

Department of the Interior  
Bureau of Land Management  
Yuma Field Office  
2555 E. Gila Ridge Road  
Yuma, AZ 85365

March 14, 2007

RE: Yuma Draft Resource Management Plan

The following submission is for purposes of consideration and re-revisions of the current proposals presented within the Yuma Draft Resource Management Plan (RMP), with specific recommendations and input regarding wild horses and burros within the planning area.

Please include me in your Interested Party list for all future communications and publications concerning the RMP as well as any related issues that would or will affect its framework and final proposals.

I would also like to be added to your Interested Party list regarding all management actions and proposals that affect the wild horses and burros within the Herd Management Areas administered by the BLM Yuma Field Office.

Thank you for the opportunity to participate in the planning and preservation of our Nations resources and environment.

Sincerely,

NAME/ADDRESS REMOVED

**Summary of Input and Recommendations**

- The preservation of wild burro populations and their habitat in America is reaching a crisis level that demands acknowledgement. Arizona is the last state left in the West where any significant wild burro populations still exist. Site-specific decisions have resulted in cumulative impacts that are decimating the wild burro habitat and populations. Decisions must be made that consider wild horses and burros within the context of a broader, National perspective.
- No open-ended, generalized or vague proposals. Supply specific data regarding wild horse and burro forage requirements, rangeland production, and allocations that supply those requirements within the life span of the RMP to ensure proper planning for continued wild horse and burro preservation.
- No reductions of acreage from historic herd area habitat; herd management boundaries should conform to the existing land use designation. This includes the area east of Highway 95.
- No acreage, habitat or crucial resources necessary for wild horse and burro preservation transferred to agencies that do not manage or acknowledge existing rights and protections of wild horses and burros on public lands. No Memorandums of Understandings issued between these agencies as they are not required to renew or honor them once expired.
- No sale of wild horse and burro herd areas and habitat to private ownership. Historic herd areas have been withdrawn for the purposes of preserving them for future generations. Under continued federal jurisdiction, a wide variety of multiple use applications that benefit the Nation can continue to supply future benefits. If sales are deemed necessary, provide reasons, specific projected impacts per parcel, and resources of value that may be contained within parcel (e.g., springs or exceptional forage production).
- No further reductions in appropriate management levels (AML's). The currently established AML's conform to recognized population levels that assure genetic viability and prevent inbreeding. Any reductions would compromise this conformance and affect the self-sustaining abilities of the populations.
- Insure that wild horses and burros are considered comparable to other resource values within the Resource Management Plans, Land Use Plans and framework.
- Insure that formulation of management plans and actions conforms to valid and existing rights already reserved for wild horse and burros on public lands. These include water rights and prior land use designations and authorizations.

- Provide specific information regarding management plans of wild burros within the Imperial and Cibola NWR's. This would include impacts and reasons for proposals and specific, detailed plans that clearly delineate why "minimizing burro use within these

areas” is necessary and what those plans entail.

- Implement planning and commitment to the currently established wild horse and burro AML’s due to known monitoring data of their forage and habitat requirements. If necessary, reduce or eliminate livestock grazing within the effected areas until wild horse and burro forage requirements can be assured at current AML’s.
- Issue wild horse and burro allocations that plan for and allow climactic fluctuations such as below average precipitation or drought years. During higher rangeland production years, issue temporary non-renewable grazing permits to increase productivity on public lands.
- Provide specific data on rangeland forage capacity within the planning areas, breakdowns of available forage types (20% grasses, 30% forbs, 40% shrubs, etc.)
- List all significant rangeland users such as mule deer, pronghorn antelope, elk, bighorn sheep, cattle, sheep, and wild horses and burros. Provide projected management plans and goals for each species, projected habitat requirements, expected rangeland allocations, and population targets. Illustrate in a comprehensive table that clearly delineates numbers, allocations, and projected use levels.
- No denial of access to all natural water sources currently utilized by wild horses and burros within the herd area boundaries, including the Colorado River. Proposals should include water requirements of wild horses and burros and allocations that provide for use at the currently established AML’s. Include planning that would insure water availability for below average rainfall and/or drought conditions.
- Development of new water sources in addition to current sources with site-specific proposals, projected types and numbers of water developments, supply capabilities, maintenance requirements and potential dangers or adverse impacts of those proposals.
- No fencing or restricted access to water sources that inhibits their free-roaming behavior, or that can potentially cause injury, harm or death due to inability to access water sources and recognize this possibility due to lack of necessary funding or available manpower required for maintenance.

