



ANIMAL PROTECTION INSTITUTE OF AMERICA

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In Memoriam
VELMA JOHNSTON
"Wild Horse Annie"

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CLAUDE,
Countess of Kinnoull

Vern Shultz
BLM
Department of Interior
Washington, DC 20240

Dear Vern:

I'm writing to confirm API's position that we discussed during our recent telephone conversation. Your original question to me had to do with the administrative convenience of being able to schedule wild horse population reductions by removing a certain percent below "AML" then allowing to grow to the same percent above "AML" in order to avoid having to conduct annual roundups. I did not agree.

Because there seems to be an ongoing reluctance by BLM to accept the statutory meaning of "AML," I'm reluctant to leap ahead to discussing removal schedules until there is assurance that the IBLA ruling is being fully implemented in your programmatic guidance.

The IBLA order (IBLA 88-678) clearly states, over and over, that BLM is restricted on when it can remove horses from the public lands. IBLA states:

"...The statutory term 'appropriate management level (AML)' has a very specific meaning in regard to removing wild horses or burros from the public range. It is synonymous with RESTORING THE RANGE TO A THRIVING NATURAL ECOLOGICAL BALANCE AND PROTECTING THE RANGE FROM DETERIORATION." [Emphasis added.]

"The number of 'excess' animals the Secretary is authorized to remove IS THAT WHICH EXCEEDS the appropriate management level, which is the optimum number of horses and burros that results in a thriving natural ecological balance and avoids a deterioration of the range." [Emphasis added.]

"Appropriate management levels" established purely for administrative reasons because it was the level of wild horse use at a particular point in time cannot be sustained under §1333

(b) (2).

"The statute DOES NOT AUTHORIZE REMOVAL OF WILD HORSES TO ACHIEVE AN APPROPRIATE MANAGEMENT LEVEL which was established for administrative reasons rather than in terms of the optimum number of animals which results in a thriving natural ecological balance and avoids a deterioration of the range." [Emphasis added.]

"...§1333 (b)(2) contains the sole and exclusive authority for BLM to remove wild horses from the public range..."

"Dahl v Clark held the test as to appropriate wild horse population levels is whether such levels will achieve and maintain a thriving ecological balance on the public lands."

The IBLA order repeats over and over what AML is and is not. They go on in the Downer order (IBLA 88-678) to say "the inventory is to provide information which, along with other information gathered from monitoring and studies (§1333..) will allow the Secretary to determine the optimum number of horses and burros that will allow a thriving natural ecological balance and protect the range...the inventory itself does not constitute that determination." The API order from IBLA stresses current, monitoring data of actual use.

In responding to Downer, BLM evidently argued that they had a study called "Wild Horse Parentage and Population Genetics" made under contract with BLM and being forwarded to the NAS committee for review to see if there is some application of this information on herd management. If there isn't a known application one wonders why BLM contracted for it or why that relevance wasn't determined beforehand. If it is from the University of Minnesota studies, you realize there was overwhelming criticism of that study including API's charge of shoddy methodology.

Not until BLM does the inventorying, monitoring and the studies required to establish optimum numbers and basis removals on data that show a removal will achieve a thriving ecological balance, can we answer the question you pose. It's on the order of crossing one's bridges when they get to them. As I said on the phone it is Question Number 3 in a series that needs answers to Questions 1 and 2 first. I suspect your suggestion to remove to 15 percent below AML allow to grow to 15 percent above does not meet statutory criteria for a removal and falls short of IBLA's repeated emphasis on the meaning of AML. Because this point is reiterated so often in federal suits (Dahl v Clark and API v Hodel) I suspect most courts would find your suggestion lacking in statutory authority as we do.

When we discussed acceptable utilization levels as the measure of the ecological balance of the natural system, I hope it was clear that API does not (at this time) challenge the forage allowance set by BLM. If it is open to question, I would suspect the amount left on the bush falls short of providing for the demands on the vegetative resource for watershed protection, soil stability, and wildlife habitat. But I accept BLM's setting of this balance of uses presuming calculations, technical judgments, and other professional considerations went into the "UAL" determination.

