

Appellants Response to the Surprise Field Offices Responses Regarding

Request for Stay/Rationale for Motion to Dismiss and,
BLMs Response to Appellant's Statement of Reasons

The Summary Conclusions by the Surprise Field Office in its Rationale for Motion to Dismiss is found on page 4, stating:

“Based on the above, public interest would not support granting a stay because: (1) a determination that excess wild horses has been made; (2) immediate removal is needed to prevent further deterioration to the range, and further delays in gathering would increase wild horse impacts on the rangeland resources; (3) Field Manager's final decision was issued effective immediately under authority provided in 43 CFR 4770.3 (a) and (c); (4) the removal is needed to achieve AMLs set under previous decisions (CA-370-01-07 and CA-028-93-03) and to achieve land use plan objectives (EA, pages 2-3)”

To summarize the information provide within the Statement of Reasons/Rationale for Motion to Dismiss: that an overpopulation of wild horses exists based on previously established AMLs, that current population levels are causing excessive utilization, trampling, and detrimental impacts to spring sources and riparian areas, that failure to reduce/remove wild horse populations will further continue deterioration within these areas, that law, regulations and authority demand that BLM remove “excess horses” to restore a thriving ecological balance to rangeland resources and that this is a “maintenance gather” in compliance with established AMLs and land use planning in the area.

This excess amount of wild horses is based upon previously established AMLs which determined population levels of what the land can sustain in balance with other multiple-use objectives and needs, that wild free-roaming horses and burros will continue to be regarded as wild and free until title is actually transferred, regardless of how long they remain captive, and that no challenge can be issued regarding the land use plans, the established AMLs, or financial impacts.

It also states that the appeals focus is outside the scope of the decision record which is only concerned with the removal of excess horses and/or to implement fertility control, that this excess is evident in “several bands of wild horses in poor physical condition due to lack of adequate food and water conditions”, that no genetic danger exists at current AMLs due to intermixing with other herds and that the Surprise Field Office addressed public comments in the FONSI/DR, pages 4-6, respectively.

The “scope” of issues listed in this Rationale for Motion to Dismiss is extensive. BLMs authority covers a considerable amount of multiple-uses, considerations, regulations and laws, all designed to implement proper management of public lands and our Nations resources.

While BLM is allowed to address these multiple issues, citing them as the relevant factor in achieving and maintaining proper public land stewardship, appealing or examining decisions within a multiple-use context that also addresses multiple issues is “considered outside the scope of the proposal”.

The initial intention of opposing the gather proposal was not to challenge the established AML but to challenge the management and actions regarding the wild horses within the High Rock HMA. The established AML is only one part of a comprehensive overview and perspective on whether proper administration is being conducted.

Limited information is available regarding the High Rock HMA and its resources. Truly concise analysis is impossible. Why? Because the Surprise Field Office is not effectively monitoring rangeland resources or collecting valuable, vital data in any sort of current manner. If rangeland information, trends and utilization levels are not recorded, no decision or land use plans on any of the various multiple-use resource allocations within the area are valid.

To determine that horses are “excessive” would require actual data of carrying capacity, in both forage and water availability, and a proper analysis of ratios required for multiple-use implementation.

Though some data has been provided, mainly through documents dating back to 1993, much of the past or current land use utilization is absent, incomplete, and/or misleading, especially so on the proposed gather area. Proposed future actions are also being considered without proper monitoring or data on rangeland resources and multiple-use issues.

While the cost of irreparable impacts to resources is cited as reason to remove excess horses, irreparable damage to wild horses, wildlife, and rangeland resources and health through failing to adequately monitor and manage these resources is not cited as a consideration. It is through this inadequate monitoring that wild horse AMLs have been established, which in turn determines what population levels are cited as excessive.

Recent information located in the Wildlife Water Development EA (CA-370-06-02) indicated that wild horse utilization of riparian area forage around Buck Springs was not excessive, despite population levels exceeding the currently established AMLs of the entire HMA by 400%. The actual percentage increase from the Little High Rock Home Range, the proposed gather area, is 600%.

The financial cost of removing 364 wild horses, which is considered outside the scope of consideration, is estimated to be \$621,875.00.

This figure is based from 2003 BLM statistics found in “An Economic Analysis of Alternative Fertility Control and Associative Management Techniques for Three BLM Wild Horse Herds” by John Bartholew, (Open-File Report 2004-1199) page 6, Table 3-(Exhibit 1). This estimated cost includes removal, transportation, medical treatment, and assumes a one-year containment with all animals successfully adopted.

If AMLs have been erroneously established at population levels well under the current range capacity, than unnecessary removals and expense will continue to happen.

The issue of what constitutes an appropriate management level for wild horse and burro management is extensive and complex, covering a wide array of Congressional Acts/Public Laws, Federal Regulations and Guidelines, as well as rulings from Federal Courts and the Interior Board of Land Appeals.

There are two distinct levels used in determining what is appropriate.

The first is the administrative side, which is established by laws, regulations, and rulings. The second is the actual use side, which is determined within the framework established from the administrative mandates, by applying actual data and land resource applications to the decisions. Each level has specific conditions and requirements that must be adhered to when determining multiple-use applications and, for this appeals purposes, wild horse and burro AMLs.

The first level to be examined is whether or not the Surprise Field Office is issuing decisions and employing management strategies based on valid legal mandates and laws concerning wild horse and burro management.

Since a significant portion of the appeal expresses concern for non-compliance by the Surprise Field Office (SFO) in regard to lawful administrations, the administrative and legal compliance of wild horse and burro management will be addressed first.

In BLMs Response to Appellant’s Statement of Reasons, pg. 7:

11. *“The SFO has completely ignored the line in Public Law 92-195, Section 1332 (c) which states that wild horse ranges are to be devoted principally, but not necessarily exclusively, to their welfare in keeping with the multiple-use management concept for public lands.”*

Response

The Appellant has confused the special designation of wild horse ranges, with herd management areas as per CFR-4710.3-2. The regulations provide for designating herd management areas as wild horse and burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds (43 CFR 4710.3-2).....”

The Appellant is confused because there are two distinctly different definitions being legally applied to the term “range”. One is cited in Public Law 92-195, The Wild Free-Roaming Horse and Burro Act of 1971, and one is cited in the Code of Federal Regulations, currently being applied.

Therefore, an examination of each definition is necessary in order to determine which definition must be considered the correct or appropriate definition.

LAWS

Public Law 92-195 was established by Congress to provide protection for the wild horses and burros within the United States public lands. This law establishes the intent to protect them and the framework as to how this would be accomplished.

Section 1332 is titled “Definitions”
This is followed by: “As used in this Act-“

Therefore, clear delineations are established by Congress as to the meanings, intent, and definitions of words used in the Act and are to be regarded and considered with this intent upon interpretation of these “definitions” throughout the content of Public Law 92-195, The Wild Free-Roaming Horses And Burros Act of 1971.

Under Section 1332, Definitions, paragraph (b) states:
“wild free roaming horses and burros” means all unbranded and unclaimed horses and burros on public lands of the United States”

This clearly defines what is to be considered a wild free roaming horse and burro throughout the Act and thus, will be subject to the terms and conditions as defined by the Act.

Having thus defined what a wild free-roaming horse and burro is, Congress further defines where these policies will be applicable and where they will not. Section 1331, Congressional Findings and Declaration of Policy declares:
*“...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”.*

This declaration defines the areas as to which the policies of the Act are to be applied. This is further supported by Section 1339. Limitation of Authority which states:
*“Nothing in the Act shall be construed to authorize the Secretary to relocate wild free-roaming horses and burros to areas of the public lands **where they do not presently exist.**”*

Thus, Congress clear defines and establishes which areas of public lands are to be administered by the provision of the Act and which are not.

To further increase clarifications as to the establishment of these boundaries and subject to the provisions provided within the Act, Congress provides a specific “definition” in Section 1332, Definitions, as to what is to be considered the “area where presently found”.

Section 1332, paragraph (c) states:

“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 concept for the public lands.”

This defines the “areas where presently found” as their “known territorial limits”.

This definition is evidenced, established and supported by the Secretary of Agriculture, through the United States Forest Service, as defining and administering the provisions of this Act within these known territorial boundaries currently referred to as “Wild Horse Territories”.

The Congressional establishment of “known territorial limits” acknowledges the awareness that wild free-roaming horses and burros utilize land through seasonal movements. It was Congress’ intent to recognize, define and apply the provisions of this Act throughout the entire “known territorial limits” that wild-free roaming horses and burros occupied at the time of passage of this Act.

It was through the establishment of these definitions and delineations of boundaries that provided the precedence, foundation and framework for the currently established Herd Areas, Herd Management Areas and Wild Horse Territories that are presently administered by the Bureau of Land Management and United States Forest Service today.

However, this was not the only clarification and definition provided by Congress in Section 1332 (c) as to how the administrations of the Act were to be applied within “their known territorial limits.”

The definition of the land to be considered as under the jurisdiction and application of the policies defined in the 1971 Act was clearly delineated under this section as “...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”.

This establishes and further supports the Congressional declaration of “areas where presently found” are to be administered under the provision of this Act while “areas where they do not presently exist” or “outside of their known territorial limits” are not subject to the provisions and protections afforded wild free-roaming horses and burros.

The enactment of this Congressional directive is still evidenced today as all free-roaming wild horse and burros that stray from these lands are legally removed.

In Section 1332. Definitions, paragraph (c) Congress also defines the “.... *land necessary to sustain an existing herd or herds of wild-free roaming horses and burros, which does not exceed their known territorial limits*” as “**range**”.

