

INTERIOR BOARD OF LAND APPEALS

American Horse Protection, Inc. and Joey R. Deeg

134 IBLA 24 (October 3, 1995)

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AMERICAN HORSE PROTECTION, INC.
JOEY R. DEEG

IBLA 93-71, 94-284

Decided October 3, 1995

Appeal from a decision of the BLM Montana State Director amending the Payor Mountain Wild Horse Herd Area Management Plan and authorizing the removal of excess horses. E-MT-025-2-18.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

A BLM decision amending a wild horse area management plan will be upheld where the decision is predicated on a reasoned analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors which demonstrate that reduction of the appropriate management level will restore the range to a thriving natural ecological balance and prevent a deterioration of the range, in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994).

APPEARANCES: Russell J. Gasper, Esq., Washington D.C. for appellant; Joey R. Deeg, Bridger, Montana, pro se; Karen L. Dunnigan, Esq., Office of the Solicitor, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The American Horse Protection Association, Inc. (AHPA), and Joey R. Deeg have appealed from a July 29, 1992, Decision Record and Finding of No Significant Impact (Decision/Finding) of the Montana State Director, and the Miles City District Manager, Bureau of Land Management (BLM), amending the June 1984 Prior Mountain Wild Horse Range Herd Management Area Plan (1984 Area Plan). The amendments, inter alia, reduce the appropriate management level (AML) for the Prior Mountain Wild Horse Range (Range) and authorize the removal of excess horses.

AHPA's case was docketed as IBLA 93-71; Deeg's was docketed as IBLA 94-284. They are hereby consolidated because they involve appeals of the same Decision/Finding.

BLM's Decision/Finding adopts the actions proposed in Environmental Assessment MT-025-2-18 (EA), which revise the 1984 Area Plan in the following respects: (1) It reduces the appropriate management level AML of wild horses from 121 head with a variation of no more than 5 percent to 95 with a variation of no more than 10 percent; (2) it eliminates the designation of herd areas assigned a specific number of horses; (3) it authorizes the use of micro-chips for identification of horses; (4) it allows the use of tranquilizers in emergency situations; (5) it commissions the use of helicopters in the capture and management of wild horses; and (6) it expands the dates when removal operations are not allowed from April 15 through June 15 to April 1 through June 30.

Background

The Range is located in the southeastern portion of Carbon County, Montana, approximately 13 miles due north of the city of Lovell, Wyoming. It extends into the northern portion of Big Horn County, Wyoming, and is bordered on the north and west by the Custer National Forest, on the south by private lands, and on the east by the Bighorn Canyon National Recreation Area (NRA). There are four wilderness study areas within the Range containing approximately 2,000 acres (1984 Area Plan at 1; EA at 3).

The Range was created by order of the Secretary of the Interior, Stewart L. Udall, on September 9, 1968, and was the first such designation in the United States. Id. Since the 1984 Area Plan, approximately 1,340 acres have been added to the Range via an exchange of lands with Montana (EA at 3). The area is administered primarily for the protection and management of wild horses, wildlife, recreation, watershed, archeological, and scenic values. The herd management area designation directs that management of the wild horses be within a balanced program which considers all public values without impairment to the productivity of the land (1984 Area Plan at 1; EA at 3).

On October 4, 1991, BLM published a notice in the Federal Register to the effect that, due to the loss of 2,601 acres of land administered by the National Park Service (NPS), as well as correction of acreage figures on other portions of the Range, both the Billings Area Resource Management Plan (RMP) and 1984 Area Plan would be amended. To be considered during the course of the amendment processes would be "habitat objectives, herd size parameters, capture methods, removal characteristics, removal dates, relocation, land adjustment, adoption program, range improvement projects, and monitoring studies on vegetation, wildlife and wild horses." 56 FR 50345. After public notice and comment, the Decision/Finding and the supporting EA were released on July 29, 1992.

The EA considered two alternatives with respect to management of the Range: the alternative adopted by BLM's Decision, and a no action alternative. The major purpose of the action proposed in the EA and adopted by the Decision is to reduce the size at which the herd is maintained in order

to prevent continued deterioration of rangeland conditions (BLM Statement of Reasons (SOR) at 1, 3-5).

