by the Secretary of the Interior, or where the improvement would interfere with the range management practices determined by the Bureau of Land Management, or for a violation of any of the terms of this permit.

Reveille Mill Pipeline to Charles Mill, approved in 1971.
conditions 2,5,and 7 the same as Five Mile Spring above.

The public land grazing preference and the authorization of the grazing of the public lands on this allotment are and have been authorized under the authority of the Taylor Grazing Act (TGA) the Federal Land Policy and Management Act of 1976 (FLPMA) and the Public Rangeland Improvement Act of 1978 (PRIA).

The TGA specifically states, in Sec. 3...

"...grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands."

FLPMA directs that, "...goals and objectives be established by laws as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield.." it further defines the term multiple use to mean..."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."

Need to explain what is referred to as the "Twin Springs Ranch" ie. deeded property, as opposed to the grazing preference which is attached to the base waters located on public lands.

Disagree that with line 9 that states "without it, the owners' property is valueless in the conduct of the business." It is unclear to what specifically is being referenced as "the owners' property". The Twin Springs Ranch consists of deeded land, which produces hay and forage. It is true that the grazing preference adds a value to the deeded market in the private sector however; the United States does not recognize that there is a value for the grazing preference. Without the grazing preference (which as pointed out above is entirely "base waters" the majority of which occur on public land not private land) there would still be a value to the deeded property.

7. Disagree with lines 15 to 18 and the claim that "plaintiffs were and are the exclusive owners of rights to appropriate all of such water. By reason of such right, plaintiffs own said grazing preference.

As noted above the adjudicated grazing preference in attached to 46 waters, the majority of which ,41, are located on public land. BLM water resources inventory for the Reveille allotment has identified a total of 105 waters on the allotment. Not all of these waters are base waters, the United States would assert a claim for all natural occurring water within the allotment that qualify as a Public Water Reserve under the Order of Withdrawal, Public Water Reserve No. 107 of 1926.

Fallini has filed for appropriated rights or claimed a vested right for stock watering on 102 spring sources, with the Nevada State Water Engineer, however the US would assert its' claim for all waters, which were claimed as appropriated and/or vested after 1926.

The 2/16/1983 Solicitor's Opinion said, "The springs and water holes reserved pursuant to the Executive Order of April 17, 1926, were reserved to prevent "private monopolization,"of the public domain through control of important springs and water holes..."

There are only 46 total waters that were recognized as bases water to which the grazing preference is attached.

Need to explain the water situation, disagree with claim that plaintiffs were and are the exclusive owners of rights to appropriate all of such water.

Should summarize water situation. How much does Fallini have under State Water Right? What the situation presently and historically as to the amounts of water that we estimate came from those waters that Fallini had a water right on? Of these how many waters were wells pumped by diesel? How many were pipelines, how many developed springs, how many undeveloped springs? How much came from those waters that we assert the US claims? How much does the US claim by asserting PWR? Need to explain that TGA/FLPMA/PRIA/WHBA provide for multiple use. That the grazing on this allotment is consistent with the LUP for the area. That WH livestock and wildlife use both the forage and the water on the area.

8. Disagree that Fallini's costs are accurate for providing water. Of the total water sources (105 total) identified in the BLM water inventory 13 of these sources were identified as wells. A review of the Range Improvement permits on the allotment identify 17 permits for wells, the remaining water projects are springs, pipelines etc. Not all of these wells have gasoline motorized pumps and are either totally or partially driven by wind. Additionally the remaining water sources after initial construction costs would/should result in a minimal per/year operation expense. (for which he possibly takes credit for with the IRS)

The grazing fee charged by the United States Government to Mr. Fallini has been determined by using a series of indices. Included in these indices is a factor that recognizes the increased cost to operate a livestock operation on public land as opposed to a private lease situation. The public land grazing fee is determined in part by discounting a bases value for the additional operating costs for operating on public lands. As an example the 1992 public grazing fee is \$1.92/AUM while the value of the forage as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture for the same time period was \$9.25/AUM. see 43 CFR 4130.7-1 and 4150.3 (a).

9. We deny that BLM is required to manage for animal numbers which existed at the time of passage of the WH&B Act. Although BLM is restricted to manage WH&Bs in the areas where they were found at the time of passage of the Act, a Solicitors Opinion dated July 27, 1977, states that wild horses and burros retain their protected status even when they leave the area. The WH&B Act requires that BLM determine an appropriate management level through an evaluation of current monitoring data and to remove those animals determined to be excess. The Act does not authorize any specific level of use (numbers of animals) and BLM is not required to manage for the number of animals which existed within an area of use at enactment (DeMar Dahl v. Watt, et al. Civil No. R-82-124-BRT). The court held that the number of wild horse and burros on the public lands in 1971 was immaterial and that the law requires reduction of wild horse and burro populations on public lands only when necessary to achieve a thriving natural ecological balance. Following the November 28, 1986 United States District Court of Nevada ruling, BLM established an appropriate management level of 145-165 based on the evaluation of monitoring data. A subsequent settlement agreement with Fallini allows for adjustment of the AML should an evaluation of monitoring data indicate the need.

