

INTERIOR BOARD OF LAND APPEALS

Thomas M. Berry

162 IBLA 221 (July 27, 2004)

Title page added by:  
[ibiadecisions.com](http://ibiadecisions.com)

THOMAS M. BERRY

IBLA 2001-374

Decided July 27, 2004

Appeal from a decision of the Field Manager, Little Snake (Colorado) Field Office, Bureau of Land Management, to proceed with a gather and selective removal of wild horses within the Sand Horse Herd Management Area.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

A decision to remove excess wild horses to the extent necessary to reach the appropriate management level required to preserve a thriving natural ecological balance on the range will be affirmed when the decision is based on a reasoned analysis of rangeland monitoring data.

APPEARANCES: Thomas M. Berry, Whitewater, Colorado, pro se; John R. Kunz, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Thomas M. Berry appeals from the Decision Record (DR) issued July 17, 2001, by the Field Manager, Little Snake (Colorado) Field Office, Bureau of Land Management (BLM), determining to proceed with the gather and selective removal of wild horses from the Sand Wash Herd Management Area (HMA). The gather and removal would be conducted in accordance the proposed gather and removal action analyzed under Environmental Assessment (EA) CO-100-LS-01-044.

The proposed action is based on BLM's 2001 Wild Horse Strategy, which provides that all HMA's will be managed through gathers every 4 years in order to obtain the Appropriate Management Level (AML). (EA at 4.) The term AML generally refers to the optimum number of wild horses and burros that "results in a thriving natural ecological balance and avoids a deterioration of the range." Animal

Protection Institute of America, 109 IBLA 112, 119 (1989); see 16 U.S.C. § 1332(f) (2000); Dahl v. Clark, 600 F. Supp. 585, 595 (D. Nev. 1984). The AML established for the Sand Wash HMA was 362 horses. The proposed action reflects a change in BLM approach to treat the AML as the maximum viable number of wild horses in a HMA rather than the average number of horses maintained. The result is that sufficient numbers of wild horses are removed in the gather to allow the herd to increase back to the AML by the fourth year. (EA at 4.) According to BLM, the number of wild horses within the Sand Wash HMA should be maintained at a level between 163 and 362 horses:

The Sand Wash herd increases at an average rate of 22% annually. Using this estimate, the Sand Wash herd is expected to increase to 363 horses the fourth year after a gather. Horse number will be adjusted the fourth year to the lower end of the management range. The 22% herd increase is a number averaged from data acquired during gathers completed in 1988, 1995, and 1998.

(EA at 5.) Thus, BLM proposed gathering approximately 325 horses in 2001 in order to remove 271 horses in specific age groups. At the completion of the gather, 163 horses, representing the lowest management level, would be selected and returned to the HMA.

These numbers were developed as a result of BLM studies:

Utilization data was collected at key areas. These key area readings were weighted to represent areas of the allotment and also for forage production characteristics. From these weighted reading[s], an overall allotment utilization amount was determined. This overall utilization figure was then weighted \* \* \* to arrive at the weighted average utilization figure for the HMA. The overall browse and grass key specie utilization figures were averaged because both grass and browse are key components of wildlife, horse and livestock diets.

(EA, App. III at 1-2.) Application of this data to find the desired stocking level was described by BLM:

The following formula, found in the BLM Technical Reference 4400-7 Methodology, is used for calculating a desired stocking level:

Actual Use/Actual Utilization = Desired Use/Desired Utilization

Actual use means where, how many, what kind of grazing animal, and how long the animals graze a particular area. It is normally expressed in terms of animal unit month (AUMs)--the amount of forage necessary for sustenance of one cow or its equivalent for one month.<sup>[1/]</sup> Actual utilization means the measured percentage of key [forage] browse and grass species that have been consumed by grazing animals during a specified period. Desired utilization means the proper use factor percentage which will maintain and enhance the health and vigor of key forage browse and grass species. Desired actual use is what is calculated and is the carrying capacity or desired stocking level. Prior to 1996, the desired utilization on both shrubs and grass in the Sand Wash HMA was 50%. Since that time, new information suggests that winter use on browse species should not exceed 40% and less than 50% use on grass is desirable.

(EA, App. III at 5.)

The desired actual level of use calculated using this formula for the years 1989 through 2000 was averaged to reach a desired actual use of 16,871 AUMs. Id. at 7. In determining the desired stocking level for wild horses, BLM explained:

Averaged desired actual use equals 16,871 AUMs. During the 11 year [study] period, horses used an average of 27% of the total AUMs.  $16,871 \text{ AUMs} \times 0.27 = 4,555 \text{ AUMs}$  available for wild horses per year.  $4,555 \text{ AUMs} \div \text{the } 1.25 \text{ forage consumption factor} = 3,644 \text{ AUMs}$ .  $3,644 \text{ AUMs} \div 12 \text{ (months)} = 304 \text{ horses}$ . However, this number of horses is only for 84% of the HMA. Therefore,  $304 / .84 = X / 1$ .  $X = 362$  wild horses is the desired number.

Id. at 7. The averaged desired actual use of 16,871 AUMs was calculated for grazing allotments making up only 84 percent of the HMA. Hence, BLM extrapolated the resulting number slightly to account for the larger size of the HMA.