Therefore, when “range” is used within this Act, under the definitions lawfully provided and established by Congress, it is to be interpreted and understood to mean:

“range means the amount of land necessary to sustain an existing herd or herds of wild-free roaming horses and burros, (all unclaimed and unbranded horses and burros on public land) 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 concept for the public lands”.

Through these definitions, Congress establishes:

- 1) what is to be administered (free-roaming wild horse and burros),
- 2) where they are to be administered (range/land where presently found that does not exceed their known territorial limits), and
- 3) how they are to be administered (to be protected from capture, branding, harassment, or death and that within these known territorial limits, the range/land is to be devoted principally but not exclusively to their welfare) as opposed to the remaining amount of public lands that do not afford this protection and where this law is not applicable.

The intent, designations, policies and framework as defined within the 1971 Act continue to be supported and upheld in subsequent Acts, Laws and Policies as evidenced from the following passages in The Federal Land Policy and Management Act of 1976, which states:

“Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right of way, or other land use right or authorization existing on the date of approval of this Act” (emphasis added)

“Nothing in this Act shall be deemed to repeal any existing law by implication” (emphasis added)

*“All actions by the Secretary concerned under this Act **shall be subject to valid existing rights**”* (emphasis added).

“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 or leases”

“The permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease” (emphasis added)

As well as within passages of The Public Rangelands Improvement Act of 1978 (Public Law 95-514) which states:

“continue the policy of protecting wild-free roaming horses and burros from capture, branding, harassment, or death....”

“the policies of this chapter shall become effective only as specific statutory implementation is enacted by this chapter or by subsequent legislation and shall be construed as supplemental to and not in derogation of the purposes for which public rangelands are administered under other provisions of law” (emphasis added).

Through these passages, Congress clearly illustrates that, while it was their intent to *add to* existing laws by providing for a better management strategy for rangeland health, it was **not** their intent to repeal, remove, modify or revoke existing protections, rights and laws previously established through the implementation of these new rangeland guides and policies.

In all subsequent Acts and Public Laws, the designations, definitions, rights and protections assigned by Congress through the 1971 Act to wild free-roaming horses and burros within their known territories is both highlighted, supported and upheld.

Through the enactment of The Federal Land Policy and Management Act of 1976 and The Public Rangelands Improvement Act of 1978 (Public Law 95-514), Congress acknowledged that the public lands of the United States were in need of new direction, new management, new implementations and new standards.

One of the standards Congress recognized a need for, was the proper management of wild free-roaming horses and burros within their designated territories. Unlimited growth is detrimental to rangeland health and resources. Thus, they acknowledged that such a condition did in fact, exist as “excessive populations” and that proper rangeland health must be protected against the deterioration experienced as a result of excessive populations of wild free-roaming horses and burros or any other excessive and unbalanced use.

Thus, the Secretary of the Interior, through the Bureau of Land Management and the Secretary of Agriculture, through the United States Forest Service, established the concept and implementation of Appropriate Management Levels (AML) for the proper administrations and protection of both wild free-roaming horses and burros as well as rangeland resources and health.

The Interior Board of Land Appeals has determined that Appropriate Management Levels are to be defined and thus determined as (109 IBLA 119):

“We interpret the term AML within the context of the statute (law) to mean that ‘optimum number’ of wild horses (or burros) which results in a thriving natural ecological balance and avoids a deterioration of the range.”

Websters New Collegiate Dictionary, 1981 edition, defines the following:

Optimum:

“1: the amount or degree of something that is most favorable to some end; *esp*; the most favorable condition for the growth and reproduction of an organism 2 : greatest degree attained or attainable under implied or specific conditions”

Optimal:

“most desired or satisfactory”

This definition and determination by the Interior Board of Land Appeals as to the establishment of appropriate population levels of free-roaming wild horse and burros within their territories makes clear that, while no set number or population level is required due to a wide range of factors and variables within the management of our public lands system, neither are they to be arbitrarily established, and they must adhere to specific guidelines and conditions when these levels are determined.”

What criteria and specific conditions must be adhered to when establishing these appropriate management levels?

The first is, that these levels must be favorable to some end.

This end is defined by Congress in the 1971 Act as the protection of wild free-roaming horses and burros within their established boundaries. The IBLA determined that within those boundaries, the wild free-roaming horses and burros must be managed at an optimum number or, the most favorable condition for their growth and reproduction, without sacrificing rangeland health and resources for other multiple-use applications.

The second of the conditions and specifications for determining what that end is, and the appropriate management level must be, is the definition provided by Congress in Section 1333, (c) which states that the areas where wild horse and burros currently occupy are to be “..... *devoted principally but not exclusively to their welfare in keeping with the multiple-use concept for the public lands*”.

Webster New Collegiate Dictionary, 1981 Edition defines the following:

Principal (principally):

1 : the most important, consequential, or influential: CHIEF

Devote:

1 : to dedicate by solemn act,
2 : to give over wholly or purposefully
3 : to center the activities or attention of

Devoted:

1; ardent, devout
2: affectionate

The third specification and condition that is required when determining what is an appropriate management level is the productivity, vigor and long-term health of the public lands and the associative resources.

This condition defines that the optimum number must not be established for exclusive use, must be capable of maintaining harmony and balance between other ecosystems, wildlife, endangered or threatened species, all the other uses that currently define “multiple-use” of public lands and their associative relationship, and must not degrade rangeland resources. In other words, to maintain a “thriving ecological balance”.

Therefore, the specific conditions that must be satisfied for the determination of an appropriate management level is:

- a) that within the areas occupied by wild free-roaming horses and burros, the appropriate management level must be set with the consideration of wild free roaming burros as the principal, first, or chief element regarding the allocations and decisions of multiple-use management.
- b) that this number will be of a “optimum” value that is most favorable for wild free-roaming horses and burros growth and reproduction, and that
- c) the needs of each individual area and the unique components of the area must be considered regarding wildlife, rangeland health and resources, and all other multiple-use considerations and laws currently listed within the BLM’s and USFS management strategies.

If an appropriate management level is set within a Herd Management Area that does not take in to account one of these three integral components, then balance and multiple-use objectives will not be achieved and Congressional intent regarding the public laws established for resource management will not be adhered to.

This statement of the obvious seems superfluous at first glance, since BLM and USFS is well aware of the multiple-use factors and land management variables they must administer.

However, a disturbing trend seems to have developed regarding the establishment of appropriate management levels within Herd Management Areas and Wild Horse Territories. That trend of course being, a failure to consider wild free roaming horses and burros as a principal consideration within their designated areas or even a integral component of the natural system of public lands.

Without this consideration and adhering to this lawfully specified condition, the balance is being dramatically shifted away from wild horse and burro protection and survival within their designated territories or Herd Management Areas.

To illustrate this point, the following examples are given, based on recent and currently established appropriate management levels from the BLM and USFS.

Rattlesnake HMA (NV)- 71,433 acres

AML established by FMUD 2004

AML-1 horse

The one horse is scheduled for removal in December.

Two grazing allotments are located within this HMA, Rattlesnake and Oak Spring.

Silver Peak HMA (NV)- 239,701 acres,

AML reported in 2005 at 314 horses, AML reported in 2006 as 0.

All WH&B's are now removed and HMA has been zeroed out.

Highland Peak HMA (NV)- 136,091 acres

AML established by FMUD 2004

AML- 33 horses

7 grazing allotments are located within this HMA, Bennet Spring, Black Canyon, Ely Spring Sheep, Highland Peak, Klondike, Pioche, Rocky Hills

Lee Flat HMA (CA)- 71,940 acres

AML reached in 2001

AML-0 for horses, 15 burros

Currently reporting zero population

Currently pending AML establishment for 7 Wild Horse Territories in Fish Creek Complex:

Kelly Creek WHT (NV) 20,902 acres

Proposed AML- 8 horses

Monitor WHT (NV)- Currently pending AML establishment

A Co-managed area with BLM who has set the standard for the AML proposals

Total acreage of combined co-managed HMA's and WHT- 609,701 acres

Total Combined AML- 197 horses

Several grazing allotments are permitted within all areas.

There are many more that could be listed to illustrate this trend and not all details are known as to the factors that have been weighed in these AML determinations. However, the intent of their inclusion is only to provide a quick summary as supportive evidence of this point:

The focus is on what constitutes an appropriate management level within a HMA or WHT.

The BLM currently manages and administers 262,000 million surface acres of public land. Designated wild horse and burro HMA acreage is currently reported at 34,441,150 acres. Almost all public land managed is accessible to livestock grazing, mining, wildlife, and recreational use. Wild horse and burros are only allowed on a small portion of our public lands.

Logic would suggest that, because their allowable land use is of a limited nature, that within their designated areas, they would be the first or chief consideration in management administrations. This was the original intent of Public Law 92-195, why wild horse and burro territories were established in the first place, and why they are not allowed outside of these boundaries.

While I have been unable to access or compute all HMA's and WHT's currently being managed for wild horse and burros, there is an apparent formula that has emerged for wild horse and burro forage allocations within their respective managed territories, currently at about 10% of available AUM's.

While I hope to someday be able to ascertain if this is indeed the standard resource allocation currently being used in determining appropriate management levels for wild horse and burro use, I can only say that, from my current research and data, this seems to be a rather consistent formula.

From the data and evidence obtained about the general trends in BLM and FS management of the wild horse and burro administrations, wild horse and burros appropriate management levels are not being set with the "optimum number" or "devoted principally" to their welfare nor or they being evaluated or considered integral parts of the natural system of public lands.

