

**APPEALS OF THE RECORD OF DECISION FOR THE  
WILD HORSE GATHERING AND REMOVAL:  
BITNER, HIGH ROCK, NUT MOUNTAIN, AND WALL CANYON  
ENVIRONMENTAL ASSESSMENT**

**SURPRISE RESOURCE AREA  
RESPONSE:**

The Nevada Commission for the Preservation of Wild Horses and the Wild Horse Organized Assistance (Commission/WHOA) appeals will be discussed together, because they are the same. The appeals each contained five parts. The Humane Society of the United States' (HSUS) appeal will follow. HSUS issues which repeat the Commission/WHOA appeals will not be discussed again. Quotes from the appeals are in bold type. SRA's responses to each item are presented.

**THE NEVADA COMMISSION FOR THE PRESERVATION OF WILD HORSES  
AND THE WILD HORSE ORGANIZED ASSISTANCE  
APPEALS**

With the exception of "Part 1," the Commission/WHOA appeals do not allege that the BLM erred in following or implementing current approved BLM policies and procedures. In fact in Part 4 the Surprise Resource Area (SRA) is accused of following BLM policy. We believe, as will be discussed below, that the comments made in "Part 1" are erroneous.

**PART 1: THE ENVIRONMENTAL ASSESSMENT IS INADEQUATE**

**"The environmental assessment did not consider the gather of only adoptable animals and restructuring 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."**

**SRA Response:**

Gathering only adoptable animals was not analyzed in the EA, because it would have been a token alternative. Gathering only adoptable horses is not practical, because when horses are gathered using a helicopter, generally entire bands are captured. It is not possible to adequately age and evaluate the horses from the helicopter while herding them to the trap. If adoptable horses could be identified from the helicopter, sorting them with the helicopter and only gathering the adoptable individuals would make gathering more stressful to the horses and expensive for the BLM.

The Susanville District's wild horse management plan defined herd structuring for the District (BLM 1985 and BLM 1989). The EA includes restructuring these herds as part of the "DESCRIPTION OF PROPOSED ACTION" (p. 4). The impacts of restructuring were described in "IMPACTS OF THE ALTERNATIVES" (p. 18).

Horses from two to twenty years old were returned to the range following this removal. Eighty horses were returned, 21 were four years old or younger, 59 were older than four years old. There is little basis for the appellants' statement that removing young horses increases the mortality rates and decreases recruitment. According to BLM population studies, five to fifteen year old horses are the most reproductive. The old and the young are most susceptible to mortality. When BLM removes younger horses, through gathering and adoption, that reduces competition among the remaining horses for the available habitat. The experience of the severe winter of 1992-93 in this area has shown that the current management is providing for the wild horses on the SRA. (This point will be discussed in detail in response to the HSUS appeal.)

According to the carrying capacity calculations in the EA (Appendix 2) wild horses were not released in numbers above carrying capacity. Also the statement, "Releasing unadoptable animals above carrying capacity..." appears to contradict the assertion in Part 3 that "carrying capacities were not established."

**PART 2: THE RECORD OF DECISION IS BIASED AND ARBITRARY AGAINST WILD HORSES.**

SRA Response:

This statement is completely incorrect. High Rock Canyon, which has been closed to livestock grazing since 1984, has remained open to wild horses. All the allotments in the other HMAs are currently being stocked at less than the AUMs specified as livestock active preference in the land use plan. In contrast, wild horse numbers have been allowed to exceed land use plan levels since the last gather in 1988. The analysis in the EA determined wild horse AMLs with the current livestock use reductions. The decision was to use the current wild horse population calculations, and not reduce horse numbers to correspond with the reductions in livestock use. In High Rock the AML that would correspond with the current livestock levels would be 0. In the Bitner HMA the wild horse AML to correspond with the current reductions in livestock use would be 5 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."**

SRA Response:

First this statement is not entirely correct. The land use plan (Cowhead/Massacre MFP 3) did establish carrying capacities, which were presented in the EA (pp. 11-12). However that is not the main point here. The primary issue is did the SRA follow established BLM policies and regulations in reaching the current AML decisions.

