

Mr. J. Anthony Danna
November 15, 1993
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appeal, appeal with a request for a stay of the action, or if necessary file and injunction to prevent the removal of the horses. Under its animal protection mission, The HSUS has a responsibility to preserve and protect wild horse herds and their habitat. This mission has been obstructed by the procedures and events leading up to this gather, which have prevented us from providing meaningful input on land use planning as an interested and affected party.

Setting appropriate management levels for wild horses is a Bureau of Land Management priority for FY 94 and this document represents your decision to adjust only wild horse numbers to meet a thriving natural ecological balance. In our previous discussions concerning the management of wild horses and burros within the Susanville District in Nevada, we have attempted to set specific guidelines that assure that wild horses are adjusted in concert to other ungulates with the end result of improved range conditions. In our view the environmental assessment must address specific land use objectives for key vegetation, critical habitat, multiple use and sustained yield affecting all ungulates dependent on our public lands. In Nevada wild horse appropriate management levels are being established by use of monitoring data in the allotment evaluation format. Wild horse decisions are issued as a part of Multiple Use Decisions per allotment. In this way, wild horses are adjusted in balance with livestock and wildlife on equal terms and assumptions within the Bureau's consistent format and methodology.

Due to inconsistencies and errors of the proposed decision and draft environmental assessment, we formally appeal your final decision. The Commission and WHOA had provided you with comments and concerns on your draft documents which were still not addressed and corrected in your final. Based upon the problems noted previously to your District you leave us no choice but to appeal your decision based upon the following errors:

Wild Horse appropriate management levels are not in balance with active livestock preference of affected allotments.

Throughout these documents the Bureau talks in generalities when it comes to livestock management, yet you become very specific about horse numbers and the overuse caused by horses.

The land use plan limited the utilization of key riparian species to the moderate range (40 to 60 percent) . Use pattern mapping data in the appendix indicates the allotments were used by livestock, wild horses and wildlife. wild horse appropriate management levels were set independent of any other adjustments to ungulates that affect riparian habitat.

For example, use pattern mapping for the Nut Mountain Allotment indicated heavy and

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severe use of riparian habitat when wild horses and livestock used the allotment in common. Wild horses are proposed to be reduced to meet the land use plan's moderate utilization limitation for riparian habitat. Criteria have been established to determine utilization limits for key vegetation species for monitoring, evaluations and manager decisions. Riparian objectives to protect spring sources and deteriorated riparian areas are short and long term objectives. Monitoring studies based upon the land use plan objectives were to enable the District to make multiple use decisions to adjust livestock, wildlife and wild horses to carrying capacities to maintain, protect and restore natural resources. Unfortunately, you did not apply these criteria to livestock in 1993. As a result, with significantly fewer horses, riparian habitat was degraded. Livestock grazing permits are for active preference levels set in the land use plan. The Susanville District has the same obligation to adjust livestock to meet the moderate utilization limitation of the land use plan.

The Decision for Wild Horses is arbitrary and biased against wild horses.

In this gather plan you have stated that this gather is being done to achieve a thriving natural ecological balance. You state "New population calculations were only made for wild horses, because the key areas chosen for doing the calculations were only used by wild horses. This was done to reduce the confounding influence of cattle utilization." You are saying that you cannot manage for multiple use which is required of you by law. You chose sites to calculate from that only wild horses use. In a multiple use framework you have the responsibility to manage for multiple use and to analyze data for the complexities of that use by all users. This is made impossible by just collecting data on horse use and adjusting only wild horses. Choosing key areas only used by wild horses and not the other users of the areas was an arbitrary decision to single out wild horses for reduction.

Your final decision did not establish a carrying capacity to justify the initial herd. C carrying capacity computations must consider all land use plan objectives. As an example, using existing data the following computation could be applied to establish an appropriate management level:

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

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

Livestock stocking rates were not established under the same criteria as the wild horse

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appropriate management levels. 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 levels for wild horses in a multiple use decision. In our view, this arbitrary decision to target only wild horses and not adjust livestock to fails to protect the habitat you are mandated by law to protect.

Wild horse population data was not fully analyzed to determine current population estimates or projected recruitment rates for the proposed appropriate management levels.

Nevada witnessed winter losses of entire bands of wild horses in 1993. We have found and documented the loss of bands of up to 40 head in the Susanville District. Suffering wild horse bands were shot by the Winnemucca District adjacent to these wild horse management areas in 1993. We have no reason to believe that the general lack of wild horses within these management areas in the spring of 1993 are because of delayed migration from other areas. A population survey should be conducted to verify the population estimates and document migration rather than working from guesswork.