The thriving ecological *balance* is being severely weighted towards their demise through the failure of factoring in this key component necessary for their continued existence and attainment of the Congressional Declaration of Policy that mandates their primary consideration and continuation.

Without it, there will continue to be statements issued similar to this one:
"The Appropriate Management Level has been established at 8 horses within the 20,000 acre wild horse territory. The proposal to gather the current estimated population of 16, which is 100% over the established AML, is needed to prevent the deterioration of range associated with excessive wild horse utilization and to achieve thriving ecological balance for multiple-use objectives"

While this statement seems ridiculous, the threat of 16 horses on 20,000 acres actually causing range deterioration, not only is it supported, it is upheld. If this same statement was issued regarding other multiple-use resources, it would most likely be vehemently opposed.

For example:

“The Appropriate Management Level has been established at 8 bighorn sheep within the 20,000 acres....”

Or “The Appropriate Management Level has been established at 8 cattle within the 20,000 acres....”

Or “The Appropriate Management Level has been established at 8 trees within the 20,000 acres....”

The Rattlesnake HMA, currently established with an AML of 1 horse, has two grazing allotments being utilized within it. Without factoring the “optimum” number of animals or considering them as the principal use of the HMA, as required by law, results like this will continue to be reaped:

Not in compliance with wild horse and burro protection, not in compliance with thriving ecological balance, not in compliance with proper multiple-use administrations within the HMA’s, and not in compliance with Congressional intent about proper implementation of public land resources.

The Bureau of Land Management and the United States Forest Service have no authority of their own but only that which is granted and bestowed upon them through Congress. The authority that they cite to implement public policy, laws, and mandates must comply within the lawfully established framework as dictated to them.

Congress has granted the BLM and FS the power to remove “excess animals” from the range, to prevent deterioration and degradation of vital resources, so that balance may be achieved within the natural systems of public lands.

However, the the Bureau of Land Management is currently applying two definitions to “range” within the Wild Free-Roaming Horse and Burro Act of 1971.

The first definition is established by Congress within “The Wild Free-Roaming Horse and Burro Act of 1971”, Public Law 92-195, Section 1332, Definitions, (c) and states that this definition is to be used in interpretation of the Act:

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

The second definition is from the Federal Code of Regulations, 43 CFR 4710.3-2, which interprets “range” to mean only “specially designated ranges” that are required to conform to the “devoted principally” mandate.

43 CFR 4710.3-2: Herd management areas may also be designated as wild horse and burro ranges to be managed principally, but not necessarily exclusively, for wild horse and burro herds.

However, regulations do not supersede laws. (See American Horse Protection Association vs Andrus, 1978). This is also supported by The Federal Land Policy and Management Act of 1976, Title 7, Section 701 (h) which states:

“All actions by the Secretary concerned under this Act shall be subject to valid existing rights” (emphasis added).

The power and authority granted by Congress to the Bureau of Land Management is established in Section 1333 Powers and duties of the Secretary states in (2) (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 (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 of priority, until all excess animals have been removed so as to restore a thriving ecological natural balance to the range, and protect the range from the deterioration associated with overpopulation”.

Congress has only authorized BLM the authority to remove wild horse and burros from the “range” when they are excessive. What determines “excessive” is population levels exceeding the appropriate management levels as determined by authorized officers.

When BLM cites the authority granted to them to remove these “excess animals from the range so as to achieve appropriate management levels”, the established appropriate management levels must first be in legal compliance with the Congressional mandate and definition of “range”, stated within Public Law 92-195 which is:

Section 1332 Definitions: (As used in this Act)

- (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 concept for the public lands.”

If the current definition of “range” as defined by the Bureau of Land Managements Code Of Regulations is the only definition of range to be applied within this Act, despite Congress clearly establishing the definition of “range” to be used in interpretation of the Act, then Congress has not authorized BLM the authority to remove wild free-roaming horses and burros from any areas occupied by them except “specially designated” HMA’s.

Congress has only authorized, according to Public Law 92-195, which is amended and current, that the Secretary of the Interior/Bureau of Land Management and the Secretary of Agriculture/United State Forest Service, removal of wild free-roaming horses and burros from the following areas:

- a) private land
- b) outside their established territories at the time of the passage of this Act, and
- c) excess animals from the range so as to achieve appropriate management levels.

The probability that the Congressional intent was to only authorize the removal of “excessive animals” from specially designated HMAs is highly unlikely.

Therefore, the first definition, the lawfully established definition of “range” is the one that must be adhered to in the determination of what criteria and conditions constitutes the establishment of appropriate management levels and meeting that criteria will determine what is excessive.

Those criteria are:

- a) that within the areas occupied by wild free-roaming horses and burros, the appropriate management level must be set with the consideration of wild free roaming burros as the principal, first, or chief element regarding the allocations and decisions of multiple-use decisions and management,
- b) that this number will be of a “optimum” value that is most favorable for wild free-roaming horses and burros growth and reproduction and that,
- c) the needs of each individual area and the unique components of the area must be considered regarding wildlife, rangeland health and resources, and all other multiple-use considerations and laws currently listed within the BLM’s and USFS management strategies.

Again, failure to include one of these vital components will result in improper administrations of both public lands and their resources as well as the wild free-roaming horses and burros Congress has established laws to protect.

In BLM Response to Appellant’s Statement of Reasons #3, it states:

“However, it should be noted that nowhere in the law or regulations is BLM required to maintain any specific numbers of animals or to maintain populations in the numbers of animals existing at any particular time for genetic reasons; rather the goal is to populations levels will achieve and maintain a thriving, ecological balance on public lands.”

Is that truly the only goal of the wild horse and burro program? Has something been lost through the years? Is this why, in April 2006, Bill Philips felt comfortable stating that protection of wild horse and burros was no longer a major issue? Aren't there multiple-goals and objectives? Such as: "to prevent them from fast disappearing, to consider them a part of the natural systems of public lands, to prevent harassment, capture, branding, and death".

Furthermore, this statement of no laws or regulations is untrue. While there is no specific number of animals to be maintained, there is a ruling that requires specific conditions and considerations to be adhered to.

According to 109 IBLA 119:

"We interpret the term AML within the context of the statute (law) to mean that 'optimum number' of wild horses (or burros) which results in a thriving natural ecological balance and avoids a deterioration of the range."

Websters New Collegiate Dictionary, 1981 edition, defines the following:

Optimum:

"1: the amount or degree of something that is most favorable to some end; *esp*; the most favorable condition for the growth and reproduction of an organism 2 : greatest degree attained or attainable under implied or specific conditions" (emphasis added).

The Surprise Field Office, as do all Field Offices that must administer wild horse and burro mandates, has an obligation to make decisions that provide favorable conditions to sustain healthy herds, not just for today, but for future generations too.

Federal Land Policy and Management Act of 1976

Title 1, Definitions-

Section 103 [43 UUSC 1702] (c):

"The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and *future needs of the American people; making the most judicious use of the land for some or all of these resources* or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and *not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.*"

This definition of multiple-use mandates that decisions must be made with future needs in mind. It also requires and allows flexibility within the decision making process so, that if certain components of public lands or resources are in need of adjustments to assure the re-establishment of balance, the authority has been granted to public land and resource administrators the ability to make these adjustments.

If the Surprise Field Office, or any other public land administration agency, administers decisions that cause undue harm to one of the public land components, eliminating that resource for future accessibility and objectives, they are not issuing decisions that are in balance with the resources or complying with their mandates.

For example, through monitoring, it is revealed that rangeland health and resources are moving in a downward trend and adjustments need to be made to restore the balance, such as often is cited with wild horse and burro removal, decisions are then made to remove the “excess animals”.

However, if it is determined that a hard decision must be made due to limited resource capacity, such as the forage allocations are only sufficient to sustain a viable wild horse or burro herd or a livestock grazing allotment, but not both, then the primary consideration must go towards the wild horse and burro use within the HMAs, not toward the grazing allotments.

Why? Because balance must be maintained to preserve the rangeland and its resources for future generations. Because livestock grazing allotments may meet the present needs of the American people, but not the future needs, and because grazing allotments are allowed on a great deal more of public lands than wild horse and burros are.

Rangeland Data

The second level of determining what is an appropriate management level is the actual carrying capacity of the range, the forage and water availability, the habitat requirements of the species, etc. This is determined through collection of data, field monitoring, and application of multiple-use management requirements of the area.

Monitoring

On pg.18 of the High Rock HMA Appeal, the following was submitted highlighting the importance of accurate information to ascertain proper removal numbers.

“Therefore, it is crucial to consider the long-term impacts of gather decisions and removal numbers. The potential that every horse pulled off the range may end in slaughter is antithetical to the mission of the wild horse and burro management program. Equally important is the potential for excessive financial commitments that are unwarranted and unjustified through improper evaluations deeming animals as “excessive” without actually providing evidence to support such unsubstantiated claims.”

This logical and valid concern is supported and addressed from a report released in 1990 by the Government Accounting Office (GAO), RCED-90-110 titled Rangeland Management (Exhibit 2), which examined BLMs stewardship of public lands, wild horses and burros, livestock allotments and rangeland health.

In this report, the GAO found this trend, among many others, about decisions issued concerning wild horse and burro populations;

(Chapter 2-Wild Horse Removals Need to Be Linked to Rangeland Conditions, Pg. 21)

“Under the act horses are to be removed from the range to “restore a thriving ecological balance”-a condition that cannot be known without these data. Given this mandate and the substantial costs associated with wild horse round-up and disposal, accurate up-to-date information on the range’s ability to sustain wild horse grazing must be available for each herd area to make rational wild horse removal decisions. Removing more horses than is necessary wastes federal funds, removing less than is warranted by range conditions contributes to continued resource deterioration and, depending on horse reproduction rates, can lead to higher removal costs in the future.”

