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United States Department of the Interior

IN REPLY REFER TO:
4700-4110
(NV-046)

BUREAU OF LAND MANAGEMENT

Ely District Office
Star Route 5, Box 1
Ely, Nevada 89301

FEB 04 1986

Mrs. Dawn Lappin
Wild Horse Organized Assistance
P.O. Box 555
Reno, Nevada 89504

Dear ^{Dawn:} Mrs. ~~Lappin~~:

I would like to give you a brief update on events coming out of the Dawn Lappin-Dan Russell agreement signed in September 1985. Russell Ranches has adjusted their livestock use in Long Valley to conform to the terms of the agreement and BLM has scheduled an emergency gather of 389 wild horses in the Buck-Bald area to reduce the total herd to approximately 700 wild horses.

In reviewing the signed agreement, one major error has been noted. On page 1, paragraph 6, third sentence reads "Data gathered in the next three to five years from monitoring studies will be used to determine if adjustments in livestock or wild horse numbers were [emphasis added] necessary." The word "...were..." tends to imply that adjustments will be done prior to monitoring. This is definitely not true and is a misleading statement. Monitoring studies will be used to determine if adjustments are necessary. Any adjustment will follow and be based on monitoring studies.

If you disagree with this analysis, please let me know in the next month. If you agree with changing "were" to "are", please keep a copy of this letter with the agreement.

I want to again thank you for your cooperation and willingness to resolve conflicts in this critical area. If you have any questions, please contact me.

Sincerely yours,

Howard Hedrick

Howard F. Hedrick, Manager
Egan Resource Area

February 20, 1986

Mr. Wayne Lowman, Acting District Manager
Bureau of Land Management
Star Route 5, Box 1
Ely, Nevada 89301

Dear Mr. Lowman:

WHOA would like to take this opportunity to congratulate the Ely District and Staff for the revised Buck and Bald Environmental Assessment, and to give support for the wording change in the Russell/Lappin Agreement.

I would also like to remind the District the purposes of our incorporation. Our role is to protect wild horses, to oversee BLM activities as it relates to wild horses, and to work with the BLM to achieve a program that will benefit the wild horses. WHOA represents that portion of the public that is sensitive to the wild horse requirements, be they spacial, habitat, cover, or forage. Many years have gone into our understanding of the BLM's limitations, as well as our belief that BLM's wild horse "problems" are largely internal. WHOA feels that due to a resistance on the part of BLM Districts to recognize the importance of the wild horse resource, and to sensitize themselves to our concerns, we have had to assume an adversarial role, one which I might add, we are not comfortable. But we can play hardball also. So in light of the above, WHOA compliments BLM on those situations that were done correctly (revised EA) and adds "constructive criticism" in those areas done poorly. This not meant as a personal attack on anyone persons credibility or ability, but rather on the District as a whole; since responsibility appears to a collective effort.

The law, the regulations, policies, and manuals were developed to provide BLM with management directives in how BEST to achieve the mandates of PL 92-195. Those regulations, policies, and manuals give specifics in management to enable the

Page three

2. That contractor was prevented from loading adequate numbers of horses in transport. This led to downed horses.

Counter: That BLM have experienced personnel who eludes authority in dealing with contractors. My experience with contractors has shown that largely they run the game and get very obnoxious when overruled. Not everyone has the personality and experience to deal with that situation.

3. That wild horses should not be captured in February.

Counter: The policy remains that six weeks either side of peak foaling; therefore the District should ascertain a correct foaling period of your area, if indeed it is incorrect. It did not appear to be the case from this end during this roundup; but you may well have need for future use.

Also during the Buck and Bald capture we had the benefit of concerned citizens' reports. Some of these concerns we believe are internal and we are reluctant to become involved in this area, but you might well weigh their concerns for the future when you consider captures.

- 1). The availability of footing material locally, or having the contractor supply it.
- 2). The review of the use of side-load trailers and the difficulty in unloading these types.
- 3). The correct sorting for age, size and sex in transporting.
- 4). Contingency plans for horses too weak or sick to ship long distances.

WHOA believes that Mr. Hedrick did everything within his power to alleviate a bad situation, once it was relayed to him. We appreciate his attention for our concerns.