The EA shows clearly that the current AMLs were established by analyzing the most recent monitoring data (Appendix 2) and all other information available for this area (Appendices 3, 4, 5, 6, and 7). There were both livestock and wild horse carrying capacities in existence for three of these HMAs (EA, p. 11), and only wild horse carrying capacities for one of the HMAs (EA, p. 12). The current monitoring supported those numbers.

**"Allotment evaluations and multiple use decisions are being made in Nevada to establish a thriving natural ecological balance."**

The Surprise Resource Area is administered by California BLM. The Nevada BLM is the only state that is using the Multiple Use Decision (MUD) format for managing wild horses. Other states with wild horses, for example California, Wyoming, Oregon, and Colorado do not use MUDs to manage wild horses. Appealed removals in those states have been affirmed by IBLA. Also IBLA has overturned BLM gathers based on MUDs.

MUDs are inappropriate management tools for this area for three reasons:

- 1) Livestock management is very different from wild horse management. Livestock use on the SRA is a greater impact than wild horse use. As a result we need much more flexibility for managing livestock. Currently annual and sometimes mid-season adjustments are made in livestock management in response to utilization and weather. If livestock management were tied up in a multiple use decision for gathering wild horses, that flexibility would be lost, because it is neither feasible, practical, and perhaps not legal to annually adjust wild horse numbers.
- 2) The BLM does not own, permit, or control wildlife. The state's wildlife management agency has control over wildlife, so for BLM to include wildlife population levels in a MUD is nonsensical.
- 3) Wild horses have their own legislation, regulations, decisions, and appeals procedures. Combining wild horse management with livestock management, through a MUD is like combining apples and oranges.

The SRA allotment management plans are evaluated on an ongoing basis and herd management area plans are evaluated in conjunction with upcoming gathers to maintain or establish a thriving natural ecological balance.

**"Failure to address and adjust other users to protect or restore natural resources is biased against wild horses."**

SRA Response:

Livestock grazing was ended in the High Rock HMA, East of Canyon Home Range, in 1984. Since BLM does not control wildlife, that leaves horses as the only tool for adjusting unacceptable utilization in the High Rock Canyon area.

As discussed in the EA (pp. 16-17) and in the letter transmitting the record of decision (pp. 2-3), livestock use is addressed annually, not ignored. And, once again, the BLM does not control wildlife populations.

SRA Summary for this part:

Multiple Use Decision has become a buzzword in Nevada in association with gathering wild horses. The reason MUDS were initiated in the hopes that appeals could be streamlined or avoided. Even this has not always occurred. The SRA does look at the entire ecosystem in implementing management actions. The EA and responses to the protests thoroughly discussed what livestock management actions had been done to address the problems identified in the EA. It just happens that the management history of the SRA does not lend itself to doing MUDs. MUDs are not a BLM policy requirement.

**PART 3: 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."**

SRA Response:

Apparently the appellants did not understand the EA. Appendix 5 is utilization pattern mapping and appendix 6 is livestock "actual use". As discussed in the EA (appendix 2) wild horse carrying capacities were established for areas used only by wild horses. As discussed in the transmittal letter for the record of decision (p. 2), wildlife utilization was not measured, because it is usually masked by livestock and/or wild horse utilization. The Nevada Department of Wildlife does not provide wildlife counts to the BLM, so wildlife utilization studies are pointless, because we do not know how many antelope and deer the utilization might represent. Also methods that have been used for measuring livestock and wild horse utilization tend not to be useful for measuring wildlife utilization.

Reasons for separating, rather than combining, wild horse and livestock management were discussed above. Coincidentally if the Wall Canyon HMA AML had been determined as suggested by the appellants, the AML would be 7 wild horses rather than 20. Also to proportionately allocate forage among wild horses and livestock in High Rock would require the reintroduction of livestock into the area or total removal of the horses.

