



ANIMAL PROTECTION INSTITUTE OF AMERICA

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2 letters

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INFORMATION**

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Dan Rathbun
Assistant Director
Nevada State BLM
850 Harvard Way

EMERGENCY REMOVAL POLICY

Dear Dan:

As you probably know I was in Tonopah a week ago to tour the Goldfield HMA where the Resource Area is suggesting an emergency removal be considered. When these situations arise, API's expectation is that BLM will make the decision and support it with evidence.

When such a crisis situation arises suggesting that an emergency removal is the proper response we're concerned because it waives the law.

In the case of ANY removal of horses, both the law and the intent of it as expressed in the Congressional Committee Report, make it very clear that a removal of horses from the public lands is to be viewed as a major action. It is a decisive, definitive, and conclusive action for wild horses. The Committee Report states:

"The committee recognizes that some control over the numbers of animals may be necessary in order to maintain an ecological balance in an area. Guidelines for reducing the population of wild free roaming horses or burros in an area are provided in the measure but it should be noted that any reduction should be carefully weighed before being undertaken. The committee does not intend that the provision for a reduction of numbers as contained in the measure be considered a license for indiscriminate slaughter or removal of the wild free-roaming horses or burros."

Congress listed restrictions in statute rather than the granting of full discretion to the Secretary for how wild horses should be managed particularly when they could be removed. These are the very statutory restrictions an emergency removal waives. So, for us, emergency removals are a very delicate situation.

There is the very definite possibility that BLM could conceivably stretch administrative convenience to be the determinant of what is the emergency or how many horses should be removed when a crisis occurs. For instance, an unforeseen disaster might destroy a water system at the same time BLM is proposing a reduction but lacks the monitoring data to support their proposed reduction. In such a case, [albeit illegal to not support a reduction with monitoring data] it could happen that the actual emergency affects 100 horses, while BLM's proposed reduction is for 500. The emergency might be used as the avenue for removing the 500. This was the case in Nellis. Jake's Wash was very similar except they had not proposed a removal, they simply used a crisis to conduct an extensive reduction.

Another instance, could be for an emergency to occur that affects a small portion of the population at the same time a proposed reduction is supported by data. The emergency might affect 70 horses while the data show the need to reduce 365. Rather than capturing 70 horses as an emergency, BLM might argue that all should be removed in one operation to avoid the double removal operation. The other alternative in this situation would be to haul food and water for the 70 affected by the crisis for the three months required to complete the paper work of a regular removal. This appears to be the case in Goldfield.

The IBLA ruling points to §1333 (b) (2) as the SOLE authority for removing horses from the public lands. IBLA says "BLM clearly faced a dilemma in 1981 and 1982. On the one hand, it was required to manage the public range, establishing appropriate levels of wild horse use, while, on the other hand, it did not have adequate information to make the necessary management decisions regarding appropriate levels of such use. While we [IBLA] can appreciate this dilemma, it is clear that ANY decision to remove wild horses is constrained by the express requirements of Section 3(b)."

Because API seeks full implementation of the law and that the full intent of Congress as the expression of the public mandate be carried out by BLM in its management program, we view removal of horses under any circumstance as a very grave and serious action.

Despite attempts by BLM to imply the opposite, we are aware that the public continues to endorse the same mandate as expressed in the 1971 Committee Report; which is, that wild

horses be protected on the public lands as a native species managed as wildlife, their free-roaming nature protected.

Despite the Reagan Administration's effort to manufacture a market and create a demand for adoption horses, we know from our own contact with the public that the vast majority of Americans want wild horses kept wild and free-roaming in their public land habitat homes and that the adoption program is secondary as a convenient, expedient means of disposing of healthy horses determined to be excess in their given areas. This is very clearly the sentiment of our own 150,000 members. Therefore, API is always wary and highly suspicious of the use of "emergencies" as the justification for a removal of horses from the public lands.

However, because we are a humane organization, API cannot obstruct or interfere with a humane rescue when BLM declares an emergency removal is needed to save lives or alleviate suffering caused by a specific crisis situation.

During my experience working on Jake's Wash and Nellis with you, and through questioning Milt Frei, I have gleaned and gathered what have emerged as four very logical and very applicable criteria which I used in both Nellis and Goldfield. Because these criteria did emerge from exchange with your own staff not just off the top of my head, API requests the Nevada State Office to adopt these same criteria as a standing format to apply to emergency situations.

I believe these four criteria are the very things BLM should ask itself when a crisis occurs or a disaster hits: (1) What is the emergency? (2) How many horses does it affect? (3) Is it a fix-it or a no fix-it situation? (4) What is being done to alleviate the death and/or suffering caused by it?

So the question arises as to whether or not in the Goldfield HMA, the Tonopah BLM has the justification of a regular removal or if it has an emergency situation or if it has both.

If it has both, then being able to delineate between what is the actual emergency from what might be the result of a habitat evaluation constituting the determination of optimum numbers and the declaration of excess is crucial to us--even if it is decided that one removal operation is the most practical course for BLM to take. In talking with Craig Downer, who used to work for API, he has declared that he has evidence (observations documented with photos) of horses surviving on unknown seeps--digging down to a pocket of water where BLM says there is no water. This is why we feel hesitant and in a dilemma when BLM predicts horses will die--so often, horses survive because of small seeps and unmarked springs. But then we aren't in the position of being able to gamble on this-- which is why we believe a standardized format is needed and urge Nevada to adopt the above criteria.

In the case of Goldfield, if BLM declares an emergency removal is needed we are compelled to insist BLM specify the nature of the emergency (the loss of hauled water) and the number of horses affected by the loss at this specific water source.

We believe it is incumbent upon BLM at the very minimum to make its analysis of the emergency based only on the loss of water in the temporary tank and the number of horses affected by that loss. This is consistent with the response of BLM to the situation in Breen Creek when they monitored the water and horse usage at the site of the disaster that was their emergency. The inclusion of other water sources is inappropriate to the emergency. They should be included in a habitat evaluation. API would not object to the emergency removal provided it is focused on the site causing the suffering of horses; however, we will argue that BLM declare an emergency Closure to Livestock (§4710.5) based on habitat limitations as done in the past--e.g., Buffalo Hills in 1978 in a similar situation.

We would also include the 100-mile Nellis boundary fence--built in 1985, one year before the Military Land Withdrawal Act went into effect--that inhibits the free-roaming nature of these wild horses.

I look forward to hearing from you and would appreciate your looking at this request for a standardized format concurrent with the situation in Goldfield.

Sincerely,

Nancy Whitaker
Nancy Whitaker
Program Assistant