

# WFOA

WILD HORSE ORGANIZED ASSISTANCE  
P.O. BOX 555  
RENO, NEVADA 89504

NV-050-94-04



RECEIVED  
07:30 A.M.

... a note from

NOV 02 1993

Dawn Y. Lappin

CALIENTE RESOURCE AREA  
BUREAU OF  
LAND MANAGEMENT

October 26, 1993

Curtis G. Tucker, Area Manager  
BLM-Caliente Resource Area  
P.O. Box 237  
Caliente, Nevada 89008

- RE: 1) FORMAL APPEAL OF THE MEADOW VALLEY MOUNTAIN HERD MANAGEMENT EMERGENCY REMOVAL PLAN, RECORD OF DECISION, & EA  
2) FORMAL APPEAL OF THE GRAZING DECISION ON THE HENRIE COMPLEX ALLOTMENT

Dear Mr. Tucker,

We are in receipt of your Meadow Valley Mountain Herd Management Wild Horse Emergency Removal Plan, Record of Decision and Environmental Assessment which was provided "for our information." Subsequent to this horse plan we received copies of your Full Force and Effect Grazing Decisions affecting the wild horse herd management area in question. We formally appeal the horse documents and the livestock grazing decision for the Henrie Complex for the following reasons:

**The documents and decisions are arbitrary and biased against wild horses.**

In the decision on wild horses you are quoting that wild horses must be removed because 21% of their herd area was burned out and in addition at least 50% of the remaining acreage in the HMA is in severe condition. For this reason you have reduced the wild horses from 269 to 15. However, in your livestock decisions you are only reducing livestock with the criteria that 21% of the allotment is burned, not even considering the 50% severe condition on the remainder of the allotment. You are claiming to have the data to support the horse decision but that does not apply to livestock on the same area. The severity of the conditions of the allotment was serious enough to protect from wild horses but not from livestock that share the same boundaries.

**Violations of BLM Policy, Regulations, NEPA, and FLPMA**

This decision on wild horses was issued approximately 2 weeks after the gather was done! The document is dated October 12, 1993, and you gathered the horses two weeks prior to that on September 29, 1993! You may issue a gather plan full force and effect for

Attach 2-2

Curtis Tucker, Area Manager  
October 26, 1993  
Page 2

emergency reasons prior to gathering, even with only one days notice, you knew for 2 months that you would be gathering these horses because of the burn. However, you cannot justify the removal of horses for the rest of the HMA without supporting data as well as for horses outside of a HMA without the requirement of issuing a draft and final gather plan! No EA's were prepared analyzing the impacts of this gather, impacts to the herds and the viability of the herds were not analyzed, policy and procedures were not followed.

Grazing decision issued above carrying capacity of the range.

You state supporting data in your horse decision that in addition to the 21% burn you have the remaining allotment in 50% severe condition. That criteria has not been applied to your livestock grazing decision for the protection of the habitat.

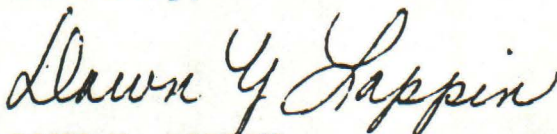
The terms and conditions that you have established with these adjusted grazing decisions are violations of:

1) CFR 4100.0-8 "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b);"

2) 4110.3-2(b) "When monitoring shows use is causing an unacceptable level or pattern or utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives;"

Within the next 30 days we will be supplying these and possibly other arguments to the Solicitor and IBLA. We request that you file this appeal with IBLA as well. If you have any questions, please feel free to call.