#### **PART 4: 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."**

SRA Response:

As discussed both in the EA (p. 10) and transmittal letter (p. 4), these HMAs are administrative divisions of a wild horse use area that includes the Sheldon National Antelope Refuge, part of the Sonoma-Gerlach Resource Area, and part of the Surprise Resource Area. There are currently about 5,000 horses in this region. These horses mix freely on the winter ranges and do not appear to always return to the same summer ranges or maintain band integrity from year to year. (These conclusions were based on the observation of several very showy black and white paint horses which were on the Nut Mountain HMA for several years before the winter of 1992-93, but were with other bands and in other areas during the summer of 1993.) All this means that there is no herd genetic integrity but breeding among the herds and ample opportunity for genetic diversity among the horses both in the larger area and the HMAs under consideration.

**"Implementation of the "Strategic Plan for the Management of Wild Horses and Burros on the 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."**

SRA Response:

The SRA as part of the BLM is obliged to follow current BLM policies. As a result we follow the guidance in documents such as the "Strategic Plan for the Management of Wild Horses and Burros on Public Lands." Herd structuring is not done arbitrarily. Rather traits which appear adaptive or desirable are selected for in the animals returned to the range. The HMAs are not dumping grounds for defective horses which do not appear adoptable. Wild horses returned to public land ranged in age from two to twenty.

The SRA is in a good position to implement the "Strategic Plan...", because of periodic gathering and keeping herds close to a thriving natural ecological balance. We do not have to remove a large number of horses, therefore we can select the individuals to be removed from among the more adoptable younger horses. We are not faced with the dilemma of having so many "unadoptable" horses that returning them to the range immediately places an HMA in an overpopulation condition.

## **PART 5: APPEAL SUMMARY**

**"Subjective decisions to adjust wild horse herds to levels that threaten their viability is contrary to law."**

**"Multiple use decisions, supported by an environmental assessment 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."**

### **SRA Response:**

This decision was not subjective, nor arbitrary, but followed monitoring, analysis, and considerable deliberation, which was documented in the EA. As stated above we do not believe, and have no evidence, that implementation of the AMLs and the gathers in any way threatens the viability of these horse herds. We do have some anecdotal evidence that the management, which this decision continued, allowed these wild horses to better survive the winter of 1992-93 than horses in adjacent areas.

As discussed above, it is both not possible and frequently not appropriate to adjust all ungulate numbers at any given time. It is also not appropriate for BLM to abrogate management decisions to the various affected interests on the public lands. BLM has ample regulation, policy, guidance, and expertise to manage the public lands in an environmentally sound manner and to balance the concerns of the various interests. The appealed decision is part of the SRA's continuous work of managing the public lands using ecological principles and following mandated policies and procedures to achieve and maintain a thriving natural ecological balance among wild horses, the other users of the range, and the water, soil, and vegetation resources.

### **HSUS APPEAL**

The HSUS appeal contained several issues in addition to, or in more detail than, the other two appeals. They are discussed below.

#### **THE DECISION FOR WILD HORSES IS ARBITRARY AND BIASED AGAINST WILD HORSES.**

**"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 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 a arbitrary decision to single out wild horses for reduction."**

The appellant makes a good point that the BLM is required to manage in a multiple use framework. He leaves out the fact that in every year since 1988, the year these HMAs were last gathered,

livestock use on three of the HMAs has been adjusted (EA; Appendix 6) to account for past use patterns by both livestock and wild horses, riparian area utilization, and weather. No comparable wild horse population adjustments were made during those years. No wildlife population adjustments have ever been made by BLM, because wildlife is under the authority of the state.