Hopefully, WHOA and the Ely District will learn from the Buck and Bald experience and use this knowledge to improve the relationship.

Most sincerely,

Dawn Y. Lappin (Mrs.)
Director

December 9, 1985

Mr. Merrill DeSpain, District Manager
Ely District Office
Bureau of Land Management
Star Route 5, Box 1
Ely, Nevada 89301

Re: Buck and Bald/Maverick-Medicine Environmental
Assessment and Capture Plan

Dear Mr. DeSpain:

Thank you very much for the opportunity to comment on the Capture Plan and Environmental Assessment No. NV-040-6-5 for the Buck-Bald/Maverick-Medicine wild horse gather.

WHOA objects strongly to the shortened comment period from 30 days to the 21 days requested. The above assessment and capture plan are a great disappointment to WHOA, for it appears the Ely District is still playing games, with language, policies, and guidance.

Page 1, (para 3)

Should read: Neither of the herd use areas are covered by a Herd Management Area Plan. However, an RMP has been developed for the Wells (Elko District) Resource Area. The RMP has established management levels for the Maverick/Medicine horse herd, and this proposed gathering is to reduce horse numbers to conform to the level established in the Wells RMP, and is considered a part of long term management. The Egan RMP/EIS has been protested by numerous people and until those protests are resolved, no management actions can occur to implement the proposed herd numbers in the Egan RMP/EIS. The current EA and capture plan must eliminate reference to the Egan RMP/EIS establishment of horse management levels for the Buck and Bald herds, until the protest of 1/7/85 has been resolved. It is interesting to note in my files, the same questions regarding the Buck and Bald previous to 1983. To date the BLM has yet to answer any of those questions.

Buck and Bald, page two

Page 1, para 4)

This paragraph should include the total agreement, i.e., Russell/Lappin/BLM.

Page 2, Numbers of horses to be gathered

A large portion of WHOA's difficulties with the Ely District has been the "loose" language applied to horses in general. I refer you back to Buck and Bald Horse Gathering Document (NV-040-0-10), page two, paragraph 1, wherein it states "...The Buck and Bald Mountain-Long Valley areas of White Pine and Elko counties in Nevada have a large population of wild horses and trespass branded horses which is recognized by resource specialists to be in excess of present grazing capacities. First, you have no data to substantiate the above claim, second, how can the BLM know whether you are over capacity, when BLM states the capacity is an unknown and that is the purpose for current numbers and monitoring. The issue of trespass horses is an administrative problem and has no relationship whatsoever with the wild horse numbers.

The original agreement between BLM and WHOA previous to 1983 was to remove all trespass horses first, then develop data to substantiate overgrazing by remaining wild horses. BLM took advantage of language, desiring of "quick-fix" solutions to all overgrazing, to pursue the removal of wild horses without data to substantiate the need. One little sentence in the Buck and Bald EA and Capture Plan of 1983, attempted to tie a wild horse gathering into our agreement to have trespass horses removed.

The current capture plan does not clarify what animals will be removed, and since the Russell/Lappin agreement states that 700 horses will remain on public rangelands, I would like to see that clarification in writing. As an example of my concern, I will not agree to the removal of horses down to 700 and find out that BLM located 50 branded horses, from which you will then go back in and remove another 50, leaving less than the 700.

Page 2, (para 3)

Please explain why BLM attempted a census, a waste of taxpayer dollars, to get a count on wild horses in winter habitat in September? .11a2 and .11a2b of Nevada Manual Supplement 4730 requires the establishment of a standard time of year which the District will conduct census. Please notify WHOA what season you have selected for the Buck/Bald herd and if the September census is not within that time period, an explanation as to why a September census was conducted.