- Due to the prolific amount of Areas of Critical Environmental Concern, Wildlife Refuges, Conservation Areas, Wilderness Study Areas, Military Installations, elevation and terrain factors, etc., provide actual habitat, rangeland forage production and water

availability that can realistically be utilized by wild horse and burro populations within the HMA's.

- Clearly describe and provide supporting data regarding documented effects of wild horses and burros in areas that are of special concern or require specialized management such as desert tortoise habitat. Generalized statements that they “*may*” effect a resource without supporting data is insufficient to justify extreme management actions that are known to have permanent, adverse consequences to wild horses and burros or their habitat requirements.
- Provide classification of threats to desert tortoise and other species that require special management attention expressed as percentages of expected affects and their priorities; e.g. habitat fragmentation-30%, raven depredation-17%, and so on.
- If necessary to reduce impacts to other species within affected areas, provide data and documentation of those impacts and propose plans that establish livestock reductions or removals taking precedence over wild horse and burro reductions or removals.

The preservation of wild burro populations and their habitat in America is reaching a crisis level that demands acknowledgement. Arizona is the last state left in the West where any significant wild burro populations still exist. Site-specific decisions have resulted in cumulative impacts

that are decimating the wild burro habitat and populations. The Bureau of Land Management can no longer afford the luxury of failing to consider the impacts of their decisions about wild horses and burros within the context of a broader, National perspective.

In brief, wild burro populations have lost almost 50% of their original and historic ranges, their habitat is now almost a million acres less than habitat reserved for desert tortoise management; wild burro appropriate management levels (AML's) have been proportionately slashed to match these habitat reductions. The National AML targets a total of merely 2,695 burros to be allowed on all public lands throughout the entire West.

There are 26 remaining wild burro herds and only 5 of them have established appropriate management levels that are considered genetically viable to prevent inbreeding; all of these are found within the state of Arizona.

For a complete overview of the situation, please review Wild Burros of the West-A Critical Analysis of the Current Status of Wild Burros on Public Lands –2006 attached to the back of this document.

It is imperative that specific plans be outlined within the Resource Management Plan (RMP) that gives special consideration and attention to wild burros impending demise if BLM fails to properly coordinate resources for their continued preservation and survival.

While there are a number of proposals outlined within the RMP regarding wild horses and burros within the planning areas, researching these proposals has shown that they are unacceptable for a variety number of reasons.

The first of which is the actual lack of planning and management strategies provided within all of the proposals that fail to secure the preservation, protection and continued sustainability of the herds within the RMP's framework. This is reflected in such open-ended statements as found under Management Common to All Alternatives:

*“The Appropriate Management Level (AML) for the Cibola-Trigo HMA would be 165 burros and 150 horses. Monitoring data, including climate, population, and vegetative data, would be collected and used to support removals and/or the revision of AML for either wild horses, burros, or both.”*

Or within Table 2-10, Wild Horse and Burro Management Actions by Alternatives, which proposes the only “plan” is to identify objectives for herd composition, animal characteristics, and habitat development. The AML may be adjusted based on monitoring data and subsequent evaluations.

Monitoring data, including climate, population, vegetative data and rangeland evaluations have been performed within the planning area for the last thirty years. It is through this monitoring,

data and documentation of rangeland utilizations and impacts that determined wild horse and burro “appropriate management levels” and which authorized their removals.

Because of this data, the Yuma Field Office already knows the habitat requirements and needs necessary to sustain the current populations and AML’s. Therefore, proposing a “plan” that pleads ignorance to these requirements *now* with the only proposed plan being to discover these needs at some remote future date is unacceptable.

Since the Yuma Field Office has extensive documentation of the necessary requirements such as forage, water, space and cover of the wild horses and burros in the area, a proposal that lists these needs (e.g., X amount of forage) and plans to provide these resources for wild horse and burro utilization over the next 10-20 year period needs to be included within the RMP.

The AML’s issued for wild horse and burro use are based on the productivity of their environment. The standard for issuing livestock forage permits is usually done on a ten-year lease. This clearly illustrates that rangeland production is reasonably stable and that BLM feels comfortable making forage allocation commitments that extend through this length of time. The same forage allocation commitments need to be proposed, drawn and implemented for wild horse and burro preservation within the planning area.