Applicable Law

[1] Section 3(b)(2) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b)(2) (1994), provides the statutory authority for the removal of excess wild free-roaming horses and burros from the public range. Specifically, the statute provides that, where the Secretary of the Interior determines on the basis of information 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 * * * until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

16 U.S.C. § 1333(b)(2) (1994). "[E]xcess animals" are defined in the Act as wild free-roaming horses or burros "which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area." 16 U.S.C. § 1332(f) (1994).

The goal of wild horse and burro management is to maintain a thriving natural ecological balance between wild horse and burro populations, wildlife, livestock, and vegetation, and to protect the range from the deterioration associated with overpopulation of wild horses and burros. 16 U.S.C. § 1333(a) (1994); Dahl v. Clark, 600 F. Supp. 585, 594 (D. Nev. 1984); see Animal Protection Institute of America, 131 IBLA 175, 178 (1994). A determination that removal of wild horses is warranted must be based on research and analysis, and on monitoring programs involving studies of grazing utilization, trend in range condition, actual use, and climatic factors. Animal Protection Institute of America, supra; Animal Protection Institute of America, 117 IBLA 4, 5 (1990). Where the record establishes that an area is either currently experiencing resource damage or there is a significant threat of resource damage, removal is warranted. Portland Audubon Society, 128 IBLA 370, 374-75 (1994); Animal Protection Institute of America, 109 IBLA at 114. BLM may remove horses to prevent their numbers from becoming excessive. Animal Protection Institute of America, 118 IBLA 63, 75 (1991). BLM need not wait until actual damage occurs, but may take preventative action to avoid damage to the range. Id. at 76.

The Board will affirm a decision establishing the appropriate management level suitable for a herd management area where the decision is predicated on an analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors, which demonstrate that maintenance of the herd at the prescribed levels of horse population will

restore the range to a thriving natural ecological balance and prevent a deterioration of the range, in accordance with section 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994). When an appellant merely urges some other course of action which may be theoretically as correct as that chosen by BLM, this Board will not substitute its judgment for that of the Department's experts, but will rely on their reasoned analysis. In cases involving the interpretation of data, the appellant must demonstrate by the preponderance of the evidence that the BLM expert erred when collecting the underlying data, when interpreting the data, or in reaching the conclusion. Animal Protection Institute of America, 122 IBLA 290 (1992).

Issues and Analysis

The amendments to the 1984 Area Plan essentially pertain to two issues: (1) the number of horses that the range can adequately support; *i.e.*, the AML, and (2) procedures which may be used to remove horses in the event such removal is necessary to conform the population to the AML. AHPA and Deeg variously challenge BLM's decisions pertaining to both questions. In addition, Deeg generally charges that "current data on the Pryor Mountain HMA horses is insufficient," in that it does not address "times dates, and personnel involved with the census," nor are "bands, scars, colors, markings and foals" identified (Deeg SOR at 2).

I. Appropriate Management Levels

AHPA and Deeg challenge the Decision/Finding on the grounds that BLM erred in calculating the range area, in calculating the carrying capacity of the range, in assessing the range condition, by failing to factor in the potential for inbreeding if the herd size is lowered, and in assuming that horses are or will compete with other wildlife on the range if the herd size is not reduced. A related challenge by the parties pertains to the elimination of subherd areas.

A. Range Reductions

AHPA alleges that BLM reductions in the Range area are miscalculated, resulting in an on-paper representation of available forage area that is 6,200 acres less than the area actually available. Deeg alleges that supporting data for the recalculation of acreage in the Range is not presented.

BLM maintains that its evaluation revealed that acreage calculations for the Range included in the 1984 Area Plan were in error (Answer at 6). BLM avers that the revised calculations were based on Federal Register legal description notices establishing the Range and topographic maps, and were computed using two different methods. BLM contends that the revised computation, plus NPS' withdrawal of the Sorenson Extension for wild horse

and burro grazing lessened the total acreage available by more than 8,000 acres. Id.

The EA appendix includes a table at A5 which shows that the 1984 Area Plan calculated total acreage available for forage in the Range to be approximately 46,800 acres. Calculations in 1992 revealed an approximate total of 38,000 acres, a difference of 8,800 acres. The Sorenson extension withdrawal accounted for approximately 2,600 acres of the difference, leaving an approximate 6,200-acre deficit between the 1984 and 1992 calculations.

As stated above, in cases involving the interpretation of data, the appellant must demonstrate by the preponderance of the evidence that the BLM expert erred when collecting the underlying data, when interpreting the data, or in reaching the conclusion. Animal Protection Institute of America, 122 IBLA at 290. As neither appellant has provided us with information which would support a finding that BLM's revised calculations were in error, we are not persuaded to find for appellants on this issue.