There is some discrepancy between what you refer to as balance of use of the forage as some indicator of a thriving ecological balance of the natural system and what I interpret as balance of use of the vegetative resource--of which forage is but one of the four uses--as the measure of a thriving ecological balance of the natural system. From my perspective, when the forage allowance is 55 percent utilization, then the 45 percent left is the very thing BLM is mandated to protect as the thriving ecological balance of the natural system. Therefore, when one use (forage) exceeds the acceptable level of that 55:45 percent ratio, it infringes on the other three uses--watershed, soils, and habitat. According to your own directives, as well as the laws, the three users of that forage allowance are wildlife at reasonable numbers, wild horses at optimum, and cows at a permitted use based on (1) monitoring actual use, (2) available livestock forage, (3) and carrying capacity.

When overutilization occurs, (that is, forage allowance exceeds the 55 percent UAL), we need to know whether horses contribute to that overutilization and if so how much. This information is shown in the Use Pattern Maps which show the state of the vegetative condition (light, moderate, heavy, severe) and the location of these grazing impacts in the allotment; it would also be shown in the census mapping of horses which show numbers and very vaguely indicate locations. The picture we want the data to show is where horses are in relationship to the overutilization in the HMA. We want to also know how many cows are there in relation to the damage. If there are 500 horses in the hills and 500 cows in the riparian area, we will protest reducing horses to remedy damage in the riparian areas. If there are 30 horses watering alongside 500 cows in a severely overutilized areas, we will also protest a reduction because the Secretary is required to provide for the biotic needs of an optimum number in the HMA, and 30 may be the optimum number based on biotic needs and habitat requirements of that herd. We would also request the nature of other damage besides overeating--such as compaction of soil, trampling, punching, and breaking down stream banks.

Because spatial overlap information has not been collected--even though the NAS stated that where and when horses graze (e.g. spatial overlap) is the very crux of developing a sound

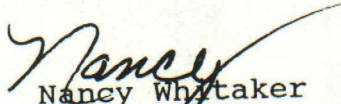
program--we are willing to accept the testimony of the wild horse specialists based on their field observations and the notes he has made of seasonal movements, daily routines, and grazing/watering sites of the horses in his areas. A narrative account in the form of a testimonial statement by a qualified observer is acceptable to us. But we will not accept horse counts on UPMS unless there are also cow counts. However, any animal counts on UPMS misuses these documents. We can't understand how, when BLM was directed so specifically by Congress to develop a sound protection and management program twenty years ago, the most basic monitoring information has not been collected to provide that program. We know it is not incompetence.

With regard to population estimates, API has not pursued that issue. When, in 1985, Nevada removed over 10,000 horses from a population of 31,000 and had 29,000 left, we realized it was a waste of time to attempt to argue arithmetic with BLM. But there are legitimate questions to be raised in that issue: whether the calibrated index is applied to the census data, whether you include foals in the total, and how you compute mortality rates. We understand John Turner's mountain lion studies in Montgomery Pass indicate a higher rate of predation than supposed; also that the South Stillwater population is suspected of being stabilized due to mountain lion predation. Unless there is some indication in statistics of natural population adaptations going on (number of young to adults in the herd, the size of bands, a correlation of birth to precipitation, etc), the statistics compiled for the budget fall short of meeting the statutory requirements for population information. Since population dynamics are not analogous to statistical demographic projections, we are always at a loss to know how to discuss the subject of numbers with you. We are aware that two or three hundred thousand horses existed in Nevada in the late 1950s when the Wild Horse Annie Act was passed. Using the increase of the estimated 1971 numbers as an alarm of "overpopulation" is a false picture. During the 1960s adjudication period, most of the population was rounded up or slaughtered by private parties. It is suspected that there was a dramatic increase in the slaughter of horses when it became apparent that the protection legislation would pass. The purpose of the act was to stop that slaughter and destruction and bring wild horses under the protection of the Secretary to be managed as "integral components of the natural system."

Here it is twenty years later, and we're still asking for the most basic components of a sound program be implemented. Having read the 1982 Programmatic Guidance, it comes very close to being a sound program kicked under the rug along with the 1985 Dahl v Clark ruling and the 10th Circuit ruling by the

Reagan Administration. We hope that BLM's own 1982 Guidance will be followed, since most of the changes made under the Reagan Administration violated the law.

Sincerely,


Nancy Whitaker
Program Assistant