The fluctuating possibilities of AML’s for wild horses and burros that are always subject to renegotiation for the next ten-twenty year period is a truly unacceptable from a land management point of view. Why would they possibly fluctuate? This is BLM’s *job*, to manage resources, to issue allocations, to stabilize and sustain public resources. BLM needs to issue proposals that state, “We are proposing to manage for 150 horses and 165 wild burros for the next 10-20 year period and they need X amount of resources to do it, so that is what we will *plan* for.”

Also, the RMP states that Management Common to All Alternatives, “Imperial and Cibola NWR’s would allow burro use that minimizes impacts to the refuges.”

Please clarify this statement. What impacts? What level of burro use? How much “impact” is acceptable impact and how much is too much? How many acres would this “management” affect? How many head of burro is it expected to affect? Are any of these affects to be considered adverse? What is the cumulative impacts to wild burros from this statement?

Please provide specifics, as this plan is the framework for the next 10-20 year period of all management activities.

Within the available resources, forage allocation assurances need to be provided for wild horses and burros in the plans framework and those assurances should include “room” for known environmental factors that may have significant impacts to rangeland health.

For example, in our arid regions, droughts or drier years may have more impacts to rangeland production than in other areas of the country where rain is not such a critical factor in survival. Knowing this factor must be considered, forage allocations for wild horses and burros must be made with this in mind; that there is still sufficient resources to provide for them in the event of climactic fluctuations or severe disruptions.

This needs to be established within a range or cushion of available resources. Knowing that wild horses and burros need X amount of forage and Y amount is available on an average year, but on below average years, production levels drop to Z, a plan must be made that guarantees that wild horses and burros will still have the critical resources they need, even in the worst of times.

One of the ways that this can be accomplished is through the reduction or removal of livestock grazing within the Herd Management Areas on a permanent basis. Livestock permits would only be issued on a temporary non-renewable basis to allow flexibility in management options if forage production or other environmental factors results in below average resource availability.

This management action is completely supported and required by CFR 4710.5 (a), which states; If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

This would assure continued health and preservation of the wild horses and burros habitat within the planning area and herd areas, allow for fluctuations in environmental conditions, prevent emergency removals or drastic actions caused by poor planning, and preserve rangeland health while still providing flexibility coupled with the ability to maximize rangeland productivity with livestock whenever resources are available.

The RMP needs to provide complete available rangeland forage and vegetative resources within the planning areas such as X amount of acres provide Y tons of forage that will support Z amount of animals.

Different species have different habitat and forage requirements and the purpose of clearly establishing the available resources within each planning area will assure that proper allocations are planned and can be realistically implemented for future sustainability of all rangeland users.

Once the forage resources are clearly delineated, statistics need to be provided as to the projected needs and management levels of all significant species requiring these resources. This would include the projected management levels for big game species such as mule deer, pronghorn antelope, elk, and bighorn sheep as well as the livestock needs of cattle and sheep, and of course, wild horses and burros.

For example, 100,000 tons of forage is available on 100,000 acres. This forage is broken down by percentages such as 20% grasses, 30% forbs, 40% shrubs, etc. This would provide a general overview of the available resources required for proper planning and allow the public to clearly see the management plans for all species within the framework of the land use plan.

The BLM’s traditional rangeland policies are not to exceed 50% utilization levels. There are studies suggesting this level may be too high within the arid desert regions, so compromises may have to be made due to the input and comments received during this planning process.

However, regardless of the utilization level finally established, once established, expected allocations per species should be listed within the framework of the plan. Cattle: X head equals X Animal Unit Months (AUM’s) within the planning area, Elk: X head equals X AUM’s, and so on for all the significant rangeland users.

A table illustrating the rangeland allocations and users would provide a convenient and clear way for the public to see the proposals and expected future management plans and implementations. Such as:

Species	X head	X AUM’s	% of Forage	% of Water	Season of Use
Cattle	50,000	600,000	15%	15%	Year-long
Sheep	10,000	50,000	3%	3%	Winter
Wild Horses	150	1,800	1%	1%	Year-long
Burros	165	1,980	1%	1%	Year-long
Elk	500	6,000	2%	2%	Year-long
Bighorn	300	3,600	1%	1%	Seasonal

In addition to providing clear illustrations of expected utilization levels and projected long-term planning goals for each species, this would also allow a determination to be made regarding the current or preferred alternative being compliant with the Code of Federal Regulation (CFR) 4700.0-6 (b) that requires wild horses and burros to be considered comparable to other resource values within the formulation of land use plans.

