

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ARIZONA STATE OFFICE

4700 (932)

3/29/89

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7
4/6

March 29, 1989

Memorandum

To: Director (200), Room 5626

From: State Director, Arizona

Subject: Wild Burro Management on Arizona and Nevada BLM Lands and the Lake Mead National Recreation Area (LAME) Lands

A national policy issue surfaced between the National Park Service (NPS) and the Bureau of Land Management (BLM) when NPS cancelled a standing memorandum of understanding and drafted a proposed instrument which would have drastically changed our working relationship. The area of concern is the management of wild burros that use the lands administered by both agencies as part of their natural habitat. We feel that sister agencies should be able to solve their problems in house to the satisfaction of both organizations and their clientele. This memorandum is to inform you of the problem and to seek your help in resolving it at the Washington level.

Arizona and Nevada BLM had a Cooperative Agreement with Lake Mead National Recreation Area (CA 8360-81-01 and AZ 9950-CIA-0001) to cooperatively manage the wild burros that use the lands of both agencies. The burros were managed under the Wild, Free-Roaming Horse and Burro Act (P.L. 92-195) and 43 CFR 4700 regulations. Cancellation notice was provided by a letter dated August 17, 1988.

In a subsequent memorandum, dated November 22, 1988, the Park Service proposed a draft interagency agreement. The draft agreement stated that the Park Service was specifically exempt from the Act (P.L. 92-195) and that the wild burros would be managed under Park Regulations, which considered them an exotic species, subject to complete removal (at NPS discretion). The Field Solicitor, San Francisco Field Office for the National Park Service, provided the Park Service Solicitor with an opinion that supported their position. The Park Service Solicitor indicated that he had discussed the issue with the Solicitors Office (Pacific Southwest Region) for BLM, who apparently agreed with his opinion. A Park Service employee indicated informally that they were considering complete burro removal in the long term.

Based on our interpretation of the intent of the Act (sec. 4) and 43 CFR 4700.0 regulations, the burros should be managed under BLM guidelines. In the regulation 4700.0-5 (1), wild horses and burros are specifically defined as unbranded and unclaimed horses and burros that use public lands as part or all of their habitat. Historically, wild burros have inhabited both the Lake Mead National Recreation Area and BLM lands in Arizona and Nevada. They water at the lake/river and move out to BLM lands to feed. Since these animals move back and forth from public lands to Park Service lands, they must be considered wild burros. If this were not true, every time the burros crossed the Park Service/BLM boundary the policy that directs their management would change. Broadly speaking, National Park Service is a land management agency that manages habitat, while BLM has jurisdiction over the wild burros.

If the NPS opinion prevails, we can expect a negative impact of about 20% to Arizona's wild burro population and about 50% to Nevada's. Collectively, Arizona and Nevada manage about 67% of the Bureau's total burro population. Such a decision could also set a precedence. Other federal agencies, such as the Fish and Wildlife Service (Wildlife Refuges) and military reservations also border BLM lands. Should these agencies take similar actions, the burro program could be drastically impacted. There are no known conflicts at present. Special interest groups such as the Animal Protective Institute (API) can also be expected to become involved. API obtained two court injunctions preventing Nevada BLM from removing burros from the Desert Range and Caliente areas. They threatened additional suit should BLM proceed with burro removals in the Gold Butte Area of Lake Mead National Recreation Area.

At present, Arizona and Nevada Districts are considering a proposed interim agreement with the Lake Mead National Recreation Area. This agreement would essentially allow NPS and BLM to operate as they have in the past until the issue is resolved.

We have attached materials pertinent to the issue. If you need additional information, please contact the Division of Lands and Renewable Resources (932) in the Arizona or Nevada State Office.

Beaumont A. McClure
Acting

4 Attachments

- 1 - Cancelled, Cooperative Agreement with Lake Mead National Recreation (CA 8360-81-01 and AZ 9950-CIA-0001)
- 2 - Draft Interagency Agreement proposed by the Park Service
- 3 - Interim Interagency Agreement Between Lake Mead National Recreation Area and the Bureau of Land Management
- 4 - Background Information



United States Department of the Interior

IN REPLY REFER TO:
4700 (023)

BUREAU OF LAND MANAGEMENT

Phoenix District Office
2015 West Deer Valley Road
Phoenix, Arizona 85027

December 2, 1986

ARIZONA STRIP DIST.
BU. LAND MANAGEMENT
DM _____
ASSOC DM: <i>[Signature]</i>
DEC 08 '86
ADMIN _____
RESOURCES _____
ENV COORD _____
PUB AFF _____
OPS _____
SRA <input checked="" type="checkbox"/> _____
WRA _____
OTHER _____
ACTION

Memorandum

To: District Manager, Arizona Strip
District Manager, Las Vegas
Superintendent, Lake Mead, National Park Service

From: District Manager, Phoenix

Subject: Cooperative Agreement, Burro Management

Enclosed, for your files, is a fully executed copy of the Cooperative Agreement for burro management between the Bureau of Land Management and Lake Mead National Recreation Area.

Enclosure

COOPERATIVE AGREEMENT
BETWEEN
LAKE MEAD NATIONAL RECREATION AREA
(CA-8360-81-01)
AND THE
BUREAU OF LAND MANAGEMENT
(AZ 950-CAI-001)

ARTICLE I

Background and Objectives

It is jointly recognized that wild, free roaming burros inhabit adjoining lands that are administered by the Lake Mead National Recreation Area, National Park Service, and the Las Vegas, Arizona Strip, and Phoenix Districts of the Bureau of Land Management, and;

Concentrations of these animals occur during the hot, dry months along the Colorado River area, primarily on the Lake Mead National Recreation Area, but also on BLM lands administered by the Las Vegas, Arizona Strip and Phoenix Districts, and;

There is a mutual desire by the Bureau of Land Management and the National Park Service, to work cooperatively in the management of burros that utilize the lands identified above, and

Management of wild free-roaming burros on public lands was authorized by Congress under the Act of December 15, 1971, 16 U.S.C., 1331-1340 as amended. Implementation regulations are found in 43 CFR Part 4700. Public Lands are defined as lands administered by the Secretary of the Interior through the Bureau of Land Management. The Lake Mead National Recreation Area under the National Park Service does not come within that category, and is specifically exempt from the Act (P.L. 92-195). Therefore, any management of burros must be by means of a cooperative agreement as provided in 43 CFR 4710-3.

ARTICLE II

Statement of Work

NOW, therefore, it is agreed:

1. Herd Management Plans will be a joint effort with BLM, Las Vegas District, Arizona Strip District or Phoenix District taking the lead role, supported by appropriate Lake Mead National Recreation Area personnel.

2. Management Plans will use the format outlined in BLM Manual 4730.6. The general objective of the management plan is to establish a natural ecological balance to benefit wild free roaming burros in harmony with other resources. It is understood that stocking rates are an initial stocking level that may be adjusted based on future studies or other pertinent information. These stocking rates provide for the management of wild and free roaming burros in a manner that is designed to achieve and maintain a thriving ecological balance. Management objectives will be consistent with directives governing each part of this agreement.

3. Removal of wild, free roaming burros that exceed the herd size to be determined in accordance with the Herd Management Plan(s) (43 CFR 4740.3, 43 CFR 4740.4, and 43 CFR 4740.5) will be accomplished through the BLM Capture and Adoption Program, or other legally approved means. Burros that become habitual problems around human developments will be removed by a live capture operation.

4. Coordination will be required to identify the necessary personnel and funds needed to accomplish the removal of excess burros. An Interagency Agreement will be established after all the necessary planning has been completed and agreed on by all parties concerned.

5. The BLM will be the lead agency in conducting capture operations and the National Park Service will provide funds, personnel or equipment to the extent permissible under No. 4 of this agreement.

6. Burro Management will be conducted in accordance with the Wild, Free-Roaming Horse and Burro Act (P.L. 92-195) and the Lake Mead Act (P.L. 88-639) and the provisions of this agreement. Accordingly, the BLM, with assistance from the National Park Service, will develop and include within Herd Management Area Plan(s), burro management that will preserve the scenic, historic, scientific, and other important features of the recreation area.

7. The Lake Mead National Recreation Area Superintendent and the District Managers or their respective delegated representatives will meet at least once each year to review the Cooperative Agreement and make any necessary adjustments.

ARTICLE III

Term of Agreement

This Agreement shall become effective when signed by the parties hereto and shall continue in effect for five years.

This Agreement may be extended by the execution of a Reaffirmation Memorandum.

ARTICLE IV

Key Officials:

- a. Superintendent, Lake Mead National Recreation Area.
- b. Manager, Las Vegas District, Bureau of Land Management.
- c. Manager, Arizona Strip District, Bureau of Land Management.
- d. Manager, Phoenix District, Bureau of Land Management.

ARTICLE V

Parties to this agreement are not obligated to expend funds for the execution of this agreement unless funds are appropriated and are available for the purpose of this agreement.

ARTICLE VI

Prior approval.

Not applicable.

ARTICLE VII

Reports.

Not applicable.

ARTICLE VIII

Not applicable.

ARTICLE IX

This agreement may be terminated by either party upon 60 days written notice.

During the performance of this agreement, the participants agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race, color, religion, sex or national origin.

No member of delegate to Congress, or resident Commissioner, shall be admitted to any share of part of this agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

FOR LAKE MEAD NATIONAL RECREATION AREA:

Jerry D. Weyers
Superintendent,
Lake Mead National Recreation Area

7.25.86
Date

FOR THE BUREAU OF LAND MANAGEMENT

Ben F. Collins
Manager, Las Vegas District
Bureau of Land Management

9-12-86
Date

William Lamb
Manager, Arizona Strip District
Bureau of Land Management

9/22/86
Date

Charles J. Jones
Manager, Phoenix District
Bureau of Land Management

12/2/86
Date

INTERAGENCY AGREEMENT
BETWEEN
LAKE MEAD NATIONAL RECREATION AREA
AND THE
BUREAU OF LAND MANAGEMENT

ARTICLE I

Background and Objectives

WHEREAS, it is jointly recognized that wild, free-roaming burros and horses inhabit adjoining lands that are administered by the Lake Mead National Recreation Area, National Park Service, and the Las Vegas, Arizona Strip, and Phoenix Districts of the Bureau of Land Management, and high concentrations of these animals occur year around within Lake Mead National Recreation Area, and;

WHEREAS, the Bureau of Land Management (BLM) manages the public lands and their various resource values under the principles of multiple use and sustained yield that will best meet the present and future needs of the American people, making the most judicious use of the land without permanently impairing the productivity of the land and the quality of the environment, and;

WHEREAS, the National Park Service (NPS) administers the National Park System and manages the units of the system to conserve their scenic, natural, cultural, and wildlife resources and to provide for public enjoyment of those resources in such a manner as to leave them unimpaired for the enjoyment of future generations, and;

WHEREAS, the NPS and BLM both have responsibilities for carrying out policies and programs established by the National Environmental Policy Act of 1969, Clean Air Act, Federal Water Pollution Control Act, Wilderness Act, Endangered Species Act, Historic Preservation Act, Archeological Resources Protection Act of 1979, and other applicable public laws, recognizing that the policies, programs, plans, and activities pertaining to our respective responsibilities may significantly affect the other and recognizing the need for harmonious and effective cooperative relationships between our agencies, and;

WHEREAS, management of wild, free-roaming burros and horses on public lands was authorized by Congress under the Act of December 15, 1971, 16 U.S.C., 1331-1340, as amended with implementation regulations found in 43 C.F.R., Part 4700 and public lands being defined as lands administered by the Secretary of the Interior through the Bureau of Land Management, and;

WHEREAS, Lake Mead National Recreation Area, a unit of the National Park System, does not come within this category, but is specifically exempt from the Act (Public Law 92-195), and;

WHEREAS, there is a mutual desire by the National Park Service and the Bureau of Land Management to work cooperatively in the management of burros and horses that utilize the lands identified above;

ARTICLE II

Statement of Work

NOW, Therefore, it is agreed that:

1. Management of wild, free-roaming burros and horses inhabiting (wholly or partially) the lands administered by the National Park Service, Lake Mead National Recreation Area will be in accordance with United States Department of the Interior, National Park Service Management Policies, National Park Service guidelines, the Lake Mead General Management Plan and the Lake Mead Resources Management Plan, which define wild, free-roaming burros and horses as exotic species and provides means for control of populations up to and including total removal.
2. That Management of wild, free-roaming burros and horses within Lake Mead National Recreation Area will be a control program based on documented, scientific information and data which demonstrates the need for and justifies control measure to be taken. Examples of situations include:
 - a. Posing a hazard to public safety.
 - b. Interfering with the accurate presentation of an historic scene.
 - c. Damaging historic or archeological resources.
 - d. Damaging native vegetation or impacting soils due to concentrated use.
 - e. Interfering with natural processes and the perpetuation of natural features or native species (especially those that are endangered, threatened or unique).
 - f. Posing a public nuisance in developed areas or campsites.
3. Removal of wild, free-roaming horses and burros will be accomplished through the Bureau of Land Management Capture and Adoption Program, or other legally approved means.
4. The National Park Service, Lake Mead National Recreation Area and the Bureau of Land Management, Las Vegas, Arizona Strip, and Phoenix Districts will exchange scientific, biological, population, and other information regarding the management of wild, free-roaming burros and horses.