Sincerely,



DAWN Y. LAPPIN  
Director

BOB MILLER  
Governor

STATE OF NEVADA

NV-050-94-05

CATHERINE BARCOMB  
Executive Director



COMMISSION FOR THE  
PRESERVATION OF WILD HORSES

50 Freeport Boulevard, No. 2  
Sparks, Nevada 89431  
(702) 359-8768

COMMISSIONERS

Paula S. Askew, Chairperson  
Carson City, Nevada  
Steven Fulstone, Vice Chairman  
Smith Valley, Nevada  
Michael Jackson  
Las Vegas, Nevada  
Dan Keiserman  
Las Vegas, Nevada  
Dawn Lappin  
Reno, Nevada

November 23, 1993

NOV 23 1993

Curtis G. Tucker, Area Manager  
BLM-Caliente Resource Area  
P.O. Box 237  
Caliente, Nevada 89008

CALIENTE RESOURCE AREA  
BLM  
CALIENTE, NEVADA

- RE: 1) FORMAL APPEAL OF THE MEADOW VALLEY MOUNTAIN HERD MANAGEMENT  
EMERGENCY REMOVAL PLAN, RECORD OF DECISION, & EA  
2) FORMAL APPEAL OF THE GRAZING DECISION ON THE HENRIE COMPLEX  
ALLOTMENT

Dear Mr. Tucker,

We are in receipt of your Meadow Valley Mountain Herd Management Wild Horse Emergency Removal Plan, Record of Decision and Environmental Assessment which was provided "for our information." Subsequent to this horse plan we received copies of your Full Force and Effect Grazing Decisions affecting the wild horse herd management area in question. We formally appeal the horse documents and the livestock grazing decision for the Henrie Complex Allotment and Meadow Valley herd area for the following reasons:

**The documents and decisions are arbitrary and biased against wild horses.**

In the decision on wild horses you are quoting that wild horses must be removed because 21% of their herd area was burned out and in addition at least 50% of the remaining acreage in the HMA is in severe condition. For this reason you have reduced the wild horses from 269 to 15. However, in your livestock decisions you are only reducing livestock with the criteria that 21% of the allotment is burned, not even considering the 50% severe condition on the remainder of the allotment. You are claiming to have the data to support the horse decision but that does not apply to livestock on the same area. The severity of the conditions of the allotment was serious enough to protect from wild horses but not from livestock that share the same boundaries.

**Violations of BLM Policy, Regulations, NEPA, and FLPMA**

This decision on wild horses was issued approximately 2 weeks after the gather was done! The document is dated October 12, 1993, and you gathered the horses two weeks prior to that on September 29, 1993! You may issue a gather plan full force and effect for

Attach 3-1

Curtis Tucker, Area Manager  
November 23, 1993  
Page 2

emergency reasons prior to gathering, even with only one days notice, you knew for 2 months that you would be gathering these horses because of the burn. However, you cannot justify the removal of horses for the rest of the HMA without supporting data as well as for horses outside of a HMA without the requirement of issuing a draft and final gather plan! No EA's were prepared analyzing the impacts of this gather, impacts to the herds and the viability of the herds were not analyzed, policy and procedures were not followed. Your documents were NEPA insufficient.

You violated CFR 4110-3-3(c) in that actions must be taken after consultation with affected permittees or lessees, and other affected interests, either to close allotments to grazing by all or a particular kind of livestock or to modify authorized grazing use. Your decisions show that you met with the permittees on September 7th and 8th, 1993. Your letter to the affected interests does not request a meeting or any input and was issued after the fact eliminating any input that we are allowed by law. As a result the livestock operators take little or no reduction in use while wild horses take a 95% reduction.

#### **Wild Horse Distribution and Habitat**

Reduction of the Meadow Valley wild horse herd did not consider the biological needs of the herd. The EA didn't analyze the jeopardy you have arbitrarily placed on the herd, viability, gene pool, seasonal use, distribution, social needs, and longevity. By reducing the herd from 269 to approximately 15 older horses you have sentenced the Meadow Valley herd into a very probable extinction.

You have made these decisions without considering the seasonal use or distribution of the herd. For example, if winter range is the limiting factor of grazing animals with the herd area, then distribution and population data should have been analyzed to determine the "initial herd". You have arbitrarily set a herd size at 15 without considering percentages of summer or winter ranges necessary for any herd size.

#### **Restructuring of the Wild Horse Herd**

The 1993 wild horse gather and future gathers are governed by the Strategic Plan for Management of Wild Horses and Burros on Public Lands. Plan Assumption E. states: "Only adoptable animals will be removed from public lands." This assumption is being implemented in Nevada in gathers to release all horses in excess of their carrying capacities and restructuring the herds to older age classes. These two issues were not assessed in the environmental assessment for this gather.

