

SUMMARY OF INFORMATION
FROM API FILESby
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February 1991
on

THE WILD HORSES OF NELLIS

[Because API appealed removal decisions from the Caliente Resource Area including Nellis, our files include copies of BLM administrative records that should be made part of the general background of Nellis. The following highlights rather than quotes, complete records are in BLM's files.]

1980

API files on Nellis begin with a field trip in June 1980 by Craig Downer and Dawn Lappin. Craig refers to the range conditions around ROSE SPRINGS and in portions of the Kawich Valley, stating that grazing pressures were heavy in an 8 mile radius of ROSE SPRING. He indicates that there were several overgrazed areas in the ROSE SPRING vicinity. He reports that vegetation was more abundant on the east side of the mountains in the Kawich Valley and a higher adult to foal ratio existed over there. But fewer horses were seen on that side. Craig also says trespass cattle on Nellis, before 1979, were allowed to equal horses even though grazing permits were bought out in 1964. BLM's official estimate of horses in 1980 was 4800. In response to BLM's proposed reduction, Craig and Dawn insisted that utilization studies be done [in accordance with the statutory requirements in the law]. BLM agreed to do trend and utilization studies. It isn't clear if the proposed roundup was carried out.

1982

The Las Vegas District Manager wrote to the Nevada State Office stating that the Nellis AFB asked for a solicitor's opinion concerning the responsibility for horses on the USAF Tactical Fighter Weapons Training Center (formerly Nellis AFB Bombing and Gunner Range) and the Tonopah Test Range. NSO replied that the management of the bombing range is under the five-party agreement for Nellis AFB, Nevada Test Site, and the Tonopah Test Site which identifies and recognizes the wild horses on the Bombing range as the responsibility of the BLM...and BLM cannot absolve itself of the management responsibility for the animals and their habitat at this time.

Next is a letter from a Sierra Club representative who served as the C & C Chairman. He thanked BLM for concentrating on the wild horse "problem" saying he's anxious to hear what concrete steps

and plans the BLM is thinking about for the implementation of "the great 1985 wild horse roundup."

1983

Our copies of BLM files include BLM field inspections reports for 1983. Unfortunately BLM used marking pens to highlight the original which, when photo-copied, blackouts some of the most pertinent information. BLM range con, Phil Seegmiller, reported his field trip of April 26 to check water. BLM's wild horse-/range specialist, Terry Driver, reported tours on April 28-29 and again in June. A team from NSO reported a trip made in July. Driver's early tour is to take slides and run utilization studies near permanent water sources. He notes that halogetan and tumbleweed have colonized the denuded areas within a half mile radius of water.

He notes that there is still water in the MANY POTHOLES out on Cactus Flats and that "horses will stay out on the desert floor until these are dry." In June. Driver sets-out utilization cages and tours Range 75 and 76 of the old Nellis AFR area. Range 75 is identified as the southwestern one-fifth of this area; Range 76 includes the Stonewall Mountain area. Several horses were observed at the GOLD FLAT WELL # 1. Driver notes that the potholes are starting to dry up and horses are starting to move to permanent waters. Seegmiller reports seeing 100 horses at the OPERATIONS MAINTENANCE COMPOUND RESERVOIR. About 1000 were now using the lower ROSE SPRING and the spring south of the old wild horse ranch. BREEN CREEK was still running into the RESERVOIR at the edge of the upper dry lake in Gold Flats. Seegmiller reports that ANOTHER RESERVOIR at Gold Flat Wells #1 would probably be dry in a couple of weeks. He reports that horses were now widely dispersed at least 30 miles from the permanent water in the south end of Gold Flat. He reports the horses as being in good physical condition. THE TROUGHS AT TUNNEL SPRINGS AND THE OLD HORSE RANCH were being depleted and CEDAR WELLS was becoming contaminated.

When the NSO team went out in July 1983, in response to Air Force complaints about dust, auto-horse collisions, and the possibility that, if there were a die off of horses, carrion birds could get sucked into jet engines and cause damage. Ed Evatz of NSO wrote the field trip report. Evatz described the tour as starting at INDIAN SPRINGS. From here they flew north over the bombing range toward Stonewall Mountain. He reports counting 106 burros, 200 horses and 4 bighorn in the vicinity of STONEWALL SPRING. They continued north to the nw corner then due east about 20 miles before dropping south across BREEN CREEK (318 horses were counted in this area). They landed near a WATER HOLE used by the Air Force for maintenance (205 horses spotted in this area). Here, they switched to a truck and drove s.w. to the old ranch (they spotted 207 horses along this stretch). Then they drove

five miles south (187 horses were seen along this stretch). Here they turned west, then north back to where they began (counting 99 horses along this portion). Now they flew east to CEDAR WELLS in Kawich Valley (spotted 170 horses in the vicinity of the wells), turning south to the end of the valley they counted another 100 head. Continuing south and west across the test site back to INDIAN SPRINGS they saw no horses on this leg. A total of 1,646 horses and 106 burros were counted on their trip. Evatz concluded that those horses they spotted (in JULY) were not scattered widely but concentrated near water sources. He reports seeing no damage to military facilities and the only dust was around water sources with horses moving in and out. The NSO team suggested a possible option to lessen the military's objections would be to take out half the horses. It would still leave a viable herd. NSO recommended the first removal priority should be in Stonewall Mountain where competition with bighorn occurs; the second, around military facilities and equipment. They suggested the possible management option could be to remove 90-95% from the [NRC) range then concentrate BLM efforts (e.g. providing water and doing proper utilization checks) on the NWHR only. The only reference to utilization in this report was that galetta grass and other grasses are 90-100% utilized up to 4 miles out from water and budsgge had been heavily utilized earlier in the year. About 5 miles from water utilization appeared to be currently about 20% but this would increase as horses increase in these areas. Utilization up to 90-100% in a five mile radius of water is expected.

1984

Driver and Seegmiller report a field tour taken April 26, 1984. Seegmiller's tour was to assess the needed maintenance on water sources TO BRING THEM BACK INTO FULL OPERATION TO PROVIDE ADEQUATE WATER FOR THE WILD HORSE POPULATION. Seegmiller describes CORRAL SPRINGS has having two sources an upper and lower. Water flow from the lower is @ 1 gal per min. He notes that gravel needs to be put around the headbox to prevent a cave in which would cut off this source. He suggests the upper spring be re-developed by installing a headbox and pipes. The two need to be linked together with a 5-10 thousand gallon storage tank and water piped out to troughs. TUNNEL SPRINGS also needs to be redeveloped. Here the flow is a half gallon per minute. A 2-3 thousand gallon storage tank is needed. ROSE SPRINGS pipelines need to be cleaned out to allow more water down the line. A 5-10 thousand storage tank is needed. Water control valves need to be added to control water flow. SILVERBOW has maintenance problems near the source. Lines should be pumped back to the source and the line cleared. A trough of at least 1500-2000 gallon capacity with float valves needs to be added to the pipeline. Pipes could be extended 4-5 miles down the old corral road for a capture site.