5. Prior to any capture-removal operation of wild, free-roaming burros and horses from the Lake Mead National Recreation Area and adjoining Bureau of Land Management lands, cooperative consultation and advisement of the respective agencies will take place.

ARTICLE III

Term of Agreement

This Agreement shall become effective when signed by the parties hereto and shall continue in effect for five years.

This Agreement may be extended by the execution of a Reaffirmation Memorandum.

ARTICLE IV

Key Officials:

- a. Superintendent, Lake Mead National Recreation Area.
- b. Manager, Las Vegas District, Bureau of Land Management.
- c. Manager, Arizona Strip District, Bureau of Land Management.
- d. Manager, Phoenix District, Bureau of Land Management.

ARTICLE V

Parties to this agreement are not obligated to expend funds for the execution of this agreement unless funds are appropriated and are available for the purpose of this agreement.

ARTICLE VI

Prior Approval.

Not applicable.

ARTICLE VII

Reports.

Not applicable.

ARTICLE VIII

Not applicable.

ARTICLE IX

This agreement may be terminated by either party upon 60 days written notice. During the performance of this agreement, the participants agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race, color, religion, sex or national origin.

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

For Lake Mead National Recreation Area:

Alan O'Neill, Superintendent

Date

For Bureau of Land Management:

Manager, Las Vegas District
Bureau of Land Management

Date

Manager, Arizona Strip District
Bureau of Land Management

Date

Manager, Phoenix District
Bureau of Land Management

Date

INTERIM INTERAGENCY AGREEMENT
BETWEEN
LAKE MEAD NATIONAL RECREATION AREA
AND THE
BUREAU OF LAND MANAGEMENT

2/10/89

ARTICLE I

Background and Objectives

WHEREAS, it is jointly recognized that wild, free-roaming burros and horses inhabit adjoining lands that are administered by the Lake Mead National Recreation Area, National Park Service, and the Las Vegas, Arizona Strip, and Phoenix Districts of the Bureau of Land Management.

WHEREAS, the Bureau of Land Management (BLM) manages the public lands and their various resource values under the principles of multiple use and sustained yield that will best meet the present and future needs of the American people, making the most judicious use of the land without permanently impairing the productivity of the land and the quality of the environment, and;

WHEREAS, the National Park Service (NPS) administers the Lake Mead National Recreation Area and manages the units of the system to conserve their scenic, natural, cultural, and wildlife resources and to provide for public enjoyment of those resources in such a manner as to leave them unimpaired for the enjoyment of future generations, and;

WHEREAS, the NPS and BLM both have responsibilities for carrying out policies and programs established by the National Environmental Policy Act of 1969, Clean Air Act, Federal Water Pollution Control Act, Wilderness Act,, Endangered Species Act, Historic Preservation Act, Archeological Resources Protection Act of 1979, and other applicable public laws, recognizing that the policies, programs, plans, and activities pertaining to our respective responsibilities may significantly affect the other and recognizing the need for harmonious and effective cooperative relationships between our agencies, and ;

WHEREAS, management of wild, free-roaming burros and horses on public lands was authorized by Congress under the Act of December 15, 1971, 16 U.S.C., 1331-1340, as amended with implementation regulations found in 43 C.F.R., Part 4700 and public lands being defined as lands administered by the Secretary of the Interior through the BLM, and;

WHEREAS, Lake Mead National Recreation Area, a unit of the National Park System, does not come within this category, but is specifically exempt from the Act (Public Law 92-195), and, therefore, any management of wild horses and/or burros must be by means of a cooperative agreement.

WHEREAS, there is a mutual desire by the NPS and the BLM to work cooperatively in the management of wild horses and/or burros that utilize the lands identified above;

ARTICLE II

Statement of Work

NOW, Therefore, it is agreed that:

1. Herd Management Areas will be managed as a joint effort with BLM, Las Vegas District, Arizona Strip District, and/or Phoenix District and the Lake Mead National Recreation Area.

2. Coordination will be required to identify the necessary personnel and funds from both agencies needed to accomplish the capture of excess or problem wild horses and/or burros.

3. Capture of wild, Free-roaming horses and/or burros will be accomplished through the BLM capture and adoption program, or other legally approved means.

4. The NPS, Lake Mead National Recreation Area and the BLM, Las Vegas, Arizona Strip, and Phoenix Districts will exchange scientific, biological, population, and other information regarding the management of wild, free-roaming horses and/or burros.

5. Prior to any capture-removal operation of wild, free-roaming horses and/or burros from the Lake Mead National Recreation Area and adjoining Bureau of Land Management lands, cooperative consultation and advisement of the respective agencies will take place.

ARTICLE III

Term of Agreement

This interim agreement shall become effective when signed by the parties hereto and shall continue until management responsibilities for the wild horses and burros on Lake Mead National Recreation Area are resolved.

This interagency agreement will be considered the same as a cooperative agreement for the purposes of management of wild horses and/or burros on the Lake Mead National Recreation Area.

ARTICLE IV

Key Officials

- a. Superintendent, Lake Mead National Recreation Area.
- b. Manager, Las Vegas District, Bureau of Land Management.
- c. Manager, Arizona Strip District, Bureau of Land Management.
- d. Manager, Phoenix District, Bureau of Land Management.

ARTICLE V

Parties to this agreement are not obligated to expend funds for the execution of this agreement unless funds are appropriated and are available for the purpose of this agreement.

ARTICLE VI

Prior Approval.

Not applicable.

ARTICLE VII

Reports.

Not applicable.

ARTICLE VIII

Not applicable.

ARTICLE IX

This agreement may be terminated by either party upon 60 days written notice. During the performance of this agreement, the participants agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race, color, religion, sex or national origin.

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

For Lake Mead National Recreation Area:

Alan O'Neill, Superintendent

Date

For Bureau of Land Management:

Manager, Las Vegas District
Bureau of Land Management

Date

Manager, Arizona Strip District
Bureau of Land Management

Date

Manager, Phoenix District
Bureau of Land Management

Date



United States Department of the Interior

NATIONAL PARK SERVICE

LAKE MEAD NATIONAL RECREATION AREA

601 Nevada Highway

BOULDER CITY, NEVADA 89005

SEP 05 1988

ARIZONA STRIP DIST.
BLM LAND MANAGEMENT
DM
ASSOC DM
8362 '88
ADMIN <input checked="" type="checkbox"/>
RESOURCES <input type="checkbox"/>
ENV COORD <input type="checkbox"/>
PUB AFF <input type="checkbox"/>
OPS <input type="checkbox"/>
SRA <input checked="" type="checkbox"/>
VRA <input type="checkbox"/>
OTHER <input type="checkbox"/>
PGT-24

IN REPLY REFER TO:

A44(LAME)
(X)L3019

August 17, 1988

Memorandum

To: District Manager, Arizona Strip District, Bureau of Land Management

From: Superintendent, Lake Mead National Recreation Area

Subject: Cooperative Agreement between Lake Mead National Recreation Area
(CA 8360-81-01) and Bureau of Land Management (AZ 9950-CIA-0001)
Dated December 2, 1986 - Wild Free-Roaming Burros

The Bureau of Land Management (BLM) manages the public lands and their various resource values under the principles of multiple use and sustained yield that will best meet the present and future needs of the American people, making the most judicious use of the land without permanently impairing the productivity of the land and the quality of the environment.

The National Park Service (NPS) administers the National Park System and manages the units of the system to conserve their scenic, natural, cultural, and wild-life resources and to provide for public enjoyment of those resources in such a manner as to leave them unimpaired for the enjoyment of future generations.

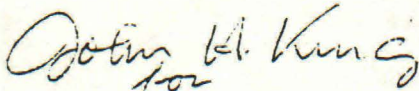
The NPS and BLM both have responsibilities for carrying out policies and programs established by the National Environmental Policy Act of 1969, Clean Air Act, Federal Water Pollution Control Act, Wilderness Act, Endangered Species Act, Historic Preservation Act, Archeological Resources Protection Act of 1979, and other applicable public laws. We both recognize that the policies, programs, plans, and activities that carry out our respective responsibilities may significantly effect the other. We also recognize the need for harmonious and effective cooperative relationships between our agencies.

Management of wild free-roaming burros and horses on public lands was authorized by Congress under the Act of December 15, 1971, 16 U.S.C., 1331-1340, as amended. Implementation regulations are found in 43 C.F.R., Part 4700. Public lands are defined as lands administered by the Secretary of the Interior through the Bureau of Land Management. The Lake Mead National Recreation Area, a unit of the National Park Service System, does not come within this category, and is specifically exempt from the Act (Public Law 92-195).

The existing and current Cooperative Agreement between our agencies does not correctly identify current National Park Service management policy and guidelines for the management of alien (feral) species within National Park System units. The difference in policies, guidelines, and current management goals between our agencies require that we terminate the existing agreement as provided for in Article IX, effective 60 days from the date of this letter.

We jointly recognize that wild free-roaming burros and horses inhabit adjoining lands that are administered by the Lake Mead National Recreation Area, National Park Service, and the Las Vegas, Arizona Strip, and Phoenix Districts of the Bureau of Land Management, and that concentrations of these animals occur during certain periods of time along the Colorado River area, primarily on the Lake Mead National Recreation Area, but also on BLM lands administered by the Las Vegas, Arizona Strip and Phoenix Districts.

We believe that there is a mutual desire by the National Park Service and the Bureau of Land Management, to work cooperative in the management of burros and horses that utilize the lands identified above. We are requesting that our agencies enter into negotiations to formulate and prepare a new Cooperative Agreement that will be in the best interests of our agencies that will allow each of us to fulfill our mandates, policies, management guidelines, directions and goals.


for
Alan O'Neill



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
SAN FRANCISCO FIELD OFFICE
450 GOLDEN GATE AVENUE, BOX 36064
SAN FRANCISCO, CALIFORNIA 94102-3402

COMM. (415) 556-8807
FTS: 556-8807

IN REPLY REFER TO:

NPS.SF.1591

January 12, 1989

DEPARTMENT OF THE INTERIOR
RECEIVED

JAN 17 1989

OFFICE OF FIELD SOLICITOR
PHOENIX, ARIZONA

Memorandum

To: Regional Director, Western Region
National Park Service

From: Field Solicitor, San Francisco

Subject: Wild Horses and Burros
Lake Mead National Recreation Area

The Superintendent's memorandum dated December 15, 1988 requested that this office resolve some confusion as to the laws applicable to burro removals within National Park Service areas. The request was prompted by the Service's recent termination of a cooperative agreement with BLM against whom litigation apparently has been filed by the Animal Protection Institute seeking a restraining order prohibiting burro removal from BLM lands. The agreement covered the removal of burros from some areas of the Recreation Area. The confusion has arisen as to whether the limitations contained in certain legislation discussed below are applicable to the Park Service burro removal programs.

