

G 10-10-96



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Hearings Division
139 East South Temple, Suite 600
Salt Lake City, Utah 84111
Phone: 801-524-5344

October 16, 1996

ORDER

COMMISSION FOR THE	:	NV-050-94-05
PRESERVATION OF WILD HORSES	:	
(CPWH),	:	Appeal from the Area Manager's Full
	:	Force and Effect Decision dated
Appellant	:	November 24, 1993, Caliente Resource
	:	Area, Las Vegas District, Nevada.
v.	:	
	:	
BUREAU OF LAND MANAGEMENT,	:	
	:	
Respondent	:	

Proceeding Dismissed

Based on appellant's withdrawal of its appeal in this matter subject to conditions set out in the attached stipulation incorporated herein, this proceeding is hereby dismissed.

The foregoing renders moot respondent's request for remand heretofore filed in the matter.

Harvey C. Sweitzer
Administrative Law Judge

Attachment

RECEIVED

OCT 10 1996

OFFICE OF ATTORNEY GENERAL
DEPUTY ATTORNEY GENERAL



COMMISSION FOR THE
PRESERVATION OF WILD HORSES

255 W. Moana Lane
Suite 207A
Reno, Nevada 89509
(702) 688-2626

MEMORANDUM

TO: Wayne Howle, Deputy Attorney General
FROM: Cathy Barcomb, Executive Director
SUBJECT: Meadow Valley Appeal Settlement
DATE: August 8, 1996

As per our conversation today regarding the Meadow Valley Appeal Settlement, I would like to specifically address criteria for dispersal of wild vs stray horses at gathers as well as closure either temporary or permanent of an herd management area.

As was previously a Nevada Statute, and policy with the Nevada Division of Agriculture, stray horses are identified by signs of prior "domesticity". The "indicia of prior domesticity" includes but is not limited to: brand, horseshoes, roached mane, bobbed tail, saddle marks, obvious surgery such as gelding, brand inspection, or identifiable pictures to establish ownership. This criteria is also included in the MOU between the State Agriculture Department and the BLM. As a reminder, it is a violation of State law for livestock (horses, cattle, sheep, etc.), to be released for grazing without a brand to identify ownership. With intentionally not branding those animals it leaves wide open the allegation of "rustling", did the permittee ever turn out a horse?

In addition this is further supported by the BLM regulation that "domestic horse not be licensed in areas **inhabited** by wild horses". This regulation still needs to be addressed and clarified in our appeal. Our argument is further supported by the fact that Nevada BLM established a policy that excludes domestic horse grazing in allotments in and **adjacent** to HMA's.

In regards to "closure of an HMA" versus "management for zero". As we understand it there is a distinct difference between the two as explained by the BLM. We probably should state the difference in writing to avoid any misunderstanding, especially between Districts and Resource Areas. As was explained and we understand it:

Wayne Howle, D.A.G.
August 8, 1996
Page 2

"Closure of an HMA": A land use plan amendment would be initiated to permanently close that area to wild horses and/or burros (example: checkerboard land). If horses wandered into an area they would be removed as they would be in a "horse free area". This is without revision and has already been done by the Bureau. Approximately 10 HMA's have been closed in Nevada.

"Management for Zero": A land use plan amendment may still be necessary, I am not sure. The Bureau would manage that area for zero horses and/or burros because of suitability of the range (drought conditions, severe overgrazing, fire). This would be a unilateral decision with livestock grazing for protection of the habitat. This could be reversed if:

- 1) horses migrated back into the area in the future and the Bureau determined through monitoring that the horses were not detrimental to the habitat and could survive in a thriving natural ecological balance with multiple use management. If the habitat could not support the horses, they would be easily removed under the management framework.
- 2) the allotment was being re-evaluated to determine that grazing could be reinstated in that area. Through a decision horses could be reintroduced as part of the multiple use grazing system.

I hope this explains some of my concerns for settlement. I discussed this with Roy Leach this morning and he is preparing the other points of appeal that would be negotiable. If you have any questions, please feel free to call.

12/3/97



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

IN REPLY REFER TO:

CERTIFIED

DEC 3 1997

IBLA 94-447	:	NV-050-94-01
	:	
WILD HORSE ORGANIZED ASSISTANCE	:	Emergency Removal Plan
	:	
	:	
IBLA 94-449	:	NV-050-94-03
	:	
HUMANE SOCIETY OF THE UNITED STATES	:	Emergency Removal Plan
	:	
	:	Status Order

ORDER

By Order dated May 22, 1996, we suspended consideration of the above-captioned appeals, as well as a related appeal (IBLA 94-448) filed by the Commission for the Preservation of Wild Horses (the Commission), taken from a decision of the Caliente Resource Area Manager, Bureau of Land Management (BLM), approving the Meadow Valley Mountain Herd Removal Plan environmental assessment and record of decision. This plan had authorized the immediate removal of all wild horses within the Meadow Valley Mountain Herd Management Area (HMA) due to the destruction by wildfires of approximately 21-percent of the wild horse habitat within the HMA.