A June 4 report says the Air Force shut down the O & M water source. This, says Seegmiller, will increase pressure on other sources. Seegmiller states that repairs are needed now. In June another report states that RECO cleaned the ROSE SPRING pipeline but the situation is more grave than thought. [portions here are blacked out.] Horses were found dead and several lame ones had to be put down. [This information is blacked out.] Even with ROSE SPRING at full performance it can't keep up with the demand of horses. Seegmiller states that RECO has not been able to work on the other water sources. CEDAR SPRINGS AND CEDAR WELLS had turned into mud holes "even though they were producing plenty of water two months previous." Recommendations to fence the source and pipe waters out had been ignored.

A report states that ROSE SPRINGS, CEDAR WELLS, CORRAL AND SILVER BOW are seen as the most important permanent water sources. Seegmiller states these won't support the 4063 horses reported in the March 1984 census even with help from RECO on maintenance and repair.

In August Seegmiller goes out with Harley Dickensheets of the Air Force. [Half of this is blacked out.] On a loop through the range, where according to Seegmiller's report, they normally see 1,500 horses he reports seeing less than 200. Seegmiller concludes that perhaps this is due to recent moisture and cooler temperatures that day which would allow horses to be more flexible in their movements. He notes that a water shortage still exists.

1985

This year's BLM file contains a handwritten note from Terry Driver to Mike Pontrelli of Sandia Labs, Inc. dated May 14, 1985. This relates to their putting together a work party to do the maintenance and repair work needed. Backhoes, graders, ditchers etc are on "standby alert" and ready to go. Driver mentions that it is becoming very crucial because horses will be using only a few of the permanent waters in the hot dry weather and these are in a state of disrepair. He says they need to do this maintenance without delay in order to support the horses. [In a 6/8/88 summary report, Seegmiller states that during the summer of 1985 three miles of pipeline and four sets of water troughs were installed at Tunnel Springs, Rose Springs and the two sources at Corral Springs.]

There is a May 1 1985 notification to take 1500 horses off Nellis and "Manage wild horses on the NRC with the objective to maintain the home range wholly within the NWHR." The purpose of the removal is to implement objectives outlined in the HMAP to leave 2000 head on the NWHR area. {NOTE: See Table S-2, P. S-5 in the RMP/EIS which compares existing and new objectives as either retain 5000 or 4000 horses.} The 1985 removal plan says to

accomplish its goal all horses on the NRC will be removed. In addition the number inside the NWHR will be reduced!

1986

Driver and Seegmiller go out on April 16 to do their utilization studies and check water conditions. A reference to utilization is blacked out as is a reference to the flow of BREEN CREEK (it appears to say "Breen creek was almost full two weeks ago...in excess....now.... this flow will need to be monitored...fluctuate often.")

They report that the NEW ROSE SPRING trough-pipeline was cleaned out and water is flowing into the trough. [Note: no mention is made of the 5-10 thousand gallon storage tank that was recommended.] Seegmiller reports that THREE OTHER SPRINGS (ANTELOPE, CACTUS, & ONE UNNAMED) in the Kawich mountains were examined. He recommends "CONSIDERATION SHOULD BE GIVEN FOR MAINTENANCE & DEVELOPMENT OF THESE SPRINGS IN THE FUTURE." [His 6/88 Summary Reports states that during the summer of 1986 one water source was maintained at CAMP SPRINGS, utilization studies completed.]

In May a Wild Horse Roundup, by water trapping, took place. Catoor was the contractor. Phil Seegmiller reports on this. Panels were placed around WILD HORSE SPRINGS May 28 with capturing starting on June 5...[black out: "water was the most...in this area, both horses...water sources trying to...for the animals in this...to the animals from May 26..."] The report states that at STONEWALL SPRINGS and WILD HORSE SPRINGS the majority were coming in for water every other day as the nearest available forage was 7 to 15 miles out. Foals had tender feet and bad infections. Black out: "Lack of water and having to trail great distance to suitable forageincreasing the mortality...." On June 5, capture corrals were set up at CORRAL SPRINGS UPPER & LOWER ROSE SPRINGS. Both of these are inside the old NWHR. [Blacked out section obscures part of the totals]... 534 horses and 205 burros were removed from Stonewall Spring, 224 horses and 28 burros from Wild Horse Spring, and 285 horses from the NWHR for a total number of 1276 animals removed. 12 horses and 1 burros were put down. More wet mares than foals were brought in but a fly over revealed no live or dead orphan foals. [The 6/88 Summary lists 285 taken from the west side of the Kawich Range and 534 horses, 205 burros from Stonewall, 224 horses and 28 Burros from WILD HORSE SPRING--both of these are on the extreme west boundary.

In July 1986, the Air Force reported horses dying at CEDAR WELLS (in Kawich Valley). Seegmiller investigated on July 16. He says that the new troughs installed in June were working and about 1 gal/min was flowing into the troughs but the horses wouldn't use the troughs. Horses stayed around the reservoirs instead. [NOTE: Again nothing is said about installing a storage tank. No one

questions what occurrence caused this aversion on the part of the horses to the new troughs, since there are troughs elsewhere used by horses without being so wary or leery.] Seegmiller reports that 200-250 horses were standing around CEDAR WELLS. They showed signs of extreme stress from lack of water, staggering, flanks drawn in with ribs showing. 13 animals were dead. Seegmiller pleads for water hauling. The Air Force refused on orders from their commander.

In August 1986, a Memo lists the costs of the needed repairs and maintenance. Short term maintenance would require hauling 5,000 gallons of water per day to Cedar Springs at a cost of \$200.00/wk. To make the springs identified in the HMAP fully functional would cost \$29,000. Development and maintaining springs with 5-party members would cost \$34,000 versus \$85,000 to remove 1500 horses. Remaining wild horse removals plus water projects inside NWHR only would cost \$148,208. Seegmiller comments that if water projects are by contract another \$50,000 needs to be added to costs. Total cost would then be \$198,00 of which nearly \$164,000 would go for roundups.

1987

Next in the file is a MARCH 1987 letter from Curtis Tucker to the Commander of Air Force the first line is blacked out:..."my staff...maintenance of the spring source at Cedar Wells...week of April 6..." Tucker reports that they need a cutting torch and welder. He asks for clearance on someone who will help with the maintenance project. The commander answers Tucker on APRIL 6, saying the request was being forwarded to his staff for coordination. [The 6/88 Summary Report states that one source was maintained at CAMP SPRINGS.]

