BW: this must meet the Aug 1 deadline. Copies should go to Sen Reid, Bryd, Ford, Bradley & Congressmen Vento, Yates, Campbell
be back 7/30. NW

7-19-91

rulemaking 1991 "X"

July 19, 1991

Director [140]
BLM Room 5555
Main Interior Bldg
1849 C Street NW
Washington DC 20240

<u>7/2/91 RULEMAKING</u>

WO 250-4370-02-241A
Management and Protection of
Wild, Free-Roaming Horses & Burros

Dear Sir:

The Animal Protection Institute speaks for its 150,000 members in response to the proposed rulemaking published in the Federal Register July 2, 1991. This proposal to put decisions to remove free-roaming wild horses and burros from <u>public</u> lands into full force and effect grants the Secretary the very authority which Congress purposely withheld.

§4720.2-1 grants the Secretary authority to immediately remove horses from private lands. Full force and effect is absolutely irrelevant to private lands.

More important, the IBLA has already ruled on putting public land removal decision into full force and effect. A copy of that ruling is enclosed.

The IBLA has already ruled on the limitation Congress imposed on the Secretary's authority to remove horses in their June 1989 ruling. When BLM argued that the Secretary had discretionary authority for when, how, and why wild horses and burros can be removed from the public lands, IBLA stated unequivocally that "the sole and exclusive authority for removing horses is in the law." They cited the statutory restrictions and constraints related to determining when an overpopulation exists and wild horses and burros removed. API was one of many interested and affected parties in 1978 at the time that restricted authority was granted. We joined with the arguments for the need of it. That same need is apparent today in this very rulemaking.

In their October 19, 1990 ruling IBLA states "WE DECLINE TO GRANT FULL FORCE AND EFFECT TO BLM'S DECISION, AS TO DO SO MAY EFFECTIVELY MOOT THE APPEALS. They go on to reiterate their statement of October 15, 1990 related to their procedure for a Motion for Expedited Consideration.

The fact of the matter is that IBLA has already ruled on this rulemaking. In practice the rulemaking eliminates BLM's need to file a Motion for Expedited Consideration and requires the appeallant to file a Motion to Stay at the time of the appeal. We would not appeal without such a motion because we would contend that the arguments for our appeal would deny the decision.

BLM argues

> ** that it takes so long for the appeals process to work that populations can expand at rates of 15 to 25 percent and that this increase of growth makes it <u>difficult</u> to maintain a thriving ecological balance in the habitat area.
>
> This spurious argument implies that a population increase automatically "POSES A THREAT TO THEMSELVES AND THEIR HABITAT AND TO OTHER RANGELAND VALUES" and causes an imbalance of the ecological condition in a given area. To make that assertion requires monitoring the impact of horses on their habitat to show when and where they are the cause of overutilization or other damage and where actual competition with livestock occurs which could pose a threat to livestock grazing. BLM has NEVER done this even though their own field manual lists these studies as mandatory and the law requires them.
>
> BLM is required to correct overutilization and remedy damage when range condition information shows that the natural ecological balance is upset or impaired. The law clearly requires monitoring and inventorying be the basis of decisions. The failure to conduct the studies to show overutilization and competition is the basis of every removal appeal.
>
> The "difficulty" referred to in BLM's supplemental background was clearly pinpointed in the 1988 GAO investigation on grazing as political pressure from grazing interests inside and outside BLM. There is no other "difficulty."
>
> MORE IMPORTANT, IBLA has already ruled on the argument related to alleged delay by citing their procedure for a Motion for Expedited Consideration.

BLM argues:

> ** [delay in appeals] also INCREASES THE COST of removing horses because the budget planners can't write contracts to accommodate a possible change in numbers. The problem here is in the budget forecasting process and the contract-writing process. Denying the public its right of appeal and granting

to the Secretary the very authority Congress withheld is not the solution to this administrative ineptness. Contracts can be worded to allow for a possible change of number and the procedure adapted to the intent and requirements of the law--not vice versa.

Again, IBLA already addressed the issue of BLM's using "administrative convenience" to change the intent of the law. They called it a dilemma that BLM must work out. We realize it is a challenge to budget planners to figure out how to write a contract to meet the reality of the situation.

BLM argues:

** [that] "on several occasions" wild horse and burro herds have been endangered by the lack of forage or water caused by weather conditions or other emergencies such as fire or deep snow.

API has been actively involved in over sixty decisions affecting wild horses in the past three years. Only twice has this endangerment been an issue. One was the Nellis HMA, the other the Goldfield HMA--which is adjacent to Nellis. Both of these situations included such controversial extenuating circumstances as to make them completely atypical. The construction of the western boundary fence of the Nellis Complex in 1985 is part of the controversy in both cases. But the proper and common sense response to the need for addressing possible emergency situations is to write a procedure to allow for an emergency removal. Nevada BLM worked out just such a procedure in an open meeting with interested wild horse protection groups. The procedure included guidelines and criteria that would specify the nature of the emergency and the number of horses involved along with parameters on actions to be taken. Nevada BLM's commonsense solution is ignored.

We believe the proper rulemaking to address the argument for emergency situations presented by BLM is to set forth procedures and criteria to meet an emergency when "lack of forage or water caused by weather conditions or other disaster" occurs in exactly the way Nevada BLM suggests. The solution to this problem is not to deny the public its administrative right of appeal or to grant the Secretary authority which Congress refused.

Because wild horse removals today are the result of the allotment evaluations that are in progress [in accordance with FLPMA and the timeframes resulting from the implementation of NEPA], the need is to bring wild horse monitoring schedules within the same timeframes as livestock in order to carry out the multiple use decision that arises from the allotment review process. A workable multiple use decision format was devised by Nevada BLM and has the support of wild horse groups, conservation groups, and Nevada Department of Wildlife. It is in accordance with law. This

rulemaking does not address the need to bring wild horses into that multiple use decision making. In fact it ignors that allotment evaluation process and the multiple use decision format.

It takes wild horses and burros further away from a coordinated, integrated management approach as required by NEPA and further from the intent of the Wild, Free-Roaming Horse and Burro Protection Act.

The language for appealing decisions for livestock and wild horses in that multiple use decision making needs to be identical. The appeals process for wild horse/burro and livestock needs to be in the same arena. This rulemaking is totally insufficient and inappropriate.

The §4700 Regulations need to restore the statutory requirements for monitoring and inventorying that were deleted in December 1984. This would bring the wild horse program into compliance with law. The Resource Management Plans and Allotment Management Plans (where the Secretary elects to write an AMP) need to include quantifiable objectives to protect wild horse habitat and populations and to do this at this time requires either a procedure to include them in allotment evaluation decisions by a rulemaking or taking every RMP and AMP through the amendment process to correct the consequence of the 1981 §1600 rulemaking and the December 1984 rulemaking e two rulemakings This would not only put the law back in the program but bring wild horses into the same monitoring time schedule as livestock, thus implementing the laws--NEPA. FLPMA, and the Wild Horse law as amended by PRIA. This rulemaking ignors this need entirely.

We strenuously object to the use of the word "control" when the word "manage" already includes removal as an option for management action. The word "control" is not in the law. We object to its use because it is a propaganda word inserted into official government documents.

API will appeal the rulemaking in total as being in violation of the words and the intent of the law.

FOR THE ANIMAL PROTECTION INSTITUTE OF AMERICA

Sincerely,

Nancy Whitaker
Assistant Director of Public Land Issues,
Specializing in Wild Horses