The Park Service authority for wild animal management, control and removal is found in 16 U.S.C. 3 and has been sustained in various court decisions, principally New Mexico Game Commission v. Udall, 410 F2d. 1197 (1969); cert. denied 396 U.953, 24 L. Ed. 2d. 445, 90 S. Ct. 1/

When the Park Service authority to remove burros from Death Valley National Monument was challenged recently in Fund for Animals v. Hodel, Civil No. CV-F-85-545, the Court confirmed the authority from the bench^{2/} and the case turned solely to the issue as to NEPA compliance. The case eventually was dismissed (1986) by stipulation with the Service proceeding with its

1/The Bureau's authority to regulate wild horses and burros on public lands was likewise sustained. (Kleppe v. New Mexico, 426 U.S. 529, 49 L. Ed. 34, 96 S. Ct. 2285 (1976))

2/ Plaintiffs also alleged violation of Wild Horse and Burro Act which the Court pointed out from the bench was not applicable (16 U.S.C. 1332(a)).

removal program.^{3/}

As to the two statutes mentioned in the Superintendent's memorandum, neither is applicable to the National Park Service. The Wild Horses and Burros Act applies to "public lands administered by ... the Bureau ... and .. public lands administered by ... the Forest Service". 16 U.S.C. 1332(a))^{4/} Likewise, the Public Rangelands Improvement Act applies to "land administered by ... the Bureau of Land Management or ... the Forest Service ...". 43 U.S.C. 1902(a)

For a detailed discussion of the use of aircraft in wild horse and burro programs, attached please find the following memoranda:

- (1) Assistant Solicitor, Park and Recreation to the Director, National Park Service, dated September 13, 1982,
- (2) "Memorandum to the Files", undated, and
- (3) Field Solicitor, San Francisco to Regional Director, Western Region, National Park Service, dated August 10, 1977.

For your information, I have discussed the two above mentioned "BLM Statutes" with Burt Stanley, the Solicitor's Office (Pacific Southwest Region) attorney handling the BLM matters and we are in accord.

If you have any further questions, please do not hesitate to contact me.

Sgd Ralph G. Mihan

Ralph C. Mihan
Field Solicitor

Attachments

^{3/} In the Death Valley situation, the Service has had and continues to have authority to "remove" with use of helicopters and motorized vehicles. (See PL 100-446, 102 Stat. 1788, 1988 U.S. Code and Adm. News, page 1788)

^{4/} BLM does have authority to use helicopters or motor vehicles in carrying out the Act. (16 U.S.C. 1338a) Also of interest is the Ninth Circuit Court of Appeals ruling on the matter of BLM disposal of captured wild horses and burros. Animal Protection Institute v. Hodel, 860 F.2d. 920 (1988)



United States Department of the Interior

NATIONAL PARK SERVICE

LAKE MEAD NATIONAL RECREATION AREA

601 Nevada Highway

BOULDER CITY, NEVADA 89005

IN REPLY REFER TO:

W34(LAME-R)

December 15, 1988



Memorandum

To: Regional Director, Western Region
Attention: Field Solicitor

From: Superintendent, Lake Mead National Recreation Area

Subject: Laws Applicable to Management of Wild Horses and Burros within
National Park Service Areas

On August 5, 1988, Mr. Ben Collins, District Manager, Las Vegas District, Bureau of Land Management (BLM), informed us via telephone that the Animal Protective Institute (API), P. O. Box 22505, Sacramento, California 85922-2505, had filed and obtained two court injunctions preventing the Las Vegas District, BLM, from conducting scheduled live capture round-ups of burros at the Desert Range and Caliente areas in Nevada. The API group further threatened additional suit should the BLM proceed with the capture/removal operation of burros in the Gold Butte area of Lake Mead National Recreation Area. As a result of the threatened lawsuit, BLM, cancelled scheduled burro removal operations planned for the Tassi/Gold Butte and Cottonwood/Eldorado areas of Lake Mead. The two planned removals were for a total of 500 feral burros.

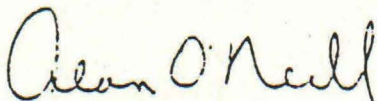
On August 12, 1988, we were notified by Ms. Runore Wycoff, Stateline Resource Area Manager, Las Vegas District, BLM, that we would have to cease all live capture operations of feral burros in the recreation area as we were in violation of the Cooperative Agreement between BLM and the National Park Service. We subsequently cancelled the agreement and are attempting to work out a revised agreement which more accurately reflects our proper role and authority in the management of wild horses and burros within National Park Service areas. In the meantime we have agreed to cease all burro removal operations until a new agreement is finalized.

We request that the solicitor address the following issues:

1. The legal authority for the National Park Service to manage wild horses and burros at Lake Mead National Recreation Area in accordance with current National Park Service policy, guidelines and management objectives.

2. The applicability of the "Wild Horse and Burro Act," (Public Law 92-105), and the "Rangelands Improvement Act," (Public Law 95-514), to Lake Mead National Recreation Area.

As an item of information, in our conversations with BLM representatives we were advised that they had contacted Interior Field Solicitor Bert Stanley in Sacramento, California, and he had advised them that the Wild Horse and Burro Act applies to National Park Service lands as well as Bureau of Land Management lands.



Alan O'Neill

cc:

Superintendent, LAME w/attachs.

Burt Stanley, PSW/SC w/attachs.

Field Solicitor, Phoenix w/attachs.

Assistant Solicitor, Parks
and Recreation w/o attachs.

Field Solicitor, Santa Fe w/o attachs.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D C 20240



SEP 13 1982

Memorandum

To: Director, National Park Service

From: Assistant Solicitor, Parks and Recreation

Subject: Implementation of Burro Management Program at
Death Valley

This responds to your memorandum dated August 19, 1982, received in this office on August 26, 1982, concerning the extent to which helicopters may be used by BLM in a program to capture burros in Death Valley National Monument. You indicate that the Service is prepared to enter into an agreement with BLM to remove approximately 4,000 burros from the Park.

In our view, BLM employees engaged in the capture of burros on National Park Service lands would be limited in those activities to the same extent as Park Service employees. As you know, 18 U.S.C. § 47(a) provides:

Whoever uses an aircraft or a motor vehicle to hunt, for the purpose of capturing or killing, any wild unbranded horse, mare, colt or burro running at large on any of the public land or ranges shall be fined not more than \$500, or imprisoned not more than six months, or both.

Although section 404 of the Federal Land Policy and Management Act of 1976 provides an exception to that prohibition, it is limited to "the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management". Accordingly, when BLM employees are engaged in capture of burros in Federal lands other than those administered by BLM, the prohibitions of section 47(a) apply to them as well.

Attached for your consideration is a Memorandum to the File drafted by this office on the issue, as well as a Memorandum to the National Park Service Regional Director from the Field Solicitor in San Francisco concerning use of aircraft in capturing or killing burros. These memoranda should explain in more detail the legal limitations on use of helicopters in the capture of burros in areas of the National Park System.

Should you have any further questions on this matter, please feel free to contact Brian Koula of my office on 343-7957.

(Sgd.) David A. Watts

David A. Watts

Attachments

cc: Reg. SOL, Sacramento
Field SOL, San Francisco

Memorandum to the Files

Re: Application of 18 U.S.C. § 47 to National Park Service
Personnel

The Superintendent of Grand Canyon National Park requested that this office review the prohibition of the hunting of wild horses or burros from aircraft or motor vehicles contained in 18 U.S.C. 47, to determine if that criminal statute limits the authority given the Secretary of the Interior in 16 U.S.C. 3 to "provide . . . for the destruction of such animals . . . as may be detrimental to the use of any" of the parks, monuments, and reservations under the jurisdiction of the National Park Service.

It has been determined by the National Park Service that a number of wild burros in the Grand Canyon must be destroyed. The authority to carry out the destruction of such animals is clear under 16 U.S.C. § 3. However, because of the terrain involved, this task would be made much simpler, and could be carried out at a much lower expense if the use of helicopters is not prohibited.

18 U.S.C. § 47(a) states:

Whoever uses an aircraft or a motor vehicle to hunt, for the purpose of capturing or killing, any wild unbranded horse, mare,

colt or burro running at large on any of the public land or ranges shall be fined not more than \$500, or imprisoned not more than six months, or both.

The question then, is, does this criminal statute apply to the employees of the National Park Service, while carrying out their official duties under section 3 of Title 16.

The words "public land and ranges" are not defined *as used in 18 U.S.C. § 47.*
However, the legislative history of H.R. 2725, which later was *enacted and* codified as 18 U.S.C. § 47, indicates that this prohibition is to apply to "wild horses or burros on land belonging to the United States." Furthermore, the legislative history indicates that the House Committee on the Judiciary considered a recommendation by the Department of the Interior *for* the inclusion of a proviso which would have the effect of providing an exception for federal activity. The proviso was to permit the very activities made criminal in subsection (a), as quoted above, when carried on by the government or its permittees. The Committee report indicates that the committee carefully weighed the suggested exception, but decided that the amendment should not be made. The insertion of this proviso was seen to have the effect of "all but destroying the effectiveness of the legislation. Its impact as a criminal statute would be

seriously weakened by the fact that the Government would be empowered to engage in the proscribed activities."

This, I believe, combined with the clear language of the statute, quickly defeats any attempt to argue that the prohibition was not intended to apply to the federal government when the law was originally passed.

There has been a recent exception made to the above discussed prohibition. Contained in Section 404 of the Federal Land Policy and Management Act of 1976 (BLM Organic Act) (PL 94-579) is the exception that in administering the Wild and Free Roaming Horses and Burros Act, the Secretary of the Interior may-

Use or contract for the use of helicopters
or, for the purpose of transporting captured
animals, motor vehicles.

This new provision specifically states that "the provisions of subsection (a) of the Act of September 8, 1959 (. . . 18 U.S.C. 47(a)) shall not be applicable to such use."

The Wild Horses and Free Roaming Horses and Burros Act grants the jurisdiction of all wild free-roaming horses and burros for the purpose of management and protection to the Secretary of the Interior. The authority includes the right of the Secretary to destroy horses

and burros under certain circumstances. However, all of the authority granted to the Secretary under the original Wild and Free Roaming Horses and Burros Act and the latter addition in Section 404 of the BLM Organic Act is limited by the definition section of the Act. "Secretary", as used in this Act, means "the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management. . . ."

From the above discussion, it seems clear that the original Wild and Free Roaming Horses and Burros Act and that latter addition to that Act under which the exception was made to the prohibition contained in 18 U.S.C. 47(a), applies only to public lands administered by the Bureau of Land Management. The conclusion then, that the exception does not apply to activities of the Secretary of the Interior in his other areas of responsibility, such as areas under the jurisdiction of the National Park Service, is unavoidable.

In conclusion, it seems clear that at the present time, although the National Park Service has the authority to destroy burros at Grand Canyon National Park under the authority of 16 U.S.C. § 3, it is prohibited from the use of aircraft in implementing its plan.

A handwritten signature in dark ink, appearing to be "R. H. [unclear]", is written in the bottom right corner of the page.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
SAN FRANCISCO FIELD OFFICE
450 GOLDEN GATE AVENUE, BOX 36064
SAN FRANCISCO, CALIFORNIA 94102

Your Ref:
W1323
N16
(WR)RNR

August 18, 1977

Memorandum

To: Regional Director, Western Region,
National Park Service

From: Field Solicitor, San Francisco

Subject: Use of Aircraft in capturing or killing Free-
Roaming Burros in Grand Canyon National Park

This is in response to your inquiry of July 21, 1977, on the above-referenced subject. Before addressing the specific questions you raise, a couple of preliminary remarks should be made. First, 18 U.S.C. § 47 (1970) states that it applies to wild horses and burros "on any of the public land or ranges". From this it might be argued that it only applies to the "public lands" administered by the Bureau of Land Management and not to lands in the National Park System. However, the preamble to the Act states that the animals are to be protected under the Act on "land belonging to the United States" and we believe the Act would be interpreted by a court as applying to all Federal land and not just the public lands administered by BLM. Second, the Act is a criminal statute. Thus, if a prosecutor and court take a more expansive reading of the Act than our office, the consequences are much more significant to the Park Service officials involved than would be the case if we were dealing with a Park Service management statute. We will respond to the questions raised with what in our opinion is the correct interpretation of the Act but you should keep this second point in mind.

The first three of the Superintendent's options that you requested our review of require some discussion. The fourth option, using immobilizing compounds on the ground

with no helicopter assistance raises no problems under 18 U.S.C. § 47, sometimes referred to as the "Wild Horse Annie Act". The same would be the case if the Superintendent had added the option of using a high-powered rifle in place of the capture gun.

The pertinent language in the Act is as follows:

- (a) Whoever uses an aircraft or motor vehicle to hunt, for the purpose of capturing or killing, any wild unbranded horse, mare, colt, or burro running at large on any of the public land or ranges shall be fined not more than \$500, or imprisoned not more than six months, or both.