There is a MARCH 1987 letter from Tucker to Dawn Lappin of WHOA thanking her for helping to develop the HMAP [black out deletes some of this, it ends with ..."avert potential die off." The letter also explains that 800 horses were removed from the Kawich Valley and Cactus Flat areas in the 1986 roundup; 3378 horses and 4 burros remain based on the September 1986 count of 4178 horses, 4 burros. [Seegmiller reported 1276 animals actually removed and another 12 put down on site. These figures leave a total of only 2888--490 animals less than what Tucker reports. It isn't clear if Tucker is referring only to horses in the boundary of the old NWHR.] But Tucker does refer to THE 1,137,417 ACRES STUDIED. He says utilization was severe on 17%, heavy on 16%, moderate on 23%, light on 21%, and slight on 23%. He states that horses are not often found in the remaining areas within the NRC. Tucker's letter says "progress has been made on the NRC and on what is being planned [for Nellis]."

1988

In January 1988, an AF/DOE Joint Working Group met on the subject of wild horses on the Tonopah Test Range. Sandia Labs presented data which documented 9 accidents between vehicles and horses that occurred in 1986. When they lowered the speed, the accident rate dropped to six in 1987. [NOTE; API contends this is a driver problem requiring a driver-related solution not a horse problem requiring a removal of horses.] In April, Curtis Tucker wrote to Sandia Lab regarding their unauthorized removal of foals from the range! {NOTE: The taking of foals off the range by Sandia staff explains why more wet mares than foals had been captured in the 1986 removal.)

The September 1988 census listed 4120 as the actual count of wild horses still on the NRC. Seegmiller reports that "of the 4120 counted, HALF ROAM OFF THE NWHR. This situation exists with very limited perennial water sources available for wild horses especially during summer months."

The Summary Report of 6/8/88 compares three years's of utilization on the NRC

| 1985 | 1986 | 1987 |
|--------------|--------------|--------------|
| 17% Severe | 28% Severe | 15% Severe |
| 16% Heavy | 11% Heavy | 13% heavy |
| 33% | 39% | 28% |
| 23% moderate | 10% moderate | 10% moderate |
| 21% light | 11% light | 10% light |
| 23% slight | 40% slight | 53% slight |
| 67% | 61% | 73% |

API appealed the 1988 removal of 225 horses from the NRC which would have left a herd of 3,895 horses to be managed in the NWHR portion of the herd area.

The purpose of the 1988 removal was to bring the total "closer to the AML of 2000" to be managed within the boundaries of the old NWHR only as identified in the land use plan. The land use plan violates the law. The IBLA ruled that BLM must base its determination of excess horses on current range conditions resulting from actual monitoring of the vegetation and determining optimum numbers for the area--not on a number set in a land use plan. The boundary issue is under protest to the Director, the next step in the decision-making process would be to appeal his decision to IBLA.

1989

There is a notation in our files with regard to the Nevada State Commission for the Protection of Wild Horses having investigated an incident of the USAF "accidentally" pouring antifreeze into a water source with several deaths resulting.

In early 1989 before the IBLA ruled on API's appeal of the 1988 removal, a removal plan for 1,099 horses was sent out from Caliente Resource Area. The cover letter dated April 25, 1989 stated that "the present population is estimated to be 5,376 based on the September 1986 census of 4120.

The purpose of the April 1989 removal was to bring the population to the AML set in the HMAP. It states that 1,210 horses had been removed in 1986 [Seegmiller reported 1276 animals removed plus 12 put down in 1986].

The plan states that a total of 3,988 horses having been removed from 1985 to 1987. BLM estimates the population increases at a 20% annual rate. Other materials to support their proposal and claims that 1989 is a drought year, include precipitation data from 13 stations. These show a low of .17 to a high of .68 for the first five months of 1988 and a low of .01 to a high of 1.70 for the first five months of 1989, which makes 1989 wetter not drier. Utilization readings, which accompanied the removal plan, were depicted in a bar graph to show the 1989 readings plus a 3 yr average for three key species. Indian Rice Grass was 65% in 1989, and 67% for the 3 yr average; Galleta Grass was 33% in 1989 and 48% over 3 yrs; Winterfat was 70% in 1989 and 70% over three years. [NOTE: Page D-10 of the draft RMP lists allowable use levels and wild horse policy: If use is 10% above the allowable use then horses will be reduced to a level that will result in use at 10% below the allowable.]

The June 1989, ruling from the IBLA on AMLs in land use plans cancelled the removal plan because the purpose was not in keeping with law or this policy.

In July, thunder showers are blamed for the BREEN CREEK water system failure which presented the crisis situation that resulted in the emergency removal of 623 horses in December. Waters did not flow down the Creek bed into the reservoir as described in the 1982 field inspection but were diverted down the old Corral road instead. [In fact, no further mention is ever made of reservoirs and mudholes or the 5-6 month use of these.] The Breen Creek crisis ended when winter snows dispersed the horses in January 1990. In this crisis, API did not question that affected horses might need to be removed because of the emergency, what we questioned was the number of horses affected by the break down of the Silverbow Springs pipe and trough system. A series of phone calls between API and Caliente occurred in

September in which API was originally told that there were up to 1000 horses in the vicinity of the Silverbow/Breen Creek area half of which were affected by the breakdown. This number escalated to 1,700 when the emergency removal was declared in October. This was 700 more horses than were in the area and was a number conveniently close to what would bring the population down to their "AML in the land use plan." Milt Frei and Dan Rathbun of NSO intervened with a fly over evaluation of the situation. Frei recommended that 400 be taken off, waters monitored with further removals in increments of 200 until a balance between the supply and demand was achieved. API and others agreed this was a sensible solution. In the meantime WHOA raised the issue of BLM's responsibility, under the objectives listed in the HMAP and C & C agreements, to repair and maintain water sources and BLM's obligation to fix the problem not just remove horses. BLM began the removal December 4, but sent the Wyoming wranglers homes on December 18. When they planned to resume the emergency on January 8, API charged that by their own actions they already declared the emergency ended on December 18 when they sent the wranglers home, It was then discovered that they also had stopped monitoring the waters. BLM put out a press release saying API filed suit prohibiting their removal of horses to the detriment of both the horses and the range and they had fixed springs, laid pipes and built fences but 6,500 head was 4,500 too many horses. They didn't mention that API won the ruling on that suit and their actions were not in compliance with law or their own range management policies or the valid objectives listed in the HMAP.

1990

In Spring of 1990, we received an "Evaluation Summary of the Nevada Wild Horse Range." The documents begins by saying there is no AML at this time but the C & C committee listed the AML in the HMAP as 2000. [NOTE: API's series of appeals are specifically to bring the law and BLM's Congressional mandate to base decision on technical data and range monitoring back into the wild horse program. Many inside BLM flatly refuse to believe a federal law protects wild, free-roaming horses.]