11. We deny that BLM has failed to remove animals determined to be in excess of established appropriate management levels. BLM has conducted regular removals of excess wild horses from the Reveille HMA as required by law. The number of animals to be managed within the Reveille HMA has been determined through the land use planning process, the evaluation of monitoring data, and in conformance with United States District Court rulings and settlements. The Tonopah MFP/Grazing EIS 1982, 1981 established the Reveille herd management area and set an initial stocking rate of 350 animals. The Record of Decision also provided for adjustment of the AML based on consultation, coordination, and cooperation with the various affected interests. The AML was adjusted to 650 animals in 1984 and the population reduced. Fallini, et al. v. Clark et al., Civil No. CV-LV-84-040-HEC, determined that BLM had erred in establishing the HMA boundary and ordered the boundary be adjusted and an AML established within that boundary based on monitoring data. A new AML was established at 145-165 animals and the herd was once again reduced to the new AML. BLM has conducted removals of excess wild horses from the Reveille allotment in 1980, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. All removals were intended to reduce populations to the AML which was authorized at the time.

12. NA

13. We deny that any action by the BLM which resulted in use of water controlled by the Mr. Fallini constitutes as a "taking" requiring compensation within the meaning of the Fifth Amendment to the United States Constitution. We base this conclusion on Mountain States Legal Foundation v. Andrus; Civil No. C-79-275K (D. Wyo., filed September, 1979).

Plaintiffs brought suit contending that the Bureau of Land Management (BLM) had failed to maintain an ecological balance in its horse population; to protect and manage wild horses; and to remove wild horses from private lands upon request of the landowner. The plaintiffs sought an order that would require BLM to reduce the number of horses to a level that would prevent further damage to the horses and their habitat. They also sought damages to cover forage losses and payment for each horse remaining on the intermingled (checkerboard pattern) private lands.

A final 4-3 ruling in this case was issued by the Tenth Circuit Court of Appeals in August, 1986. This case was appealed to the Supreme Court and in the March, 1987 the Supreme Court, without comment, let the ruling stand. While the District Court decision required the BLM to remove the excess wild horses, the issue of compensation was appealed.

In ruling that no "taking" had taken place by the wild horses under administration of the BLM the Appeals Court stated the following:

1. Wild Horses and burro are no less wild animals than are the grizzly bears that roam the National parks and forests.
2. That the BLM does not own the wild horses and burros until they are captured but does have administrative responsibility for their management and control.
3. The Wild Free-Roaming Horse and Burro Act is nothing more than a land-use regulation enacted to ensure the survival of a particular species of wildlife and not unique in its impact on private resource owners.
4. The majority of courts that have considered similar issues have held that damage to private property by protected wildlife does not constitute a taking and thus the government does not owe compensation.
5. A land-use regulation may effect a taking if it "does not substantially advance legitimate state interests . . . or denies an owner economically viable use of his land . . .".

6. The provisions of the Wild Free-Roaming horse and Burro Act which states "Wild horses and burro contribute to the diversity of life within the Nation and enrich the lives of the American people" advances an important government interest.
 7. Wild horse grazing use does not interfere with the Association's investment expectations of using its property for grazing cattle.
 8. In view of the important governmental interest involved and the limited economic burden, no taking has occurred.
14. The number of wild horses presented in Exhibit A are in error. The attached table indicates the BLM record of wild horse numbers from 1957 through 1991. The 1992 population of 135 wild horses in the Reveille allotment is below the authorized AML of 145-165.

The use of 12 gallons of water per animal per day is in excess of accepted values of a maximum of 10 gallons per animal per day and discounts the lower requirements experienced during the winter months.

15. - 20. Replication of 12. - 14.

Re: Fallini v. United States, Cl. Ct. No. 92-809 C

The issue of reimbursement for damages caused by wild horses consuming private forage was resolved in Mountain States Legal Foundation v. Andrus; Civil No. C-79-279K (D.Wyo., filed September 1979) when the Supreme Court let stand the ruling of the Tenth Circuit Court disallowing reimbursement for forage consumed by wild horses. The issue in the Fallini case above is essentially the same and the claim should be dismissed.

Reveille Allotment Horse Populations

Year	Horse Count	Map?
1957	50	-
1966	250	-
3/1969	137	-
1971	290 BLM estimate	
1/1971	126 Fallini ct.	
2/1972	178 Fallini ct.	
1/1973	260 partial ct.	
1/1973	206	
1/1973	238 Fallini ct.	
2/1974	342 Fallini ct	
2/1974	421	
7/1974	421	
2/1975	463 Fallini ct.	
3/1975	254 partial ct.	
3/1975	243 partial ct.	
1975	470 D.M. estimate	
1976	625 D.M. estimate	
1/1976	584 Fallini ct.	
1977	690	
1/1977	703 Fallini ct.	
2/1978	843	
2/23/1978	844	
1978	737	yes
2/1978	1,096 Fallini ct.	
1979	975	yes
8/1980	1,682	
10/1980	1,233	
1984	1,541	yes
1985	808	yes
1986	957	yes
1988	370	yes
1989	269	yes
1990	185	yes
1991	195	yes