B. Forage Capacity, Range Condition, Animal Unit Month (AUM) Calculations, and Multiple Use

1. Forage Capacity. AHPA alleges that the forage capacity of the Range has been underestimated, thereby giving the appearance that the HMA can support fewer horses than can in fact be supported.

Specifically, AHPA contends that BLM has rated the amount of AUM's that classes of soil can produce differently from the amount of AUM's that it rated those same classes as capable of producing in 1984, thereby lowering the calculation of available AUM's by about 20 percent, or 300 AUM's. As an example, AHPA cites the fact that in 1984, the category of soil described as shallow-limy, 10-14 PZ Zone, was rated to produce 0.05 AUM's per acre, whereas in the 1992 Revision the same category of soil was appraised to produced 0.03 AUM's per acre. AHPA cites several examples of this downgrading of forage production capacity, and estimates that BLM's 1992 calculations have lowered the actual capacity of the Range by over 300 AUM's. AHPA alleges that "[n]o explanation for this phenomenon is given in the Amendment; it is not even acknowledged. Yet if the revised acreage data is to be evaluated in a consistent manner, the 1984 forage production multiples should have been used" (SOR at 5).

BLM denies that the total forage production is understated by 20 per- cent, noting that "the figures used for AUMs/acre in the 1992 summary of grazing capacity, see Revision, App. A, p. A1-2, are based on the updated Soil Conservation Service Range Site Technical Guides" (Answer at 7). BLM states that stock levels for range sites were revised downward in the August 1983 and March 1985 technical guides issued by the Soil Conservation Service, which were used by BLM to compute the range capacity of the Range in the 1992 Revision.

AHPA has not responded to BLM's assertions. The explanation given by BLM clarifies the lowering of AUM's per acre assigned to the various soil classes, and removes BLM's analysis from the realm of arbitrary action. We, therefore, find that appellant has not shown error in these computations by a preponderance of the evidence.

2. Range Condition.

The EA reports that the condition of the Range has deteriorated since the 1981 field survey which formed the basis of the 1984 Area Plan.

BLM concludes that over 25 percent of the Range produces no forage; about 66 percent of the Range is in poor condition and produces about 21 percent of the forage; and less than one-third of the Range (about 31 percent) is in good or fair condition, and produces over two-thirds (about 71 percent) of the available forage (EA at 5). Appellants have not produced data to contradict these calculations, nor have they shown error in BLM's calculations of these percentages.

AHPA alleges that BLM has not established that rangeland conditions have deteriorated, and that supporting monitoring reports attached to the EA at A7-A17 are "not well detailed, and often report data in an inconsistent manner that makes comparisons over time difficult" (SOR at 7). While each survey is complete on its own, we agree that the reports do not consistently report the same categories of information, nor do they attempt to support BLM's total soil categorization figures set forth in Appendix A of the EA.

While correlation of all its data collection into one organized package might be preferable, we cannot say, however, that failure to do so by itself demonstrates error by a preponderance of the evidence in BLM's underlying data collection, its interpretation of data, or in the conclusions it has reached.

AHPA further contends that as recently as 1988, monitoring determined that rangeland conditions were mostly fair to good, and that the condition of the Range was improving. Since then, rainfall has been abundant, and animal health has "consistently been reported as good to excellent," AHPA asserts. Id.

AHPA challenges the 1991 monitoring report as biased in favor of finding deteriorating rangeland conditions, alleging that it was written after BLM had decided to reduce the herd size. AHPA also alleges that the report is based on a very limited study: "[O]nly four 3x3 photo plots in the sub-alpine portion of the Range were reviewed, three of which reportedly showed an unspecified decline in the percentage of allowable grasses" (SOR at 8 (emphasis in original)). AHPA challenges the finding of this monitoring, stating that "no data is reported from which the significance of this decline can be determined * * *"; nor "is it possible to tell if

these four plots are representative of the condition or trend of the range as a whole." Id.

BLM responds by stating that the 1988 survey was based upon a visual inspection, and that 1989 monitoring, which consisted of "reading Daubenmire transects, photographing 3- by 3-foot photo plots, conducting an ecological site method inventory, and observing grazing utilization and animal condition," did not confirm these observations, but rather indicated a downward trend "not apparent from simple visual inspection" (Answer at 5). BLM maintains that reliance upon the 1988 monitoring report does not provide evidence of a consistently upward or steady trend in range conditions, as it is normal for year-to-year and season-to-season fluctuations in forage production to occur, as the result of favorable or unfavorable yearly weather patterns. Neither is good animal health an indicia of abundant rangeland, BLM asserts, as the horses are excellent scavengers and will make masterful use of scarce forage availability.