While it can not be expected that full scale HMA surveys and the total gamut of all rangeland factors be submitted annually, it is expected that key rangeland health factors, water resource data, stubble heights, current AUM allocations being utilized by other significant users, and general conditions of animal health be updated and reported on in a fairly current manner.

The Surprise Field Office did not submit evidence in either the gather proposal or the appeal exhibits that could even be considered reasonably current about rangeland utilization.

One of the assertions made in EA#CA-370-06-16, the gather proposal being appealed is, “recent information” indicated excessive rangeland utilization was being implemented by the wild horses in the area. This “recent information” turned out to be water data collected 6 years ago on less than one third of the existing springs.

In support of the assertions made in the appeal about this proposal, is the failure of the Surprise Field Office to comply with federal laws, regulations and policies as required.

The Public Range Management Act, Section 1903. Rangelands inventory and management; public availability, (a):

“...shall be kept current on a regular basis so as to reflect changes in range conditions; and shall be available to the public.”

The 1990 GAO report also states:

Chapter 2-Wild Horse Removals Need to Be Linked to Rangeland Conditions-Pg. 21, “Reasonably current carrying capacity data are, however, frequently not available within the BLM. As we reported in our June 1988 report on range conditions, carrying capacities have not been assessed for 30 percent of BLM grazing allotments in over 20 years. Another 11 percent of the carrying capacity assessments are between 10 and 20 years old. The value of information this old is questionable.”

What is current? Perhaps there are regulations that specify time-frames to address this but submitting livestock AUMs and forage computations that are over well over a decade old, water data that is 6 years old, and forage formulas to determine “new” AMLs not based on actual forage availability, indicate that no recent or current evaluations have been done as well as still not providing an evaluation of rangeland health which reflects past or current conditions.

No actual data about the trend in range condition has been supplied, in either the proposal or the appeal. No actual use data has been supplied in either the proposal or the appeal.

All assertions were vague, generalized, not based on any current scientific data or monitoring, no actual current use data was supplied regarding water sources, sensitive species, wildlife usage or populations levels, nothing.

In BLM Response to Appellant’s Statement of Reasons #2, the following statement was issued: “...the decision record for this project confirms continued monitoring of wild horse populations and habitat use to ensure that unacceptable adverse impacts are not occurring from wild horse use to the bighorn sheep population and to other resources, including wilderness values.”

Since the establishment of the wild horse AML, livestock grazing has been closed off for ten years in one of the areas due to overgrazing and a bighorn sheep population has been added. These significant changes to land use require monitoring.

Where is the evidence that monitoring has been happening at all? Due to the supposed decrease in livestock grazing in the area, perhaps the wild horse AML needs to be adjusted *upward*. Due to the bighorn sheep population now inhabiting the area, perhaps the AML needs to be adjusted *downward*, as already suggested and considered.

The point is, no one knows, not even the Surprise Field Office, because they are not measuring, verifying, monitoring, or reporting any comprehensive or significant rangeland factors. Yet, they have the audacity to assert that “continued” monitoring will be done.

Furthermore, the citing of “adverse impacts” to bighorn sheep populations are made in the context of promoting the “ideal” reproduction and growth rate regardless of how detrimental it may be to “ideal” reproduction and growth of wild horses in the area. How adverse are the “excessive wild horse populations impacts” to bighorn sheep if Nevada Department Of Wildlife is calling their current growth levels “spectacular”?

As for the “Recent monitoring information and riparian functional assessments conducted in 2000 indicate spring sites are at-risk or in non-functional condition due to impacts from wild horses”. The spring source data cited as the “recent information” is from the 2000 assessment, already 6 years old. Continued monitoring was highly advised as a future action needed and as well as the implication that this monitoring would indeed, be done. By submitting these measurements as the most current information available, it indicates that the Surprise Field Office did not abide by their own recommendations.

According to the EA CA-370-06-16, currently being appealed, under Section 1.2-Conformance with Rangeland Health Standards, it was stated that data was collected in 2004 as well. However, this data was not supplied within the EA or the appeal information.

117 IBLA 4 is also cited as supportive to the removal of the horses in the High Rock HMA. “The Board will affirm a decision to remove wild horses from a herd management area where removal is predicated on an analysis of grazing utilization, trend in range condition, actual use, and other factors, which demonstrates that removal is necessary to restore the range to a thriving natural ecological balance and prevent deterioration of the range....”

What evidence has the Surprise Field Office supplied within this gather proposal that meets this criteria?

Furthermore, EA# CA-370-06-16, Section 3.9 states:

“The High Rock Canyon area has been managed for long term rest from livestock grazing, although in the future grazing may be prescribed to meet certain resources objectives.”

What are they basing this statement on if no current field data, rangeland data, forage, or soil analysis have been done in over a decade? If it has been done, why was it not submitted as evidence? Perhaps this lack of viable and current monitoring is why almost a million and a half acres administered by the Surprise Field Office is identified as suitable for intensive level management.

The only recent specific information available about the current status of rangeland utilization and resource condition was in EA# CA-370-06-02, the Wildlife Water Development proposal that issued current measurements of key riparian area species. These measurements reflected no excessive utilization despite reported “excessive populations of 4 times the established AML”.

On pg. 10 of the 2001 Gather Proposal/AML Establishment (CA-370-01-07), a small table is provided listing the estimated functionality for the primary water sources utilized by horses. Three are cited as Non-functioning, two cited as Functioning at risk, and one as Disturbed (Dug out).

Surely, the severity of the water situation cited within this proposal would require intensive-level monitoring and follow up to record the results of the gather conducted in 2001 and its correlating impacts on riparian and spring health. Why was nothing cited, provided, or reported on within EA# CA-370-06-16 despite recommendations and assertions that monitoring would be done after the 2001 gather?

The actual time by field officers to conduct these studies is minimal, as evidenced by the fact that the majority of the water data was collected in just two days in the 2001 environmental assessment. Even then, half of the listings were not measurable, unmeasured and undetermined.

In the 2001 EA Decision Record, under Finding of No Significant Impact, the Surprise Field Office contends that the Proposed Action of the Little High Rock AML Establishment/Capture Plan would not result in any significant impacts on the quality of human environment. Therefore, an Environmental Impact Statement is not required according to Section 102 (2) (c) of NEPA.”

The reported condition and functionality of the springs listed within this proposal are of the most severe rating that can be issued. If these ratings are accurate and valid enough to issue new AMLs and reduce wild horse numbers, then surely something must be very wrong with the data/decisions being issued regarding resource management by the Surprise Field Office. If the situation has so degenerated to produce these ratings, why would the Surprise Field Office not aggressively pursue an Environmental Impact Statement to ascertain new directions and new management strategies?

The most obvious conclusions is either the situation is not as severe as they are reporting it is or they have no desire to expose the current multiple-use utilizations in the area and their associative impacts to rangeland health and resources.

The 1990 GAO report under Recommendations, pg. 4, stated:
“To ensure that wild horse removal decisions are made in the context of a rational range betterment strategy, GAO recommends that BLM expeditiously develop carrying capacity and range condition data. In locations where these data indicate that overgrazing is occurring, BLM should implement range management techniques designed to give native vegetation more opportunity to grow and when necessary remove wild horses and reduce livestock grazing in proportion to the numbers of each species on the range.”

The lack of data, proper assessments and failure to respond in any significant manner to public questions and concerns in EA#CA-370-06-16 cast serious doubt on whether the “benchmark test of thriving ecological balance” is being implemented. The information found in EA#CA-370-06-02 only increased this doubt by providing, at least to some extent, relevant multiple-use information about the area.

It is this lack of compliance that has resulted in this dispute as well as the discovery, through another current environmental assessment, that actual use trends were not supporting the need for removals or the established AML.

Multiple Use

In BLM Response to Appellant’s Statement of Reasons-1, the IBLA decision 109 IBLA 115, is cited as pertinent to both the Surprise Field Offices authority and correctness of issuing the decision to remove the “excess population of wild horses” by quoting the “bench mark test” being....thriving ecological balance.

This is exactly the issue and point of contention. Is this proposal balanced? Are the decisions and actions being taken by the Surprise Field Office providing proper ecological balance between wildlife, livestock, rangeland resources, wild horse and burros, etc.? How is a “thriving ecological balance” to be maintained without current field data? Are they issuing decisions out of prejudice, preferences, favoritism, unsubstantiated claims, improper reporting and monitoring, politics, economic considerations, or under-funding that prevents current proper rangeland health analysis?

The double-standard currently being applied that “thriving ecological balance” must be maintained only through the removal wild horses and burros while adamantly refusing to address the serious and severe impacts of other allocations, such as livestock grazing, wildlife populations, timber and mining production, etc., is a deeply-rooted policy promoted within the entire BLM infrastructure that must be addressed if upward trends in rangeland health and resources are to ever be achieved.

According to the GAO report, the BLM responded to the recommendations of their report was as follows (Agency Comments, pg. 5):

“BLM disagreed, however, with a recommendation in a draft of this report to reduce overgrazing by removing wild horses and reducing the levels of authorized domestic livestock grazing in proportion to the amount of forage each is consuming and the amount of range damage each is causing.”

This fundamental approach and encouragement of refusing to evaluate, consider, report and honestly address of all the variable multiple-use factors that are so essential for proper rangeland administrations, is found at the highest level of BLM’s internal administrations.