In our Order, we noted that the Commission had filed a request that we refer the matter to the Hearings Division for consolidation with an on-going related grazing appeal. We declined to do so at that time, however, because, as we pointed out in our Order, there was a pending motion before the assigned Administrative Law Judge to dismiss the grazing appeal based on a challenge to the Commission's right to obtain a hearing. Based on the foregoing, we concluded that "[u]ntil such time as this matter is resolved by the administrative law judge, we deem it inappropriate to refer the matters presently before the Board to him for consolidation." Accordingly, we directed counsel for appellants "to promptly inform the Board as to the disposition of the motion to dismiss" and suspended consideration of the appeals by the Board pending such notification.

That Order was issued 1½ years ago. We note that on October 15, 1996, the Commission informed the Board that, based on an agreement which it had reached with BLM, the Commission wished to withdraw its appeal. By Order dated October 30, 1996, the Commission's request was granted and its appeal was dismissed. Nothing further, however, has been heard from either the Wild Horse Organized Assistance (WHOA) or the Humane Society of the United States (Humane Society).

We recognize, of course, that WHOA and the Humane Society may have been proceeding under a misapprehension that the Board's dismissal of

7-15-96



**UNITED STATES DEPARTMENT of the INTERIOR
BUREAU OF LAND MANAGEMENT**

Ely District Office

HC 33 Box 33500
Ely, Nevada 89301-9408

In Reply Refer To:
NV-050-94-02
4160/4770.3 (NV-055.07)

(702) 289-1800

JUL 15 1996

Catherine Barcomb
Executive Director
Commission for the Preservation
of Wild Horses
1105 Terminal Way, Suite #209
Reno, NV 89509

Dear Ms. Barcomb:

The Caliente Field Office of the Ely District recently received a letter from the Commission for the Preservation of Wild Horses (Attachment 1). You requested that this letter be considered as an amendment to your appeal number NV-050-94-05, which was submitted over two years ago in November 1993. Since the referenced appeal number was assigned to your livestock grazing appeal which was forwarded to the Office of Hearings and Appeals for a factual hearing before an Administrative Law Judge, and since your requested amendment raises questions related to wild horse management and not to livestock grazing issues, the Ely District assumes the referenced appeal number is in error. The Commission's appeal of the Meadow Valley Mountains Herd Management Area emergency removal of wild horses was assigned appeal number NV-050-94-02 which was also submitted over two years ago in November 1993 and forwarded to the Interior Board of Land Appeals (IBLA) for their review and decision. The Ely District is therefore responding to the appeal amendment's wild horse issues as an amendment to appeal number NV-050-94-02, and not NV-050-94-05. We are submitting your requested amendment and BLM's responses to the allegations to IBLA for review as an amendment to NV-050-94-02.

Response to Appeal Points

Answers to the allegations in the Appeal Amendment dated March 8, 1996 are in the same order as presented in the appeal amendment letter.

1. "...excess wild horses from the Meadow Valley Mountain Herd Management Area Emergency Removal were released on the Nevada Wild Horse Range. This action violates Federal Regulation Section 4710.4 Constraints on Management:
"Management of wild horses and burros shall be undertaken with the objective of limiting the animal's distribution to herd areas. Management shall be at the minimum level necessary to attain objectives identified in approved land use plans and herd management area plans." "

The action does not violate 43 CFR 4710.4, but is in fact in direct compliance with the regulations. The excess animals were released within an established herd area, the Nevada Wild Horse Range (NWHR), which complies with the objectives identified within 43 CFR 4710.4, which limits the animals' distribution to herd areas. as stated above. The regulations do not limit distribution by specific wild horses to specific herd areas.

Current Bureau policy, as directed under Washington Office Instruction Memorandum No. 93-30 (Attachment 2), states the following guidelines for releasing older and unadoptable excess wild horses into herd areas (HAs):

"If possible, animals to be released should be returned to the HA from which they were removed. Selection of HAs for release of older and unadoptable excess wild horses should be based on the following priority:

1. HAs which are at or below the established appropriate management level (AML).
2. HAs where a concurrent removal has been scheduled and extra animals can be removed to accommodate the older and unadoptable animals.
3. HAs where populations are above the AML but which is scheduled for gathering in the near future.
4. HAs where no AML has yet been established. It is recognized that these areas may have extra animals until an AML is established and a removal action implemented."

