

## Points of Injunction- Possibilities

### To Show Relative Harm

#### 1. Potential Illegal Wild Horse Gather:

- a) BLM has had 5 weeks to “change” gather schedule removals numbers and potentially adjust wild horse populations on the range to cover for the alleged illegal gather in the Wheeler Pass area.
- b) They failed to release the October 2006 census numbers despite repeated requests.\* They “re-wrote” this request in “comment 104, (2)” as: release an accurate population estimate versus release October 2006 census results.  
They re-did the census again in December 2006. For what purpose? They released *those* census numbers in less than 4 weeks. In Final EA, they claim that December census was done with more experienced personnel and sight visibility. Yet, to the public's knowledge, the same individual did both census counts.
- c) Numerous rumors have been alleged that BLM nationwide, has been selling wild horses before the reach containment centers or have been freeze-branded. This allegation was also the source of a Grand Jury Investigation around 1995\*\* that was closed down, for a variety of “obstructional reasons” eventually culminating in the assertion that:  
  
*“Lawyers from the Department of Justice also urged that the case be dropped **because the tolerance within BLM for the horse to slaughter trade was so widespread** that it would be unfair to single out any one person for prosecution. Over the objections of the Assistant U. S. Attorney who led the case, the recommendations of the Justice Department lawyers was accepted and the grand jury was dismissed.”*
- d) Despite BLM’s assertions in response to comment 3 that “law enforcement has aggressively investigated”, no proof of that investigation has been offered.
- e) Despite scheduling gathers for 3 weeks, BLM is only offering public participation and opportunities to observe wild horse and burro removals for one day with limited numbers of people that require reservations for attendance.

2. The wild horse population in Final EA is cited as only 26 wild horses above AML. This excess is not significant enough to cause deterioration of the range by granting an injunction to research the highly questionable numbers being cited by BLM regarding this proposal.

\*Request for October 2006 Census Numbers

Jerrie Bertola- BLM

Sent 11/12/06 3:36 pm

Dear Jerrie-

So you won't have to get back to me because you don't have this information handy, will you please have these numbers available at the Pahrump meeting.

What is the exact numbers of wild horses and burros counted in the October 13, 2006 census for the Wheeler Pass HMA?

- a) horses-
- b) burros-

The Johnnie HMA?

- a) horses-
- b) burros-

The adjacent WHT territories of Wheeler and Johnnie?

Wheeler WHT-

- a) horses-
- b) burros-

Johnnie WHT-

- horses-
- burros-

Thank you.

Cindy MacDonald

**\*\*Excerpt from a STATEMENT BY KAREN A. SUSSMAN, PRESIDENT, INTERNATIONAL SOCIETY FOR THE PROTECTION OF MUSTANGS AND BURROS, for the Subcommittee on National Parks and Public Lands and presented to Chairman James V. Hansen - June 5, 1998**

Full Description of Events According to this statement/report:

A new era of trust and credibility was spawning in Washington's BLM. There was hope for the Wild Horse and Burro program. The new Director, Jim Baca of New Mexico talked about making the wild horse the symbol of the BLM. According to PEER's (Public Employees for Environmental Responsibility) White Paper published in April of 1997, "*The BLM began a crackdown on wild horse-to-slaughter operations in 1993 under the new director. BLM investigators began compiling evidence documenting theft of wild horses during BLM sponsored gathers or captures; black booking or phony double branding of horses so that duplicate branded horses could disappear without a paper trail; manipulation of wild horse adoptions where one person holds the proxies for a group of supposedly separate adopters and the horses all end up at slaughter; use of satellite ranches to hold horses for days or weeks as stopping points on the way to slaughter; fraudulent use of wild horse*

sanctuaries- ranchers subsidized by the federal government to care for unadoptable wild horses deemed excess and removed from the range- as fronts for commercial exploitation. Baca's campaign on behalf of wild horse protection worried top Interior officials and, according to Baca, played a major role in his abrupt removal from office in 1994.

One investigation backed by Baca had already been accepted for prosecution by the U. S. Attorney's Office in the Western District of Texas by the time he had left office. This investigation, developed by law enforcement agents from the BLM New Mexico, centered around the direct participation of BLM employees and contractors selling wild horses for slaughter with the knowledge and approval of BLM managers. Their scheme involved the use of satellite ranches and horse sanctuaries to hide the horses for profit.

One particular troubling aspect of this investigation was the apparent obstruction and witness tampering by BLM managers. In some instances, BLM officials warned suspects of impending search warrants and the revealed identity of undercover investigators. In Baca's absence, the Department of Interior began a campaign to shut down the U.S. Attorney's investigation although a grand jury had already been convened to hear evidence in the case. Using lawyers from the Interior's Solicitors Office and the agency's civil legal representatives in the Department of Justice, pressure was brought upon the U. S. Attorney to limit the scope of the investigation to the actions of low level BLM employees.

Once the investigation was limited, the BLM reassigned investigators working on the case and began a campaign to drive these original investigators out of the agency altogether. When agency lawyers were able to block execution of subpoenas it struck the death blow to the grand jury probe. The grand jury was cut off from the evidence it needed to continue. Lawyers from the Department of Justice also urged that the case be dropped **because the tolerance within BLM for the horse to slaughter trade was so widespread** that it would be unfair to single out any one person for prosecution. Over the objections of the Assistant U. S. Attorney who led the case, the recommendations of the Justice Department lawyers was accepted and the grand jury was dismissed.

*The Office of the Inspector General (OIG) of the DOI is supposed to be an independent monitor of agency actions but when it came to wild horses this watchdog ran for cover. The OIG answers to the Secretary of the Interior and declined even a request for assistance from the Chief of BLM Law Enforcement who acknowledged that his program lacked independence to investigate its own agency."*

The final paragraph of this report sums up with clarity the problems of the Wild Horse and Burro program. **"The agency under interim leadership is simultaneously denying the existence of any problem while announcing multiple paper reforms to improve the performance of its Wild Horse and Burro program. The problems are not administrative or budgetary in nature. The problems stem from failure to faithfully execute the law regardless of political consequences."**

The planned strategy by the BLM to diminish the importance of wild horses and burros is seen recently in the revision of BLM's mission statement in 1991 where wild horses and burros were excluded as a resource on public lands. Although we can assume that they should fall under the category of wildlife, it would give greater emphasis standing alone since the law deems them a National Heritage Species and the Supreme Court case, *Kleppe v's New Mexico* clearly defines them as wild animals. Director Jamison was unable to adequately defend BLM's position of omission to two Wild Horse and Burro Advisory members when he said then the BLM would have to list wild turkeys etc. Since wild horses and burros have their own specific law and wild

turkeys do not, this does not make sense. In April of 1994, Acting Director, Mike Dombeck lists ten visions for public lands all of which do not include any mention of wild horses and burros.