According to Memorandum addressed to Kathleen Clark from the Office of Inspector General dated January 31, 2006, listed under the subject entitled “Independent Auditors’ Report on the Bureau of Land Management’s Financial Statements for Fiscal Years 2005 and 2004 (Report No. X-IN-BLM-0012-2005)-(Exhibit 3), BLM’s response echos the same lack of concern for proper reporting and resource stewardship that the Surprise Field Office has been exhibiting.

Within this document, an analysis is done of various BLM controls, finances, and stewardship of our public lands. It contained what it cited as “deficiencies” in BLM administrations as well as recommendations for resolution of these issues.

This Memorandum, pg. 8, and the issue of “deficiencies” was noted under the heading, Internal Control Over Required Supplementary Stewardship Information, (F) which states:

“In addition, the Accounting and Auditing Policy Committee of the Federal Accounting Standards Advisory Board (FASAB) commissioned the Stewardship Guidance Work Group to prepare the *Reporting and Assurance Guide for Stewardship Land (SL) and Heritage Assets (HA)*. The report, which is still in draft form, concluded one of the most meaningful criteria for measuring the condition of stewardship land originates from the fact the federal government has been entrusted with, and made accountable for, stewardship lands that are held for the long-term benefit of the Nation. Hence, the most important information about the condition of stewardship land is whether or not it has been safeguarded and protected against waste, loss, and misuse; managed consistent with its intended use in accordance with federal laws and regulations; and not materially degraded while under government care.”

“Based on the above, we concluded that BLM is not using the appropriate basis in its annual report for assessing and reporting the condition of its stewardship land. In its fiscal year 2005 report, BLM reported the condition of its stewardship land as acceptable, and that assessment was based on resource production and revenues generated from the public lands. That assessment did not consider the aggregate results of condition information that BLM gathers as part of its ongoing operational processes.”

“For example, as part of its land management operations BLM performs various condition assessments, which include: (1) Ecological Site Inventories, which provide a reference for determining the land’s capability to produce forage and habitat, for assessing land health, and for monitoring the characteristics of the resource.

(2) Land Health Assessments, which ascertain whether land health standards have been achieved and which describe a level of ecologic functionality for water quality, wildlife habitat, soil stability, and nutrient and energy cycling. (3) Fire Regime Condition Class, which is a standardized tool for determining the degree of departure from reference condition vegetation, fuels, and disturbance regimes. In many cases, the completion of the above studies is ongoing, and the preliminary results indicate, in certain situations, that the condition of the land is not acceptable and is in need of intervention.”

“We believe BLM’s disclosures on the condition of stewardship lands are substantially not complete. Asserting that the condition of land is evidenced merely by resource production and revenue generated from the land reports little or no substantive information on the true condition of the land. Further, BLM has not met its reporting responsibilities to the general public by not reporting, in its annual report, the results of condition assessments conducted as part of its general operations.”

In the attached section of this report, BLM’s response did not concur with **Recommendation F.** This response states in summary that “land” is defined as the solid part of the surface of the earth and that FASAB has “clearly distinguish(ed) between land as essentially rock and sediment from any type of natural resource.” It goes on to state that, “In light of BLM’s multiple-use mission as defined by the Federal Land Policy and Management Act (FLMPA) of 1976, we believe that defining “acceptable” condition for “rock and sediment”.....is entirely reasonable, useful, valid and fully in accord with SFFAS 8 and 29. Using these definitions, the BLM can state that the condition of the Public Lands is “acceptable.”

The 1990 GAO -RCED-90-110 titled Rangeland Management, pg. 2 states:

“GAO found that despite congressional direction, BLM’s decisions on how many wild horses to remove from federal rangelands have not been based on direct evidence that existing wild populations exceed what the range can support. Moreover, wild horse removals often have not been accompanied by reductions in authorized livestock grazing levels or effective range management to increase the land’s capacity. As a result, range conditions have not demonstrably improved....”

This recommendation is aimed at evaluating rangeland conditions as a whole, within the context of multiple-use directives, as was the Congressional intent. Evaluations of wild horse and burro AML, as well as what is deemed excessive, needs to be considered in context with the other rangeland utilizations. Proportionate adjustments to the other multiple-use factors is just as necessary to truly achieve the “thriving ecological balance” that BLM has been charged with establishing and maintaining.

To cite that animals are “excessive” causing “rangeland deterioration associated with excessive populations” without monitoring or citing any other excesses disturbing the “thriving ecological balance” and making the necessary “balanced” adjustments, will continue to result in continued rangeland and resource degradation. This is not “acceptable” public land and resource condition.

If the issuance of livestock grazing permits or wildlife numbers within the High Rock HMA is too excessive to maintain a genetically viable herd, then those permits and numbers must be adjusted downward to provide for an “optimum” number of wild horses and burros, for their continued health, survival and sustainability. Just like wild horse and burro AMLs must be adjusted to balance other resource components, other resource components must be adjusted to achieve and maintain a “thriving balanced herd” within their lawfully designated territories, now called HAs and HMAs.

The Surprise Field Office, through their assertion that, “nowhere in the law or regulations is BLM required to maintain any specific numbers of animals or to maintain populations in the numbers of animals existing at any particular time for genetic reasons; rather the goal is to populations levels will achieve and maintain a thriving, ecological balance on public lands,” seems to imply that all resource allocations currently comprising their “multiple-use” allocations are set in stone.

Also stated is that, the current allocations within the HMA must be adhered to, even if it results in unhealthy population levels for the wild horse and burros within the HMA. This is not an “ecological balance” as they try to imply. The wild horse and burro populations are not *an exception to* the “thriving ecological balance”, as suggested, they are *part of* the “thriving ecological balance” the BLM has been charged with maintaining.

To implement decisions of resource allocations based on present versus future needs, sacrificing healthy horse populations at the expense of a “balance” that does not assure their protection or survival, is not proper administrations of public land resources and their associative values.

Many Congressional Acts have been passed in effort to protect, manage, and maintain the resources of our Nation. These include special considerations for wildlife, endangered species, wilderness values, National Monuments, National Conservation Areas, etc., all with the intention of protecting our heritage and values, values that cannot always be measured in just dollar or unit output.

The 1971 Wild Free-Roaming Horse and Burro Act is one of these laws established in any effort to designate and protect the values of the Nation and the American people, now and for future generations. Special areas have been set aside from the majority of public lands to uphold and preserve these values, and as such, are treated with special considerations for future sustainability.

In BLM Response to Appellant's Statement of Reasons, # 5, it states:

“Public Lands are managed under the Federal Land Policy and Management Act of 1976 (FLPMA). FLPMA emphasizes that the public lands are to be managed to protect the quality of scenic, ecological, environmental, and archeological values; to preserve and protect public lands in their natural condition; to provide feed and habitat for wildlife and livestock; and to provide for outdoor recreation. FLPMA also stresses harmonious and coordinated management of the resources without permanent impairment of the environment. Under FLMPA it is not a matter of selecting one use over another but of balancing the various uses within the land's productive capability. BLM policy and regulations state that wild horses and burros shall be managed as viable, self-sustaining populations of healthy animals in balance with other multiple-uses and the productive capacity of their habitat (CFR 4700.0-6)”

FLPMA was established as a comprehensive management plan of **all public lands and resources**, wild horse and burro management, as well as the management of all the values included in BLMs response.

However, FLPMA included and established many sections of exceptions, special considerations, relative values, and previous designations, rights and laws that were to be adhered to, upheld, maintained and administered.

To subjugate areas of special consideration, protection and critical concerns to the same uniformity that all public rangelands and resources were to be evaluated and maintained at, was not the Congressional intent of this Act as evidenced by the ample inclusion of these exceptions.

This comprehensive application to all public lands as a *general policy* is clearly delineated in FLMPA, Title 1, Declaration of Policy, Section 102-(7), as follows:

“goals and objectives be established by law as guidelines for public land use planning, and that the management be on the basis of multiple use and sustained yield *unless otherwise specified by law*:”

Under the same section of Title 1, (4) it states:

“the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;”

Under Title 1, Section 102, 13(b), it states:

“The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and *shall be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law*.”

Under Title 1, Definitions, Section 103. [43 U.S.C. 1702] states:

“Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act-“

Title 1, Definitions, Section 103. [43 U.S.C. 1702] (a) states:

“The term “areas of critical environmental concern” means areas within the public lands where special management attention is required (when such areas are developed or used or *where no development is required*) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards”

Title 2, Land Use Planning, Section 201 [43 U.S.C. 1711] (a):

“The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including but not limited to, outdoor recreation and scenic values), *giving priority to areas of critical environmental concern.*”

Title 3, Administration, Section 302. [43 U.S.C. 1732] (a) states:

“The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, *except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.*”

Title 4, Grazing Leases and Permits, Section 402. [43 U.S.C. 1752] (h) states:

“*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 or leases.”

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701 note] (a) states:

“Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, *or other land use right or authorization existing on the date of approval of this Act.*”

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701 note] (f) states:

“Nothing in this Act shall be deemed to repeal any existing law by implication.”

Title 7, Effect on Existing Rights; Section 701. [43 U.S.C. 1701 note] 6 (h) states:

“All actions by the Secretary concerned under this Act shall be subject to valid existing rights.”

These excerpts show the extent of Congresses intent to create a comprehensive rangeland and resource management plan without overriding and overruling previously established laws, designations, considerations and reservations. The Surprise Field Office assertions are only partially correct and do not take into account the many exceptions provided by Congress for proper public land and resource management.

Furthermore, the statement, “Under FLMPA it is not a matter of selecting one use over another but of balancing the various uses within the land’s productive capability” is untrue.