Additionally, a recent “scandal” has erupted regarding BLM’s reporting of rangeland and watershed health factors as a result of studies submitted regarding the impacts of their new grazing regulations on public land health. Within this scandal, long-time former BLM managers have accused the BLM of re-writing their reports, covering up the facts, and withholding

valuable information obtained from those studies on proper management of resources and significant expected impacts through the implementation of the new regulations.

The terms used were “white wash” and “turned our science 180 degrees”.

The Government Accounting Office (GAO) in the late 80’s also filed a very detailed report on BLM’s unwillingness and/or inability to provide accurate rangeland assessments through scientific data. They reported that BLM generally just “winged it”. My words, not theirs.

Clearly proposing plans within the RMP that provides actual, relevant science and data of the rangeland factors to be considered will go a long way in preventing litigation, appeals, protests, and investigations regarding these proposals and their eventual implementations.

Once forage allocations have been clearly delineated and an actual plan is proposed that includes guaranteed forage allocations for wild horses and burros within their HMA’s and the framework of the RMP, plans to assure the most critical habitat requirement of all needs to be both proposed and implemented.

Within the current proposals, all alternatives proposed will eliminate wild horse and burro access to the Colorado River, the most abundant natural water source in the area.

While the BLM is required from time to time to complete new land use plans to adjust for changing times and needs, it does not authorize them or allow them to abdicate their responsibility to assure protection of wild horses and burros on public lands as required by public law through the Wild Free-Roaming Wild Horse and Burro Act of 1971.

Neither does the Federal Lands Management Policy Act (FLMPA) of 1976 allow any previously legally established rights to be transferred or overridden in the formulation of new land use plans. This is evident by some of the following excerpts from 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:*”

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 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.”

Clearly, all proposals must comply with existing rights. The Secretary and the BLM must submit to Congressional authority and the public laws established through them. The management of wild horses and burros on public lands is one such instance.

The current proposals that eliminate the most critical element needed for continued preservation of wild horses and burros on public lands, **water**, is the equivalent of proposing a death sentence to their future sustainability.

Livestock have access to water developments of all kinds; wells, troughs, water-hauling, etc. Wildlife such as bighorn are regularly provided water developments as well, such as guzzlers, damns, protected spring sources and they too are approved for water hauling under emergency conditions.

**WILD HORSES AND BURROS ARE GRANTED NONE OF THESE RIGHTS OR ACCESS.**

The only water sources allowed for wild horses and burros on public lands is natural sources and all of your proposals are seeking to eliminate their access to the most abundant source in the area. This constitutes a premeditated act that will result in permanent, significant, adverse and cumulative impacts that is projected to result in capture, branding, harassment, injury and death. To continue the course of these proposals would indicate direct defiance of the public law that mandates BLM protect wild horses and burros from this sort of fate.

CFR 4700.0-5 states that inhumane treatment is any intentional action or failure to act that causes stress, injury or undue suffering to a wild horse or burro...

The removal of the wild horses and burros water sources qualifies as both an intentional act and failing to act to preserve their rights to this crucial habitat requirement. At the very least, it could be interpreted as inhumane.

Additionally, CFR 4710.3-1 requires that the habitat requirements of the animals be considered in all plans, HMA's, and herds. The BLM is aware that the Colorado River and its water is the critical habitat requirement for the wild horses and burros within the area, are they not?

All proposals that seek to deny this crucial and critical habitat requirement for wild horses and burros within the planning area need to be re-drawn so that all access to the Colorado River and any other natural water sources they are currently utilizing remains available to them.

The alternatives proposed for compensating the removal of this critical habitat requirement by providing fenced access is also unacceptable. CFR 4700.0-6 (c) requires that management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior. There are many, many examples of difficulties arising from fencing of critical water sources that caused wild horses and burros to expire just feet away.

Fences would have to be maintained, causing perpetual funding and manpower needs that may not always be immediately available which then run the risk of creating injuries or death, not just to the wild horses and burros that so desperately depend on this water, but all wildlife in the area becomes threatened if they become entangled or trapped. Fencing also detracts from the naturalness of the environment and generally, should only be utilized when no other options are available.