The Evaluation refers to the NRC as "the withdrawn lands"--when, in fact, the 1986 Military Land Withdrawal Act released Nellis from "withdrawn" status except for the purpose for which they were originally withdrawn. This is in accordance with the provision in FLPMA that required BLM to assess all withdrawn lands and report to Congress on their status within 15 years. [Changes in the original purpose for withdrawal by the military raises a serious controversy that goes beyond the question of wild horse management in the NRC portion of the area identified as wild horse habitat.]

The Evaluation lists the April 1989 population as 5,376 and the July population as 6,255. [NOTE: A sex ratio, age structure analysis would evaluate the probability of this being an accurate increase rate for a population that has no ingress or egress from the area. Commonsense would suggest that it is not possible to go from 5,376 in April to 6,255 in July on birth rate alone.]

Under management objectives listed on page 9, Objective No. 2 is listed as managing numbers in balance with available supply of perennial water at a 10 gal/day and forage at a 33 lb/day consumption rate.

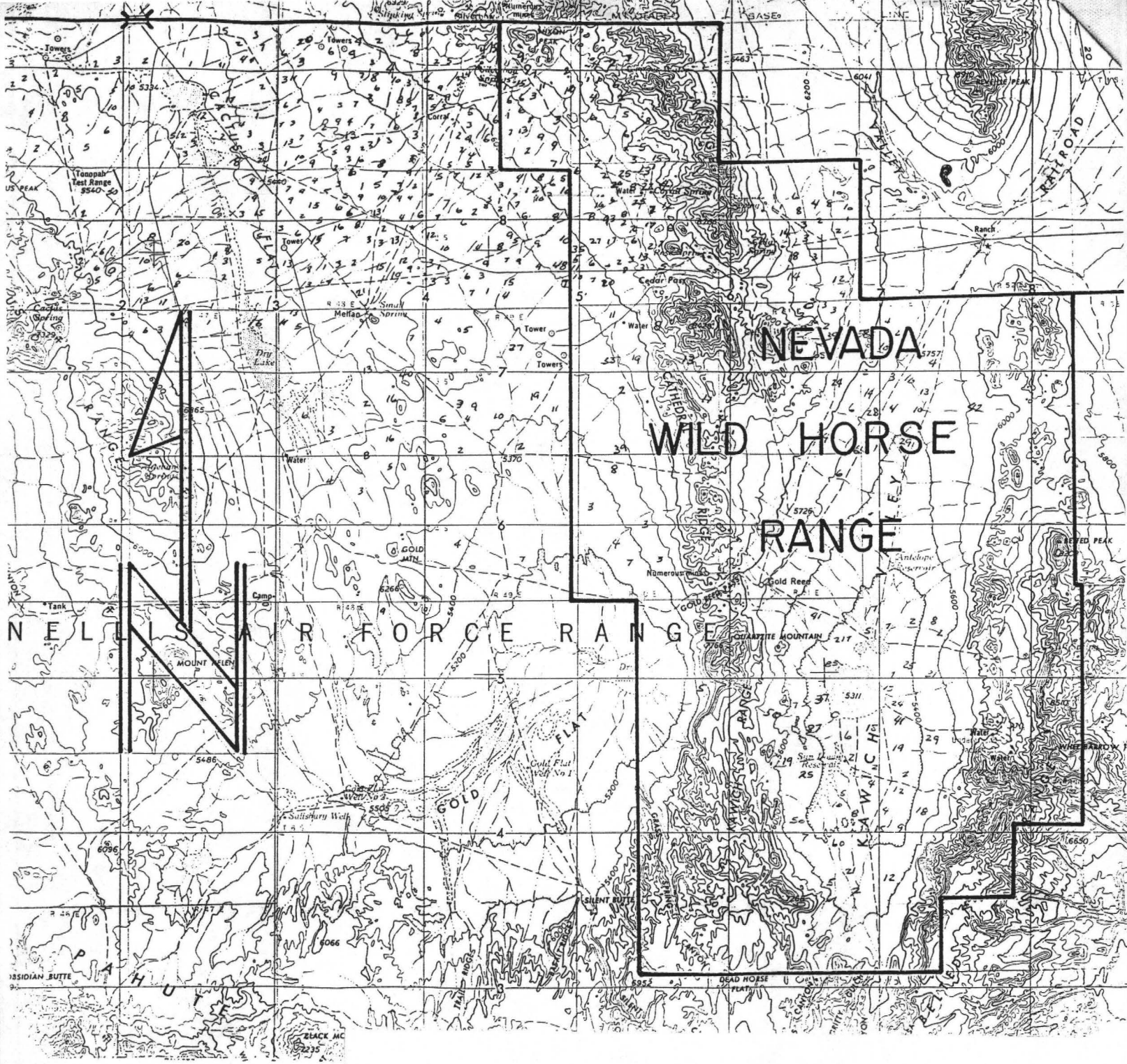
[NOTE: The RMP/EIS page D-10 to compares the objectives from the HMAP with those in the RMP. Here it requires BLM to initially bring water back into functional condition WITH ADEQUATE WATER STORAGE AND ANNUAL MAINTENANCE! Cedar Wells is to be given the highest priority with STORAGE TANKS AND TROUGHS. Cedar Spring is to have STORAGE. Upper and Lower Corral Springs are to be reconstructed with new troughs and STORAGE. Silverbow pipeline is to be repaired, new troughs and STORAGE installed and an extended pipeline is to be considered. STORAGE is to be added to Tunnel Springs. Completion is dependent upon feasibility and funding. Additional projects are to be proposed every year. WATER SOURCES ARE TO BE MONITORED YEARLY if adequate water is not available horses will be removed from that area and either relocated or put up for adoption. On page D-12 it states that population adjustments will be conducted only when range monitoring studies demonstrate a need; adjustments will be based on the utilization of key forage species. The basic utilization-population formula to be used is