#### **No consideration for the Social or Economic Impacts**

The Strategic Plan for the Management of Wild Horses and Burros was finalized without public input stating that input could

Curtis Tucker, Area Manager  
 November 23, 1993  
 Page 3

be provided in documents or actions implementing the plan. In this removal plan and associated EA there was not consideration for the social structure, biological diversity, age and sex classification, or the long term impacts to the herds by implementation of this action. In addition no alternative social or economic avenues were explored.

**Carrying Capacities were not established, the Decision was Arbitrary**

The removal plan did not establish a carrying capacity to justify the initial herd or establish livestock use. Carrying capacity computations must consider all land use plan objectives. Riparian habitat was not considered in the environmental assessment and must be considered.

As an example, the following computation which is equitable to both users should have been applied to determine carrying capacity and appropriate management level:

$$\frac{\text{wild horse and livestock aums}}{\text{percent utilization}} = \frac{\text{carrying capacity}}{55\% \text{ desired utilization}}$$

Allocation of the carrying capacity or desired stocking rate could be proportional to the composition of existing animals. Further adjustments in wild horses could be proportional to percentage of loss in habitat necessary to support the remaining herd. Livestock adjustments would be made to meet a natural ecological balance.

Livestock stocking rates were not established under the same criteria as the removal decision for wild horses. It would appear that the above carrying capacity computation (TR 4400-7 BLM Manual), could be applied based upon existing monitoring data to set a livestock carrying capacity and appropriate management level for wild horses in a multiple use decision.

**The gather plan executes a process to eliminate the Meadow Valley wild horse herd.**

The removal plan adjusts the existing population from 269 to an arbitrary number of 15 for an interim period. Implementation of the Strategic Plan for the Management of Wild Horses and Burros dictated that only older age class animals in excess of ten years of age. These combined actions reduced the Meadow Valley herd below its biological threshold and has jeopardized the herd in the short and long term.

**Grazing decision issued above carrying capacity of the range.**

You state supporting data in your horse decision that in addition to the 21% burn you have the remaining wild horse habitat in 50% severe condition. That criteria has not been applied to your livestock grazing decision for the protection of the habitat.

Curtis Tucker, Area Manager  
November 23, 1993  
Page 4

The terms and conditions that you have established with these adjusted grazing decisions are violations of:

1) CFR 4100.0-8 "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b);"

2) 4110.3-2(b) "When monitoring shows use is causing an unacceptable level or pattern or utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives;"

We are filing this appeal with the Solicitor and IBLA. We request that you file this appeal with IBLA as well. If you have any questions, please feel free to call.

Sincerely,



CATHERINE BARCOMB  
Executive Director

BOB MILLER  
Governor

STATE OF NEVADA

CATHERINE BARCOMB  
Executive Director

RECEIVED  
07:30 A.M.



COMMISSIONERS

- Paula S. Askew, Chairperson  
Carson City, Nevada
- Steven Fulstone, Vice Chairman  
Smith Valley, Nevada
- Michael Jackson  
Las Vegas, Nevada
- Dan Keiserman  
Las Vegas, Nevada
- Dawn Lappin  
Reno, Nevada

NOV 02 1993

COMMISSION FOR THE  
PRESERVATION OF WILD HORSES

CALIENTE RESOURCE AREA  
BUREAU OF  
LAND MANAGEMENT

50 Freeport Boulevard, No. 2  
Sparks, Nevada 89431  
(702) 359-8768

October 26, 1993

Curtis G. Tucker, Area Manager  
BLM-Caliente Resource Area  
P.O. Box 237  
Caliente, Nevada 89008

- RE: 1) FORMAL APPEAL OF THE MEADOW VALLEY MOUNTAIN HERD MANAGEMENT EMERGENCY REMOVAL PLAN, RECORD OF DECISION, & EA  
2) FORMAL APPEAL OF THE GRAZING DECISION ON THE HENRIE COMPLEX ALLOTMENT