Please also provide the number of all other natural water sources within the herd areas and herd management areas so proper evaluations can be determined as to the status of these water sources. Are there only two? Two hundred? What is the expected water allocation for wild horse and burro use at the current AML's? 10%? 20%? Are there springs that are currently receiving excessive utilizations? Will there be any in the foreseeable future due to the proposals within the RMP? Are there changes with the RMP proposals that will affect the current water allocations of wild horses and burros such as goals to manage for higher species of wildlife?

Another alternative proposed for mitigating lack of access to water along the Colorado River is developing new sources of water. While I strongly support this proposal in general, there are some issues that must be addressed.

First, Nevada Department of Wildlife currently submitted an appeal to the Interior Board of Land Appeals of a decision the BLM made in the Las Vegas, NV area regarding BLM's attempts to develop new sources of water for wild horse and burro utilization within the area. This case is currently pending and the outcome may determine whether this will ever be an option or tool available for management within the herd areas or herd management areas. Until a decision is rendered, it would be unwise to expect it as an available option.

Furthermore, prior attempts at developing new water sources for wild horses and burros within other BLM proposals have usually been blocked, sometimes by wildlife agencies, sometimes by livestock operators, sometimes by Resource Advisory Councils, but usually by BLM themselves.

According to BLM, the justifications for not developing new water sources within the herd areas has been the mandate to manage with minimum feasibility. Many times, BLM asserts that developing new water sources does not fit this criterion.

I personally believe very strongly that the development of new water sources should be a standard tool in land use planning. Minimum feasibility is NOT spending hundreds of thousands of dollars on gathers, holding pens, and adoptions. The cost effectiveness alone of "holding horses" on the range versus in pens would be extremely significant. It also allows for greater habitat dispersion, lessens excessive utilizations on key areas, and benefits all wildlife in the developed areas.

However this form of on-the-range management has not been supported much before. Proposing to do so now will result in challenges and quite possibly and ultimately, not being able to implement them.

I would like to see proposals for new water sources provided in the RMP but not at the expense of losing the current ones. If additional water sources were developed while still maintaining current access to all water sources, great strides in healthy, cost-effective management would be made.

The last concern that would need to be addressed is providing specifics as to what sort of water sources, how many, their proposed locations, their expected maintenance needs, potential dangers to wild horses and burros or wildlife (like becoming trapped not being able to get out) and perhaps even a cost-benefit analysis that illustrates the savings of developing them versus just removing/containing/adopting wild horses or burros.

Please provide specifics and details about available resources and projected utilization levels within the planning areas that affect wild horses and burros within their HMA's.

Another issue of concern is the possible transfers of wild horse and burro habitat to other government agencies that do not manage for wild horses and burros, do not acknowledge their

protected status on public lands, and refuse to provide the protections that BLM is mandated to supply.

There is already a long history of BLM transferring valuable and critical habitat to other agencies, especially National Park Service (NPS), that once the wild horse and burro habitat is obtained, they refuse to allow them continued existence on NPS land, not *public* land, but *their* land.

National Park Service has a very open policy of considering “humane disposal” shooting and killing wild horses and burros on *their* land with the only reasoning being (a *policy*, not *law*), that asserts NPS simply doesn’t “manage” for wild horses and burros and therefore, they must be “disposed” of like garbage.

For BLM to transfer *any* portion of wild horse and burro habitat to such an agency would clearly indicate a premeditated act of knowing the fate of the animals that they have been charged with protecting but blatantly disregarding their mandates for protection by doing it anyway. Through these transfers, BLM would be guilty of indirectly causing the eradication, capture and death of these wild horses and burros.

Agreements and Memorandums of Understandings are insufficient protection to wild horses and burros or their habitat because they expire and there is nothing that requires the “cooperating agency” to honor any previous agreement or provide what was initially promised. Therefore, no proposal within the RMP can contain habitat transfers to any agency that is not mandated by law to protect wild horses and burros and their habitat on public lands.

This also applies to various proposals to sell wild horse and burro habitat to private ownership. These individuals will have no obligations to protect them or their habitat. The herd areas have already been withdrawn and designated for a particular use, a use that has multiple applications such as livestock grazing, wildlife habitat, minerals, etc. Maintaining them within federal jurisdiction satisfies the requirement that they are already withdrawn as well as still providing a large amount of options for maximum utilizations within the proposed areas.