Appended to the EA are rangeland monitoring summaries for 1988, 1989, 1990, and 1991. Appellants would have us rely exclusively on the 1988 monitoring report as indicative of rangeland conditions. The 1988 report indicates that rainfall was above average, vegetation was more plentiful, and "[t]he ecological condition of the horse range is mostly fair to good" (EA at A15). The 1988 report is, however, not conclusive. The report also states that "[r]ecoverry from past abuse is slow due to low potential of the middle and lower portion of the horse range. The upper portion has the greatest potential for recovery; however, recovery is hindered because of season long grazing by the horses and wildlife." Id.

Even if the 1988 report were unequivocal in stating that rangeland conditions were improving, appellants have not refuted BLM's assertion that rangeland monitoring over several growing seasons is sound rangeland management practice. In addition to the 1991 monitoring report, reports for 1989 and 1990 indicate that ecological trends on the Range are downward.

The 1990 report is instructive of downward trends in the lower regions of the Dryhead area, which is used by both horses and bighorn sheep, particularly during the winter months, when higher elevations are inaccessible for foraging due to snow cover:

Grazing use on the entire Dryhead area varies from moderate, to heavy, and to extreme. Moderate grazing use occurs only in the portion that is above elevation 4600 feet. The majority of the area is heavily grazed from both the wild horses and the Bighorn sheep. The southern most portion of the Dryhead area receives extreme grazing use. The horses in this area were observed pawing rocks out of the way to enable them to graze the last bit of vegetation.

The nine wild horses and sixteen Bighorn sheep observed appeared healthy and capable of reproduction. None of these animals appeared starving or sick.

The state of health of the rangeland; however, is a different story. This area has received excessive use for many years and as a result much of the topsoil has eroded away. What remains is in small scattered patches protected by blue grama (Bogr), and tucked under unpalatable, harsh plants such as Rocky Mountain Juniper (Juco) and cactus (Oppo). The remainder of the area is a classic example of desert pavement where the topsoil is gone and all that remains are the rocks that are too large to blow or wash away. The few remaining plants are mostly undesirable or unpalatable and are pedestaled.

(EA at A9).

In summation, we are in agreement with BLM that "[a]ppellant has provided no documentation that the BLM's findings that the [Range] is suffering from a downward trend and that portions of the range are in poor condition with bleak prospects for improvement are erroneous" (SOR at 6). We find that analysis of rangeland condition is predicated on sufficient data such as grazing utilization, trend in range condition, actual use, and other factors, and demonstrates that rangeland conditions warrant a reduction in herd level.

3. Horse AUM Calculations. AHPA and Deeg contend that BLM's use of a "horse AUM," of 1.25, compared to all other livestock grazing calculations, which assume an AUM equals 1.0, lowers the forage/horse ratio beyond reasonable estimates. AHPA asserts that this practice is "totally inconsistent with BLM practice in other herd areas" and argues that "[i]n early every other 1984 Area Plan written by BLM treats a wild horse as one animal unit" (SOR at 5). According to AHPA, "for purposes of livestock grazing fees, a domestic horse is considered to consume one AUM per month." *Id.* AHPA further maintains that the 1984 Area Plan offers no reason to treat the Pryor Mountain horses differently than all other wild horses, or domestic horses grazed on BLM land." *Id.*

Citing a "National Academy of Science Final Report," BLM responds:

[H]orses are well equipped to service poor forage conditions because horses are able to consume more forage per day than cattle "to compensate for the low nutrient concentrations" and can "extract the scarce quantities of dietary protein that are usually nutritionally limiting under such conditions." See National Academy of Science Final Report, p. 28 (1982).

(Answer at 6). BLM further states: "The consumption rates are important to wild horse management and support the use of an animal unit equivalent

of 1.25 for horses. * * * [National Academy of Science Final Report]; see also SCS [Soil Conservation Service] Range Handbook, supra," and maintains that the 1.25 AUM standard is "particularly applicable to the [Range] where there are poor forage conditions." Id.