Dear Mr. Tucker,

We are in receipt of your Meadow Valley Mountain Herd Management Wild Horse Emergency Removal Plan, Record of Decision and Environmental Assessment which was provided "for our information." Subsequent to this horse plan we received copies of your Full Force and Effect Grazing Decisions affecting the wild horse herd management area in question. We formally appeal the horse documents and the livestock grazing decision for the Henrie Complex for the following reasons:

**The documents and decisions are arbitrary and biased against wild horses.**

In the decision on wild horses you are quoting that wild horses must be removed because 21% of their herd area was burned out and in addition at least 50% of the remaining acreage in the HMA is in severe condition. For this reason you have reduced the wild horses from 269 to 15. However, in your livestock decisions you are only reducing livestock with the criteria that 21% of the allotment is burned, not even considering the 50% severe condition on the remainder of the allotment. You are claiming to have the data to support the horse decision but that does not apply to livestock on the same area. The severity of the conditions of the allotment was serious enough to protect from wild horses but not from livestock that share the same boundaries.

**Violations of BLM Policy, Regulations, NEPA, and FLPMA**

This decision on wild horses was issued approximately 2 weeks after the gather was done! The document is dated October 12, 1993, and you gathered the horses two weeks prior to that on September 29, 1993! You may issue a gather plan full force and effect for

A.H. 3-2

Curtis Tucker, Area Manager  
October 26, 1993  
Page 2

emergency reasons prior to gathering, even with only one days notice, you knew for 2 months that you would be gathering these horses because of the burn. However, you cannot justify the removal of horses for the rest of the HMA without supporting data as well as for horses outside of a HMA without the requirement of issuing a draft and final gather plan! No EA's were prepared analyzing the impacts of this gather, impacts to the herds and the viability of the herds were not analyzed, policy and procedures were not followed.

**Grazing decision issued above carrying capacity of the range.**

You state supporting data in your horse decision that in addition to the 21% burn you have the remaining allotment in 50% severe condition. That criteria has not been applied to your livestock grazing decision for the protection of the habitat.

The terms and conditions that you have established with these adjusted grazing decisions are violations of:

1) CFR 4100.0-8 "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b);"

2) 4110.3-2(b) "When monitoring shows use is causing an unacceptable level or pattern or utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives;"

Within the next 30 days we will be supplying these and possibly other arguments to the Solicitor and IBLA. We request that you file this appeal with IBLA as well. If you have any questions, please feel free to call.

Sincerely,



CATHERINE BARCOMB  
Executive Director





RECEIVED  
0730 A.M.

NOV 18 1993

CALIENTE RESOURCE AREA  
BUREAU OF  
LAND MANAGEMENT

**OFFICERS**

William Wiseman  
Chairman of the Board

Coleman Burke, Esq.  
Chairman Emeritus

J. J. Ramsey, Esq.  
Vice Chairman

Army Freeman Lee, Litt.D.  
Secretary

John A. Hoyt  
Chief Executive

Paul G. Irwin  
President and Treasurer

Patricia Forkan  
Executive Vice President

Roger A. Kindler, Esq.  
Vice President/General Counsel

**STAFF VICE PRESIDENTS**

Richard M. Clugston, Ph.D.  
Higher Education

Patty A. Finch  
Youth Education

Michael W. Fox, D.Sc., Ph.D.,  
Vet. Med., MRCVS  
Farm Animals & Bioethics

John W. Grandy, Ph.D.  
Wildlife & Habitat Protection

Randall Lockwood, Ph.D.  
Wild Services

Eric S. Paulhus  
Companion Animals

Deborah J. Salem  
Occupations

John J. Stephens, Ph.D.  
Laboratory Animals

Mark K. Wills  
Investigations

Maureen Stuart Madden, Esq.  
Attorney at Law

**DIRECTORS**

(Sonny) Bloch

Richard W. Cashen

William Schoemaker Coupe, Esq.

John Freeman

Wald H. Gardiner

John R. Garey

Jane Goodall, Ph.D.

Bessie R. Inglis

Donna Leaning, M.D.

Army Freeman Lee, Litt.D.