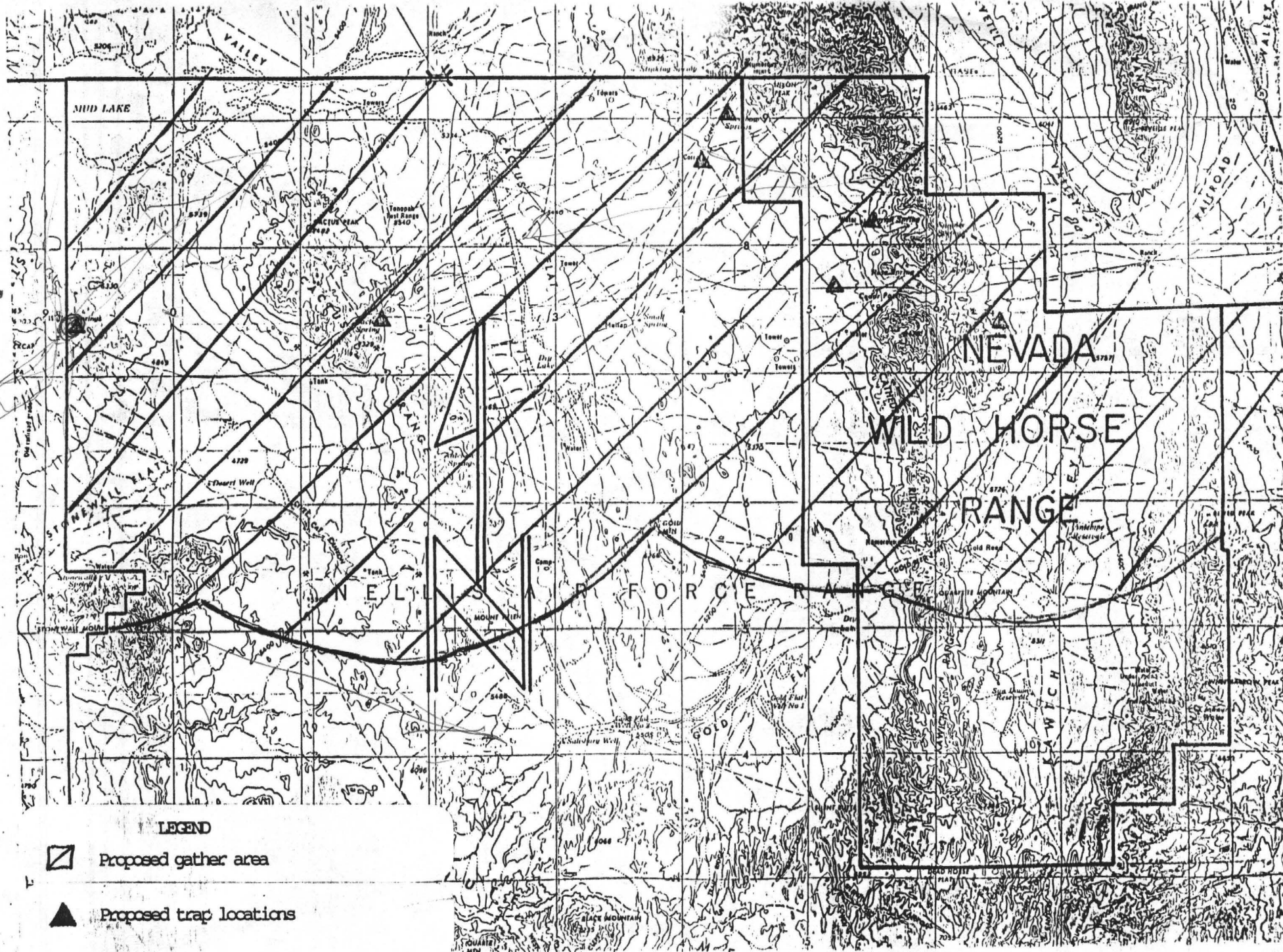
$$x = \frac{(\text{Desired Population Size})}{\text{Desired Utilization}} = \frac{\text{Present Population Size}}{\text{Present Utilization}}$$

Page 9 of the Evaluation at No. 3, states utilization has been collected from 31 sites every year since in 1985. The very next sentence says only 13 sites were measured once in the 1985-89 period.

A table compiles readings at six sites located within the boundaries of the old NWHR. These were observed 18 times between 1986 and 1989. Only Three sites measured Heavy, one severe.

A second table compiles readings from twelve sites located in the NRC area. Five of the twelve (e.g., less than half) were observed to have readings from moderate to severe. Since only one set of frequency data (1986) has been done, no trend can be established. Yet BLM concludes, on the basis of this one set of frequency data, that trend is down. This is not supported by the 6/88 Summary report of utilization.





LEGEND

▣ Proposed gather area

▲ Proposed trap locations

MEMO TO FILE
IBLA Rulings

I WHAT MADE THE 1989 IBLA RULING SIGNIFICANT?

(In response to API's appeal, IBLA at 109 124, June 1989)

BLM argued: (1) it has authority to remove wild horses in the exercise of its discretion even where it cannot demonstrate current damage to the range. (2) BLM argues it can remove wild horses in order to achieve stable populations for monitoring purposes so that the potential for damage can be assessed and thus prevented. (3) BLM interprets the statutory term excess to mean not only the number of animals necessary to main the range in a thriving natural ecological balance but also "the number of animals substantially above the initial AML established for study or monitoring.

IBLA found

(1) SOLE AND EXCLUSIVE AUTHORITY FOR REMOVAL IS IN §3(b)(2) the act provides explicit direction regarding the circumstances under which removal of horses from the public range is permitted, viz, where there is an overpopulation of wild horses in a given area and removal is necessary in order to restore a thriving natural ecological balance and prevent a deterioration of the range threatened by that overpopulation.

(2) IBLA says: WE FIND NO SUPPORT FOR THE CONCLUSION THAT BLM HAS THE DISCRETIONARY AUTHORITY TO REMOVE HORSES FROM AN AREA TO ESTABLISH A BASELINE DATA.

(3) IBLA says: Under the Act AML has a very particular meaning in the context of actions required to be taken to remove horses. It is synonymous with restoring the range to a thriving natural ecological balance and protecting the range from deterioration, excess horses shall be removed 'so as to achieve appropriate management levels" or stated differently "so as to restore a thriving natural ecological balance to the range and protect the range from the deteioration associated with overpopulation."

IBLA quotes DAHL v CLAR supra at 595: "the test as to appropriate wild horse population levels is whether such levels will achieve and maintain a thriving ecological balance on the public lands Nowhere in the law or regulations is the BLM required to maintain any specific numbers of animals or to maintain populations in numbers of animals existing at any particular time.

However, IBLA also noted it could be argued that an AML established for administrative reasons fits the statutory so long as it constitutes a level which results in a thriving natural ecological balance even tho it falls below the optimum which may be supported...however the Act expressly provides that removal shall proceed only "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. Thus the statute simply does not authorize the removal of more than the excess. We {IBLA} interpret the term AML within the context of the statute to mean that optimum number of wild horses which results in a thriving natural ecological balance zand avoids a deterioration of the range. THE ACT DOES NOT AUTHORIZE THE REMOVAL OF HORSES IN ORDER TO ACHIEVE AN AML WHICH HAS BEEN ESTABLISHED FOR ADMINISTRATIVE REASONS RATHER THAN IN TERMS OF OPTIMUM.