In the specially designated areas established by Congress, whether that be areas of critical environmental concern, endangered and threatened species habitat, special cultural or archaeological sites, or any other public land use system, priorities *have been established* as to how they are to be preserved and administered.

An endangered species takes precedence over “the land’s productive capabilities” within their critical habitat and is administered as such. In such instances, one use *is* selected over another, giving it special attention and priority within the decision making process. That is the very reason Congress attempted to establish laws that would provide flexible management of the resources of our Nation.

This is why FLPMA mandated, in one of its very first definitions that, administrative decisions were to consider “*the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.*”

As to the Code of Federal Regulations cited within the BLM Response, there is nothing inherently wrong in, and of, itself:

“BLM policy and regulations state that wild horses and burros shall be managed as viable, self-sustaining populations of healthy animals in balance with other multiple-uses and the productive capacity of their habitat (CFR 4700.0-6),”

However, a regulation does not supersede a law, and the Secretaries concerned have been expressly forbidden in the creation of codes and regulations that are non-compliant with Congressional intent or public laws.

There is also the factor that failure to interpret the regulations correctly by the Surprise Field Office within their administrative duties can be cited if they issue decisions on other multiple-use objectives that do not support a viable, self-sustaining population of healthy animals or is not “optimal” for their survival within their designated areas.

To further illustrate why including other “factors of thriving ecological balance” is a necessary component in assessments of “excess wild horse and burro populations”, the following considerations are submitted.

One of the questions submitted to the Surprise Field Office during the public comment period which was not addressed was: “Has any other species within this HMA been documented in deteriorating range?”

The last two EA’s issued by the Surprise Field Office have stated that the HMA was a popular destination for pronghorn antelope. The wildlife water development EA stated that they made extensive use of the meadows.

On pg. 4 of Appendix 3 in the 2001 AML Establishment/Capture Plan (EA#CA-370-01-07) it states that “in the winter antelope populations can swell to 1,000 animals.”

While it is generally accepted that wild horse diets (about 50% grasses) and pronghorn antelope diets (12.5% grasses) don’t significantly overlap, what kind of impact does 1,000 pronghorn antelope make on riparian areas, the associative meadows and the general rangeland health condition of the area?

According to the 1993 EA (CA-028-93-03), Table 4, pg. 12, for the East of Canyon Home Range, it shows that the AUM forage allocations established for antelope was issued for 350 head. In the 2001 EA (CA-370-01-07), pg. 4, for the Little High Rock Home Range, it cites a antelope herd of 100, though no actual forage allocations were supplied.

According to the 1993 EA CA-028-93-03, pg. 6, it stated:

“The desirable perennial sedges, grasses, and shrubs have been replaced by annual grasses and forbs, less desirable grasses and sedges, and sagebrush and juniper.”

The pronghorn antelope diet is listed as follows (see Exhibit 4):

“Of the total diet consumed by the pronghorns, forbs ranked highest (75 %) while grasses and shrubs were eaten in almost similar quantities (12.5 % of each).

All EA’s concerning the High Rock HMA also cite mule deer as one of the key wildlife inhabitants within the area. (See Exhibit 5)

“Mule deer are ruminants and digest their food in much the same way as a cow. This digestive process allows them to utilize a wide range of vegetative food stuffs in their diet. In this area, sagebrush makes up 65 percent of the November diet, and ponderosa pine comprises 18 percent. In general, woody plants comprise 77 percent of the food. The primary species used are sagebrush (32 percent), cliffrose (28 percent), and antelope bitter brush (13 percent). Grasses make up about 17 percent of the deer’s diet and forbs about six percent.”

According to the 2005-2006 Big Game Status Report recently released by the Nevada Department of Wildlife, SS-1, the following summary was provided regarding statewide population levels and trends: (See Exhibit 6)

PRONGHORN ANTELOPE

“The statewide adult population estimate has increased from 20,000 pronghorn in 2005 to 21,500 animals in 2006. The population continues to approach the goal of 25,000 pronghorn statewide by year 2013 set in the Nevada Pronghorn Species Management Plan. This is the highest recorded population in the history of Nevada and is reflective of above-average production and recruitment rates observed over the last several years. The only regional exception to these increases appears to be occurring in the central portion of the state where fawn ratios have been depressed over the last several years.”

The same statewide population levels were not cited for Mule Deer within the 2005-2006 Big Game Status Report. However, some population estimate was provided on Nevada Department of Wildlife’s Home Page, www.ndow.org, under Fast Facts. (Exhibit 7).

The numbers provided here are lower than the reported numbers within the 2005-2006 Big Game Status Report, so one must assume they haven’t been currently updated.

“Latest available numbers indicate that Nevada had estimated adult populations of 105,000 mule deer, 18,500 pronghorn antelope, 5,100 desert bighorn sheep, 210 Rocky Mountain bighorns, 1,500 California bighorn sheep, 7,400 Rocky Mountain elk, 370 Rocky mountain goats and about 2,700 young and adult mountain lions.”

By way of comparison, the current wild horse and burro AML target for the state of Nevada issued in the Fiscal Year 2006 Herd Management Statistics is 12,587, down 403 from the same report in Fiscal Year 2005. The current population, as of February 2006, is estimated at 13,384. (See Exhibit 8).

One of the springs evaluated in the 2001 EA (CA-370-01-07), Appendix 3, pg. 7, was Mahogany Creek, listed as a good water source with severe use by wild horses. This creek is also listed by NDOW as a good source for mule deer hunting and is also known as Unit 34. (See Exhibit 9).

Information about the following Units are provided from the 2005-2006 Big Game Status Report; Unit 34 because it was cited as containing Mahogany Creek, one of the analyzed water sources in the 2001 EA (CA-370-01-07) and Unit 12 because of all the information contained about the bighorn sheep population from this Unit interacting and affecting the High Rock wild horses.

It is unknown what the amount of area these units cover, how much they actually intersect with the High Rock HMA, or what the proportionate population levels would be based on these statistics.

2005-2006 Big Game Report-
MULE DEER, pg.1

Units 011 - 015: Northern Washoe and Western Humboldt Counties

Report by: Chris Hampson

Survey Data

Although mule deer populations are increasing in the short-term, Management Area 1 deer herds remain at moderate levels when compared with the high population levels experienced during the mid to late 1980's. Mule deer numbers in Management Area 1 are now estimated at 3,900 animals.

MULE DEER, pg. 2

Units 031, 032, 034, 035: Western Humboldt County

Reported by: Ed Partee

Survey Data

Population Status and Trend

The population in Management Area 3 excluding Unit 033, has been on a slight upward climb. The 2006 pre-hunt population estimate is predicted to be approximately 4,400 compared to 4,000 in 2005. The slight increase in the populations is a direct effect of the weather conditions that have been experienced the last couple of years. Even though the winters have been mild, plenty of precipitation has been received. This has provided ample forage to sustain the existing populations throughout the year.

The High Rock HMA is "located within the Massacre Mountain Allotment" according to the 2001 Forage and Water Analysis (CA-370-01-07-Appendix 3) on pg. 4. Due to the well-documented significant impact of cattle grazing to riparian areas and rangeland resources, failure to provide water or forage data about this area is of primary concern. Citing water data from six years ago about a portion of the HMA that was not the central area being evaluated for wild horse removal does not comply with the assertion that "rangeland health is the foundation for long-term management of wild horses" (or anything for that matter) as this statement tries to imply.

In the Wildlife Water Development EA (CA-370-06-02) pg. 49, it stated:

"Livestock grazing was authorized and occurred in the Warm Springs pasture of the Soldier Meadows allotment during the summer and fall of 2005. Livestock grazing is not authorized in High Rock and adjacent canyons under the direction of the NCA RMP. Livestock grazing was authorized, but little or no grazing occurred in the area west of High Rock Canyon."

The eyewitness account, which was submitted in a prior request for body conditions scores, of Wildlife ecologist and author, Craig C. Downer (A.B., M.S., Ph.D. studies), regarding the current land and riparian conditions of the High Rock HMA provide a much more different view of the current rangeland status located within this portion of the HMA.

“What I, in fact, observed was: (1) a game animal monopolization in the eastern two-thirds of their herd area established to cater to bighorn, deer and upland game bird as well as varmint hunters; and (2) a disgraceful overpopulation of cattle within the lower western third of the legal wild horse herd area occurring in the more well watered, grassier areas where cattle were despoiling the streams and lakes and overgrazing their riparian meadows, rendering these a mucky mess full of cattle excrement, urine, flies, and germs. The formerly lush vegetation around these water sources during this unusually wet-winter year had been ripped down to the roots or along with the roots. As anticipated, here, as at nearby Soldier Meadows to the east, I observed cattle camping on and trashing the wet meadows.”

The Surprise Field Office has stated that no grazing occurs or minimal grazing occurs while it continues to express concern for competition between livestock and wild horses. What is the livestock AUM’s being issued on the High Rock HMA? Was the damaged fence between the HMA and Soldier Meadow a valid concern regarding livestock utilization in unauthorized areas?

This accounting indicates that while rangeland health is obviously in critical condition, it is a result of improper and excessive issuance of livestock grazing, and not solely from excessive wild horse use.

This too was addressed in the appeal, which cited many factors pointing to improper administrations that were not resulting or achieving “thriving ecological balance” within the HMA, regardless of how low the AMLs have become or how many wild horses are removed.

According to the 1990 GAO report, this is a common occurrence in BLM administrations and decisions that is continuing the downward trend of rangeland health and resources that Congress attempted to address through FLMPA and the PRIA.

