

Ely

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TO Ray + Paul only

Date: 26 October 1993
 To: Billy (Templeton)
 From: Bruce
 Subject: Meadow Valley Mountain Emergency Removal

Billy, I have looked into the Meadow Valley Mountain Emergency Removal in Caliente Resource Area a little deeper now. Here are my findings:

September 23, 1993: Full Force and Effect Decision to conduct the emergency removal issued.

September 29, 1993: Emergency removal begins.

October 5, 1993: Notice of Closure signed by the District Manager declaring the burn area w/in the allotment closed to all livestock grazing for a minimum of two years.

October 11, 1993: Emergency removal completed; the HMA population was reduced 85% (15 animals left in the HMA). In addition, 206 animals were removed from outside the HMA.

October 12, 1993: Emergency Gather Plan mailed out to affected interests certified. The Gather Plan states, in part,

"The recommended management action would allow natural re-vegetation to occur, facilitated by closure of the burned areas to grazing for a period of at least two growing seasons. Use of the burned areas by livestock and wild horses would be restricted (closed) during re-vegetation."

October 15, 1993: Full Force and Effect Decision (grazing) mailed to permittee. The Decision reduces the permittee 7 cows (9% reduction). 74 cows remain year round.

October 18, 1993: Full Force and Effect Decisions (grazing) mailed to affected interests. Transmittal letter states, in part,

"To assure livestock grazing does not occur in the burn area, this office is issuing Full Force and Effect Grazing Decisions ...".

Summary: 27,186 acres of public land were burned in a wildland fire within the Henrie Complex Allotment and Meadow Valley Mountain HMA. Prior to the burn there were 181 grazing animals on the allotment year round (100 horses and 81 cows). To facilitate rangeland rehabilitation, the Wild Horse population was reduced 85% w/in the HMA and 100% outside the HMA. The active preference was reduced only 9% (7 cows).

Gather Plan was mailed out the day after the removal was completed and 19 days after the Full Force and Effect Decision was issued.

Mr. John Payne, Esq.
Assistant Solicitor

Dear John:

The Nevada Commission for the Preservation of Wild Horses (Commission) has appealed the gather of horses from the Henrie Complex, and has asked the IBLA for an evidentiary hearing on the appeal. Following is a summary of the case we would put on for the Commission's appeals on the Henrie Complex Allotments.

I. ISSUE: Decision threatens the viability of the herd in violation of the requirement that management be at the minimal feasible level.

LAW: Wild Free Roaming Horses and Burros Act. "The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands." "All management activities shall be at the minimal feasible level."

EVIDENCE: No basis is provided for selection of 15 as the number to which the herd should be diminished. The EA relies on "professional judgment."

No less intrusive alternatives were considered.

On page 4 of BLM's transmittal document sending the record to the Office of Hearings and Appeals (Report), BLM acknowledges that a minimum of 50 horses are probably necessary to preserve the genetic viability of a herd.

BLM Decision reduces horses to 15.

DAMAGE: Irreplaceable genetic loss to Meadow Valley herd
Irreversible genetic damage to Nevada Wild Horse Range Herd.

REMEDY: Vacate decision, restore herd to _____, set AML.
Census.

SETTLE:

II. ISSUE: BLM failed to consult with the COMMISSION as required by law.

LAW: Section 3 of the Act requires "all management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located."

43 C.F.R. § 4700.06 (d) "In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands."

EVIDENCE: Testimony of Commission Director that no consultation occurred.

Date stamp on documents showing receipt after the removal of herd.

No emergency. Compare dates of fire, environmental analysis, and gather.

REMEDY: Vacate decision, restore herd to _____, set AML.

SETTLE:

III. ISSUE: NEPA Violation
Failure to consider alternatives.
Failure to consider overuse by cattle as cumulative impact.

LAW: National Environmental Policy Act

EVIDENCE: 1. Environmental Assessment dated _____
2. Report admitting limited nature of environmental review.
3. Report at 4, identifying 50 horses as minimum safe number.
4. Decision to reduce herd to 15
5. Use pattern mapping data show heavy and severe use prior to wild horse gather.

REMEDY: Allotment evaluation, multiple use decision, AML.

SETTLE:

IV. ISSUE: Indiscriminate dispersal of horses

LAW:

4. agreement to do proper ea's in future alternatives impacts
5. allotment evaluation, decision and aml.
6. herd area management as unit of management.

Complete disclosure + investigation
of 27 hrs

Why did state office do cover up?

1) memo from Tom

1) hrs given away w/
~~anti~~ BLM knowledge other HMA's

2) permit sale of ranch

3) Tom memo

4) no docs

5)

EVIDENCE:

REMEDY:

SETTLE:

V. ISSUE: Turnover to private owner

LAW: Section 5 of the WFRHBA states: "A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found."

43 C.F.R. §4710.5. Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

(b) All public lands inhabited by wild horses or burros shall be closed to grazing under permit or lease by domestic horses and burros.

EVIDENCE: Absence of brand inspection certificate for horses turned over to private individual.

Admission in _____ that horses did not have brands, and claim was based on assumption they were progeny, without any proof thereof.

3. Licenses for domestic horses adjacent to HMA and within lands inhabited by wild horses
4. Gather data for 289 wild horses, with only 101 within HMA.

REMEDY:

SETTLE:

1. do census and survey with commission on board.
2. reestablish herd if necessary.
3. agreement to consult

4. *req clarity on areas inhabited*