Recruitment rates are essential to population estimates, appropriate management levels and re-structuring of the herd. Actual counts of wild horses vary due to habitat, season and methodology. The percent of foals in the population is an index as to the health and viability of the herd. This data must be collected and analyzed to determine proper management of the herds.

Age and sex data collected in previous gathers should be presented and this data must be analyzed to determine how the herd is to be re-structured. This was not provided in the final decision or EA.

No consideration of the Social or Economic impacts.

The 1993 wild horse gather and future gathers are governed by the Strategic Plan for the 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; this implementation is leading to the release of horses in excess of carrying capacities and to the restructuring of the herds such that older age classes are overrepresented. These two issues were not assessed in the environmental assessment.

Utilization rates for key riparian species of key riparian habitat is not consistent with other federal land management agencies.

The land use plan MFP III decision limits utilization of key forage to moderate utilization, or 40 to 60 percent. Specific standards and guidelines of the U.S. Forest Service do not allow over 50% utilization on riparian habitats. On degraded riparian

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habitats in need of improvement, the Service has implemented utilization limits that will not exceed 25% of the annual growth. In allotments with livestock, wild horses and wildlife the allowable use level or utilization limit is proportionately distributed between users. For example, the utilization limit is 50% for upland wetland riparian habitat and 20% of this limit is allocated to wild horses with 30% allocated to livestock. Appropriate management levels for wild horses and the livestock carrying capacity computations use 20% and 30% as "desired utilization," respectively.

Monitoring data indicates that all key riparian habitats within these herd management areas are degraded. In our comments on the draft documents we had suggested the District implement the lower limit of 40% utilization to restore these riparian areas. Computations for livestock and wild horse carrying capacity should use proportions that maintain a viable wild horse herd.

Wild horse appropriate management levels are below the threshold for a viable population.

In a recent Multiple Use Decision for wild horse appropriate management levels within the Black Rock Range of Nevada, the Bureau of Land Management could not reduce the herds below 50 individuals. The Bureau's rationale was based upon research that found that herds less than 50 risk the loss of its genetic diversity after as few as five generations.

The Commission and WHOA questioned this point in their response to your draft gather plan. In a response back to those questions you stated "The HMA's involved in this Decision are four administrative divisions of the Black Rock/Massacre wild horse range. This area includes much of the surprise Resource Area, the northwest part of the Sonoma/Gerlach Resource Area, and the Sheldon Antelope Refuge. Presently this area has around 5,000 horses. This is the genetic pool containing these HMA'S. In the winter of 1992-93 all the horses from the northwestern part of the Black Rock/Massacre area were forced onto the High Rock Canyon winter range. There appears to be ample opportunity for genetic diversity."

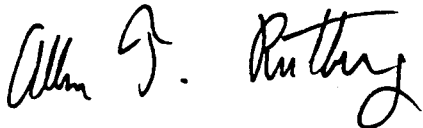
However, there has been no documented evidence regarding the migration of horses between Districts. Both the Susanville District and the Winnemucca District claim that the horses move back and forth but no evidence has ever been provided by either district to document how many horses move, where they move to, interaction between the herds; nor have they used pattern mapping to show movement or seasonal distribution. That "there appears to be ample opportunity for genetic diversity," as you stated, does not guarantee genetic diversity and the viability of the herds you have already affected.

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APPEAL SUMMARY

The issues of this appeal are to elevate previous concerns expressed in comments on the draft documents by the Commission and WHOA to the Susanville District which we believe were ignored in the protest stage. In addition to showing the adverse impacts to wild horses by this gather plan and EA, we have also presented the biased and arbitrary decisions made by your District as well as the potential irreparable harm to the habitat that may be caused by failing to base decisions on uses by livestock, as well as wild horses. In summary, we believe that the estimates of carrying capacity were flawed; the EA was inadequate to comply with NEPA; this decision was arbitrary, biased against wild horses, and inconsistent with an equitable multiple use framework; and these allotments have never been sufficiently evaluated to allow the District to make sound resource decisions on these areas. We view these issues and concerns as constructive input to assure the preservation of these herds and their habitat and that wild horses are treated fairly and consistently. We encourage the District to provide additional data, expand the scope of this decision and provide sound rationale to support a Multiple Use Decision that will protect the natural resources of the area.

Sincerely,



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

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



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J. Anthony Danna
Surprise Resource Area Manager
BLM- Surprise Resource Area
Box 460 Cedarville, CA
96104-0460

NOTE TO COME

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H&A appeals arrived
the same envelope.

