

m Little Mtn (Caliente) 10-5-89 orig to 930

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

FACSIMILE MESSAGE

DATE 10/5/89	MESSAGE NO.	NO. OF PAGES 13	AUTHORIZED BY <i>[Signature]</i>	FILE CODE 4700
TO (NAME, OFFICE) Terry Woosley - (NV-931)		FROM (NAME, OFFICE) Bob Brown, Ely District		
SUBJECT Items relating to API's protest of Diamond Horse Free Removal				

1. API Protest letter (2p)
2. Letter of intent to WtH groups (including API) (2p)
3. EA No. NV-040-8-15 (3p) (portions of entire document)
4. Removal Plan (portions of entire document) (3p.)
5. IBLA Decision (portions of entire document) (2p.)



# ANIMAL PROTECTION INSTITUTE OF AMERICA

2831 Fruitridge Road, P.O. Box 22505, Sacramento, CA 95822 (916) 731-5521 FAX (916) 731-4447

BUREAU OF LAND MGMT ELY, NEVADA RECEIVED	OCT 5 - 1989		INT OFFICE	ST. M.	PLANS	DEB	ITS	730	Comments:

October 3, 1989

Ken Walker  
District Manager  
BLM  
Star Route 5, Box 1  
Ely, NV 89301

RE: REMOVAL OF WILD HORSES FROM  
A HORSE FREE AREA.

Dear Mr. Walker:

This letter is in response to your notice that the Ely District intends to remove 100 wild horses from the public lands identified as a horse free area between the Buck and Bald HMA and the Diamond Mountains.

Your letter advises interested parties that the action is affirmed by the ruling handed down by the Interior Board of Land Appeals and carried out under the authority of Section 4710.4 of Regulations.

Our understanding is that the affirmation of the removal by the IBLA is based on the information which referred to the need to remove 65 horses from this area. It is not clear to us what you intend to do with the horses when you remove them from the area. We believe the IBLA affirms removal of 65 wild horses from the area in question<sup>(2)</sup> but that this is not synonymous with the loss of wild, free-roaming status that would be associated with total removal from the public lands.<sup>(3)</sup> It does not affirm removal of an additional 35 horses from this area.

- ④ The relocation of these horses to an area clearly identified as a designated habitat area, where the appropriate management level has not been established, is not addressed anywhere in the documents related to the removal of these horses from this horse free area. Both the change in numbers and the possibility that
- ⑤ the consequences of the Buck and Bald removal may alter conditions to the extent that, we believe, BLM is required to submit a new plan that refers to the actual number intended for removal and<sup>(6)</sup> we believe the question of where the horses are to go needs to be addressed in that plan.

continued . . .

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- MRS. FRANK V. BRACH
- CHARLOTTE L. B. PARKS
- CLAUDE,  
Courtes of Kinnoull

On the basis of the changed conditions<sup>(A)</sup> plus the fact the  
affirmation is simply removal from the area in question and  
<sup>(B)</sup> not elimination of the status granted these horses as wild  
and free-roaming or their protection as public land  
resource values we are writing to protest this removal.

Sincerely,

*Nancy Whitaker*  
Nancy Whitaker  
Program Assistant

NW:di



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

ELY DISTRICT OFFICE

Star Route 5, Box 1  
Ely, Nevada, 89301



IN REPLY REFER TO

4700  
(NV-043)

SEP 21 1989

*How  
did we  
see get  
to this question?*

Dear Reader:

This letter is to inform you of our intention to gather approximately 100 wild horses from a horse free area along the east slope of the Diamond Mountains in the Ely District. The Diamond Horse Free Area Wild Horse Removal Contract is scheduled to start November 1, 1989. We are conducting this gather as a total removal of horses from the area to comply with the provisions of 43 CFR 4710.4 which states, "Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas." The removal area is outside the boundaries of our established herd management areas.

This gather was originally proposed for completion last year, as part of the Ely/Elko District Wild Horse Gather. You were given the opportunity to review the Removal Plan for the Ely/Elko District Wild Horse Gather and the associated Environmental Assessment No. NV-040-8-15 at that time. The proposal for a complete removal of horses from the Diamond Horse Free Area and impacts to the environment from the proposed action remain the same as in these documents. Only the gather date and proposed number for removal, based on an updated August 1989 census (109 horses censused), have changed. The 1988 removal plan and environmental assessment remain valid documents and new ones will not be prepared.