The Caliente Resource Area had no HAs at or below established AML at the time of release (priority #1). The releasing of the excess wild horses from the Meadow Valley Mountains removal falls under the next two of these priority items (#2 & #3). The NWHR had been gathered twice in 1993 (Jan/Feb and Sept). The number of excess horses that were released would not have put substantial pressure on the remaining horses within the NWHR based on the removal of over 1500 horses in the two 1993 removals. Though the NWHR was and is currently above its identified AML, the NWHR is one of the most actively managed herd areas within the Bureau's wild horse program. The NWHR has averaged at least one gather of 750 or more animals per year since 1992, and it would be scheduled for another removal subsequent to the release of the wild horses from the Meadow Valley Mountains HMA.

2. "These excess wild horses were introduced into an occupied wild horse herd outside of their designed wild horse herd area and beyond any reasonable distance to assume natural ingress or egress of each herd. This action disturbed any genetic integrity of the impacted herd area and increased wild horse use within a herd area suffering from excess wild horse use of the forage resource."

The excess wild horses were introduced into an area outside of their designated herd area but

that was the desired intent of the process. To release the excess animals back into the Meadow Valley Mountains HMA or adjacent HMA would have been contrary to the desired objective of the removal to protect the rehabilitated burn area from grazing until vegetation could be reestablished. By putting the animals on the NWHR, it essentially eliminated the possibility that the animals would return to their original HMA following release and would thus allow the burn area to effectively revegetate.

The assumption of being "beyond any reasonable distance to assume natural ingress or egress of each herd" is handled under both positive and negative avenues. Negatively, the original animals that were removed were taken out of the natural ingress loop based on the distance that the animals would have to travel to ingress (return) to their original HMA, which was the intended objective of placing the animals on the NWHR. On a more positive ground, the Meadow Valley Mountains HMA is bordered on the east side by two HMAs, the Blue Nose Peak and the Mormon Mountains HMAs, and on the north by the Delamar Mountains and Clover Mountains HMAs with no barriers to movement. The avenues of natural ingress and egress is very favorable for this herd area from these other HMAs.

The assumption that the releasing of the excess animals "disturbed any genetic integrity of the impacted herd area (NWHR) and increased wild horse use within a herd area suffering from excess wild horse use of the forage resource" is not supportable. The NWHR had an estimated population of 1500-2000 wild horses following the September 1993 gather, which removed over 800 horses from the NWHR. The impact of 26 horses on a population of this size is insignificant. If anything, genetic integrity would be improved, not disturbed, with the introduction of the 26 horses adding to the gene pool.

3. "The Nevada Wild Horse Range has an approved herd management plan. The action releasing excess Meadow Valley Mountain Herd wild horses was not a plan activity of the existing herd plan. The action violates the National Environmental Policy Act. No environmental assessment was prepared to assess impacts to displaced horses or horses in the occupied herd management area."

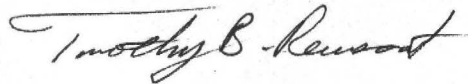
Both the Meadow Valley Mountains Emergency Removal Plan and associated Environmental Assessment addressed the necessity of relocating the excess wild horses into another herd area but neither document specifically stated that it would be the Nevada Wild Horse Range. This item was overlooked in the Bureau's review process for finalizing the documents. The NWHR's herd management area plan does not state that wild horses would be released within its boundaries. Due to the emergency and urgency to complete the action, this was overlooked and the NWHR was selected for the release site due to the active management being completed on the HMA in compliance with existing Bureau policy (W.O.I.M. 93-30), as stated in response #1.

Administrative Record

If IBLA deems it appropriate to include this amendment to appeal number NV-050-94-02, the two attachments (March 8, 1996 letter from the Commission, and Instruction Memorandum 93-30) should be included as additions to the existing Administrative Record.

A copy of this amendment to the appeal file has been sent to the Interior Board of Land Appeals, Regional Solicitor, and the Nevada State Director/National Wild Horse and Burro Program (NV-960). A copy has also been retained in the Ely District's files.

Sincerely yours,



Gene A. Kolkman
Acting District Manager

2 Attachments

1. March 8, 1996 letter from the Commission for the Preservation of Wild Horses (2pp)
2. Washington Office Instruction Memorandum No. 93-30 (3pp)



COMMISSION FOR THE
PRESERVATION OF WILD HORSES

255 W. Moana Lane
Suite 207A

Reno, Nevada 89509
(702) 688-2626

March 8, 1996

RECEIVED
07:30 A.M.

MAR 12 1996

CALIENTE RESOURCE AREA
BUREAU OF
LAND MANAGEMENT

Mr. Curtis G. Tucker
Caliente Resource Area
Bureau of Land Management
P.O. Box 237
Caliente, Nevada 89008

Subject: Appeal NV0509405 Amendment - Meadow Valley

Dear Mr. Tucker:

Information provided to the Commission on February 8, 1994 by Mr. Tom Pogacnik at the Bureau of Land Management State Office provides for an amendment to the Commission's Appeal.