The Superintendent's first option is to use firearms on the ground with helicopter assistance. We are not sure of the precise role of the helicopter under this option. According to the option paper attached to your memorandum, the helicopter "would support the collectors by locating the burros and acting as a distractant during the ground approach." While we are not sure what using the helicopter as a "distractant" would consist of, its use would apparently be to directly assist the shooter "to hunt" specific burros "for the purposes of killing" them. Consequently, we believe implementing such an option would constitute a violation of the Act.

The second and third options involve shooting burros with immobilizing compounds with the assistance of a helicopter. The only difference between the options appears to be that under the second option the helicopter would transport the shooter to the burros whereas under the third option the helicopter would move the burros to the shooter. In both cases we believe the aircraft is being used "to hunt" the burros "for the purpose of capturing or killing" and thus implementation of either option would appear to violate the Act.

In addition to requesting our review of the four options proposed by the Superintendent you have requested our review of two other uses of helicopters, namely (1) flying shooters from one area to another when use of a helicopter is solely for means of transportation, and (2) use of a helicopter for transporting lumber, hardware and similar materials which would be used for constructing a trap for capturing live burros.

Whether transporting shooters by helicopter (or motor vehicle) from one area to another would constitute a violation of the Act is a close question. In our view a helicopter is not being used "to hunt" unless and until a particular animal or group of animals is located and the "hunt" has begun and the helicopter is being used to assist the shooter in his hunt of those particular animals. Thus transporting a shooter to a shooting site ahead of some fleeing burros would appear to violate the Act. Similarly, transporting a shooter to a spot near some specific burros that have been identified for shooting would appear to violate the Act. If, on the other hand, the helicopter is only being used to transport men, for example from camp to a spot inside the canyon from which the shooter will only then begin "to hunt" in hope of spotting a burro, then we do not believe this could be a violation of the Act.

As to your last question concerning transporting material for constructing a trap, we do not believe this would constitute a violation of the Act for the same reason just discussed. The helicopter would not be engaged in the actual hunting of specific animals. The Bureau of Land Management has used motor vehicles (and possibly helicopters) for this purpose for several years.

In your last paragraph you state that amendment of 18 U.S.C. § 47 may be the only realistic approach. We agree. The Bureau of Land Management and the Forest Service have recently obtained amending language allowing use of aircraft and motor vehicles in carrying out their management activities under the Wild Free-Roaming Horse and Burro Act.

Ralph G. Mihan
Field Solicitor

cc:
Field Solicitor, Santa Fe
w/c of incoming

October 6, 1988

- Marvin Wise - WH&E Army - 0. - L.D. (1) 1/20
 at 3743 E in Planning - 1/20 1/20 1/20
 NPS - 1/20 1/20 1/20
 - 1/20 1/20 1/20
 - 1/20 1/20 1/20

TO: District Manager, Las Vegas and Area Manager, Stateline R.A.
 THROUGH: Assistant District Manager, Resources
 FROM: District Wild Horse and Burro/Range Specialist
 SUBJECT: Burro Removals From Lake Mead National Park in the Muddy Mtn., Gold Butte, and Eldorado HMA's

Pursuant to our meeting on October 5, 1988 concerning the NPS/BLM Cooperative Agreement dated 1986, I contacted Milt Frei in the NSO, John Boyles in the WO, the Kingman RA, and related agreements, laws, and regulations.

As we discussed in our meeting, the Gold Butte, Muddy Mountain, and Eldorado HMA's are below their appropriate management levels (AML). The Muddy Mtn. HMA is significantly below the AML of 122 with only 0-11 burros censused in the spring and fall of 1988. The NPS had the Kingman BLM crew capture in the Muddy Mtn HMA to remove 57 burros in 1988. Apparently, the NPS may have lead the Kingman crew to believe that we had approved it.

Based on my conversations with Frei and Boyles, there does not appear to be any national agreement with the NPS concerning WH&B's.

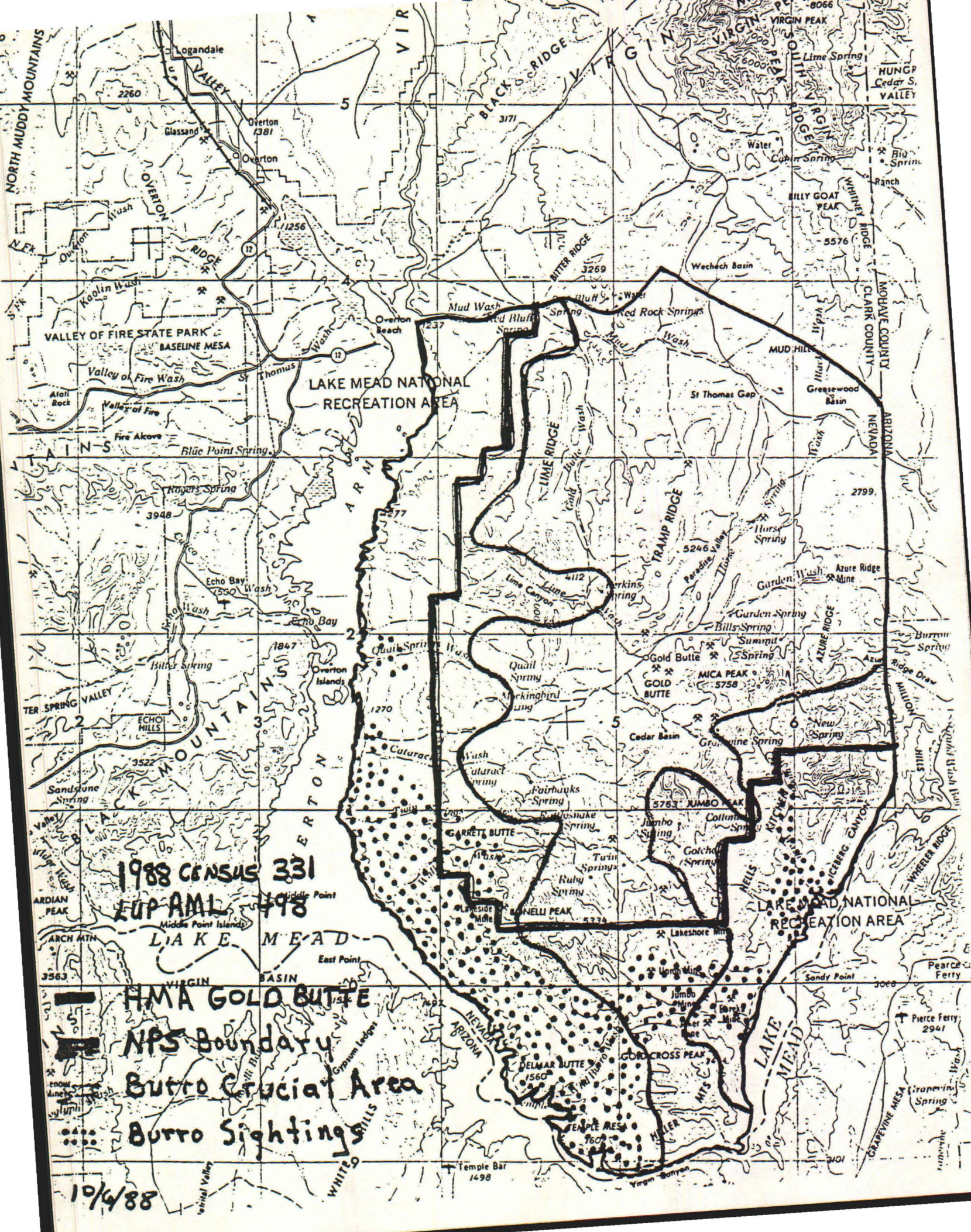
The options recommended by Frei and Boyles are as follows:

- Given that: The NPS does not have the authority to remove burros according to law unless identified in a cooperative agreement. This is not recommended. (ref. the attached maps and excerpts from law, regulations, and agreements).
1. We should not agree to any changes to the canceled 1986 cooperative agreement that are in violation of the law, regulations, the LUP, or that would adversely impact the well being and status of the HMA's.
 2. If the NPS formally requests a burro removal from the three HMA's within their boundaries, we may have to do so. However, we must remain within AML, so we could only herd them back to the BLM lands.
 3. If we herd the burro's to the BLM, the NPS will probably have a recurring request. They can be requested to fund all or part of the efforts.
 4. We can request that NPS fence their entire or selected parts of their boundary. We wouldn't necessarily fund this. Since they have most the water, this would adversely impact the health of the HMA.

5. Through a cooperative agreement, we can develop a comprise with NPS to fence selected highest conflict areas and have cattle guards on roads entering the areas. The remaining majority of the River/Lake would be open to Burros for watering.

Enclosures: 3 maps of each HMA
1 pg NPS/BLM Coop. Agr.
1 pg 43 CFR 4700
1 pg PRIA
1 pg FLPMA
2 pg WH&B ACT 1971