Gene W. Lorenz

Mark W. Lydman

Christina S. Lynch

Thomas L. Meinhardt

J. J. Ramsey, Esq.

James D. Ross

Barbara G. Seyler

John E. Taft

Harry C. Thomason

Carroll Thrift

Robert F. Welborn, Esq.

David O. Wiebers, M.D.

Barbara E. Wilhelm

William Wiseman

November 15, 1993

Curtis G. Tucker, Area Manager  
BLM-Caliente Resource Area  
P.O. Box 237  
Caliente, Nevada 89008

RE: 1) FORMAL APPEAL OF THE MEADOW VALLEY  
MOUNTAIN HERD MANAGEMENT WILD HORSE  
EMERGENCY REMOVAL PLAN, RECORD OF DECISION, &  
ENVIRONMENTAL ASSESSMENT  
2) FORMAL APPEAL OF THE GRAZING DECISION ON THE  
HENRIE COMPLEX ALLOTMENT

Dear Mr. Tucker:

We are in receipt of your Meadow Valley Mountain Herd Management Wild Horse Emergency Removal Plan, Record of Decision and Environmental Assessment which was provided "for our information." Subsequent to receiving this horse plan we received copies of your Full Force and Effect Grazing Decisions affecting the wild horse herd management area in question.

The Humane Society of the United States (HSUS) has a longstanding interest in the welfare of wild horses and their management on public lands, and a long history of providing comments on Bureau of Land Management management documents.

For reasons described below, we hereby formally appeal the horse documents and the livestock grazing decision for the Henrie complex for the following reasons:

**The documents and decisions are arbitrary and biased against wild horses.**

In the decision on wild horses the Bureau argues that wild horses must be removed because 21% of their herd area was burned, and in addition at least 50% of the remaining acreage in the HMA is in the "severe" use

Attach 4

Mr. Curtis Tucker  
 November 15, 1993  
 Page Two

category. For this reason the Bureau has reduced the wild horses from 269 to 15. However, it is our understanding that the Bureau is reducing livestock allocations only in response to the 21% habitat reduction caused by the fires, and have not considered the 50% severe use categorization of the remainder of the allotment. No data are provided in the decision documents or the EA that justify the differential application of these standards to horses and livestock that share the same boundaries.

**Violations of BLM Policy, Regulations, NEPA, and FLPMA**

It is our understanding that the Meadow Valley gather was carried out beginning on September 29, 1993. The gather plan decision was dated September 28, 1993; however, this plan and accompanying documentation were not mailed until October 12, 1993, approximately 2 weeks following the implementation of the gather. We understand that a gather plan may be issued under full force and effect regulations for emergency reasons prior to gathering, even with only one day's notice. Because of the timing of the burn, it was known for two months that a gather would be likely. However, you cannot justify the emergency removal of horses for the rest of the HMA or of horses outside the HMA without supporting data and without issuing a draft and final gather plan. No EA's were prepared analyzing the impacts of this gather; impacts to the herds and the viability of the herds were not analyzed; policy and procedures were not followed.

**Grazing decision issued above carrying capacity of the range.**

In the gather decision, the Bureau states the existence of supporting data that in addition to the 21% burn, 50% of the remaining allotment is in the "severely grazed" category. That criterion has not been applied to your livestock grazing decision for the protection of the habitat.

The terms and conditions that you have established with these adjusted grazing decisions are violations of:

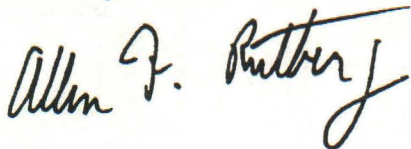
- 1) CFR 4100.0-8 "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601-5(b);"

Mr. Curtis Tucker  
November 15, 1993  
Page Three

2) 4110.3-2(b) "When monitoring shows use in causing an unacceptable level or pattern or utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives;"

Within the next 30 days we will be supplying these and other arguments to the Solicitor and IBLA. We request that you file this appeal with IBLA as well. If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in cursive script that reads "Allen T. Rutberg".

Allen T. Rutberg, Ph.D.  
Senior Scientist  
Wildlife and Habitat Protection

cc: Board of Land Appeals, Department of Interior  
Burt Stanley, Regional Solicitor, Sacramento, California