It was a management decision to calculate only wild horse carrying capacities in the EA. The reason this was done was the gathering of these four HMAs has been stopped by affected interest protests for the past two years. It is imperative that livestock management on these areas not be tied up in lengthy protests and appeals of wild horse AMLs, because livestock are a larger impact on these areas than horses. At the time the EA was prepared, the current guidance on full force and effect for gathering wild horses was not out. From an ecosystem and multiple use management stand point it was essential that the wild horse AML decision and livestock management actions be kept separate, so that the larger impact, livestock, could continue to receive closer scrutiny.

**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."**

**SRA Response:**

In the protests and now in this appeal it is implied that there must have been some large winter kill somewhere on these HMAs, and that the horses did not merely migrate to lower country as the snow melted off. First, none of the commenters have provided any information as to where the dead SRA horses are. One reason that information has not been provided is that there are not groups of dead horses on the SRA. After a one day helicopter count in February, 1993, a one day airplane count in July, 1993, approximately 40 person days spent specifically monitoring the wild horses on these HMAs in 1993, asking field personnel to report dead horses, anecdotal reports by the permittees and other public land users, and 12 days of helicopter flights during the gather in October, 1993, three winter killed horses were confirmed on the four HMAs in question. If there is information to the contrary, the SRA is not aware of it.

There is a reason that the wild horses on the SRA did much better than horses in adjacent areas. Conservative management of all uses has been in affect since the early 1980's. This has provided enough of a buffer so that the horses that were caught on the east side of the SRA by the heavy Christmas and January snows had adequate feed and cover to weather the storms. This has to be considered a strong argument for these HMAs approaching a thriving natural ecological balance. It is confirmation of the existing wild horse management, which this decision continues.

A cursory analysis of the wild horse counts made from October, 1992 through October, 1993 tend to support the SRA's assumption that many of the horses migrated into High Rock Canyon during the winter, then continued south and down as the snow melted in the spring and have slowly returned to the SRA through the summer. The counts made during October, 1992 on the High Rock and Wall Canyon HMAs were less than the numbers gathered from those areas in October 1993. These two HMAs are the furthest east and south, the direction the horses went in the spring, and the direction they returned from during the summer. October 1993 counts on the Bitner and Nut Mountain HMAs were less than the October 1992 counts. These HMAs are further north and at higher elevations than the other two. Fewer horses returned to these areas during the summer of 1993. The February, 1993 count found almost no horses or tracks on these four HMAs, with the exception of Pole Canyon and High Rock Canyon.

The BLM has not been individually marking horses, therefore documentation of wild horse movements across the various administrative boundaries in the area under consideration is only the observations of people who work in the field. The helicopter pilot for this gather saw horses crossing the fence from the SRA to the Sonoma-Gerlach Resource Area at Mustang Spring. The horses from the Wall Canyon HMA were trapped on the High Rock HMA, because they readily moved through the fence between the HMAs. A gravel road is the boundary between the Bitner and Nut Mountain HMAs. During the spring of 1993 wild horses were in the middle of the road, obviously not respecting that boundary. Wild horses have been observed crossing the fence from the Wall Canyon HMA into the High Rock HMA. There are trails through the fence between the Wall Canyon HMA and the Sonoma-Gerlach Resource Area to the east.

#### **NO CONSIDERATION OF THE SOCIAL OR ECONOMIC IMPACTS.**

**"The 1993 wild horse 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."**

#### **SRA Response:**

The EA did not analyze the BLM's national strategy for wild horse management, because it was not an appropriate forum for such an analysis. The return of wild horses to the range in excess of carrying capacity was not analyzed in the EA, because it would have been an irrelevant topic. The whole point of gathering was to reduce wild horse numbers to carrying capacity. According to the carrying capacities calculated in appendix 2 of the EA, wild horses in excess of carrying capacity were not returned to the HMAs.

The wild horse herds on the SRA have been structured since the mid-1970's. There is no evidence of adverse population impacts. As discussed in the EA (pp. 10-13), the wild horse populations on these four HMAs are increasing at rates of greater than 20% up to 40% per year. This is high for free roaming animals.