Buck and Bald, page three

Page 2, Times and Method of Capture (para 4)

Nowhere in Russell/Lappin agreement did WHOA agree to an 18 month capture period. The agreement states the capture was an "emergency action" agreed to by both parties. You can hardly call it an "emergency action" if it is conducted over 18 months. I spoke with Howard Hedrick on Monday, December 2, 1985, and was told "all contracts going out of Nevada had to have an 18 month time period on them." On December 6, 1985, I contacted Bonnie Johnson in contracting in the Nevada State Office and asked about the 18 month time period. She did not know what I was talking about and as far as she was concerned the 18 month had no significance at all. The very inclusion of the 18 month time period in the assessment or capture plan could result in BLM voiding the agreement under the emergency action. There is no reasonable explanation why BLM could not remove the proposed animals in three weeks.

Page 2, (para 5)

There must be some maximum mileage wild horses may be run under certain conditions, i.e., deep snow, temperature, etc. The animals will be under extreme stress from winter and heavy with foals and if additional trap sites are required because of that stress then state that additional traps may be required.

Page 3, (para 1)

Line 6.. "the time allotted for this roundup is limited." This statement conflicts with Page 2, paragraph 4 that gives an 18 month time factor.

Page 3, (para 2)

If you have to use more trap sites to be humane do so.

The trap site priorities are a little out of line. They should read 1) to cause as little injury to horses, 2) as little damage to natural resources as possible.

Page 3, (para 4)

As soon as specifics are known, please advise WHOA.

Page 3, (para 4)

The COAR/PI and pilot must remove excess animals within the range identified in the agreement, with the largest portion of the animals removed from the sensitive area (Long Valley) and within all boundaries as noted for the public.

Buck and Bald, page four

Page 3, (para 5)

The minimum of 700 horses, regardless of their status must remain on the public lands, unless BLM intends to replace branded or trespass animals with horses already captured. WHOA requests a list of branded, or trespass animals, animals turned over to the State of Nevada, and fees assessed.

Page 4, (para 1)

Same comments as Page 3, paragraph 5.

Page 4, (para 2)

If they are unbranded, how can the Brand Inspector determine if they are privately owned, what is the criteria?

Page 4, (para 3)

Claimed unbranded would result in a percentage of the capture costs plus trespass charges, unless it is an occasional domestic runaway. WHOA requests a listing of all claimed, unbranded, and branded horses and the fees assessed.

Page 4, Para 5)

No unbranded, unclaimed wild horse will be sold at auction, unless they show distinct domestication, of which WHOA would request a list of the criteria, number of animals.

Page 4, (para 6)

What evidence or criteria will you use to determine whether previously owned? WHOA requests records be made available on the number, description, and disposition of these animals. If branded colts are following unbranded mares, the owner of the brand must pay a percentage of the capture costs and trespass.

Page 4, (para 7)

WHOA requests a copy of Brand Inspection slips for all animals going to public auction.

Page 4, (para 8)

What is the BLM method for humane destruction. The EA and Capture plan should state.

Page 5

Please state how contractor will be paid, i.e., for each adult, or each horse? The contractor or subcontractor (for transporting should not be paid for delivery of dead animals.

Page 9, (para 6)

Please explain why horses will not be provided water upon separation. Remember, this is an "emergency action" based somewhat on drought, so some of the animals may have been without water for long periods.

Buck and Bald, page five

Environmental Assessment

This paragraph compromises WHOA's protest of the Egan EIS/RMP, at the very least it should only state "The Egan EIS/RMP has been protested and until those protests are resolved, no management action can occur to implement the EIS/RMP recommendations.

Page 2, (para 5)

Should contain complete agreement.

Page 3, (para 4)

As WHOA read the dates of inventories, i.e., time of year, type of aircraft, etc., it is obvious that Ely has not learned anything through your own BLM policies, and program guidance, let alone any in-put that WHOA has sent. Letters dating back to 1983 challenge the Districts use of data. There isn't even any consistency in the areas flown. What is the basis for the 5% increase, show me the calculations as described in the NSO Manual Supplement 4730. Other than counting animals, it appears that Ely has no intention of collecting meaningful data as your program guidance dictates. Why BLM would census an area, it knew was dried up of water, and attempt to base a roundup on that information escapes us.