In the EA, BLM assessed three alternatives to the proposed action. One alternative was to continue existing management -- gather every 3 years to reduce the horse population to 217. Another alternative was to use fertility control measures to regulate population. The final alternative consisted of no direct management of population. The latter two alternatives were eliminated from consideration due to inherent flaws in those plans which precluded implementation.

<sup>1/</sup> See 43 CFR 4100.0-5. One grazing wild horse consumes 1.25 AUMs per month.

The EA was made available for public review in June 2001. Berry submitted a written objection “to the proposed increase of the ‘wild’ horse numbers.” He observed as reasoning for a smaller herd that “[t]here are too many ‘wild horses’ now,” and “Western Colorado has been in a below average moisture cycle.” (July 12, 2001, Letter to Field Manager.)

The Field Manager approved the proposed action on July 17, 2001. In the DR, he noted that “[t]he decision to remove wild horses from the Sand Wash [HMA] is based on vegetation monitoring studies which document that an ecological balance currently does not exist within the [HMA].” (DR at 2.)

In his statement of reasons, Berry asserts that BLM did not provide sufficient evidence to support the proposed action of gathering horses on a 4-year cycle while maintaining an AML of 362. Appellant further contends that BLM did not adequately consider the alternatives and, therefore, it did not make a reasonable assessment. Appellant avers that BLM’s action is contrary to the relevant laws and regulations and will result in degradation of the rangeland in question.

[1] The goal of wild horse management is to maintain a thriving natural ecological balance among wild horse populations, wildlife, livestock, and vegetation and to protect the range from the deterioration associated with overpopulation. 16 U.S.C. § 1333(a) (2000); Dahl v. Clark, 600 F. Supp. at 594; Michael Blake, 138 IBLA 170, 177 (1997); Animal Protection Institute of America, 118 IBLA 20, 23 (1991). “[E]xcess animals” are defined as those “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.” 16 U.S.C. § 1332(f) (2000). The Board has held that a determination as to what level of removal is warranted must be based on research and analysis and on monitoring programs that include studies of grazing utilization, trends in range condition, actual use, and climatic factors. Joey R. Deeg, 141 IBLA 67, 69 (1997); Michael Blake, 135 IBLA 9, 14 (1996); Animal Protection Institute of America, 117 IBLA 4, 5 (1990).

Appellant has not provided the Board with any evidence refuting the information upon which the DR appealed is based. Nor has he offered evidence to show that BLM’s experts erred “when collecting the underlying data, when interpreting that data, or in reaching the conclusion” challenged. The Board has noted that

where a decision authorizing removal of excess wild horses from an HMA or HA is predicated on an analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors that demonstrate that maintenance of a herd at the prescribed

levels of horse population will restore the range to a thriving natural ecological balance and prevent a deterioration of the range, in accordance with section 3(b) of the Act, 16 U.S.C. § 1333(b) (1994), that decision will be affirmed. See, e.g., Joey R. Deeg, supra at 69-70; American Horse Protection, Inc., 134 IBLA [24,] 26-27 [(1995)]. An individual challenging a BLM decision to remove wild horses from an area of the public lands bears the burden of demonstrating, by a preponderance of the evidence, that BLM committed an error in ascertaining, collecting, or interpreting the data upon which it relies in its decision. Joey R. Deeg, supra at 70; Michael Blake, supra at 14.

Animal Protection Institute of America, Inc., 151 IBLA 396, 401 (2000).

Appellant questions the appropriateness of the AML established by BLM for the Sand Wash HMA. The use of the desired stocking rate formula to determine the AML for wild horses has been widely accepted on appeal to this Board when based on an analysis of forage consumption and livestock and wild horse numbers. See Commission for the Preservation of Wild Horses, 145 IBLA 343, 346-47 (1998); Animal Protection Institute of America, 118 IBLA at 26.

Regarding appellant's concerns that the change in AML will result in degradation to the rangeland at issue, we find that his arguments are based on a misperception. Much of his concern arises from the fact that the AML is defined differently in this case than it had been previously. Under the previous plan the AML meant 217 horses would be left after the gather scheduled for every third year. The herd would likely increase to a level of 394 horses before removal (at the historic 22 percent annual increase). In its answer, BLM indicates that the average number of AUMs utilized by the Sand Wash herd under the prior AML would amount to 19,305. Under the plan to be implemented, the AML represents a range of 163 (horses left after a gather) to 362 (likely number of horses after 4 years under the historic 22 percent annual increase) before removal every fourth year. The average number of AUMs under the latter plan would be only 18,945. (BLM Answer at 2.)

We find no basis for appellant's argument that the plan proposed to be implemented would result in greater harm than the alternatives. Certainly, his assertion that BLM has "decided to increase the number of wild horses in Sand Wash" is incorrect, as the proposed action means fewer horses will be left within the HMA. We find that the EA and record before us is sufficiently detailed with data and expert analysis which demonstrate a reasonable basis for BLM's decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

C. Randall Grant, Jr.  
Administrative Judge

I concur:

---

David L. Hughes  
Administrative Judge