We initially note that the 1984 Area Plan also used the 1.25-horse AUM (1984 Area Plan, Appendix B, A-2). While neither party has provided the Board with documentation to support its argument, we find that appellant has not sustained its burden of establishing by a preponderance that BLM's choice of a 1.25-horse AUM under poor forage conditions is in error.

AHPA further alleges that the revision does not take into account the fact that foals consume less forage, and argues that the AML should be raised to 114, to account for the 20-percent foaling rate prevalent on the Range (as stated in the 1984 Area Plan, at 31), and the lessened forage consumed by this 20 percent.

Appellant has not demonstrated that the amendments purport to modify the 1984 Area Plan as to the treatment of foals. Appellant points out in its SOR that BLM has acknowledged in Animal Protection Institute of America, 122 IBLA at 294, that AML's are defined in terms of "adult horses." This is consistent with the definition assigned to AML in the BLM Manual, Part 4700, Glossary of Terms, which states that "appropriate management level" is "the median number of adult wild horses or burros determined through BLM's planning process to be consistent with the objective of achieving and maintaining a thriving natural ecological balance and multiple-use relationship in a particular herd area." (Emphasis supplied.) Neither the 1984 Area Plan nor its revision states otherwise.

As appellant has not demonstrated that BLM intended to include foals in the AML, we are not persuaded by their argument that BLM has committed error by not raising the AML to account for the 20-percent foaling rate, and by not considering foals in the allocation of AUM's.

4. Multiple use.

Deeg argues that (1) "monitoring data is incomplete and doesn't even consider multiple use with respect to other wildlife such as deer and bighorn sheep" (Deeg SOR at 1). Deeg further charges that a de facto decision has been made to convert the Pryor Mountain HMA into a big game hunting reserve, to the detriment of the wild horse and burro population. AHPA disputes BLM's monitoring studies as premature, stating that studies concerning the impact on vegetative production of wild horse/bighorn sheep competition are currently incomplete, and should be available before decisions are made to reduce AML's.

In cases involving allocation of range between wild horses and livestock, we have held that the "appellant must demonstrate by a preponderance of evidence that the BLM expert erred when collecting the data, when

interpreting the data, or in reaching the conclusion." Animal Protection Institute of America, 128 IBLA 150, 157 (1994); Animal Protection Institute of America, 122 IBLA at 294. We find this standard is also applicable to appellants in this case, and we conclude they have failed to meet this burden of proof.

C. Potential for Inbreeding and Elimination of Subherd Areas

The EA reduces the AML from 121 head with a variation of no more than 5 percent to 95 head with a variation of no more than 10 percent. It eliminates the designation of a specific number of horses by herd area, stating that "specifying and maintaining a specific number of horses by herd area is not feasible" (EA at 2), since horses move between herd areas. The EA determined that there would be no impacts from the elimination of herd areas.

Both AHPA and Deeg maintain that expert opinion in the record supports a finding that a maximum of 95 horses on the Pryor Mountain HMA is below levels sufficient to maintain the herd without detrimental inbreeding. BLM disputes these contentions, arguing that "the 95-horse AML meets the objectives identified in the RMP and the [1984 Area Plan], as required by 43 C.F.R. § 4710.4" (Answer at 8).

AHPA opposes the elimination of subherd areas for management purposes, "especially if the Bureau regards this as authority to eliminate wild horse use of one or more of those areas" (SOR at 18). AHPA argues that before movement between herds is permitted, BLM should assure that it promotes a healthy herd, and asserts that this aspect of herd management is not addressed in the EA. Deeg argues that BLM does not present data to support the elimination of the herd area designations. Deeg also contends that barbed wire range improvements further jeopardize animal well-being and should be removed. BLM contends that it must have the flexibility to remove horses from specific herd areas in the event removal is warranted to protect the range.

Both BLM and AHPA refer the Board to a February 1992 paper entitled "Genetic Analysis of Horses from the Pryor Mountain Wild Horse Reserve," by E. Gus Cothran, Ph.D., and Cothran's July 2, 1992, letter commenting on BLM's draft EA reducing the AML to 95.

Cothran is the director of the Equine Blood Typing Research Center at the Department of Veterinary Science at the University of Kentucky. The purpose of his July 1992 study was to analyze "current variability * * * in respect to herd demographics in order to develop management strategies to maximize the long term conservation of the genetic variation that is now in the herd" (Cothran Study at 1). Cothran concluded that "[c]urrent observed levels of genetic variation within the [Range] herd indicate that the herd

is in no immediate jeopardy relative to inbreeding depression" and that "loss of current levels of genetic variation is more of a potential problem but not critical" (Cothran Study at 9).