The 1988 Ely/Elko District Wild Horse Gather did not occur; it was stopped by an appeal to the Interior Board of Land Appeals (IBLA). IBLA handed down a decision regarding this removal on June 7, 1989, which affirmed the removal action for the Diamond Horse Free Area. We are, therefore, proceeding with the action for a total removal of approximately 100 wild horses from the Diamond Horse Free Area, since the area is not designated for management as a herd area.

involvement in the Ely District. I would like to thank you for your involvement in the Ely District.

Sincerely,

*John M. Bybee*  
acting for Kenneth G. Walker  
District Manager

1 Enclosure

1. Maps of Removal Area (2 pp)

DR/FONSI

FOI

Ely/Elko District Wild Horse Gather  
EA No. W-040-8-15

Decision: I have reviewed the Environmental Assessment for the Ely/Elko District Wild Horse Gather, as it relates to the total removal of wild horses from the Diamond Horse Free Area, and I concur with the assessment. I approve of the proposed action to conduct a total removal, by using a helicopter, of approximately 100 wild horses from the proposed gather area with the following mitigation:

1. Wherever possible, gathering will avoid areas of high concentrations of mule deer and antelope to avoid stressing these animals.
2. Livestock concentrations will be avoided whenever possible to reduce the disturbances to them during the gather.
3. Horses will not be kept within the traps or corrals for more than 3 days to minimize stress to the animals, trampling effects and soil compaction, unless approved by the Authorized Officer. Number of horses to be held may vary depending on how many are caught in any one area.

A total removal in this area, which is not within a wild horse herd area, will be in compliance with current directives to manage for wild horses only within herd areas. The non-selected alternatives consist of water trapping the same number of wild horses, trapping by running them on horseback, and no action.

Rationale: The proposed action should be undertaken to properly manage for wild horses within the boundaries of established herd areas. Although this environmental assessment identifies a total removal of only 65 wild horses from the Diamond Horse Free Area, an August 1989 census of the area identified 109 wild horses which would need to be removed to complete the total removal. The proposed removal date has also changed from September 1988 to November 1989. Even with the change in removal numbers and time of removal, the impact analysis in this environmental assessment is adequate and the environmental impacts remain the same. The identified stipulations will ensure humane treatment of the captured horses. The proposal is in conformance with the Wild Free-Roaming horse and Burro Act of 1971 (P.L. 92-195), as amended. It also conforms with the Egan RMP and ROD. In addition, it complies with the provisions of 43 CFR 4710.4 which states, "Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas."

FONSI: There will not be a significant impact to the quality of the human environment resulting from the implementation of the proposed action. Therefore, an environmental impact statement is not required for this action.

Rationale: Analysis of impacts did not identify any unique or unknown risks. The standard operating procedures and mitigating measures will minimize the negative impacts. Direct and indirect environmental benefits are anticipated for wild horses, livestock, and wildlife with the adoption of the proposed action. The removal will result in improvement of the rangeland resources through decreased utilization of the forage and water resources in the gather area, thus restoring the range to a thriving natural ecological balance.

Kenneth G. Walker  
Kenneth G. Walker  
Ely District Manager

9-22-89  
Date

<u>Herd Area</u>	<u>Nos. to be Managed</u>	<u>Censused Population(Year)</u>	<u>Nos. to be Gathered</u>
Monte Cristo	72 to 120	145 (1986)	100 *
Horse Free Area	0	65 (1987)	65
Diamond Hills South	36	95 (1987)	59
Buck and Bald	700	1,081 (1987)	381
Cherry Springs	42 to 68	100 (1987)	50
Butte	60	202 (1987)	142
Maverick-Medicine	195 to 244	443 (1987)	248
Total	1,105 to 1,228	2,131	1,045

\* The number of horses to be gathered is greater than the difference between the latest census (1986) and the minimum management number for the Monte Cristo herd. Recent ground counts showed that 100 head could be removed and the AML of 72 to 120 wild horses would still remain. Under no circumstances will the herd be gathered below the AML of 72 wild horses. Any subsequent gather will require a new capture plan and EA. A post gather census will be conducted on each HMA to determine whether the AML still remains after the gather is complete. Horses will be released back into the HMA to maintain AML, if necessary.

The horses will be gathered using a helicopter and portable wing traps. The gather is expected to take place through issuance of a removal contract during FY88, and last approximately 6 weeks. The approximate start date for the removal contract is September 1, 1988.