In the GAO report under Principle Findings-Wild Horse Removals Are Not Linked to Rangeland Conditions, pg. 3, it states:

“This lack of impact has occurred largely because BLM has not reduced authorized grazing by domestic livestock, which because of their vastly larger numbers consume 20 times more forage than wild horses, or improved the management of livestock to give the native vegetation more opportunity to grow.”

“In some areas, GAO found that BLM increased authorized livestock grazing levels after it had removed wild horses, thereby negating any reduction in total forage consumption and potential for range improvement. According to BLM range managers, BLM has not acted to reduce authorized grazing levels primarily because it believed it did not have sufficient range condition data to justify the reductions.”

Appropriate Management Levels - AMLs

The currently established appropriate management levels assigned to the High Rock HMA has been upheld by the Interior Board of Land Appeals. Yet, all appeals require that the adverse party appealing BLM's decisions and management implementations to be capable of supplying the "burden of proof".

The Surprise Field Office has maintained that the appropriate management level is valid due to the Interior Board of Land Appeals upholding this decision, based on the evidence presented to the court at the time of the appeal. Just because the adverse party was unable to obtain proof at this time does not necessarily mean that the appropriate management level is indeed, appropriate.

The court can only rule based on the evidence presented to it, and in absence of this, must rely on the knowledge and judgment of the field officers as the valid source for making it's determinations as to what is appropriate within the multiple-use factors and relationships in the area.

It is up to the appellant to provide proof to the court that proposal decisions issued from the field office are non-compliant and should be modified. If that proof is never made available, how will proof be provided? Because the party that appealed the AML decision was not able to prove to the court, due to lack of evidence, that the AMLs were inappropriate and disproportionate, does not in itself, provide verification that this decision was correctly issued.

What is the AML for High Rock HMA?

In BLM Response to Appellant's Statement of Reasons, # 6, it states:

"The purpose of the Decision Record Appealed is the maintenance of the current AMLs. The AML was set as a range of 78-120 wild horses and was based upon in-depth analysis of monitoring data involving studies of grazing utilizations, range trend, actual use and climatic data. This information is contained in EA#CA-370-01-07 and EA#CA-028-93-03. At current horse population levels, riparian resources are being impacted by excessive utilization and trampling. Maintenance of rangeland health is the foundation for long-term management of wild horses within the High Rock HMA. Recent monitoring information and riparian functional assessments conducted in 2000 indicate spring sites are at-risk or in non-functional condition due to impacts from wild horses. Left unchecked, further deterioration in riparian health can be expected (EA page3 and pages 10-11)."

In reference to the maintenance of the current AMLs, despite my best efforts to ascertain what those currently are or their history, I am still unclear as to exactly what the established AMLs are within the High Rock HMA.

It would seem that the East of Canyon Home Range has an established AML of 30-40 or 40-50 horses that was established in 1993. The Little High Rock Home Range was established in 2001 as 48-80. Combining the two AMLs establishes a total AML of 78-120 within the entire High Rock HMA.

This is the information provided and submitted by the Surprise Field Office regarding AMLs.

According to the 2001 Decision Record/FONSI regarding EA#CA-370-01-07, a combined plan was issued and approved for both the capture of “excessive horses” as well as the establishment of new AML’s, which is apparently different from the previously established AMLs. The last sentence of that decision states:

“The proposed action is in conformance with the Cowhead/Massacre Management Framework Plan and would not cause any undue or unnecessary environmental degradation.”

Within Appendix 3 of that proposal on pages 5-6, titled (5) Land Use Planning Objectives, Applicable Land Use Goals and Objectives (Cowhead/Massacre wide) it states:

4. “Protect and maintain a population of 270 wild horses in the Cowhead/Massacre area.”

If the proposed action in the 2001 AML establishment was in conformance with the Land Use Planning Objectives of the Cowhead Massacre Management Framework Plan in 1980, where does the “protect and maintain a population of 270 wild horses in the Cowhead/Massacre area” apply? Was this what the AML use to be for the Little High Rock Home Range before the new AMLs were determined in 2001? Is the 70-100 head for the High Rock HMA outlined in this framework a reduction from the 270 head or included in the 270 head?

This framework is cited within Appendix 3, pg. 5, which states:

“The Cowhead Massacre Management Framework Plan, completed in 1980, set a planned management level of 70-100 head for the High Rock HMA. The Herd Management Level area was further broken down into two home ranges with a planned management level for each home range. An appropriate management level of 30-40 head was established for the East of Canyon Home Range in 1993. This level was upheld by the Interior Board of Land Appeals in 1995.”

In the same appendix cited on pg. 2, the following appropriate management level is stated under 2. Background Information:

“The East of Canyon Herd Management Area has an established AML of between 40 and 50 head of wild horses.”

Would it be too bold to inquire which AML in the East of Canyon Home Range was upheld by the Interior Board of Appeals? The 30-40 head or the 40 and 50 head?

Determining AML by Acreage

The current EA (CA-370-06-16) and the EA (CA-370-01-07) issued in 2001 cited a significant difference in total HMA acreage. According to the 2001 EA, the HMA acreage was listed as 114,500 acres. According to the EA released in August 2006, the HMA acreage is now listed as 94,391 acres. That's a reduction of 20,109 acres.

According to the HMA California Wild Horse and Burro Areas Administrated by the BLM Reports for Fiscal Year 2004, 2005 and 2006, the Herd Area assigned to the High Rock HMA has also undergone significant reduction. In Fiscal Year 2004, the Herd Area was listed as 208, 041 acres with only 94,497 HMA acres. Fiscal Year 2006 lists Herd Area acreage as 138,510 acres and 94,606 HMA acres.

So between the years 2001 and 2006, the High Rock Herd Area lost 69,531 acres while the HMA itself lost 20,109 acres. The difference in acreage between the 2004 Herd Area, 208, 041 acres, versus the currently managed and upheld Herd Management Area acreage of 94, 606 acres is 113,435.

That is a great deal of land that was originally identified for wild horse use that now has been removed from that purpose. Removing so much land would require appropriate reductions in wild horse AMLs to accommodate it.

Is this considered proper administrations?

First, identify the area to be managed as an HMA with significantly less land than the original territory identified by Congress to protect wild horses in. Then, once the new boundaries are in place, reduce the managed areas and reduce the unmanaged areas, until the originally area is but a fraction of the "lawfully designated protected boundaries".

Reducing HMA boundaries is already being discussed again.

Determining AML by Water

From EA CA-370-06-02, pg. 16:

“Water quality in the High Rock Canyon area **has not been directly measured**. However indirect indicators of water quality, primarily riparian vegetation conditions can be used to assess water quality. Water associated with the streams in High Rock Canyon, Mahogany Canyon and the East Fork of High Rock Canyon (Pole Canyon) **is typical of healthy low flow streams** in the northwestern Great Basin. Water quality is good during the winter and spring runoff period. During the hot portion of the year, flows are low with isolated pools supported by subsurface flows.”

Is this area so considerably different than the areas measured in the 2001 EA used to determine new wild horse AML's that the provided measurements for those springs didn't count?

In Appendix 3 of the 2001 EA#CA-370-01-07, pg. 8, six springs were used as the basis for the AML determinations estimating that “between 10-15 wild horses (or 60-90 head) could make use of each of the six public water sources yearlong.”

Yet the FONSI/DR issued on August 25, 2006 from the Surprise Field Office, in response to public comments stating, “There are about 20 of these small springs in the High Rock HMA.”

The water data provided in EA# CA-370-01-07 issued on June 8, 2001, stating the necessity of wild horse removals within the Little High Rock Home Range of the High Rock HMA stated that the time-frame this water analysis was done was the “driest year on record”.

In other words, the data collected was not indicative of normal conditions in any way and reflected an anomaly, not a standard. This highly unusual climactic factor being measured and then becoming the “benchmark” of water data and availability within the Little High Rock Home Range is yet another example of why current environmental conditions must be included and evaluated within proposals and assessments at the time they are issued.

Furthermore, this gather proposal made the assertion that wild horse removals would restore a “thriving ecological balance” to the area. Yet no monitoring or data was done, or at least provided, to determine if this was indeed the case.

The 1990 GAO report stated in Principle Findings-

Wild Horse Removals Are Not Linked to Rangeland Conditions, Pg. 3

“BLM could not provide GAO with any information demonstrating that federal rangeland conditions have significantly improved because of wild horse removals.”

What impact did the “driest year on record” have to rangeland health, resources, riparian areas and the other species utilizing the area?

No monitoring information was supplied about the remaining 14 springs, either six years ago, the driest year on record, or in the current EA#CA-370-06-16.

Despite these highly unusual conditions, the 2001 assessment listed three of the six springs cited as “good water sources” while pg. 9 of the proposal states “The water that the animals have available is of poor quality, and in inadequate supply.”

The assertion that there was “severe and heavy” utilization of these springs as well as the claim that “horses were observed standing in line to drink” was not mentioned or supported in the field observation table found on page 7, Appendix 3. All wild horse numbers seen within the vicinity, with one exception, were listed in relatively small numbers.

Also, these water measurements were taken during the fall of 2000. In the Decision Record for EA#CA-370-01-07 dated September 25, 2001, the issuance of a full force and effect decision to remove wild horse populations before the comment period had even closed was based on the following conclusion:

“Due to the concern of animals perishing during the summer of 2001, because of a severe water shortage in the area, a Full Forces and Effect decision was issued on June 21, 2001 to allow for the immediate removal of animals to the lower end of the population called for in the Proposed Action. This removal was accomplished in July, 2001.”