**UTILIZATION RATES FOR KEY RIPARIAN SPECIES OF KEY RIPARIAN HABITAT IS NOT CONSISTENT WITH OTHER FEDERAL LAND MANAGEMENT AGENCIES.**

SRA Response:

This is correct. This is also irrelevant. The utilization standards are those from the land use plan. Perhaps "Range Reform '94" will result in FS and BLM standards becoming similar. Whether BLM and FS standards are similar or not was not discussed in the EA and was not part of the Record of Decision.

**"Monitoring data indicates that all key riparian habitats within these herd management areas are degraded."**

SRA Response:

The riparian areas in High Rock Canyon and Pole Canyon are improving in condition. The lower parts of Cottonwood Creek and Wall Canyon in the Wall Canyon had adequate residual vegetation in both 1992 and 1993, due to improved livestock management. In 1993 a few of the spring meadows in the Nut Mountain HMA had vegetation greater than three inches tall following cattle removal from the allotment. The appellant, to the best of my knowledge, has no data to support this statement. He has either misinterpreted information in the EA or been misinformed.

**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 it's genetic diversity after as few as five generations."**

SRA Response:

The appellant obviously did not read the article he referred to. Berg (1986), the article referred to, discusses the difference between the censused population and the effective breeding population, factors which may lead to differences between the two, and how the size of the effective breeding population affects the presence of uncommon and rare genes. Berg (1986) also has a brief literature review of observed wild horse behavioral traits which avoid inbreeding. The article does not say that 50 horses are required to avoid increased homozygosity.

**"However, there has been no documented evidence regarding the migration of horses between Districts."**

SRA Response:

The BLM has not been individually marking horses, therefore the documentation of wild horse movements across the various administrative boundaries in the area under consideration is only the observations of people who work in the field. The helicopter pilot for this gather saw horses crossing the fence from the SRA to the Sonoma-Gerlach Resource Area at Mustang Spring. The horses from the Wall Canyon HMA were trapped on the High Rock HMA, because they readily moved through the fence between the HMAs. A gravel road is the boundary between the Bitner and Nut Mountain HMAs. During the spring of 1993 wild horses were in the middle of the road, obviously not adhering to that boundary. Wild horses have been observed crossing the fence from the Wall Canyon HMA into the High Rock HMA. There are trails through the fence between the Wall Canyon HMA and the Sonoma-Gerlach Resource Area to the east.

**"...does not guarantee genetic diversity and the viability of the herds you have already affected."**

This is a good point. BLM has not done genetic testing of wild horses in the past. Recently a relatively affordable blood test of genetic similarity has become available to the BLM. It is anticipated that some level of testing of genetic diversity will be done at future gathers. Currently the horses gathered from these areas do not show any genetic abnormalities. That has been the criteria in the past.

IN CONCLUSION the SRA has followed established BLM regulations and policies in determining the AMLs for these four HMAs, placing the decision into full force and effect, and carrying out the gather.

The SRA received three protest letters to the EA. In the letter transmitting the Record of Decision for the EA to the affected interests, the issues in the protests were addressed. In particular the livestock management actions which had been implemented to address the issues in the EA were summarized to show that gathering wild horses was not the only remedy being pursued. The other issues were summarized and responded to. Two of the three protesters have appealed the decision, plus and additional party.

Perhaps the discussion in the transmittal letters was not clear enough. The above has taken each specific issue raised in the appeals and addressed each one separately. Some of the issues overlapped, so some of the responses are redundant. We want the rationale for the decision to be very clear. It is important that we be allowed to manage both wild horses and livestock in compliance with the law and to the best of our knowledge, skills, and abilities. On the SRA livestock and wild horses are the major users of the natural resources, which BLM can control, and are therefore the tools which must be used to achieve and maintain a thriving natural ecological balance.

## LITERATURE CITED

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