II. OTHER SIGNIFICANT RULINGS from API appeals:

1. When an appellant merely urges some other course of action which may be theoretically as correct as that chosen by BLM, this Board will not overturn a BLM decision to gether excess wild horses. The Department is entitled to rely on the reasoned analysis of its experts in matters within the realm of their expertise. In cases involving an expert's interpretation of data it is not enough that the party objecting to the determination demonstrates that another course of action or interpretation is available or that the proposed course of action is also supported by the evidence. The appellant must demonstrate by the PREPONDERANCE of evidence that the BLM expert erred when collecting the underlying data, when interpreting that data, or in reaching the conclusion. [THIS IS IN EVERY RULING.]
2. Determinations of judicial standing do not control adjudications of administrative standing. Standing before IBLA is governed by 43 CFR 4.410 (a). [THIS IS IN EVERY RULING]
3. IBLA has no authority to revise amend or clarify language of a District court order defining appropriate management levels and excess. [THIS IS IN EVERY RULING]
4. * * * An appeal may properly be dismissed as moot where the Board can grant no futher relief because of events occurring subsequent to the appeal. [THIS IS IN EVERY RULING--it's significant if full force and effect becomes automatic.]
5. *****[SIGNIFICANT] The Board will affirm a BLM decision to remove wild horses from a HMA where removal is predicated on an analysis of grazing utilization, trend in range condition, actual, and other factors, which demonstrate that removal is

necessary to restore the range to a thriving natural ecological balance and prevent a deterioration of the range, in accordance with Sec. 3 (b) of the Wild Free Roaming Horse and Burro Protection Act as amended--16 U.S.C. §1333 (b) 1988 [THIS IS CONFIRMED IN ALL BUT THE RULINGS of 1991. One can see a real change between 1988 and 1991 looking at the significance to us of this ruling. WE NEED TO HANG ON TO THIS]

6. ***** [SIGNIFICANT] Departmental regulation 43 CFR 4710.4 requires wild horse management to be undertaken with the objective of limiting the animals' distribution to herd areas, which are defined as "the geographic area identified as having been used by a herd as its habitat in 1971." 43 CFR 4700.0-5(d). [THIS COULD BE USED TO CHALLENGE BOUNDARIES, HABITAT MUST PROVIDE FORAGE, WATER, SHELTER, COVER, SPACE FOR THE LEAST SUSTAINABLE NUMBER...THE LAW REQUIRES IT BE THE OPTIMUM NUMBER; (IBLA 90-115 says in a footnote 43 CFR 4700.0-6 (a) "horses/burros shall be managed as self sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat." The conference committee said "The goal of wild horse management...should be to maintain a thriving ecological balance between wild horse/burro populations, wildlife, livestock, and vegetation, and to protect the range from the deterioration associated with overpopulation of wild horses."

7 ***** [SIGNIFICANT] The decision to remove wild horses from an area of public lands is properly remanded where the record fails to establish that the horse excess, i.e., that removal of the horses is necessary to establish a thriving natural ecological balance and multiple use relationship in the area.

8.*****{NEGATIVELY SIGNIFICANT} (we're asking for a reconsideration--Montrose, Colo ruling) A BLM decision to gather wild free roaming horses from within and outside a wild horse herd management area will be affirmed on appeal when:

(1) a conclusion that the dormant season utilization levels have exceeded the utilization levels called for in an approved resource management plan is supported by field monitoring data--[ok]

*** (2) the actual size of the wild horse herd exceeds an appropriate management level identified in approved land use plans--[MOTION FOR RECONSIDERATION!!]

(3) it is necessary to remove the "excess" horses to restore and maintain a thriving natural ecological balance to the range and protect it from deterioration associated with overpopulation [ok, it still requires determination of excess be based on range--we see this as contradicting No. 2]

9. **** In IBLA June 1989 (at 109 IBLA 124, footnote #9) they state Maintaining the status quo is clearly an appropriate response where BLM does not have adequate information upon which to base a proper determination of the appropriate number of wild horses to permit on the public range Cf. NRDC V Hodel, supra at 1057, 1060-62 (livestock). Moreover, it is implicitly required in the case of wild horses by section 3 (b) of the Act where BLM is not able to establish that removal of wild horses is necessary to restore the range to a thriving natural ecological balance and prevent a deterioration of the range.

*** BLM had argued that it can remove wild horses in order to achieve stable populations of horses for monitoring purposes so that the potential for damage can be assessed and thus prevented. IBLA says: we do not dispute the fact that stable populations of wild horses can facilitate monitoring. However, it is clear that a study can be undertaken quite apart from any removal of wild horses, using and, if necessary, maintaining existing populations and the existing environment. Once a study has determined that the statutory prerequisites for removal have been fulfilled immediate removal can take place.

10. While Congress amended the act to mandate the removal of excess horses IBLA does not believe that it intended to alter the legislative directive that any removal from the public range be carefully considered. Commensurate with the requirement to undertake removals, Congress as discussed supra provided specific restraint on the exercise of the removal authority. Moreover the report from the congressional committee said conferees agreed that excess numbers must be removed but that caution must be exercised in determining what constitutes excess numbers. (API submitted the intent of Congress materials in our arguments.)
IBLA STATES:

BLM HAS NOT EXERCISED THE NECESSARY CAUTION AND DO OTHERWISE WOULD GRANT blm THE LICENSE WHICH CONGRESS SPECIFICALLY SOUGHT TO PRECLUDE!!!

11. * * * "Even where the EA indicate that the range is being adversely affected by wild horses, there is no indication that these statements to the extent they suggest that removal of wild horses is necessary to restore the range to a thriving natural ecological balance and prevent a deterioration were based on an in depth analysis of the condition of the range and the impact of wild horses. [see Flannigan below]

12. When IBLA put the four removals into full force and effect based on the Saare Burkharte "Condition Assessment Report" IBLA

said: with the exception of the four"our review of the assessment discloses that it does not support BLM's determination that the HMAs contain an overpopulation of wild horses. The evidence cited in the assement FAILS TO ESTABLISH EITHER THAT THE AVAILABLE FORAGE IS NOT ADEQUATE TO SUPPORT THE NUMBERS AT OR NEAR CURRENT LEVELS OR THAT THERE IS ANY OTHER BASIS FOR REGARDING THE NUMBERS AS EXCESSIVE.

13. * * * FLANNIGAN: (API charged that "other options" requires considering §4710.5 as an alternative in the EA and horses not become the scapegoat for livestock or removed without justification based on range data. BLM argued that Closure to livestock is not a viable or reasonable alternative to proper management.) IBLA found §4710.5 GIVES BLM DISCRETIONARY AUTHORITY. A CASE FOR CLOSURE WOULD HAVE TO BE BASED ON A DETERMINATION THAT SUCH ACTION WAS "NECESSARY" E.G. TO PROVIDE HABITAT OR PROTECTION TO WILD HORSES.