Bob Stupp



1988 CENSUS 331

EUP AML 198

LIAKE MEAD

HMA GOLD BUTTE

NPS Boundary

Butte Crucial Area

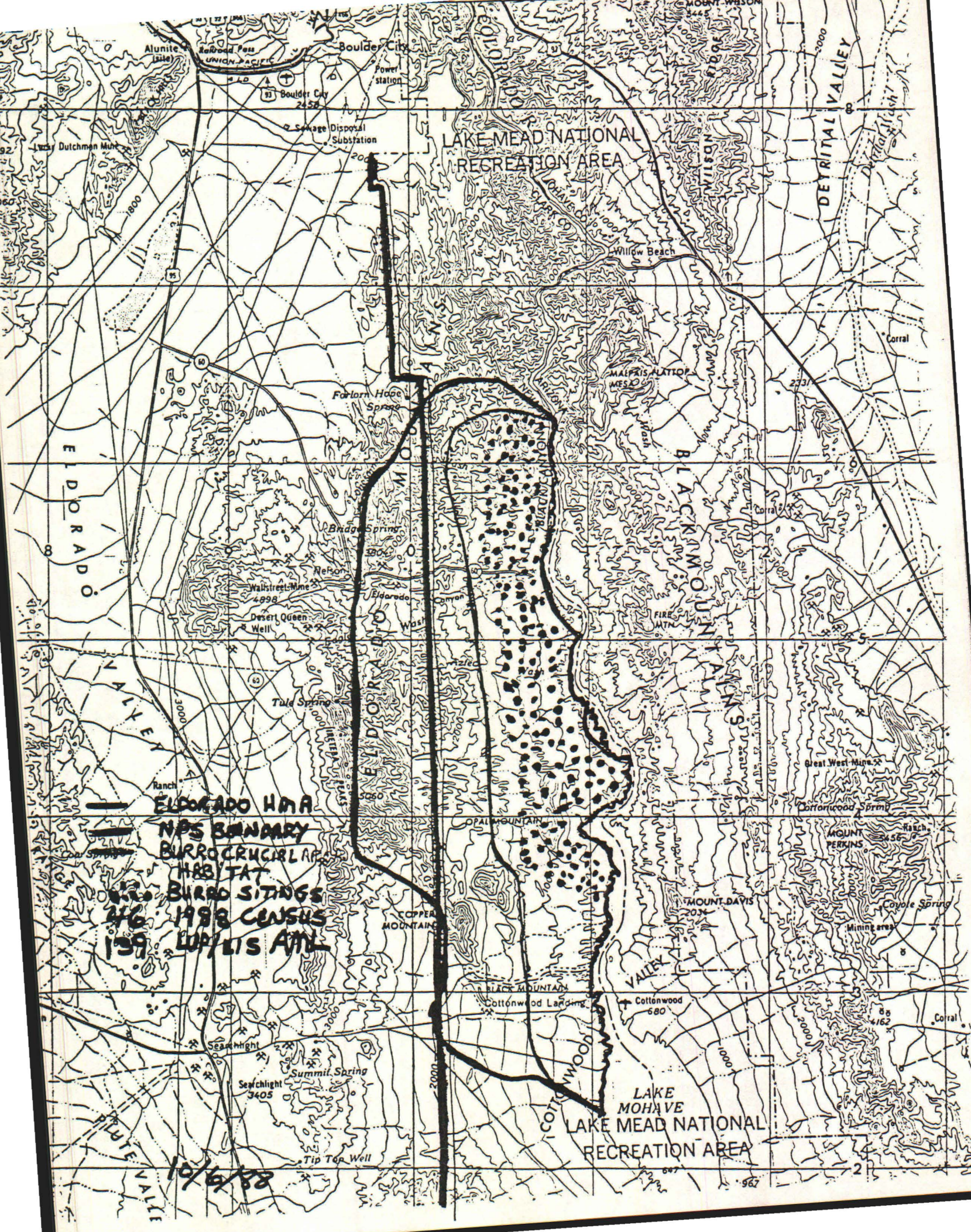
Burro Sightings

10/4/88

LAKE MEAD NATIONAL RECREATION AREA

LAKE MEAD NATIONAL RECREATION AREA





LAKE MEAD NATIONAL RECREATION AREA

LAKE MOHAVE LAKE MEAD NATIONAL RECREATION AREA

ELDORADO HMA
NPS BOUNDARY
BURROCRUCIAL HABITAT
BURRO SITINGS
1998 CENSUS
LUPULETS AVE

10/6/88

EL DOR A D O

E L D O R A D O

B L A C K M O U N T A I N

C O T T O N W O O D

D E T R I T A L V A L L E Y

N A L T E V A L L E Y

P L U T E V A L L E Y

Boulder City
Power station
Sewage Disposal Substation

Alunite (site)
Railroad Pass
UNION PACIFIC

Boulder City 2456

Willow Beach

Farlorn Hope Springs

Bridge Spring

Walkstreet Mine 4998

Desert Queen Well

Tule Spring

Ranch

EL DORADO HMA

NPS BOUNDARY

BURROCRUCIAL HABITAT

BURRO SITINGS

1998 CENSUS

LUPULETS AVE

Searchlight

Searchlight 3405

Summit Spring

Tip Top Well

WILLOW BEACH

MALFRIS ALTOP MESA

BLAUNT MOUNTAIN

ELDORADO CANYON

WASH

OPAL MOUNTAIN

COPPER MOUNTAIN

BLACK MOUNTAIN

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2. Management Plans will use the format outlined in BLM Manual 4730.6. The general objective of the management plan is to establish a natural ecological balance to benefit wild free roaming burros in harmony with other resources. It is understood that stocking rates are an initial stocking level that may be adjusted based on future studies or other pertinent information. These stocking rates provide for the management of wild and free roaming burros in a manner that is designed to achieve and maintain a thriving ecological balance. Management objectives will be consistent with directives governing each part of this agreement.

3. Removal of wild, free roaming burros that exceed the herd size to be determined in accordance with the Herd Management Plan(s) (43 CFR 4740.3, 43 CFR 4740.4, and 43 CFR 4740.5) will be accomplished through the BLM Capture and Adoption Program, or other legally approved means. Burros that become habitual problems around human developments will be removed by a live capture operation.

4. Coordination will be required to identify the necessary personnel and funds needed to accomplish the removal of excess burros. An Interagency Agreement will be established after all the necessary planning has been completed and agreed on by all parties concerned.

5. The BLM will be the lead agency in conducting capture operations and the National Park Service will provide funds, personnel or equipment to the extent permissible under No. 4 of this agreement.

6. Burro Management will be conducted in accordance with the Wild, Free-Roaming Horse and Burro Act (P.L. 92-195) and the Lake Mead Act (P.L. 88-639) and the provisions of this agreement. Accordingly, the BLM, with assistance from the National Park Service, will develop and include within Herd Management Area Plan(s), burro management that will preserve the scenic, historic, scientific, and other important features of the recreation area.

7. The Lake Mead National Recreation Area Superintendent and the District Managers or their respective delegated representatives will meet at least once each year to review the Cooperative Agreement and make any necessary adjustments.

ARTICLE III

Term of Agreement

This Agreement shall become effective when signed by the parties hereto and shall continue in effect for five years.

This Agreement may be extended by the execution of a Reaffirmation Memorandum.

§ 4700.0-1

Sec.

- 4750.2-1 Health and identification requirements.
- 4750.2-2 Brand inspection.
- 4750.3 Application requirement for private maintenance.
- 4750.3-1 Application for private maintenance of wild horses and burros.
- 4750.3-2 Qualification standards for private maintenance.
- 4750.3-3 Supporting information and certification for private maintenance of more than 4 wild horses or burros.
- 4750.3-4 Approval or disapproval of applications.
- 4750.4 Private maintenance of wild horses and burros.
- 4750.4-1 Private maintenance and care agreement.
- 4750.4-2 Adoption fee.
- 4750.4-3 Request to terminate private maintenance and care agreement.
- 4750.4-4 Replacement animals.
- 4750.5 Application for title to wild horses and burros.

Subpart 4760—Compliance

- 4760.1 Compliance with the Private Maintenance and Care Agreement.

Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties

- 4770.1 Prohibited acts.
- 4770.2 Civil penalties.
- 4770.3 Administrative remedies.
- 4770.4 Arrest.
- 4770.5 Criminal penalties.

AUTHORITY: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331-1340). Act of Oct. 21, 1976 (43 U.S.C. 1701 et seq.). Act of Sept. 8, 1959 (18 U.S.C. 47). Act of June 28, 1934 (43 U.S.C. 315).

SOURCE: 51 FR 7414, Mar. 3, 1986, unless otherwise noted.

Subpart 4700—General

§ 4700.0-1 Purpose.

The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.

§ 4700.0-2 Objectives.

The objectives of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use; protec-

43 CFR Ch II (10-1-87 Edition)

tion of wild horses and burros from unauthorized capture, branding, harassment or death; and humane care and treatment of wild horses and burros.

§ 4700.0-3 Authority.

The Act of September 8, 1959 (18 U.S.C. 47); the Act of December 15, 1971, as amended (16 U.S.C. 1331-1340); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712, and 1734); the Act of June 28, 1934, as amended (43 U.S.C. 315); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331-4335, and 4341-4347).

§ 4700.0-5 Definitions.

As used in this part, the term:

(a) "Act" means the Act of December 15, 1971, as amended (16 U.S.C. 1331-1340), commonly referred to as the Wild Free-Roaming Horse and Burro Act.

(b) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(c) "Commercial exploitation" means using a wild horse or burro because of its characteristics of wildness for direct or indirect financial gain. Characteristics of wildness include the rebellious and feisty nature of such animals and their defiance of man as exhibited in their undomesticated and untamed state. Use as saddle or pack stock and other uses that require domestication of the animal are not commercial exploitation of the animals because of their characteristics of wildness.

(d) "Herd area" means the geographic area identified as having been used by a herd as its habitat in 1971.

(e) "Humane treatment" means handling compatible with animal husbandry practices accepted in the veterinary community, without causing unnecessary stress or suffering to a wild horse or burro.

(f) "Inhumane treatment" means any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible

Bureau of Land Management, Interior

with animal husbandry practices accepted in the veterinary community.

(g) "Lame wild horse or burro" means a wild horse or burro with one or more malfunctioning limbs that permanently impair its freedom of movement.

(h) "Old wild horse or burro" means a wild horse or burro characterized because of age by its physical deterioration and inability to fend for itself, suffering, or closeness to death.

(i) "Private maintenance" means the provision of proper care and humane treatment to excess wild horses and burros by qualified individuals under the terms and conditions specified in a Private Maintenance and Care Agreement.

(j) "Public lands" means any lands or interests in lands administered by the Secretary of the Interior through the Bureau of Land Management.

(k) "Sick wild horse or burro" means a wild horse or burro with failing health, infirmity or disease from which there is little chance of recovery.

(l) "Wild horses and burros" means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, or that have been removed from these lands by the authorized officer but have not lost their status under section 3 of the Act. Where it appears in this part the term "wild horses and burros" is deemed to include the term "free-roaming".

§ 4700.0-6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.

(c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior.

(d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for

§ 4710.3-2

and management of wild horses and burros on the public lands.

(e) Healthy excess wild horses and burros for which an adoption demand by qualified individuals exists shall be made available at adoption centers for private maintenance and care.

(f) Fees shall normally be required from qualified individuals adopting excess wild horses and burros to defray part of the costs of the adoption program.

Subpart 4710—Management Considerations

§ 4710.1 Land use planning.

Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans prepared pursuant to Part 1600 of this title.

§ 4710.2 Inventory and monitoring.

The authorized officer shall maintain a record of the herd areas that existed in 1971, and a current inventory of the numbers of animals and their areas of use. When herd management areas are established, the authorized officer shall also inventory and monitor herd and habitat characteristics.

§ 4710.3 Management areas.

§ 4710.3-1 Herd management areas.

Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in § 4710.4. The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas.

§ 4710.3-2 Wild horse and burro ranges.

Herd management areas may also be designated as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds.

GRAZING ADVISORY BOARDS

PRIA

SEC. 10. Section 403(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753); its amended by substituting the word "sixteen" for the word "eleven" before the words "contiguous Western States".

NATIONAL GRASSLAND EXEMPTIONS

43 USC 1907. SEC. 11. All National Grasslands are exempted from the provisions of this Act.

EXPERIMENTAL STEWARDSHIP PROGRAM

43 USC 1908. SEC. 12. (a) The Secretaries of Interior and Agriculture are hereby authorized and directed to develop and implement, on an experimental basis on selected areas of the public rangelands which are representative of the broad spectrum of range conditions, trends, and forage values, a program which provides incentives to, or rewards for, the holders of grazing permits and leases whose stewardship results in an improvement of the range condition of lands under permit or lease. Such program shall explore innovative grazing management policies and systems which might provide incentives to improve range conditions. These may include, but need not be limited to—

(1) cooperative range management projects designed to foster a greater degree of cooperation and coordination between the Federal and State agencies charged with the management of the rangelands and with local private range users,

(2) the payment of up to 50 per centum of the amount due the Federal Government from grazing permittees in the form of range improvement work.

(3) such other incentives as he may deem appropriate.

(b) No later than December 31, 1985, the Secretaries shall report to the Congress the results of such experimental program, their evaluation of the fee established in section 6 of this Act and other grazing fee options, and their recommendations to implement a grazing fee schedule for the 1986 and subsequent grazing years.

ADVISORY COUNCILS

SEC. 13. The first line of section 309(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739) is amended by deleting "is authorized to" and inserting in lieu thereof "shall".

WILD HORSES AND BURROS

SEC. 14. (a) Subsections 3 (b), (c), and (d) of the Act of December 15, 1971 (85 Stat. 649; 16 U.S.C. 1333(b)(3)) are hereby amended to read as follows:

"(b) (1) The Secretary shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to: make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of the public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on

population levels). In making such determinations the Secretary shall consult with the United States Fish and Wildlife Service, wildlife agencies of the State or States wherein wild free-roaming horses and burros are located, such individuals independent of Federal and State government as have been recommended by the National Academy of Sciences, and such other individuals whom he determines have scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management.

"(2) Where the Secretary determines on the basis of (i) the current inventory of lands within his jurisdiction; (ii) information contained in any land use planning completed pursuant to section 202 of the Federal Land Policy and Management Act of 1976; (iii) information contained in court ordered environmental impact statements as defined in section 2 of the Public Range Lands Improvement Act of 1978; and (iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (i-iv) above on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation:

"(A) The Secretary shall order old, sick, or lame animals to be destroyed in the most humane manner possible;

"(B) The Secretary shall cause such number of additional excess wild free-roaming horses and burros to be humanely captured and removed for private maintenance and care for which he determines an adoption demand exists by qualified individuals, and for which he determines he can assure humane treatment and care (including proper transportation, feeding, and handling): *Provided*, That, not more than four animals may be adopted per year by any individual unless the Secretary determines in writing that such individual is capable of humanely caring for more than four animals, including the transportation of such animals by the adopting party; and

"(C) The Secretary shall cause additional excess wild free-roaming horses and burros for which an adoption demand by qualified individuals does not exist to be destroyed in the most humane and cost efficient manner possible.

"(3) For the purpose of furthering knowledge of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assisting him in making his determination as to what constitutes excess animals, the Secretary shall contract for a research study of such animals with such individuals independent of Federal and State government as may be recommended by the National Academy of Sciences for having scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management. The terms and outline of such research study shall be determined by a research design panel to be appointed by the President of the

The operator will charge 50% + fee is credited 50% for a R. I. done by Report to Congress.

Inventory and determinations.

Consul

Overp

43 US

Research study.

the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification.

(h) Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits and leases.

GRAZING ADVISORY BOARDS

SEC. 403. (a) For each Bureau district office and National Forest headquarters office in the ~~eleven~~ contiguous Western States having jurisdiction over more than five hundred thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon the petition of a simple majority of the livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers.