Page 4, (para 4)

The "wide-spread controversy can be laid at the door of the Ely District, and some of the verbage in these documents explains why the controversy exists today. WHOA believes it is prudent and honest to collect data for future use, to determine whether reductions can be substantiated. Primarily BLM has based all horse reductions on census counts and politics; it is WHOA's challenge to force the BLM to collect that data necessary to make those decisions in the future. If BLM continues to promise the collection of data, then attempts to reduce horses without it, WHOA and BLM will be spending a great deal of time in court.

Page 4, (para 5)

What data has BLM collected since I was in Ely a little over six weeks ago. Even at the time of the Russell/Lappin agreement, BLM could not tell me where the animals were spending the majority of their time, where they went to or came from! How can you possibly state they are expanding their range, when BLM doesn't know where their range actually is. How do you know this wasn't their historical range to begin with? How do you know other factors are not involved in pressing horses into utilizing other areas.

Buck and Bald, page six

The sentence "The proposed action is considered long term management consistent with the proposed Egan RMP/EIS, must be eliminated. The Russell/Lappin agreement is an "emergency action" and has no connection whatsoever with any long term management, the Egan RMP/or EIS.

Page 5, (para 1)

Refer back to Page 2 Numbers to be Gathered comments.
Strike "..are consistent with the Proposed Egan RMP/EIS."

Page 6, (para 1)

Strike "...However, a number of horses may be removed over an 18 month period and require more than one roundup to achieve management levels of the two herds." The Lappin/Russeel agreement does not establish management levels!! The 700-900 is an interim "emergency action" agreement. Future numbers will be based on monitoring of the resource from this point on. Which leads me to another point. The Russell/Lappin agreement was not based on monitoring establishing whether this proposed action was correct, but, rather, that future actions would be based on monitoring. For the Russell Ranches and WHOA it does not serve any purpose to determine whether BLM was justified in an action already taken, since it is already done; but rather to be able to determine through monitoring whether you will be able to do it to us again without sufficient data. A portion of WHOA's protest of the Egan was based on the proposed establishment of the management level, now you are trying to LEGITIMIZE the protested RMP/EIS through an EA for an emergency action.

Page 6, para 2)

Remove "...Gathering may be resumed after the foaling period." If BLM attempts to use this emergency agreement to capture animals not covered in the original agreement, it will be in violation of the agreement and WHOA will seek administrative or civil relief. The numbers will be left to reach 900, those numbers will remain until monitoring states otherwise.

Page 8

All alternatives would violate the Russell/Lappin agreement.

Page 12, (para 4)

What data does BLM have to assume the change in migration is due to numbers.

Page 12, (para 5)

This paragraph is unnecessary, the law protects the horses regardless of where they can from and further feeds the controversy and ill will towards the District.

Buck and Bald, page seven

Page 13, (para 1-4)

The District has no data that establishes that wild horses are the cause for range deterioration. What studies in Buck and Bald, or anywhere else for that matter, that indicate that cattle eat bitterbrush because wild horses eat grasses. If you don't have the data to back up your assumptions, they are better left unsaid. Inclusions of statements as these in this document are arbitrary and capricious.

Doesn't BLM have a policy about not allowing domestic horse permits in a herd use area?

Page 15, (para 3)

Please refer back to my comments of October 17, 1984, Egan Protest, Page two (Rangleland Management, Para 2.).

Deletion of comments on pages 15 through 33, should not be a presumption of concurrence on WHOA's part, but rather due to a shortened comment period and a weariness from repetition to all other comments provided over the years that have largely been ignored.

In conclusion:

- o The Capture Plan and Environmental Assessment compromises WHOA's protest of the Egan EIS/RMP.
 - o The BLM insists on using assumptions that are not based on fact, and their inclusion in this document are a breach of trust and professionalism.
- 1) That horse numbers are the reason for range deterioration.
 - 2) That wild horses are expanding their range.
 - 3) That horses eating grass force cattle to eat bitterbrush.
 - 4) That previous census data, in itself, is adequate to show over use by wild horses.
 - 5) That the action plan is consistent with long-term management of the Egan RMP/EIS. There is no land use plan.
 - 6) That somehow the controversy has been because of horse protection representatives, but that livestock permittees have been cooperative because they are below preference.

Buck and Bald, page eight

- 7) That BLM's census data is sufficient to use a 5% rate of increase as an estimate.
- 8) That the Ely BLM District has complied with BLM policies and program guidance.

