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BOARD OF LAND APPEALS

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Preservation of Wild Horses, Appellant

UNITED STATES DEPARTMENT OF THE INTERIOR  
INTERIOR BOARD OF LAND APPEALS

NEVADA COMMISSION FOR : IBLA-  
THE PRESERVATION OF WILD :  
HORSES, :  
Appellant :  
v. :  
BUREAU OF LAND MANAGEMENT, :  
Respondent :

MOTION FOR REFERRAL OF APPEAL TO HEARING OFFICER

Appellant Nevada Commission for the Preservation of Wild Horses (COMMISSION) hereby moves the Board for referral of its appeal in this matter to the Hearings Division, for consolidation with the COMMISSION's separate appeal from the grazing decision for the Henrie Complex.

This appeal is from a wild horse gather on October 1994 which reduced the size of the Meadow Valley Wild Horse Herd in Nevada's Caliente Resource Area from 269 animals to 15.<sup>1</sup> The gather was in ostensible response to a wild fire which burned approximately 21 percent of the Meadow Valley Herd Management Area.

In a separate grazing appeal, *see* Appeal no. NV-050-94-05, the COMMISSION challenged BLM's grazing decision for the same affected area. The COMMISSION in that appeal charges BLM was only able to deliver up forage authorized for livestock by

<sup>1</sup> The Board's clerk was unable to provide appellant's counsel with the number of the captioned case. Appellant respectfully requests notice of the case number at such time as the clerk is able to provide it.

1 eliminating wild horses from the area, and that therefore the grazing decision is inequitable,  
2 arbitrary, contrary to law and should be set aside.

3 The COMMISSION has furnished evidence in the separate grazing appeal to show the  
4 gather was conducted at the request of and for the economic benefit of the operator, not  
5 because a fire rendered the gather necessary. See letter dated June 27, 1994, from Richard  
6 M. Leonard to Catherine Barcomb, attached as Exhibit A ("B.L.M in reviewing the sale and  
7 at the buyers [sic] request to transfer of the allotment, did a horse and burro gather"). BLM  
8 nonetheless persists in its effort to dismiss or vacate the COMMISSION's grazing appeal, and  
9 currently has pending a motion with the hearing officer to so dispose of the it; but clearly a  
10 hearing is necessary to deal with the factual circumstances underlying the decision.

11 The two appeals are two sides of the same coin. They arise from the same set of  
12 circumstances, and affect the same habitat. They are both highly fact-dependent, and deserve  
13 a full hearing. To conserve resources of all involved, their hearing should be consolidated.

14 The COMMISSION therefore hereby requests that its appeal from the Meadow Valley  
15 Mountain Herd Management Emergency Removal Plan, Record of Decision and  
16 Environmental Assessment, docketed by the Board, be referred to the Hearings Division and  
17 consolidated with the COMMISSION's separate appeal from the grazing decision for the  
18 Henrie Complex, for the purpose of one consolidated factual hearing on all aspects of BLM  
19 actions respecting the forage resource on the affected allotments. See *Animal Protection*  
20 *Institute of America*, 118 IBLA 345 (1991).

21 Dated this 23<sup>rd</sup> day of March, 1996.

22 FRANKIE SUE DEL PAPA  
23 Attorney General.

24 By: 

25 C. Wayne Howle  
26 Deputy Attorney General  
27 State Bar No. 003443  
28 198 South Carson Street  
Carson City, Nevada 89710  
(702) 687-4449

Attorneys for Nevada Commission for the  
Preservation of Wild Horses, Appellant

1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the Office of the Attorney General, State  
3 of Nevada, and that on this 28 day of March, 1996, I sent a true and correct  
4 copy of MOTION FOR REFERRAL OF APPEAL TO HEARING OFFICER addressed to  
5 the following:

6 Office of Hearings and Appeals (Via Certified Mail,  
7 Hearings Division Return Receipt Requested)  
8 6432 Federal Building  
9 Salt Lake City, UT 84138

10 David Nawi (Via Certified Mail, Return Receipt Requested)  
11 Regional Solicitor  
12 Pacific Southwest Region  
13 John R. Payne  
14 Assistant Regional Solicitor  
15 Office of the Regional Solicitor  
16 U.S. Department of the Interior  
17 2800 Cottage Way  
18 Sacramento, CA 95825

19 State Director (Via Certified Mail, Return Receipt Requested)  
20 Bureau of Land Management  
21 P.O. Box 12000  
22 Reno, NV 89520-0006

23 District Manager (Via Certified Mail, Return Receipt Requested)  
24 Bureau of Land Management  
25 HC 33 Box 33500  
26 Ely, NV 89031-9408

27 Area Manager (Via Certified Mail, Return Receipt Requested)  
28 Caliente Resource Area  
P.O. Box 237  
Caliente, NV 89008

the original was sent to:

U.S. Dept. of Interior (Via Facsimile and Federal Express)  
Board of Land Appeals  
4015 Wilson Blvd.  
Arlington, VA 22203

  
\_\_\_\_\_  
Amy V. Tate

3-6-96



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Ely District Office  
HC 33 Box 33500  
Ely, NV 89301-9408

In Reply Refer To:  
4100 (NV-043)

**MAR 06 1996**

Mr. Roy Leach  
Commission For The Preservation Of Wild Horses  
255 W. Moana Lane  
Suite 205 A  
Reno, Nevada 89509

Dear Mr. Leach :

Recently members of the Ely District and the Caliente Field Office have been discussing issues related to the Meadow Valley Mountain Herd Management Area (HMA) and the Henrie Complex Allotment with you. I understand that the resolution of issues associated with this HMA in addition to setting appropriate management levels (AML's) on all HMA's in the Caliente area are important to the Commission for the Preservation of Wildhorses as well as to the Bureau of Land Management. The Ely District has therefore developed a schedule for completing multiple use decisions for HMA's administered out of the Caliente Field Office beginning in 1996 and 1997.

During 1996 we are concentrating on completing and issuing allotment evaluations and multiple use decisions for the Clover Mountain and Clover Creek HMA's. Upon completion, this will establish an AML for both of these HMA's. Currently the allotment evaluations and multiple use decisions associated with these HMA's are in various stages of completion.

Regarding the status of the Meadow Valley Mountain HMA and the Henrie Complex Allotment, we intend to begin and complete the allotment evaluation process during 1997. This will include issuing the multiple use decision which will result in the establishment of an AML for wild horses within the Meadow Valley Mountain HMA. During 1996 additional monitoring data will also be collected on the Meadow Valley Mountain HMA and the Henrie Complex Allotment which will be incorporated into the allotment evaluation.

If you have any further questions or if we may be of further assistance, please contact Chris Mayer at 289-1800 or Shawn Smith at 726-8100.

Sincerely,

Hal M. Bybee  
ADM-Renewable Resources

cc: Caliente Field Office

*FOR WILDER HORSES*