14. * * * FLANNIGAN: IBLA states "The intent of the act is to "achieve a balance in resource allocation among several groups of users of those resources. To the extent BLM's management initiatives REASONABLY REFLECT THAT GOAL THEY WOULD APPEAR TO BE IN HARMONY WITH THE ACT."

15. * * ** FLANNIGAN: Regarding whether the EA adequately supports the removal decision. IBLA states THE SALIENT INQUIRY IS WHETHER THE PLANNED ACTION IS SUPPORTED BY DILIGENT ANALYSIS AND RESEARCH IN THE REQUIRED DISCIPLINES AND WHETHER IT FOLLOWS THE REQUISITES OF THE LAW AUTHORIZING IT. IN SITUATIONS REQUIRING BLM TO ASSESS AN IMPACT ON THE ENVIRONMENT OR TO ESTABLISH AN ENVIRONMENTAL PROGNOSIS, AN APPELLANT HAS THE BURDEN OF OVERCOMING BLM'S FACTUAL CONCLUSION BY A PREPONDERANCE OF EVIDENCE (Artman, 98 IBLA 164, 168 (1987)).

NOTE: BLM raised the condition of horses in their response. I can't see that IBLA mentions this "horse condition." They refer to the fact BLM's range data showed deterioration and that BLM asserts its determination was based solely on range monitoring which showed the HMA was degraded and could not support the wild horses within it.

To me this is a case for closure, by IBLA's own definition above. WE SHOULD HAVE ASKED FOR RECONSIDERATION OR CLARIFICATION ON THIS. Carson did have the data to show a reduction was needed and that the majority of horses were all out on the flat rather than back up in the HMA. I must not have made a strong enough showing that BLM was taking horses out of the Juniper Basin but putting livestock in there for winter use for the first time in five years. I never even mentioned that I tripped over cow turds in Juniper Basin where cows had

not been for five years..preponderance of evidence?

THIS RULING ESSENTIALLY SAYS TO BLM JUST STATE THE PURPOSE AS ACHIEVING A THRIVING NAT. ECOL. BALANCE THEN IT ISN'T UP TO BLM TO SHOW IT BUT FOR GROUPS TO PRESENT A PREPONDERANCE OF EVIDENCE THAT BLM DID NOT SHOW IT. To me, just saying it isn't really good enough, we have to demand they show what they say they show; otherwise there is no accountability on the gov back to the people--it's gov against the people.

16. NELLIS (IBLA June 1989 ruling, 109 IBLA 122) IBLA SAYS: "HMAP, page 9, the AML was, like the other AMLs involved herein, designed to be an initial management level which would be adjusted as a result of further monitoring...there is simply no evidence in the HMAP indicating that the jAML constitutes the optimum number of wild hroses which will maintain the range in a tiving natural ecological balance and prevent a deterioration of the range." IBLA notes :the aml of 2,000 recommended by the C & C... (in 1985)...was less than the number of wild horses then using the range. The plan indicated that 4,890 horses had been determined to be using the range in March 1984. Doubt is cast on the figure of 2,000 by the fact the plan also reports at page 6 that 'generally animals appear to be in fair to good condition. The population as a whole appear[s] to be healthy with isolated maladies afflicting some animals.' In addition the plan indicates that no vegetation inventory had been conducted and trend studies had not yielded any results. Id at 2."

Others rulings to reference:

DAHL v CLARK at 592, a determination that the removal of wild horses is warranted must be based on analysis and studies.

If you jump the gun and mistake a proposed decision for a final thus appealing the proposed, you can request IBLA to consider it a "notice of intent to appeal." They may or may not grant it but there is no reasonable excuse to not grant it--except politics.

On emergency roundups: AHPA v Frizzell (403 F Supp 1206, 1219, n 9 Nev 1975) permitted BLM to proceed with the removal of wh from the pulic land as an "interim measure to preserve the Valley pending a complete study and the development of a long range solution designed to preserve the environment and reconcile the competing interests involved." IBLA remarks "it is clear that the removal was not predicated simply on establishing a baseline for study purposes but rather in response to a determination that "a seriously overgrazed range cannot continue to supply all of the needs for food placed on it by the various

users: cattle, wild horses, and other wildlife" whgich situation required IMMEDIATE attention pending development a long term strated (id at 1217 APHA v Andrus, 460 F Supp--9th circuit in part, remanded in part)

Critics lash water importation plan

By Courtney Brenn/Gazette-Journal

Water quality, unbridled growth and environmental damage were among concerns cited Tuesday by a coalition that called for more skepticism of a plan to import California ground water to Reno.

"This is one of the first volleys of the water growth wars of the 1990s," said Bob Fulkerson, executive director of the 1,800-member Citizen Alert, one of the groups in the Citizens Concerned about the Truckee Meadows Project coalition. "We live in a desert and therefore it is senseless to believe that growth is unlimited."

The ambitious water importation project is a public-private partnership be-

tween Washoe County and developer Franklyn Jeans to pump 15,000 acre-feet of ground water from Jeans' property in the Honey Lake Basin and distribute it within the county. The property is 35 miles north of Reno.

State Engineer Mike Turnipseed begins taking public comment Thursday on dozens of protests filed against the county's water transfer applications. Turnipseed must approve the applications before any water can be pumped in the \$86 million project.

In addition to Citizen Alert, the coalition includes the Sierra Club, Public Resource

See WATER, page 4B

Water plan

From page 1B

Associates, Great Basin Green Alliance and the Nevada Outdoor Recreation Association.

The group plans an 8:30 a.m. rally Thursday outside the county complex, where Turnipseed's water hearings will be held.

Among the group's concerns:

- The influx of new water into the Truckee Meadows could promote rampant and uncontrolled growth in a region already plagued by air pollution and water shortages.

- Contaminated ground water at the nearby Sierra Army Depot in Herlong, Calif., could foul the Honey Lake water or Pyramid Lake.

- Lowering the ground-water table in the area could kill off natural vegetation, which would threaten wildlife.

- The possible negative impact of introducing untreated Honey Lake ground water into the Truckee River system.

Jeans has maintained that his ground water is cleaner than Truckee River water. Further, he said the project doesn't promote new development since it's aimed at supplying growth already planned in the county's north valleys. He also said a U.S. Geological Survey report has shown the water can be removed safely and the only vegetation affected would be the crops on his 327,000-acre Fish Springs Ranch.

Meanwhile, the Reno City Coun-

cil on Tuesday tabled an agreement with the county that would have withdrawn the city's protest to the water importation plan in exchange for a guarantee that the project would not harm the Truckee system or the Reno-Sparks Wastewater Treatment Plant. Both Reno and Sparks, which tabled the same agreement on Monday, said they want to wait for more information on the treatment plant, which has exceeded state standards for water containing total dissolved solids for five months in the last year.