According to this source, excess wild horses from the Meadow Valley Mountain Herd Management Area Emergency Removal were released on the Nevada Wild Horse Range. This action violates Federal Regulation Section 4710.4 Constraints on Management:

"Management of wild horses and burros shall be undertaken with the objective of limiting the animal's distribution to herd areas. Management shall be at the minimum level necessary to attain objectives identified in approved land use plans and herd management area plans."

These excess wild horses were introduced into an occupied wild horse herd area outside of their designed wild horse herd area and beyond any reasonable distance to assume natural ingress or egress of each herd. This action disturbed any genetic integrity of the impacted herd area and increased wild horse use within a herd area suffering from excess wild horse use of the forage resource. The Nevada Wild Horse Range has an approved herd management plan. The action releasing excess Meadow Valley Mountain Herd wild horses was not a plan activity of the existing herd plan.

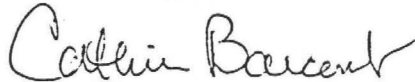
Mr. Curtis Tucker
March 8, 1996
Page 2

The action violates the National Environmental Policy Act. No environmental assessment was prepared to assess impacts to displaced horses or horses in the occupied herd management area.

We request that this amendment be added to the existing appeal. Additional information from our February 16, 1996 Freedom of Information Act Request to the District may influence this amendment or others.

Thank you for your attention on this matter.

Sincerely,



CATHERINE BARCOMB
Executive Director

cc. Wayne Howle, DAG

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

October 23, 1992

NUMBER RECEIVED 4	
ROUTING	INITIAL DATE
105	20
In Reply Refer To 15 118	
4720/1760 (NV-960)	
21960	
ACTION	
FILE	
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EMS TRANSMISSION 11/2/92
Instruction Memorandum No. 93-30
Expires 9/30/94

To: SD's (except Eastern States)

From: Director

Subject: Policy on Selective Removal of Wild Horses

The Strategic Plan for Management of Wild Horses and Burros will be implemented in FY 93. The plan provides that adjustments in population will be made by removing only those animals that can be placed in private care through the adoption program. Sanctuary and prison programs will no longer be viable alternatives for placement of horses not otherwise adoptable. Animals that cannot readily be placed through the adoption program must remain on the public lands.

Some refinements will be necessary to accommodate special removal needs that were identified by the Steering Committee at their meeting in Lexington, KY in early August. Based on decisions made by the Steering Committee, the following policy will be in effect for all animals removed by BLM after September 30, 1992. This selective removal policy only applies to wild horses. It is assumed that all wild burros are adoptable.

Effective September 30, 1992, the following policy will govern the removal of horses from public lands:

- A. All wild horses, regardless of age, that in the judgement of the authorized officer, are deemed unadoptable because of defects, previous injuries, recent, but not life threatening injuries, or other factors that may prevent adoption, will be returned to the public lands.

- B. Animals removed from within herd areas (HA) will be limited to adoptable animals five years and younger. All other animals must remain on the HA. An exception may be made for those animals which may be adopted at the trap site or at a short term holding facility prior to their return to a HA.
- C. For locations outside of HAs where all animals must be removed, adoptable animals under 9 years and younger may be removed and placed in the adoption program. All unadoptable animals and those 10 years and older will be returned to a HA.
- D. When removal of wild horses from private land is requested by the landowner or animals must be removed in response to emergency conditions, adoptable animals 9 years of age and younger may be removed and placed in the adoption program. The remaining animals that must be removed will be returned to a HA.

If possible, animals to be released should be returned to the HA from which they were removed. Selection of HAs for release of older and unadoptable excess wild horses should be based on the following priority:

1. HAs which are at or below the established appropriate management level (AML).
2. HAs where a concurrent removal has been scheduled and extra animals can be removed to accommodate the older and unadoptable animals.
3. HAs where populations are above the AML but which is scheduled for gathering in the near future.
4. HAs where no AML has yet been established. It is recognized that these areas may have extra animals until an AML is established and a removal action implemented.

There may be limited situations when some animals older than allowed by the policy can be adopted. Such a situation might be:

- 1) When an adopter requests an animal prior to its release at the trap site; or
- 2) When an adopter requests an older animal being temporarily held at a holding facility.

In these situations, where an adopter is readily available, these older animals may be adopted. However, barring these types of situations, older animals will not be placed in the adoption pipeline, nor will they be held in holding facilities for extended periods of time. They must be returned to the range.

We understand this policy may be very difficult to implement in some situations. When this is the case, a written request to deviate from the policy should be forwarded to the Wild Horse and Burro National Program Office.

Questions or comments concerning this policy should be directed to Vern Schulze of the National Wild Horse and Burro Program Office at (702) 785-6583.

Signed
Henry Noldan
Acting Assistant Director, Land
and Renewable Resources

Authenticated
Dawn Slaughter
Directives, W0855