It is estimated that 13 temporary traps with deflector wings encompassing less than 1 acre each would be constructed on public lands in the herd areas. Temporary trap and corral sites would be selected by the contractor and approved by BLM. Each facility would be constructed from portable pipe panels. These traps would be moved as needed during the gathering operation and completely removed from the area after the contract is completed. A contracted helicopter and experienced wranglers would be used to drive and direct horses to each trap site in an efficient and careful manner. Hazards such as cliffs, fences, and old mine shafts would be scouted in advance and avoided. Existing roads and trails would be used whenever possible.

Horses would be truck hauled to temporary holding facilities in Palomino Valley, Nevada, for processing, then shipped to distribution centers for adoption. Horses that might be held at the trap site in excess of 10 hours would have food and water provided.



REMOVAL PLAN FOR  
ELY/ELKO DISTRICT  
WILD HORSE GATHER

Prepared by Robert E. Brown  
Wild Horse and Burro Specialist

Bureau of Land Management  
Ely District  
Egan Resource Area  
Ely, Nevada

The remainder of the gather area is not covered by a herd management area plan (HMAP); however, both the Egan and Wells Resource Management Plans (RMP's), and Records of Decision (ROD's) have established appropriate management levels (AML's) for the herds in their respective Resource Areas. In addition, the USFS territories' management numbers are addressed in the 1986 ROD, final EIS, and Land and Resource Management Plan for the Humboldt National Forest. These documents have established upper and lower limits of horses to be managed in the respective herd areas/territories. The proposed gather is to reduce horse numbers to conform to the levels established in these land use plans. This action is, therefore, considered a part of long term management.

Number of Horses to be Gathered

The proposed number of horses to be gathered is shown by herd area as follows:

<u>Herd Area</u>	<u>Nos. to be Managed*</u>	<u>Censused Population (Year)</u>	<u>Nos. to be Gathered**</u>
Monte Cristo	72 to 120*	145 (1986)	100 **
Horse Free Area	0	65 (1987)	65
Diamond Hills South	36	95 (1987)	59
Buck and Bald	700	1,081 (1987)	381
Cherry Springs	42 to 68*	100 (1987)	50
Butte	60	202 (1987)	142
Maverick-Medicine	195 to 244*	443 (1987)	248
Total	1,105 to 1,228	2,131	1,045

\* These ranges, not to be confused with AML's, were established around the AML within management plans/land use plans as methods to achieve management objectives.

\*\* The number of horses to be gathered is greater than the difference between the latest census (1986) and the minimum management number for the Monte Cristo herd. Recent ground counts showed that 100 head could be removed and the AML of 72 to 120 wild horses would still remain. Under no circumstances will the herd be gathered below the AML of 72 wild horses. Any subsequent gather will require a new capture plan and EA. A post gather census will be conducted on each HMA to ensure that the AML remains after the gather is complete.

Time and Method of Capture

The gather is expected to take place through issuance of a removal contract during FY88, and last approximately 6 weeks. The approximate start date for the removal contract is September 1, 1988. Under no circumstances will gathering be allowed during the foaling season (March 1 to July 1).

The contractor shall provide all feed, water, labor, and equipment to care for captured horses at the holding facility. The contractor shall also provide transportation of captured horses from the temporary holding facility to the Nevada Distribution Center, Palomino Valley (Reno), Nevada. BLM will provide transportation of unclaimed and claimed branded horses to an approved facility for release to the claimant or for handling under Nevada State estray laws. All work shall be accomplished in a safe and humane manner and be in accordance with the provisions of 43 CFR Part 4700 and the following specifications, provisions, and attached work location maps. All labor, vehicles, helicopters, traps, troughs, feed, temporary holding facilities, and other supplies and equipment including, but not limited to the aforementioned, shall be furnished by the contractor. BLM will furnish contract supervision.

### Stipulations and Specifications

#### A. Motorized Equipment

1. All motorized equipment employed in the transportation of captured animals shall be in compliance with appropriate State and Federal laws and regulations applicable to the humane transportation of animals.
2. Vehicles shall be in good repair, of adequate rated capacity, and operated so as to insure that captured animals are transported without undue risk or injury.
3. Only stocktrailers shall be allowed for transporting animals from traps to temporary holding facilities. Only Bobtail trucks, stocktrailers, or single deck trucks shall be used to haul animals from temporary holding facilities to final destination. Sides or stockracks of transporting vehicles shall be a minimum height of 6 feet 6 inches from vehicle floor. Single deck trucks with trailers 40 feet or longer shall have two partition gates to separate animals. Trailers less than 40 feet shall have at least one partition gate to separate the animals. Each partition shall be a minimum of 6 feet high and shall have a minimum 5 foot wide swinging gate. The use of double deck trailers is unacceptable and shall not be allowed.
4. All vehicles used to transport animals to final destination shall be equipped with at least one door at the rear end of the vehicle which is capable of sliding either horizontally or vertically.