If, in the revision of the RMP, BLM still finds it necessary to offer herd area habitat for private sale, the purpose and reasoning for the sale of the tracts of land, as well as the expected impacts to wild horses and burros (e.g., does it contain a critical water source?), should be clearly stated so that the public can determine both the necessity and the priorities of the proposals.

Four out of five proposals presented involve the reduction/elimination of pre-established herd area habitat by over 80,000 acres. By the time the Areas of Critical Environmental Concerns

(ACEC), the Wilderness Study Areas, the Military Installations, the Conservation Areas, livestock grazing allotments, wildlife allocations, elevation and range limitations, etc. are all factored in, how much actual habitat is expected to be available for wild horse and burro use within the planning areas and HMA's? Real, actual, usable acreage, forage and water?

Please provide specific details as to the impacts that will be made to wild horse and burro habitat within their respective HMA's due to the proposals outlined in this RMP? Does any of this acreage BLM is proposing to eliminate contain critical or vital habitat requirements such as springs, good forage production, tracts where free-roaming behavior and migration patterns would be disturbed upon removal of this acreage?

Provide specify reasoning and justifications for removing this vast sum of the territory that has already been established for the purpose of maintaining wild horses and burros. If you remove the acreage or habitat from use, how is that in compliance with the withdrawn status and the laws that stated their habitat would be preserved and protected for future generations?

Please provide proposals and plans that continue to allot the same acreage that is currently being managed and was promised by Congress to the American people as the places in America where wild horses and burros would be allowed to live. Eliminating such a huge chunk of this protected habitat fails to fulfill the promise or the law.

The current proposals within the RMP also call for the elimination of habitat and therefore, the removal of some 200 wild horses and burros east of U.S. Highway 95. It is titled "Unavoidable Adverse Impacts" and cites safety and health issues as the reason this is unavoidable and must be done.

The specific health and safety issue concern is of wild horses and burros on roadways creating collisions with vehicles, causing injury and death to both animals and humans. While this is certainly an important issue that needs to be addressed, please explain why the same concern and plans are not being implemented for livestock.

During the public comment period of the Lake Havasu Draft RMP, a public comment was submitted regarding the need to reduce auto accidents caused by free-range cattle:

*"Last year at least 20 dead cows littered the roadside. Serious accidents and injuries occurred from hitting the free ranging cattle"*

BLM's response to these public concerns was:

*"The State of Arizona is an open-range state. As new roads are improved through grazing allotments, the public needs to be aware that livestock may be present and should use caution."*

Though the Lake Havasu Field Office and the Yuma Field Office are separate management units within the BLM and the State of Arizona, their administrative policies and general management mandates can't be that different within Arizona, can they?

Obviously, the free-ranging policies of the BLM, the State of Arizona and it's livestock take precedence over human life, serious accidents and injuries. Then why isn't the same priority of "open range first" given to wild horses and burros within the Highway 95 area?

Also, the elimination of habitat and the "unavoidable adverse impacts" of wild horses and burros being permanently removed from the area *is avoidable*; merely tell the public when they express concern or when serious accidents and injuries happen, that the State of Arizona is an open range state, that the public needs to be aware that wild horses and burros may be present and should use caution.

Maps of the proposed planning area show vast amounts of protected areas; ACEC, WSA, Wildlife Refuges, Conservation Areas, Wilderness Areas, Threatened and Endangered Species Areas, Sensitive Species Areas, the list of special land use designations is enormous. All of these areas have been established in efforts to promote preservation and protection of valuable, important, and significant resources.

However, evidence is surfacing that over the last 10-20 year period, abuses of laws and special designations have been transpiring on public lands that are resulting in more "land grabs" under the guise of protection than resource preservation.

On May 9, 2001, Steven P. Quarles testified on behalf of American Forest & Paper Association and the QuadState County Government Coalition before the Subcommittee on Fish, Wildlife and Water Environmental and Public Works Committee, United States Senate regarding issues concerning the listing of distinct population segments under the Endangered Species Act of 1973.

Within his testimony, he alleged that the U.S. Fish and Wildlife Service had been abusing the distinct population segment (DPS) concept which was resulting in the expansion of their species' listing authority going well beyond the expectations of Congress.