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11/24/93

STATE OF NEVADA



**COMMISSION FOR THE
SERVATION OF WILD HORSES**

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

CATHERINE BARCOMB
Executive Director

COMMISSIONERS

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- Dawn Lappin
Reno, Nevada

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November 15, 1993

Mr. Tony Danna
Surprise Resource Area Manager
BLM-Surprise Resource Area
Box 460
Cedarville, California 96104-0460

RE: - Record of Decision for Wild Horse Gathering and Removal:
Bitner, High Rock, Nut Mountain, and Wall Canyon

Dear Mr. Danna,

The Nevada Commission for the Preservation of Wild Horses has great interest in the long term management of wild horse herds within the Surprise Resource Area of Washoe County. Issues raised in the Commission's protest of the proposed decision and draft environmental assessment were not adequately considered in the Record of Decision. We appeal this decision based upon the following errors:

The environmental assessment is inadequate.

The environmental assessment did not consider the gather of only adoptable animals and re-structuring of the affected herds. The removal of young age classes (less than nine years), will increase the mortality rates and decrease recruitment in the surviving herds. Releasing unadoptable animals above carrying capacity will continue to degrade riparian habitat and range conditions.

The Record of Decision is biased and arbitrary against wild horses.

Bureau of Land Management policy and the land use plan require that monitoring data be assessed and decisions made to establish carrying capacities for the affected allotments. Allotment evaluations and multiple use decisions are being made in Nevada to establish a thriving natural ecological balance. Elements of this Record of Decision specifically adjust wild horses on allotments that are used by wildlife and livestock. Failure to address and adjust other users to protect or restore natural resources is biased against wild horses.

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Carrying capacities were not established.

Failure to include livestock actual use and use pattern mapping data in the environmental assessment prevented carrying capacity determination for wild horses, wildlife, and livestock. The land use plan limited annual utilization to the "moderate range" (40 - 61%). Selection of a carrying capacity computation from the Bureau's Technical Manual 4400-7, based upon non-uniform utilization, would result in the following:

$$\frac{\text{livestock and wild horse AUM's}}{80 \text{ percent actual utilization}} = \frac{\text{desired stocking level}}{40 \text{ percent desired}}$$

Allocation of the available forage to the proportion of wild horses and livestock on the allotment during years of monitoring would result in significant differences that the Record of Decision.

Wild horse herds are below thresholds and in jeopardy.

Wild horse research indicates that herds less than 50 are at risk of the loss of genetic diversity after as few as five generations. The Record of Decision allows for adjustments as low as 15 wild horses per herd. There are no data or analysis in the environmental assessment to support the Record of Decision's rationale. The Record of Decision provides no assurances that the surviving herds can sustain their genetic integrity.

Implementation of the "Strategic Plan for the Management of Wild Horses and Burros on Public Lands" will arbitrarily re-structure the herds affected by the Record of Decision. Plan Assumption E. states: "Only adoptable animals will be removed from public lands." Corresponding internal policy has resulted in the release of only animals in excess of nine years. These older age class animals are less productive and subject to winter kill.

APPEAL SUMMARY

The Commission is devoted to the Bureau of Land Management's land use plan and decision making processes to balance livestock and wild horses to a thriving natural ecological balance within the capacity of Nevada's public lands. Subjective decisions to adjust wild horse herds to levels that threaten their viability is contrary to law.

We encourage the District to reconsider the Record of Decision. Multiple use decisions, supported by an environmental assessment

J. Anthony Danna, Area Manager
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that evaluates all data, land use plan objectives and issues of this appeal, must adjust all ungulate use to levels necessary to protect and restore all natural resources.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Barcomb". The signature is written in dark ink and is positioned below the word "Sincerely,".

CATHERINE BARCOMB
Executive Director



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



RECEIVED

a note from

Dawn Y. Lappin

Bureau of Land Management
 Cedarville, CA 96104

November 15, 1993

Mr. Tony Danna
 Surprise Resource Area Manager
 BLM-Surprise Resource Area
 Box 460
 Cedarville, California 96104-0460

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 Bitner, High Rock, Nut Mountain, and Wall Canyon

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Sincerely,

A handwritten signature in cursive script that reads "Dawn Y. Lappin". The signature is written in dark ink and is positioned above the typed name.

DAWN Y. LAPPIN
Director



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CERTIFIED

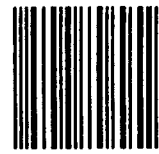
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STATE OF NEVADA
COMMISSION FOR THE PRESERVATION
OF WILD HORSES
50 Freeport Boulevard
Sparks, Nevada 89431



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