This capture plan and environmental assessment are an almost duplicate of the failed previous Buck and Bald EA and Capture Plan, still Ely cannot seem to grasp the reasons for the failure.

Finally, WHOA considers each of these documents an attempt to compromise our legal, administrative relief from the protested Egan RMP/EIS, a breach of trust of the Russell/Lappin agreement. Our protest stands and we will not allow the District to legitimize the Egan RMP/EIS through an emergency agreement. If the language in the EA and Capture Plan are not changed to reflect the Russell/Lappin agreement, WHOA will withdraw support of the agreement and 1) seek an agreement without the Ely District, or 2) pursue litigation through administrative relief and civil courts.

I have contacted Mrs. Russell, and the Russell Ranches will receive a copy of these comments. I have explained how the language in the Russell/Lappin agreement (in addition to the EA and the Capture Plan) (Paragraph 6, third sentence..."Data gathered in the next three to five years from monitoring studies will be used to determine if adjustments in livestock or wild horse numbers were necessary;" reads differently than what we agreed. WHOA's portion of that agreement understood that monitoring would determine if adjustments in the future are necessary. It is obvious that neither Mr. Russell nor myself could recapture losses if the data showed they were unnecessary, therefore it was my impression that both of us were worried that BLM would continue to reduce animals without data.

Sincerely,

Dawn Y. Lappin (Mrs.)
Director

cc: E. F. Spang, State Director
D. Rathbun, Deputy Associate Director
D. Russell/Russell Ranches
D. Hornbeck, Attorney at Law

9/11/85

The parties in this agreement recognize that the white sage (Ceratoides lanata) in Long Valley is critical winter range for both livestock and wild horses in the area. They also recognize that the recent drought conditions and grazing during the growing season may be affecting this important plant species.

All parties agree that some actions taken immediately will benefit the white sage flats in Long Valley. These actions will be only temporary in nature and will in no way substitute for a coordinated management plan which is scheduled to be written at a later date. It is further noted that this agreement or any actions taken based on this agreement will in no way jeopardize or compromise any complaint or protest either party has filed on the Final Egan Resource Management Plan.

No more than 17,054 AUMs will be licensed in the Warm Springs Allotment by Russell Ranches. This is the three-year average licensed use for the 1982-84 grazing seasons. The current preference is 23,995 AUMs. Season of use for cattle on Long Valley remains 10/15 to 04/15.

Both Dawn Lappin, Director of Wild Horse Organized Assistance and Dan Russell of Russell Ranches will support BLM gathering wild horses during the winter of 1985-86 in the Buck and Bald herd management area, leaving approximately 700 animals. This and subsequent gatherings will focus on wild horses in Long Valley. Every two years following the first gathering, BLM will inventory this area and if wild horses number more than 900, BLM will conduct a gathering that same winter, bringing the herd down to 700 wild horses.

Water developments as necessary, in Long Valley will be fenced by April 15, 1986, to aid in the management of critical winter range. The gates to these waters will be closed April 15 and reopened October 15 each year. If the Egan Area Manager, BLM, determines that severe water shortages occur, all parties will be notified in writing and use of these waters could continue throughout the summer. BLM will be responsible for all environmental assessments and clearances and Russell Ranches will be responsible for building and maintaining the fences and ensuring that gates are opened and closed in a timely manner.

This is only a temporary agreement and in no way implies a concurrence regarding present range condition or stocking levels. BLM will continue existing rangeland monitoring studies and establish new studies as needed. Data gathered in the next three to five years from monitoring studies will be used to determine if adjustments in livestock or wild horse numbers were necessary.

If any party does not fulfill their portion of this agreement, the remaining parties may choose to declare this agreement null and void and may do so by informing everyone involved of their intentions.

Dan Russell

Dan Russell
Russell Ranches

Sept 11, 1985

Date

Dawn Lappin

Dawn Lappin, Director
Wild Horse Organized Assistance

Sept. 10, 1985

Date

Howard Hedrick

Howard Hedrick
Egan Area Manager, BLM

Sept. 11, 1985

Date