(b) The function of grazing advisory boards established pursuant to this section shall be to offer advice and make recommendations to the head of the office involved concerning the development of allotment management plans and the utilization of range-betterment funds.

(c) The number of advisers on each board and the number of years an adviser may serve shall be determined by the Secretary concerned in his discretion. Each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the office concerned and shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary concerned.

(d) Each grazing advisory board shall meet at least once annually.

(e) Except as may be otherwise provided by this section, the provisions of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. 1) shall apply to grazing advisory boards.

(f) The provisions of this section shall expire December 31, 1985.

MANAGEMENT OF CERTAIN HORSES AND BURROS

SEC. 404. Sections 9 and 10 of the Act of December 15, 1971 (85 Stat. 649, 651; 16 U.S.C. 1331, 1339-1340) are renumbered as sections 10 and 11, respectively, and the following new section is inserted after section 8:

"Sec. 9. In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47 (a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary."

16 USC 1338a.

ONLY
FS/BLM
HAVE
AUTHORITY

*Prohibition
for
Department
Change
to
41104-2*



Public Law 92-195
92nd Congress, S. 1116
December 15, 1971

3/6/79
Stress Amendments
due to FLP Act.

1971 WHB

An Act

85 STAT. 641

To require the protection, management, and control of wild free-roaming horses and burros on public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.

Wild horses
and burros.
Protection.

Sec. 2. As used in this Act—

Definitions.

(a) "Secretary" means the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management and the Secretary of Agriculture in connection with public lands administered by him through the Forest Service;

(b) "wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros on public lands of the United States;

(c) "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;

(d) "herd" means one or more stallions and his mares; and

(e) "public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service.

"(f) 'excess animals' means wild free-roaming horses or burros (1) which have been removed from an area by the Secretary pursuant to applicable law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area."

Sec. 3. (a) All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 7 of this Act deems such action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 7 of this Act. All management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.

Jurisdiction
Management.

National Academy of Sciences. Such study shall be completed and submitted by the Secretary to the Senate and House of Representatives on or before January 1, 1983.

"(c) Where excess animals have been transferred to a qualified individual for adoption and private maintenance pursuant to this Act and the Secretary determines that such individual has provided humane conditions, treatment and care for such animal or animals for a period of one year, the Secretary is authorized upon application by the transferee to grant title to not more than four animals to the transferee at the end of the one-year period.

"(d) Wild free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros and shall no longer be considered as falling within the purview of this Act—

"(1) upon passage of title pursuant to subsection (c) except for the limitation of subsection (c) (1) of this section; or

"(2) if they have been transferred for private maintenance or adoption pursuant to this Act and die of natural causes before passage of title; or

"(3) upon destruction by the Secretary or his designee pursuant to subsection (b) of this section; or

"(4) if they die of natural causes on the public lands or on private lands where maintained thereon pursuant to section 4 and disposal is authorized by the Secretary or his designee; or

"(5) upon destruction or death for purposes of or incident to the program authorized in section 3 of this Act; *Provided*, That no wild free-roaming horse or burro or its remains may be sold or transferred for consideration for processing into commercial

Private maintenance.

Sec. 4. If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary, who shall arrange to have the animals removed. In no event shall such wild free-roaming horses and burros be destroyed except by the agents of the Secretary. Nothing in this section shall be construed to prohibit a private landowner from maintaining wild free-roaming horses or burros on his private lands, or lands leased from the Government, if he does so in a manner that protects them from harassment, and if the animals were not willfully removed or enticed from the public lands. Any individuals who maintain such wild free-roaming horses or burros on their private lands or lands leased from the Government shall notify the appropriate agent of the Secretary and supply him with a reasonable approximation of the number of animals so maintained.

Recovery rights.

Sec. 5. A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

Agreements and regulations.

Sec. 6. The Secretary is authorized to enter into cooperative agreements with other landowners and with the State and local governmental agencies and may issue such regulations as he deems necessary for the furtherance of the purposes of this Act.

Joint advisory board.

Sec. 7. The Secretary of the Interior and the Secretary of Agriculture are authorized and directed to appoint a joint advisory board of not more than nine members to advise them on any matter relating to wild free-roaming horses and burros and their management and protection. They shall select as advisers persons who are not employees of the Federal or State Governments and whom they deem to have special knowledge about protection of horses and burros, management of wildlife, animal husbandry, or natural resources management. Members of the board shall not receive reimbursement except for travel and other expenditures necessary in connection with their services.

Penalty.

Sec. 8. Any person who—

(1) willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the Secretary, or

(2) converts a wild free-roaming horse or burro to private use, without authority from the Secretary, or

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro, or

WITHOUT
* COOPERATIVE
AGREEMENT
CAN'T REMOVE

:	:	:	:	:	:	:	:	:	:	:			
:	CLOVER MOUNTAIN	: 55H	:	1977	130H	:	N/A	:	0	: APPLEWHITE	:	:	:
:	NV516	:	:	1981	44H	:	:	:	:	: COTTONWOOD	:	:	:
:	:	:	:	1982	55H	:	:	:	:	: SAND HILLS	:	:	:
:	:	:	:	1988	84H	:	:	:	:	: PENNSYLVANIA	:	29H 1988	:
:	:	:	:	:	:	:	:	:	:	: SHEEP FLAT	:	:	:
:	:	:	:	:	:	:	:	:	:	:	:	:	:
:	APPLEWHITE	: 15H	:	1977	13H	:	N/A	:	0	: APPLEWHITE	:	:	:
:	NV518	:	:	1981	15H	:	:	:	:	:	:	:	:
:	:	:	:	:	:	:	:	:	:	:	:	:	:
:	NEVADA WILD	: 2000H	:	1977	1300H:	:	:	:	:	: N/A	:	:	:
:	HORSE RANGE	:	:	1980	3122H:	:	:	:	:	:	:	:	:
:	NV524	:	:	1982	4405H:	:	:	:	:	:	:	:	:
:	:	:	:	1983	4860H:	:	:	:	:	:	:	:	:
:	:	:	:	1984	4890H:	:	1985	:	1502	:	:	225H 1988	:
:	:	:	:	1985	5642H:	:	1986	:	1276	:	:	2178H 1989	:
:	:	:	:	1986	4178H:	:	1987	:	1210	:	:	:	:

02-Nov-88



02-Nov-88

OCTOBER 12, 1988 LAS VEGAS DISTRICT WILD HORSE AND BURRO HERD MANAGEMENT AREA STATISTICS

RESOURCE AREA	HMA NAME AND NUMBER	AML	ANIMAL #'S		YEAR OF CAPTURE	NUMBER REMOVED	ALLOTMENT NAME	NUMBER PLANNED FOR REMOVAL
			CENSUSED BY YEAR					
CALIENTE	DEERLODGE	10H	1982	10H	N/A	0	DEERLODGE	
	NV521						CONDOR CANYON	
							RABBIT SPRINGS	
							MCGUFFY SPRING	
							MAHOGANY PEAK	
							WILSON CREEK	
	HIGHLAND PEAK	50H	1977	24H	1980	14	HIGHLAND PEAK	
	NV522		1982	37H	1986	6	BENNETT SPRING	
			1984	49H	1987	11	ROCKY HILLS	
	TOTAL					31	KLONDIKE	
							BLACK CANYON	
							ELY SPR. SHEEP	
							PIOCHE	
	RATTLESNAKE	25H	1977	32H		0	OAK SPRINGS	
	NV523		1982	25H	N/A		RATTLESNAKE	
	LITTLE MOUNTAIN	54H	1977	89H	1980	71	BUCKBOARD	
	NV519		1981	18H			CLOVER CREEK	
							CAVE	
							LITTLE MOUNTAIN	
							PANACA CATTLE	
							ROADSIDE	
							WHITE HILLS	
	CLOVER CREEK	9H	1977	47H	1987	6	CLOVER CREEK	
	NV517		1981	1H			MUSTANG FLAT	
			1982	9H			SAWMILL	
			1988	26H			OAK SPRING	17H 1988
	DELAMAR	95H	1977	168H	1980	101	OAK SPRING	
	NV515		1981	95H			DELAMAR	
			1982	56H			LOWER RIGGS	
			1985	94H			RAINBOW	
			1987	67H				
	MORMON MOUNTAIN	27H	1977	46H	N/A	0	MORMON PEAK	
	NV512		1982	27H			HENRIE	
							WHITE ROCK	
	MEADOW VALLEY	33H	1977	32H	N/A	0	HENRIE	
	MOUNTAIN		1981	33H			MORRISON-WENGENT	
	NV513		1983	54H			SCHLARMAN	
	MILLER FLAT	50H	1977	132H	1980	44	OAKWELLS	
	NV520		1982	42H			CLOVER CREEK	
			1983	49H			RABBIT SPRINGS	
			1985	32H			SHEEP SPRINGS	
			1988	71H			SHEEP FLAT	21H 1988
							UVADA	
	BLUE NOSE PEAK	10H	1977	20H	N/A	0	GARDEN SPRING	
	NV514		1981	10H			HENRIE	

Date: March 8, 1989

Subject: Results of the Meeting with NPS in Las Vegas on Burro Management in the Lake Mead National Recreation Area and an Interim Agreement with them.

Attached are copies of:

1. Summary of Las Vegas meeting 1 pg
2. Meeting Objectives 2 pgs
3. Interim Agreement 4 pgs
4. Background Information 14 pgs

As was stated in the summary, the Park Service would not budge on the burro management issue. They maintain that they do not come under the Wild Horse and Burro Act, thus can remove burros at their discretion regardless of whether these animals graze on both NPS and BLM Lands or not. We maintain (under our regulations 43 CFR 4700 and/or The Act) that since they use both lands as habitat (which has occurred historically), they are BLMs responsibility. They indicated that they were looking at complete removal on Lake Mead (in 10 to 20 years).

BLM and NPS agreed that an interim agreement was needed until the management issue was resolved.

INTERIM INTERAGENCY AGREEMENT (Proposed)

The interim agreement would allow BLM and NPS to operate pretty much as we did under the agreement that was cancelled. There are some subtle changes as follows:

1. BLM and NPS are equal partners (Under the old agreement BLM had the lead).
2. There was no reference to planning nor the management principles under which the burros will be managed. The overall management principles for BLM and NPS are shown at the beginning of the document. Management is to be a joint effort.
3. There was no specific reference to appropriate management numbers (AML) or to removal numbers. This too is presumed to be by agreement between both parties.

As long as both agencies can agree what should be done, there will not be any problems in the short term. In the event that resolution does not come quickly, I'm not sure what the outcome would be if the two agencies disagreed on removal numbers or other items.

This agreement is being reviewed by the staff for the District Managers prior to their signature.

This agreement if signed will remain in effect until the issue of management responsibility/authority is resolved or is terminated by either party.

FUTURE DIRECTION

National Park Service indicated that they would carry this issue up the chain of command for resolution. What this means in terms of specific direction, I'm not sure i.e. resolution in a BLM NPS coordination meeting, resolution at the Department level or ??

BLM field Offices should provide upper management with enough information so there are no surprise not matter what action the Park Service takes.

Nevada said that they would feel more comfortable if Arizona carried this issue forward since their field solicitor had apparently agreed with the National Park Service solicitor on management responsibilities. -- The BLM solicitors opinion/agreement may hinge on the questions asked. Neither issue identified by the Park Service addresses the management of burros that move between National Park Service Lands and the Bureau of Land Management Lands (public lands).

I discussed this issue with John Boyles at the W O. He asked for a copy of the background materials and any briefing materials that I had available. He suggested that we might want to consider elevating this problem (through the State Directors) to the Washington Level for one of the scheduled Park Service/BLM coordination meetings. He indicated that the Washington Office was willing to help in any way they could. He said that he would mention this problem to Dean Stepanek so there would be no surprises.

IMPACTED AREAS

(Primary)

Herd Areas	Appropriate Management Level	Burro Population
Arizona		
Tassi-Gold Butte	100	115
Black Mtns.	<u>300</u>	<u>600</u>
Total	400	715
Percent of State Total	31%	36%
Nevada		
Eldorado Mtns	--	46
Gold Butte	498	331
Muddy Mtns	<u>122</u>	<u>11</u>
Total	620	388
Percent of State Total	45%	33%

Nevada and Arizona BLM estimated that about 50% of Nevada's and 20% of Arizona's burro population will be impacted if the Park Service removes the burros that come to water at the lake/river. Together, Arizona (41%) and Nevada (26%) have about 67% of the total Bureau burro AML and 73% of the total burro population. Including California with Arizona and Nevada, about 98% of the Bureau's burro population and AML are accounted for.