Cothran's recommendations in his report were based on herd level of 121 and included selective culling of younger horses, removing introduced horses from the herd, maintaining subdivision of the herd to the greatest degree possible, and monitoring for potential inbreeding problems. Cothran's study recommends monitoring at least every 5 years for levels of genetic variation. If herd levels are reduced, the above recommendations still apply, except that monitoring frequency should be increased (Cothran Study at 9,10).

In his July 2, 1992, letter, Cothran states he has "no overall objections to the revisions as written" and that he thinks the current condition of the herd "will allow the proposed changes to be implemented with no short term detrimental effects." On the other hand, he notes that the revisions do not address recommendations in his report regarding genetic status, and states that if population subdivision is no longer possible, "there is potential effect." Further, he notes that a breeding population of 50 is a minimum number, allowing little margin for error if the AML is reduced to 95.

While it is clear that the EA does not address all of Cothran's concerns, it does adopt portions of the 1984 Area Plan regarding measures to be taken to minimize the potential for inbreeding (Appendix B at B4 and B5). These measures include relocation of horses between the three areas as necessary, introduction of outside blood, and selective culling with a preference for younger horses. While additional measures regarding genetic status may be desirable, appellants have failed to show that the existing EA does not adequately address this issue. Moreover, appellants have failed to show that BLM's rationale for no longer designating a specific number of horses by herd area is in error.

II. Identification Procedures and Removal Operations

AHPA and Deeg have appealed those amendments pertaining to identification procedures and horse removal operations. Appellants oppose the use of micro-chips or lip tattoos for identification, arguing that photographic identification is sufficient. Appellants approve of the increase in time permitted for horses to foal without intervention from BLM roundup maneuvers, but allege that, due to the ruggedness of the terrain and in order to properly reflect actual foaling patterns, this time should be increased from March 1 through July 31. Appellants oppose use of helicopters in roundups as inhumane, and argue that lack of access for landing make this method of removal impractical.

Finally, AHPA opposes the BLM's decision to administer tranquilizers to horses to the extent that the decision does not specify that the procedure should be performed or supervised by a veterinarian. AHPA claims that use of tranquilizers should be limited to circumstances where a horse is ill or injured, and use of such sedation for "normal handling operations incidental to adoption" violates the "minimal feasible level mandate" (SOR at 21). Deeg argues that use of tranquilizers will endanger the animals.

With regard to AHPA's rejection of suspension of roundups between April 1 and June 30 for a longer suspension, BLM responds that appellants have not provided "evidence or supporting documentation that the BLM's decision to suspend gathering for two weeks on either side of the peak [foaling] period is inadequate" (BLM Answer at 9).

With respect to use of helicopters during capture and removal operations, BLM maintains that this procedure is "in accordance with BLM law, regulation, and policy" and "more humane because the roundup takes less time so horses are returned sooner to the range and the horses are not pushed at a full gallop" (Answer at 9; EA at 2). BLM notes that the record indicates that other horse advocacy groups support helicopter use in roundups (Answer at 9).

In reference to use of microchips for identification, BLM avers that it has used them experimentally for 3 years, and has found that microchips "cause no more and probably less stress to the horses than other identification methods, such as lip tattoos" (Answer at 12). BLM states that identification is necessary because privately owned wild horses roam the Range as well.

With regard to appellants' objection to BLM's use of tranquilizers, BLM cites BLM Manual section 4720.2.24 as requiring that "drugs * * * be administered by a veterinarian or BLM personnel specifically trained in the use of tranquilizers." BLM points out that the EA is clear that tranquilizers will not be used in the routine handling of horses, but is authorized only "in special circumstances when a horse is in danger of death or serious injury or when handling a horse by other means would endanger people" (Answer at 12-13).

We find that BLM has refuted appellants' assertions that tranquilizers will not be responsibly administered, and that helicopter roundups are inhumane. Moreover, appellants have failed to show that the extension of the gathering season is inadequate. In short, appellants have failed to meet their burden of proof on these issues. Accordingly, we find no basis upon which to reverse BLM's reasoned analysis pertaining to identification, capture and removal operations.

To the extent appellants have raised arguments not specifically addressed herein, they have been considered and rejected.

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

John H. Kelly
Administrative Judge

I concur.

James L. Bymes
Chief Administrative Judge