Other statements included; that they engaged in ludicrous fiction of defining "species", that an important purpose of the Services' two DPS policies was to provide a measure of scientific rigor to the DPS decision making in the listing process but that they in fact only pretended to do so, that the DPS policies of the Service was riddled with discretion, and it is too easy for the Services to use "the best scientific and commercial data available", as required by ESA § 4(b) for listing decisions, to reach whatever conclusion they may wish.

He also cited how Congress had issued USFWS stern admonition to use their authority “sparingly” yet they had continued to issue listings at ever-increasing rates, with a 400% increase noted between 1996-2000 from the previous five years, and that species units had qualified as a DPS more than 80% of the time,

Additionally, he cited a Government Accounting Office (GAO) report in 1979, which criticized known abuses, even back then, which stated;

*[T]he committee is aware of the great potential for abuse of this authority and expects FWS to use the ability to list populations sparingly and only when the biological evidence indicates that such action is warranted.*

One other issue that he felt of major significance that must be addressed was the Service inappropriately redefining species units after their listing into smaller species units in decision making under sections of the ESA other than the ESA § 4 listing section.

The desert tortoise listings, management and recovery plans were used an example of this sort of inappropriate applications of “species units” or “recovery units” being used to create a infinite classification and withdrawals of public lands. The 1994 Desert Tortoise Mojave Population Recovery Plan used a policy that was unprecedented by applying another agency’s standards to the plan that has resulted in the current state of desert tortoise management within the “recovery units”.

One of the solutions proposed at the end of his testimony was to require the Services to provide judicially reviewable reasoning if they decide to list such variations-of-a-species.

Other relevant evidence regarding concerns of land planning and designation abuse was found in the August 3, 2004, order by the District Court that ruled the Service had relied on an invalid regulatory definition of “adverse modification” while analyzing effects to designated critical habitat in the June 17, 2002, biological opinion. The biological opinion was vacated and remanded to the Service with instructions to reissue the biological opinion after applying the appropriate definition of adverse modification, which the District Court defined as “a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for either the survival or recovery of a listed species.

The purpose of citing these potential abuses in land use designations is to alert the BLM within their final preparation of the RMP that scientific evidence and data needs to be published to support their decisions.

How this applies to wild horses and burros and their habitat is that generalized statements of their impacts will be insufficient; scientific evidence and data must be provided that clearly shows their impacts within the affected environments to justify changes in habitat and resource availability, reductions in populations, or other decisions that will have adverse impacts to their well-being and continued sustainability.

As in the case with desert tortoise habitat, only a few studies have been offered regarding wild horse and burro impacts to their populations, range and recovery. All of these provide no definitive evidence that these impacts pose a significant threat to desert tortoise. If evidence is provided as to their effects, it should be clearly listed as a percentage of the expected impact, e.g., 1% of the affected environment which totals X amount of habitat.

Additionally, due to the wide range of threats currently listed to desert tortoise populations and their habitat, listing threats and projected impacts should be provided for comparison purposes. Since habitat fragmentation is cited as one of the most significant concern, express its value as a percentage such as 30%, raven predation-17%, respiratory illness-23%, and so on. This will establish the order of priorities that must be focused on to ensure protection for all species involved in desert tortoise recovery and where management plans need to focus to assure their preservation.

There have been varying studies and decisions that have provided contradictory opinions regarding the impacts of livestock to desert tortoise and their habitat; some have removed livestock from the affected areas and some have issued a no jeopardy opinion. Therefore, if within a particular planning area wild horses and burros share habitat with livestock that affects a special concern species such as the desert tortoise, reductions or removals of livestock should take precedence over wild horse and burro reductions or removals.

Livestock have considerably more freedom, options and available acreage on public lands than wild horses and burros do. Since wild horse and burro distribution is limited to herd areas only, decisions which affirm their rights over livestock within the affected areas, needs to be implemented.

There are prior cases that reflect inconsistencies in management decisions that asserted specific, unacceptable impacts by wild horses and burros which resulted in their reductions or removals while continuing to allow these same unacceptable impacts from other rangeland users such as cattle.

In conclusion, a wide range of options, directions, alternatives and recommendations have been provided that will hopefully prove useful in re-formulating plans that assure the continued preservation of the Yuma areas wild horses and burros while still maintaining a thriving ecological balance with other resource users.