United States Department of the Interior

NEVADA STATE OFFICE

JUN 13 AM 3 05

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INTERIOR BOARD OF LAND APPEALS

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IN REPLY REFER TO:

ANIMAL PROTECTION INSTITUTE OF AMERICA

IBLA 88-591, 88-638, 88-648, 88-679

Decided June 7, 1989

Appeals from decisions of the State Director, Nevada, Bureau of Land Management, approving final plans for removal of excess wild horses and from draft plan of Sonoma-Gerlach Resource Area Office, Nevada, Bureau of Land Management, for removal of excess wild horses. N 2-88-1 et al.

Affirmed in part, reversed in part.

1. Wild Free-Roaming Horses and Burros Act

The Board will set aside a BLM decision to remove wild horses from a herd management area where removal is not properly predicated on an appropriate determination that removal is necessary to restore the range to a thriving natural ecological balance and prevent a deterioration of the range, in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1982).

APPEARANCES: Nancy Whitaker, Animal Protection Institute of America, Sacramento, California, for appellant; Dawn Y. Lappin, Wild Horse Organized Assistance, Inc., Reno, Nevada, for intervenor; Burton J. Stanley, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

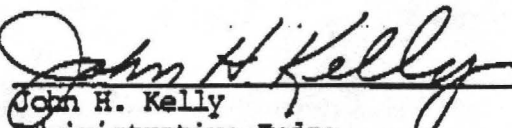
The Animal Protection Institute of America (API) has appealed from four decisions of the State Director, Nevada, Bureau of Land Management (BLM), approving final plans for the removal of approximately 2,087 excess wild horses from certain areas of the public range situated either within or outside designated herd management areas (HMA) and wild horse territories (WHT) in the Las Vegas, Battle Mountain, Carson City, Elko, and Ely BLM districts. These appeals are docketed as IBLA 88-638, IBLA 88-648,

API also contends that BLM is required to prepare an EIS prior to undertaking the removal of any wild horses. We note that, in the case of each of the removal actions involved herein, BLM determined that no EIS was required. For its part, API has provided no evidence that the proposed removal actions would have such a significant effect on the quality of the human environment that an EIS is required by section 102(2)(C) of NEPA, as amended, 42 U.S.C. § 4332(2)(C) (1982). Nor can we discern any basis for ordering the preparation of an EIS. Therefore, we conclude that BLM was not required to prepare an EIS prior to removing any wild horses from the subject HMA's. American Horse Protection Association v. Frizzell, supra at 1218-19.

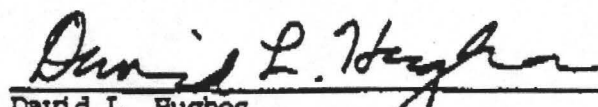
Finally, API contends that BLM should not be permitted to proceed with removal of wild horses from the HMA/WET's involved herein until it has prepared an HMAP in each case. We note that 43 CFR 4710.3-1 requires preparation of an HMAP. BLM and/or the Forest Service has prepared HMAP's only with respect to the Miller Flat and Nevada Wild Horse Range HMA's, Monte Cristo HMA/WET, and Cherry Springs WET. No HMAP's have been prepared in the case of the other HMA/WET's involved herein. We conclude that it is not necessary that BLM prepare an HMAP as a basis for ordering the removal of wild horses, so long as the record otherwise substantiates compliance with the statute. Indeed, 43 CFR 4710.3-1 does not require preparation of an HMAP as a prerequisite for a removal action. Thus, we are not persuaded that preparation of an HMAP must in all cases precede the removal of wild horses from an HMA/WET, and decline to order preparation of HMAP's.

Before concluding, it is necessary to point out that this case also involves BLM's decision to remove wild horses from a designated horse-free area in the Egan Resource Area and from outside designated HMA's in the Caliente Resource Area, including certain "problem animals" intruding on private property in the Clover Creek and Little Mountain HMA's. API takes exception to this proposed removal. However, we can find no fault with the proposed removal of wild horses from these areas. Therefore, these removal actions are affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed in part and reversed in part.

  
John H. Kelly  
Administrative Judge

I concur:

  
David L. Hughes  
Administrative Judge