(Secondary)

If the National Park position should prevail, some precedence could be set with other agencies bordering our (Arizona) herd areas. As an example, burro herd areas border four Game Refuges managed by the Fish and Wildlife (Kofa, Havasu, Cibola and Imperial). In addition there are several Indian reservations and a military reservation which border herd areas. I am not aware of any conflict at the present time. Potentially, these agencies could raise the same kind of problems that surfaced with the Park Service.

Potential Resolutions

1. Yield to the Park Service position. This would mean cutting burro herd numbers and the program in Arizona and Nevada. If other agencies followed NPS' lead there could be a significant burro reduction in both states and the Bureau.
2. Compromise -- If the Park Service would relent of complete removal and allow burros to water at lake/river in areas not frequented by park visitors BLM would work with NPS. BLM would remove problem burros from sensitive areas. BLM would either mark the burros and move them to a nonsensitive area and remove them (for adoption) if they returned to the sensitive area or remove them for adoption.
3. The Park Service could fence the wild burros off park lands. BLM would either have to make provisions to water the burros in the dry areas or remove them from the herd area.
4. Move on a collision course which would be elevated to the courts for resolution. This would likely take considerable amount of time, publicizing the issue. Without a interim agreement, this would hamstring any management and removal.
5. Elevate the problem to the Department of Interior for resolution. The Department could consider the regulations of the two sister agencies and make a determination.
6. Congressional action -- Amend the Act to specifically address the problem of burro movement between the lands of federal agencies (particularly sister agencies). There is a certain amount of logic to having the agencies under the DOI bound by the same laws and regulations. As an example, all federal agencies are bound by the Threatened and Endangered Species Act under the auspices of the Fish and Wildlife Service.

At the present time I do not have information on how many federal agencies border herd areas in California and Nevada. As I obtain this and other information, I will add it to this briefing.

Las Vegas District Office
4765 Vegas Drive
P.O. Box 26569
Las Vegas, Nevada 89126

*2/15/89 & were
making headway on
- compromise. Bob*

In Reply Refer To:

(NV-053)
4700

February 10, 1989

To : District Managers, Las Vegas, Arizona Strip, and Phoenix and Arizona State Office (AZ-930) and Stateline Resource Area Manager

From : Lake Mead Recreation Area Wild Horse and Burro Task Group

Subject: Results of the 2/10/89 Meeting with the NPS on the Management of Wild Horses and/or Burros within the Lake Mead National Recreation Area

The meeting was held in the BLM's Las Vegas District office on February 9 and 10, 1989. The Arizona and Nevada BLM members met on February 9 to discuss and arrive at a concerted approach. The National Park Service met with us on February 10.

The objective of the meeting and the participants are identified on the attached meeting information.

The primary issues were:

1. Who has management responsibility for the Wild Horses and Burros within the Gold Butte, Eldorado, and Muddy Mountain HMA's in Nevada and the Gold Butte and Black Mountain HMA's in Arizona that move between BLM and Lake Mead National Recreation Area lands (LMNRA)?

Are the animals to be considered wild horses and burros when frequenting both PL's and LMNRA or alien species?

2. How will the animals be managed in the interim until issue number 1 is resolved? How will problem/excess animals be managed in the interim

We could not agree on issue number 1. Arizona will take the lead on determining the Bureaus position on this. Bob Stager and Kelly Grissom will coordinate in getting this on the agenda for the national BLM wild horse and burro meeting scheduled for FY 89 and presenting the issue to the session.

The attached interim interagency agreement is proposed to resolve issue number 2. All parties present agreed on this and will be discussing it with their respective managers.

attachments:

- Meeting objectives 2pgs.
- Interim agreement 4 pgs.
- Background info 9 pgs.

Meeting with BLM on Management of Wild Burros
Las Vegas, Nevada
February 10, 1989

A. Objective of Meeting:

Develop solution(s) for the management of wild burros on contiguous BLM and Lake Mead Recreation Area lands. Present written proposals to the management of the respective agencies.

Participants:

Bob Mitchell	Phoenix BLM District Range Staff Specialist
L.D. Walker	Shivwits Resource Area (AZ BLM) Range Conservationist/Wild Horse & Burro Specialist
Kelly Frisaco	Kingman Resource Area (BLM) Wild Horse and Burro Specialist
Mike Coffee	Lake Mead Recreation Area Wildlife Biologist (NPS)
Fete Christensen	Las Vegas BLM District Chief of Resources
Terry Driver	Las Vegas (BLM) District Wild Horse and Burro Specialist
Bob Stager	Las Vegas (BLM) District Range Staff Specialist

B. Lake Mead Recreation Area, National Park Service: Mike Coffee

Presentation of Lake Mead's Position, legal and regulatory guidelines, management goals on issue, recommended solutions etc.

C. Bureau of Land Management Bob Mitchell/Bob Stager

1. Burro HMA's affected by name
% of burros impacted
burro historical herd areas and critical areas:
2. Historical background
 - a. dates HMA's established and by what document ie. EIS, MFP, HMAP etc.

2. Legal, regulatory, LUP guidelines

3. Interagency Cooperative Agreements dates and intent

3. Management Goals

a. maintain a viable Wild Burro population in a thriving ecological balance.

b. management of problem animals for specific areas on a case by case basis.

4. Means of attaining the goals/objectives

a. take lead to install new and read/evaluate existing vegetative and population monitoring data in cooperation with NPs.

b. conduct problem animal removals; relocate within the HMA if viable and assist if appropriate.

c. Specific actions:

Navajo:

Revisit Gold Burro HMAP FY89 and set HMA trap 4/76 to approx. 150. Capture in FY 90.

Write HMAP for Eldorado or Judry mountains area

Arizona:

Capture burros in Black Mountain HMAP at Temple Bar and near Cottonwood Road.

UNITED STATES DEPARTMENT of the INTERIOR
BUREAU OF LAND MANAGEMENT
Las Vegas District Office
4765 Vegas Drive
P.O. Box 26569
Las Vegas, Nevada 89126

In Reply Refer To:

(NV-053)
4700

February 3, 1989

To: District Manager, Las Vegas and Area Manager, Stateline R.A.

Through: Assistant District Manager, Resources

From: District Range Staff Specialist

Subject: The Lake Mead National Park NFS Wild Burro Management
Issue Affecting Arizona and Nevada BLM

I have reviewed the packet of information that the NFS sent to us concerning the management of the Gold Butte, Muddy Mountain, and Eldorado Herd Management Areas. The material is attached, highlighted and tabbed for ease of reference.

My recommendations are the same as we agreed to with the Arizona BLM in November 1988 (ref. attached 10/6/88 staff report).

The existing populations in two of the Nevada HMA's are below AML. In the third, Gold Butte, the population is below AML, however, significant amounts of resource data supports an adjustment and we are moving to adjust the AML downward to be in balance with the environment and the LUP. A capture is planned in FY 90. No captures are planned in the other two. (ref. attached tabbed table)

It should be noted that the NFS on Lake Mead historically has more than tacitly acknowledged and accepted BLM's management authority to manage the wild burros in Lake Mead and the presence of the wild burros and HMA's as evidenced by:

1. The 1982 Clark EIS, 1977 Black Mtn. MFP III, 1978 Cerbat/Black Mtn. EIS, 1981 Black Mtn. HMAP, and the 1982 Tassi/Gold Butte HMAP clearly identify the Herd Management Areas to include Lake Mead area. The BLM part of the HMA is adjacent to and not fenced or otherwise separated from the Recreation Area. The NFS reviewed the documents prior to finalization so was aware these were the official wild Burro HMA boundaries.

2. The NPS has recognized our authority over the wild burros in the Lake Mead Area by past cooperative agreements and interagency agreements (1981) to manage the wild burros.

3. In a 1978 NPS research contract they recognized that ecological damage on Lake Mead Recreation Lands by wild burros was not adverse because the burros travelled between BLM and Lake Mead lands. (Nov. 1978 "An Assessment of Impact of Feral Burros on Natural Ecosystems of The Lake Mead National Recreation Area AZ-NV" L.A.M.E., Technical Report #4, Michael J. O'Farrell, NPS/UNLV contract # CX800070012)

The negative impacts on the management of the HMA's and the burros is significant if all the NPS land is removed.

a. The primary water source for the wild burros is from Lake Mead area for all HMA's.

b. The Critical Habitat for all HMA's falls primarily on the Recreation lands due to the water source.

c. The HMA's have some of the largest healthy wild burro populations in Nevada and are the largest in the Las Vegas District. If the burros are excluded from the Lakes water source, they will in effect be non-existent HMA's. We can not realistically manage these herd areas without adequate water in a desert environment.

d. If the Lake Mead area is denied to the wild burros, the impact to the Arizona wild burro populations is significant. 20% of all Arizona's wild burros could be adversely impacted. An estimated 50% of Nevada's would be impacted.

The local and national, media and interest groups are aware of the issue and are awaiting the outcome. The question asked is "How can the government prosecute horse killers up north and consider the abolition of the three largest burro herds in the state by the NPS?" It's a tough question to answer.

On this issue, the BLM needs to consider whether we are going to manage the herds or see them continue to diminish in size and area by the actions of a sister agency as exemplified by the past Grand Canyon and Death Valley events.

It is still my staff conclusion that the NPS does not have the authority to remove wild burros in the Lake Mead National Recreation Area according to law unless identified in a cooperative agreement (Sec. 6 WH&B Act) with the BLM. I do not recommend that we abdicate our management responsibility to the NPS in an agreement or otherwise.

Attached:

Stateline SA HMA statistics 1 pg.

Clark EIS 2 pgs.

LV 10/6/88 staff report 11 pgs. *****

Lake Mead 1984 Law 3 pgs.

1/12/89 NFS solicitor's memo with attachments 19 pgs.

12/15/88 NFS memo to their solicitor 2 pgs.

RESOURCE AREA HMA NAME AND NUMBER AML CENSUSED BY YEAR YEAR OF CAPTURE NUMBER REMOVED ALLOTMENT NAME PLANNED FOR REMOVAL

RESOURCE AREA	HMA NAME AND NUMBER	AML	CENSUSED BY YEAR	YEAR OF CAPTURE	NUMBER REMOVED	ALLOTMENT NAME	NUMBER PLANNED FOR REMOVAL
STATELINE	AMARIGON	19H	1988 29H	1988	19H	HMA	
		1B	8HY		1B		
			1988 3B				
	ASH MEADOWS	0	UNKNOWN AT THIS TIME	1988	28B	DARWIN SLOUGH SPRING MEADOWS	
	BLUE DIAMOND 1/		1988 42B 93Y	1976 1987 1987 1988 1989	14B 9B 13B HITCA 4B 10B 55Y	SPRING MOUNTAINS	10B 1987 PROBLEM ANIMALS
	<u>ELDIRADO</u>	<u>128B</u>	1988 <u>46B</u> 208Y			INTEGRA PEAKS	
	<u>GOLD BUTTE</u>	<u>492B</u>	1988 <u>731B</u> 671Y			GOLD BUTTE	300 1990
	LAST CHANCE	10B	1988 41B 53Y			MOUNT STERLING	
	LUCKY STRIKE 1/		1988 44H 8HY 1988 40B 78Y			LUCKY STRIKE KYLE CANYON WHEELER SLOPE	
	MOUNT STERLING		1988 149H			MOUNT STERLING	21H 1989
	WALLACE CANYON		78-7			WHEELER MGR	210 1989
	1/		1988 57B 120Y			ROBEE SPRING YOUNG SPRING SPRING MOUNTAINS	FEEDLEY ANIMALS
	<u>MUDDY MOUNTAINS</u>	<u>122B</u>	1988 <u>11B</u> 28Y 1988 19H 4HY	1988	57B (NFE)	MUDDY MOUNTAINS WHITE BASIN	
	POTOSI 1/		1988 42B 83Y			SPRING MOUNTAINS TABLE MOUNTAIN	
	RED ROCK/		1988 31H	1987	12H SHOT	TABLE MOUNTAIN	
	BIRD SPRING 1/		4HY		2H 2B HIT BY CAR	SPRING MOUNTAINS	

TOTALS FOR STATELINE	1/ PART OF THE		272 H	YOUNG IS		DISTRICT TOTALS	170H 1989
	SPRING MOUNTAIN		59 HY	ESTIMATED		4910 H (772 H	43B 1989
	HMA, NO CLEAR		618 B	DURING		LESS YELLIS)	
	AML'S AGE		136 BY	CENSUS		59 HY	
	AVAILABLE DUE			AS IS		618 B	
	TO INSUFFICIENT		H- HORSES	MONTHS		136 BY	
	DATA AT TIME OF		HY- YOUNG	OF AGE			
	-SIS.		HORSES	OR LESS.			
			5- BURNS				
			5Y- YOUNG				

BUREAU OF LAND MANAGEMENT/NATIONAL PARK SERVICE
COOPERATIVE AGREEMENT

BACKGROUND

Cancellation of Agreement

On about August 12, 1988, the National Park Service cancelled their cooperative agreement with Nevada BLM, Las Vegas District and Arizona BLM, Phoenix and Arizona Strip Districts.