On pg. 7 of the Proposed Action (EA#CA-370-01-07), the Surprise Field Office states: “With March-June regarded as the primary foaling months, and with the entire month of June remaining, the foal crop this year may likely exceed 20%”

Generally, studies have found that wild horse reproduction rates are often dependent on environmental factors such as available forage and water for utilization. Poor environmental conditions that result in low habitat and resource factors needed for successful reproduction result in low reproduction rates. This has been documented and reported to be 10% or lower.

Since the environmental conditions and measurements were noted the previous year, if the assertions about limited forage and water availability were correct, the reproduction rates for the Little High Rock Home Range should have been reflected in this lack of sustainability through the wild horse reproduction rate. Yet, the exact opposite was reported by a foaling rate in the foaling season of 2001 that measured on the high end of the historic wild horse reproduction rate recorded within the area.

As for the severe trampling and riparian area degradation often cited in the most current EA's, according to the 1993 EA CA-028-93-03, pg. 6-
'These changes did not happen recently. Probably most of the creek and meadow riparian areas had been degraded by the first decade of the twentieth century as result of the thousands of cattle and tens of thousands of sheep grazed in this area beginning in the late 1800s. The entire area was overgrazed. As a result there are no known riparian relict areas on the Surprise Resource Area.'

Determining AML by Forage

The 1993 EA# CA-028-93-03, provided actual forage data, utilization levels, AUMs, wildlife allocations, estimated riparian species availability and poundage, estimated wild horse forage consumption, percentage of species utilized, and generally a more comprehensive perspective of overall management strategies, implementation and utilization factors.

The formula used to determine the AML within the Little High Rock Home Range in the 2001 proposal varies greatly from the information and formulas provided in the determination of AML for the East of Canyon Home Range provided in the 1993 EA for the Bitner, High Rock, Nut Mountain and Wall Canyon HMAs.

In Appendix 3 of the 2001 EA, pg. 9, it was noted that, "riparian zones are approximately the same size for each water source, therefore, a weighted average is not found to be necessary". Utilization levels were listed in 4 out of 6 cases as Severe (90%) and the remaining 2 were cited as Heavy (70%).

Why wasn't a "multiple-use" table of forage allocations available, current AUM's designations, and total assigned use levels applied to this portion of the HMA? Why was it based on the assertion that utilization levels were "Severe and Heavy" without ANY numbers to back up that assertion? What if that utilization level was from the 17% mule deer consumption of grasses at much higher population levels than wild horses, or the 12.5% pronghorn antelope swelling of 1,000 head? There appears to be some livestock grazing happening within this HMA. What if those utilization levels were done 100% by cattle? Or 50%? Or 20%?

All forage utilization was identified as wild horse use and therefore, population levels were reduced accordingly. This is multiple-use application? This is the "thriving ecological balance" that factors no other use or utilization of resources, much less supplies the data on the resources being managed? This AML is the legal, binding determination of "excess" with no further monitoring data supplied?

In BLM Response to Appellant's Statement of Reasons #3, states:
"Consistent with the policy and IBLA decision (118 IBLA 75) BLM does not have to allow wild horses populations to increase to the point of resource damage before determining that excess population levels are present."

An unquestionable sound policy and ruling. However, this only supports challenging the current AML as being established too low since the reported populations were 6 times higher for that part of the HMA than the established high AML and measurements of key riparian species were not supportive of excess utilization.

It is also a curious inclusion since the gather proposal cited that recent information indicated rangeland and resource damage *was happening* due to excessive wild horse populations. To cite a ruling that justifies removals even if resource damage hadn't happened yet, when they have asserted it was happening, could be indicative of the truth: that resource damage hadn't really been noted, at least as a result of wild horse populations.

In BLM Response to Appellant's Statement of Reasons #4, the following statement is issued: "Visual observations of the gathered horses indicate a healthy and productive horse population."

Yet, the Statement of Reasons issued by Surprise Field Manager, Owens Billingsley, #3 in response to the Request to Stay/Motion to Dismiss, it states: "While census and gather information indicates a productive wild horse population, there are visual observations from the recent gather that several bands of wild horses were in poor physical condition due to lack of adequate forage and water conditions."

Which report is accurate? Which statement reflects the truth? If consistencies cannot even be found in this most *basic* of reports, how can any blanket assertion issued by the Surprise Field Office be trusted?

Will the Interior Board of Land Appeals just take their word for it, ignore the lack of current data available, overlook the wide range of discrepancies being issued from this office and be content not to demand proper accountability of rangeland resources and multiple-use objectives?

In BLM Appellant Statement of Reasons/Response, the following was listed:

#8. *"References have been included that support the allegations of "prejudice" regarding the wild horses and their welfare. These range from the current administration's support of livestock's favorable treatment, the "advice" of the Resource Advisory Council and other field offices that SFO coordinates with as well as local values within the area."*

Response

"In developing policy, BLM consults with citizen advisory boards such as the National Wild Horse and Burro Advisory Board and Resource Advisory Councils, among others. The excerpts presented by the appellant provide a snapshot of the diverse perspectives advisory council members bring to the table; however, documentation of the individual perspectives in meeting notes is not a reflection of the consensus recommendations advisory councils make to BLM, or the Final Decisions issued by the BLM."

First, the majority of the “snapshots” of diverse perspectives provided in the appeal were quotes from BLM Field Managers and employees regarding management, focus and future directions to be implemented. That is reasonably indicative of “BLM Final Decisions” and what they are intending to do.

One of the suggestions in those meetings that was not included in the statements in the appeal because it was “outside the scope” of the High Rock focus was the suggestion by BLM Sue Noggles, Planning Team Leader from the Alturas Field Office in the April 2006 RAC meeting to remove their only remaining HMA, the Red Rock HMA because “the HMA can not support an existing herd (AML-25).” This “suggestion” is currently being implemented.

Second, the Resource Advisory Council is an integral component of land use management and decisions. Many standards are set by their recommendations. Their input is not weighted in the same manner as “John Q. Public” expressing an opinion, as the BLM response tries to imply.

Third, it has long been acknowledged that many of the members that comprise the majority of RAC members are often affiliated or have interests in livestock grazing. This background of “animal husbandry” is one of the qualifications that is considered for their acceptance.

The 1990 GAO report had acknowledged this facet of rangeland management and its resulting effects. Principle Findings-Wild Horse Removals Are Not Linked to Rangeland Conditions, pg. 3:

“Despite the lack of data, BLM has proceeded with horse removals using targets based on perceived population levels dating back to 1971 and/or recommendations from BLM advisory groups comprised largely of livestock permittees.”

The comments highlighted in the appeal are relevant factors to the over-all focus, strategies, and future directions implemented by BLM Field Offices and their respective jurisdictions.

In BLM Appellant Statement of Reasons/Response, the following was listed:

#10. *“Alternatives which would have been closer to supporting viable herd populations, promoting their welfare, be in compliance with existing standards and laws, and still provide an environment that truly conforms to the principles of establishing and maintaining a “thriving natural ecological balance” were not considered.”*

Response

“The appellant suggests that other alternative should have been considered to control the populations of wild horses, but none were provided. The alternative selected for in EA# CA-370-06-16 is consistent with the purpose and need for the proposed action, i.e. to maintain AML, had has been previously determined by an intense analysis of monitoring information collected from the High Rock HMA.”

The “alternative” that the Surprise Field Office has obviously missed was to gather to high AML, which would provide for a herd population that was closer to a genetically viable number and implement fertility control. This suggestion was offered so that the actual scheduled gather could continue, as planned, and not be disruptive of the hunting season that was to follow shortly thereafter.

It was followed by the suggestion to consider re-adjusting the current AML upwards to a more sustainable population of 150-200 head. Of course, this would require current monitoring after the gather, especially so when population levels achieved 150-200 head in the area so as to have an accurate picture of wild horse impacts at that level. The suggestion of a higher, healthier AML, was inspired and supported by the evidence of key riparian species measurements taken by NDOW that indicated that population levels of 482 were not causing excessive utilization of riparian forage. This indicated that the 150-200 AML would still provide room for reproduction between maintenance gathers. This would be further enhanced by the judicious use of PZP fertility control methods.

As for the established AML being set by “an intense analysis of monitoring information collected from the High Rock HMA”, um, well, no it wasn’t. After seeing the scant, old rangeland data, the significant gaps in multiple-use applications, the impacts to the area from other sources such as motor vehicle use, and decisions to reduce water availability and reducing the available summer/fall horse habitat by several thousand acres with no EIS to examine the consequences of this decision, as well as the intense concern expressed for healthy bighorn populations, this assertion does not seem credible.

Furthermore, consideration of reducing wild horse AML yet again, as stated in the wildlife water developments, without accurate, current data indicates that basing AMLs on real rangeland factors is not truly being implemented.

At this time, additional suggestions are offered;

Monitor the resources on a current basis and report that information accurately to determine if population levels really are excessive.

The time it took to measure the water/spring sources in 2001 was minimal. Do this a few times a year, on ALL the spring sources in the area. Measure the stubble heights of forage occasionally. Analyze fecal matter to determine what forage is being utilized by what species and in what proportions. Protect our resources and public land as congress has directed BLM to do. Don’t make decisions, such as removing wild horses if it’s not necessary, because it costs a lot of money. When considering what is “minimal” actions regarding wild horse and burro maintenance, consider the financial impacts of gathering, containing and adopting these wild horses out versus adding a reliable water source if rangeland health can permit it.

Remember our children will need these resources too; water, land, wildlife, wild horses, forests, solitude, beauty and wilderness.