The coalition also promised Tuesday to keep a relentless vigil demanding more careful land-use planning in Washoe County. Water and other natural resources need to be considered



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Water import program draws criticism

By Karen Splawn
Review-Journal

A coordinator for Citizen Alert said Monday that if the Las Vegas Valley Water District is allowed to take ground water from rural counties, the environmental impact could be devastating.

Chris Brown, Southern Nevada coordinator for the grass-roots environmental group, said he and other wildlife organizations are joining forces to oppose the water district's application to pump 864,000 acre-feet of unallocated ground water from Nye, White Pine and Lincoln counties, as well as from northern Clark County, each year.

The water district's plan to pump water from the counties could take 20 years to develop and cost an estimated \$1.5 billion.

Instead of taking water from the

rural counties to keep up with the growing demand, Clark County should look at changes in lifestyle and limitations on development, Brown said.

Owens Valley in California is a good example of what happens when an area is drained of ground water, he said.

Until the 1920s, Owens Valley was a fertile area full of wildlife and had a lake deep enough to support passenger boats. But after the Los Angeles Department of Water and Power drained 270,000 acre-feet of water from it, Owens Valley became a dustbowl, he said.

By the time Los Angeles authorities were aware of the damage, it was too late to reverse the situation, Brown said.

He cautioned that no one is sure what the impact on wildlife in Nevada would be if so much of the

ground water were taken from the rural counties, but said that "studies that have come out are disturbing enough."

According to a Citizen Alert fact sheet, endangered or threatened species such as the bald eagle, desert tortoise, gila monster and the Las Vegas Valley leopard frog could be affected if the water district's plan becomes reality.

Many desert plants would suffer, the literature stated. If the water table is lowered in certain areas, some plants probably would disappear.

The fact sheet said the pumping of water from underground sources also could affect flowing streams, springs, marshes and ponds, damaging the habitat of birds, fish and other wildlife.

One alternative, Brown said, is to allocate more water from the

Colorado River. "What's clear to us is the water district doesn't want to take up the political fight of negotiating with the other states who are entitled to the water," he said.

Under current federal agreements, Nevada is entitled to take 300,000 acre-feet of water from the river annually. Some analysts have predicted that the state will be using all of its allotment by 2010.

The water district figures the rural Nevada counties won't put up much of a fight, Brown said.

He said the water district and its governing board, the Clark County Commission, should encourage less development and more water conservation.

"We're asking them to say, 'Hey it's about time we lived within our (means),' " he said.

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WILD HORSES
What is going on in Nellis?

SACRAMENTO -- The Animal Protection Institute represents its 150,000 members as interested parties to public land wildlife and wild horse management. We appealed the roundup of 324 horses from Nellis in 1988 to the Interior Board of Land Appeals. The Nellis appeal was part of a challenge of the legal justification of BLM's entire removal policy. We won the challenge. The IBLA rulings require BLM to put the law back in their program.

But this is not what has prevented BLM from removing horses from Nellis recently. The current controversy related to Nellis is as a boundary issue. There are hidden politics (not the usual conflicts with livestock) in that boundary issue. We suspected that orders on Nellis came from Washington back in 1988 and that local BLM merely obeyed.

The 1989 draft management plan deleted 1.7 million acres identified as where horses and burros existed in 1971 and where a 5-Party agreement, between Department of Interior, Department of Defense, Department of Energy and two Nevada state agencies, specified that BLM was to manage wild horses and burros on the public lands which were withdrawn for use as the Nellis Complex and Tonopah Test Range.

In September 1989, API along with the Nevada State Commission filed a protest of the deletion of the 1.7 million acres of habitat as violating the law. Cy Jamison, the national BLM director, refused to respond to our formal protests. He refused to address the boundary issue. This refusal tied the hands of the local BLM. It held up any removals. Jamison finally made the decision in early June 1991. But his decision upholds the deletion of the 1.7 million acres and takes the boundary back to that of the pre-1971 Nevada State Horse Range. The decision ignores the law and dismisses the 5-party agreement as well as the question over the validity of the management plan.

API scrutinized BLM's field data and their reports very closely. In January 1991, BLM reported normal adult to foal ratios, horses were in good condition, and there was adequate range. We asked about finding dead horses. Less than fifty was mentioned. A ten percent mortality for a population of 4,000-6000 would be 400-600. Why don't they find more dead horses or other wildlife? Is there a rescue operation for deer, antelope, or other wildlife in this current crisis? How many fawns, baby bobcats, kit fox, or coyotes are being rescued?

The water systems were the problem in 1990--but drought only part of it. Thunder showers had knocked out the Breen Creek water system in July 1989. In December 1989, BLM declared an emergency in Nellis and removed 600 horses under their emergency removal procedures.

In 1990 a removal plan was submitted but it was a final decision which by-passed the entire administrative process. BUT IT WAS NOT AN EMERGENCY REMOVAL PLAN. There was a confusion of population numbers and the size of the habitat since the boundary decision was pending. Both WHOA and the Commission supported the removal. API's response to that plan (based on BLM's report of normal adult-to-young ratio, horses in good condition, adequate forage available) was to request that BLM follow proper policies and administrative procedures.

BLM's choice at that time was to declare an emergency or move through the regular administrative procedure channels. They did the second. Today's roundups are the result of that decision. When BLM did not declare an emergency, we suspected that there was a hidden agenda--coming from Washington. We backed out entirely with no intention of appealing the removal. We suspected BLM wanted a crisis situation and hoped we would appeal on a procedural issue so they could milque it. But we don't know what the politics are since there are no livestock. We guess it must have to do with the Department of Energy's application to withdraw lands which will be reviewed by Congress this November. We've sent all background material to the Congressional committee related to energy. We have also asked the Council on Environmental Quality for advice in the matter of the environmental assessment and BLM's Finding of No Significant Impact in the deletion of 1.7 million acres of habitat on the Nellis wild horse population.

~~But of course no one is asking about the boundary issue because now we have a full blown crisis and a real emergency in progress. Now, no one is asking why they didn't call an emergency a year ago.~~

Without in anyway affecting the current removal of horses from the Nellis herd use area, API intends to continue its policy of demanding the government fully implement the law. The elimination of 1.7 million acres identified as wild horse habitat violates the law.

Since 1984, BLM has deleted over 100 areas identified, in accordance with law, as wild horse habitat areas. This has eliminated over 13 million acres from wild horse and burro usage. API contends that BLM creates "overpopulation" by eliminating habitat areas then convinces the public and Congress of the need for fertility controls.

Nancy Whitaker
Nancy Whitaker
Animal Protection Institute