The cancellation came about over Nevada BLM's refusal to capture and remove burros from the Tassi/Gold Butte area (Nevada side) of the Lake Mead Recreation area. This is a result of two court injunctions obtained by the Animal Protective Institute (API) against Nevada BLM to prevent burro removal.

At this point Arizona BLM has had good working relations with the NPS.

REVIEW OF NATIONAL PARK SERVICE SOLICITORS OPINION

Proper Question

The NPS solicitors opinion (with the California BLM Solicitors agreement) may hinge on the questions asked. The NPS letter to the Field Solicitor, dated December 15, 1988, asked for an opinion on two issues.

"1. The legal authority for the National Park Service to manage wild horses and burros at Lake Mead National Recreation Areas in accordance with current National Park Service policy, guidelines and Management objectives."

"2. The applicability of the "wild Horse and Burro Act," (Public Law 02-105), and the "Rangelands Improvement Act," (Public Law 05-514), to Lake Mead National Recreation Area."

Neither issue addresses the movement of burros between National Park Service Lands and the Bureau of Land Management Lands (public lands). The Park Service solicitor's opinion (Memorandum of January 12, 1989) basically said that each agency had the authority to manage burros on their own lands. He cited the New Mexico Game Commission v Udall case as support for both management positions.

The One Point That Has Not Been Addressed is;

WHO HAS THE RESPONSIBILITY TO MANAGE THE ANIMALS THAT LIVE ON PUBLIC AND NATIONAL PARK SERVICE LANDS DURING THE COURSE OF THE YEAR?

Policy

Both the 43 CFR 4700 Regulations and the Act (P.L. 92-195) support BLM's position as the managing agency.

43 CFR 4700 Departmental Regulations

43 CFR 4700.0-5 Definitions (d)

"Herd area" means the geographic area identified as having been used by a herd as its habitat in 1971.

CFR 4700.0-5 Definitions (j)

Defines "wild Horses and burros" as all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat.

The burros in question inhabited both the Lake Mead Recreation Area and Public lands over the period a year. These burros have historically watered at Lake Mead/Colorado River and ranged out on BLM land to feed. During the wet season when there are pot holes of water, the burro range further away from Lake Mead.

43 CFR 4700.0-6 (c)

Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior. This implies that wild horses and burros can not be fenced in on open ranges -- the reverse implication is that they could be fenced out.

43 CFR 4700.0-6 Policy (d)

In administering these regulations, the authorized officer shall consult with Federal and State Wildlife agencies and involve them in planning for and management of wild horses and burros on public lands.

43 CFR 4710.7

Individuals controlling lands within areas occupied by wild horses and burros may allow wild horses and burros to use these lands.

43CFR 4720.2-1

Upon written request from the private landowner to any representative of the Bureau of Land Management, the authorized officer shall remove stray wild horses and burros from private lands as soon as practical.

Although NPS is not a wildlife agency, it does have the authority to permit livestock and burro use on Lake Mead which it has done until they cancelled their cooperative agreement with BLM. They acknowledged and consented to BLMs coordinated management of the burros on Lake Mead Recreation Area until a disagreement arose.

Assuming that the Departmental Regulations may require rewriting, the Act should be reviewed for intent.

THE ACT STATES

Sec. 2 (c) " "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and ..."

Sec. 3 (a). "The secretary is authorized and directed to protect and manage Wild and Free-roaming horses and burros as components of the public lands,..."

Sec. 4 states that "If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the secretary, who shall arrange to have the animals removed."

Sec. 4 last paragraph and Sec. 6 recognizes that wild horses and burros will/may use lands other than public.

Sec. 4 "Nothing in this section shall be construed to prohibit a private landowner from maintaining wild free-roaming horses or burros on his private lands, or land leased from the government if he does so in manner that protects them from harassment and ..."

Sec. 6 "The Secretary is authorized to enter into cooperative agreements with other landowners and with the State and local governmental agencies and may issue such regulations as he deems necessary for the furtherance of the purposes of this Act"

The question is; Can the burros be BLM burros one minute and NPS burros the next minute they step over the park line? This would not seem to be the intent of the Act. Even though specific references are made to Public lands the Act recognizes that these animals will range off public lands onto private lands. It also recognizes their known territories (which could include both public and private lands).

Cases cited by the NPS Solicitor

DIFFERENCES between the cases cited by the National Park Service Service solicitor opinion and BLM/NPS situation.

1. New Mexico Game Commission v. Udall confirmed USC 16 3, that NPS has the authority the destroy such animals as he may deem detrimental to the use of the parks, reservations, or monuments. This specific case dealt with deer which is under New Mexico Game and Fish. The Park Service solicitor also used this case to point out Park Services authority to manage animals on their lands

There is nothing to indicate if the deer were migrating off the park service lands or not. The CarlsBad BLM wildlife biologist said it was likely that the deer were moving on and off the park lands.

Deer are regulated under a state agency.

Federal legislation under the Supremacy Clause, overrides conflicting state laws. "Kleppe v. New Mexico" 426 U.S. 529, 49 L. Ed. 34, 96 S. Ct. 2285 (1976) Syllabus (b)

It should be noted that while the Park Service was given the authority to destroy animals that were detrimental to the use of the Parks, it was not given unlimited authority i.e. Threatened and Endangered Species (another Federal Law).

2. In the case "Fund for Animals v. Hodel", approximately 90% of the burros were permanent residents of the Death Valley National Monument and never moved off the reservation onto Public lands. Relative to the other 10%, it was stated in the Order dismissing the action that "In addition, BLM and the U.S. Navy are also carrying out burro removal programs on land adjacent to Death Valley. If NPS interrupts its planned burro removal, some burros will increase their range on BLM and Navy land, having an adverse impact on these agencies' programs." The obvious conclusion is that the Park Service was concerned about negatively impacting BLM and Navy removal programs. The case was never tried. In fact, the suit was brought against NPS by a private group after their proposal to destroy (shoot) the burros, subsequent to BLM's agreement with the Park Service on how the animals were to be handled.

3. In "Kleppe v. New Mexico", 426 U.S. 529, 49 L. Ed. 34, 96 S. Ct. 2285 (1976), the New Mexico Livestock Board was prohibited from removing wild burros from Public lands (off an allotment) under their Estray Law. Syllabus (c) "The question of the Act's permissible reach under the Property Clause over private lands to protect wild free-roaming horses and burros that have strayed from public land need not be, and is not, decided in the context of this case. pg 16-17 406 F Supp. 1237, reversed and remanded." Briefly stated, BLM has authority over burros on the Public lands but there was no determination if this authority carried over onto private lands.

Another Pertinent case

The "Mountain States Legal Foundation v, Andrus; Civil No. C-79- 275K (D. Wyo., files September 1979)" suit dealt with the issue that contended BLM failed to maintain an ecological balance in its horse population; to protect and manage wild horses; and to remove wild horses from private land upon request of the landowner. This occurred on unfenced checkerboard lands in Southern Wyoming (near Rocksprings, Wyoming). The plaintiffs ask for damages for loss of forage and that BLM be required to remove excess horses and to leave a number that the Grazing Association agreed to.

The court decision ruled in favor of the BLM. As part of its discussion, the court stated that nothing prevented the grazing association from fencing their private lands to keep the wild horses out.

It further states that "It is well settled that wild animals are not the private property of those whose land they occupy, but are instead a sort of common property whose control and regulation are to be exercised "as a trust for the benefit of the people." Geer v. Connecticut, 161 U.S. 519, 528-29 (1986)." The Supreme court implicitly accepted congress' determination to treat the horse as wild in Kleppe v. New Mexico.(page 8 foot note 4)

This situation is not too different from the wild burro use of Public lands and National Park Lands. An assessment of Impacts of Feral Burros on National Park System - Lake Mead (1978) contacted by the NPS, established the fact that the burros moved between the two agencies' lands and that at that time the burros were not causing environment damaged

POINTS THAT STAND OUT

The Act, P.L. 92-195, defines "Public Land" as lands that are managed by the Bureau Of Land Management and U.S. Forest Service. It lumps the ownership of remaining lands into one category by omission. By implication, State, other federal and private lands are on an equal footing.

Federal laws take precedence over state laws when there is a conflict.

There is no clear precedence set when two federal laws/regulations conflict (based on the information that I have). NPS does not have a free hand in disposing of animals that affect the Park lands. 50 CFR Part 402 States that all Federal agencies are required to consult with the Fish and Wildlife on actions that may affect T & E Species. Both the National Park Service and the Bureau of Land Management are bound by the T & E Species Act.

I am not aware of any precedence which deals with the Act's permissible reach under the Property Clause over private lands to protect free-roaming horses and burros.

Wild horses and burros do not change status as often as they cross a political boundary.

CONCLUSION -- HORSES AND BURROS THAT USE PUBLIC LANDS ARE WILD FREE-ROAMING HORSES AND BURROS, EVEN IF THEY USE NON-PUBLIC LANDS DURING PART OF THE YEAR.

Burros that use the public lands are free-roaming horses and burros by definition. The Bureau is bound by law to protect and manage them.

The law makes provision for burros that stray (move off public land) on to private land with the provision that the private land owners can ask the Bureau to remove them, or maintain them on private lands and/or enter into a cooperative agreement with BLM. The Mountain States Legal Foundation v. Andrus suit recognized that those horses were wild free-roaming and that they grazed on both BLM and private lands. It also said that the private land owners could fence the wild horses off their private lands.

The Park Service lands by omission in the Act definition (Public Land), could be assumed to have a status similar to private lands. The same provision, could clearly be interpreted to mean that burros which did not graze or move onto Public lands were NPS burros which they could manage as they see fit.

POLITICAL IMPLICATIONS IF THE PARK SERVICE IS ALLOWED TO DISPOSE OF ANY HORSES OR BURROS THAT CROSS THE PARK BOUNDARY (without a fence).

The private sector will see itself being prosecuted while the Park Service will have a free hand to do what they want to.

It could be an indication to the general public that when any wild horse or burro crosses a private boundary, the land owner has the authority to dispose of it as he sees fit.

It would appear to have the effect of requiring a rewrite of regulations 4700 CFR or amending the Act.

If this problem is not settled at this level and it is elevated to the political arena and the courts. Special interest groups could enjoin BLM from capturing wild horses and burros until the courts have looked at the situation. If captures were stopped for two or three years, a significant amount of ground would be lost in getting herds down to management levels.

WILD HORSE AND BURRO STATISTICS - 11 WESTERN STATES

SUMMARY

STATE HERD AREA TOT	ACREAGE		HORSE	HORSE	BURRO	BURRO	PERCENT	PERCENT
	BLM	OTHER	AML	POP	AML	POP	BURO POP	BURO AML
ARIZONA	2011000	1818000	133	204	1295	2465	45.11%	41.41%
CALIFORNIA	4387020	1900701	1463	1755	936	1369	25.05%	29.93%
COLORADO	636649	57807	430	569	0	0	.00%	.00%
IDAHO	446102	20570	428	449	0	1	.02%	.00%
MONTANA	44813	17278	121	128	0	0	.00%	.00%
NEVADA	18088670	1675501	18560	27015	803	1518	27.78%	25.68%
NEW MEXICO	94971	48161	30	70	0	0	.00%	.00%
OREGON	3192212	679018	1963	2549	25	25	.46%	.80%
UTAH	2162761	396120	1257	1319	68	86	1.57%	2.17%
WYOMING	4210803	1719966	2695	3764	0	0	.00%	.00%
TOTAL	35275001	8333122	27080	37822	3127	5464	100.00%	100.00%