

TRANSMITTAL MEMO  
REQUEST FOR DISMISSAL

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT  
SURPRISE RESOURCE AREA  
P.O. Box 460  
Cedarville, CA 96104

4160(CA-028)

MEMORANDUM

December 6, 1993

TO: Board of Land Appeals, Office of the Secretary

FROM: Area Manager, Surprise Resource Area

SUBJECT: Transmission of Appeals from the Wild Horse Gathering and Removal: Bitner, High Rock, Nut Mountain, and Wall Canyon EA, Record of Decision.

Enclosed are appeals of this action from the Nevada Commission for the Preservation of Wild Horses (the Commission), the Wild Horse Organized Assistance (WHOA), and the Humane Society of the United States (HSUS) along with the rest of the case file for this decision. The Surprise Resource Area's discussion of and responses to the appeals is attached.

We request that all three appeals be dismissed, because they were not filed in a timely manner. The decision was issued "full force and effect" on October 8, 1993. According to the return receipts, the Nevada Commission received the decision on October 12, 1993 and WHOA received the decision on October 15, 1993. Thirty days after those dates, the end of the appeal period, were November 11 and 14, 1993. Facsimiles of the appeals were received at this office on November 15, 1993. The original appeals arrived in the mail on November 17, 1993. Both of these dates are after the end of the thirty day appeal period. The first paragraph of the HSUS appeal carefully details that their appeal was dated 32 days after they received a copy of the Record of Decision. SRA received the appeal 40 days after HSUS received the Record of Decision.

We also request that the appeals be dismissed, because they appear to be frivolous. The Record of Decision was to establish an appropriate management level (AML) for each herd management area (HMA), and to gather the wild horses and remove the excess horses from each HMA. A thorough review of the EA will show that the Surprise Resource Area complied with all current BLM policies and regulations in establishing the AMLs. This is the crux of the matter, because the Wild Horse and Burro Act requires the Secretary to remove excess wild horses. Therefore the key point is to properly determine what the appropriate number of horses are for each HMA. The appeals do not allege that the Surprise Resource Area (SRA) erred in either action.

Forty copies were mailed to the "affected interests" and other individuals who requested copies. In addition the gather was discussed at a meeting of the Susanville District Advisory Council. Also, because parts of the HMAs are Wilderness Study Areas, that affected interest list was also informed of the impending activity in WSAs.

The appeals appear to take a "shotgun" approach to this decision by discussing issues that were not relevant to this specific action. For example returning only nine year old and older horses to the HMAs, severe winter death loss, and the genetic makeup of the herds are not relevant to this specific action. The appeals did offer alternative methods of determining carrying capacity. They suggested alternative standards of utilization. They suggested that the SRA use the Nevada style Multiple Use Decision format for reaching AMLs. None of these are required by regulation or current BLM policy for managing wild horse herds.

The appeals represent a single issue affected interest's attempt to maximize perceived benefits to their interest from BLM public land management. However, the BLM, through FLMPA, PRIA, and the Wild Horse And Burro Act, is mandated to apply a multiple use perspective to managing the public lands. Sometimes multiple use conflicts with the desires of single issue affected interests.

In this specific action the SRA evaluated and implemented the wild horse portion of the approved land use plan. Other habitat management actions have already been implemented. In this specific case, and contrary to statements in the appeals, livestock grazing has been ended in one of the Herd Management Areas. Livestock stocking rates and use patterns are adjusted annually in response to use patterns, weather, and riparian area utilization.

*Richard B. Westrum, acting*