

ANIMAL PROTECTION INSTITUTE OF AMERICA

IBLA 93-308, 94-14

Decided November 2, 1994

Appeal from decisions of the Lander, Wyoming, Resource Area, Bureau of Land Management, to gather excess wild horses. WY-036-EA3-010 and WY-036-EA3-013.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

BLM's decision to gather wild horses will be affirmed where it is based upon appropriate management levels for herd management areas based on analysis of grazing utilization, trend in range condition, actual use, and observational data demonstrating that maintenance of the herd at the prescribed levels of horse population will restore and maintain the range in a thriving natural ecological balance and prevent deterioration of the range, in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act.

APPEARANCES: Nancy Whitaker, Director, Animal Protection Institute, for appellant; Glenn F. Tiedt, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

The Animal Protection Institute of America (APIA) appeals decisions of the Lander, Wyoming, Resource Area Manager, Bureau of Land Management (BLM), determining to gather wild horses from five Lander Herd Management Areas, based on Environmental Assessments (EA's) WY-036-EA3-010 and WY-036-EA3-013. ^{1/}

^{1/} APIA filed two appeals from two decisions of BLM, docketed as IBLA 93-308 and IBLA 94-14, from BLM's decisions of Feb. 24, 1993, and Sept. 27, 1993, respectively. By interim decision dated Dec. 10, 1993, we consolidated those appeals. *Animal Protection Institute of America*, 128 IBLA 90, 91 (1993).

BLM did not state in its Feb. 24, 1993, roundup decision that the decision had been placed into full force and effect. As a result, APIA did not request a stay of that decision. BLM mistakenly concluded that it could proceed to gather horses in the absence of a request for a stay by APIA,

BLM also considered alternatives to its AML. It considered maintaining the horse population level existing in the Winter of 1992, viz., 1,225 horses (Alternative 1). It also considered a no-action alternative, i.e., conducting no gathers and allowing the wild horse population to increase indefinitely until "naturally limiting" (Alternative 2). BLM did not consider removing all wild horses from the HMA's, because doing so would contravene the Wild Free-Roaming Horses and Burros Act (the Act). 2/

APIA contends that BLM set arbitrary minimum and maximum horse population for the herd areas, asserting that BLM's utilization data actually show that the current number of horses is consuming available forage within acceptable levels. APIA acknowledges that BLM must take corrective action where horses are damaging riparian areas, but objects to BLM's allocating forage to cattle at the expense of wild horses.

BLM responds that monitoring data justify its AML, attaching its summary of the rationale for the AML set for each of the five HMA's. BLM based the upper limit for each viable area upon the observed maximum population occurring before individual animals begin moving out of the HMA. BLM's removal decision was based on multi-year monitoring data, as presented in the evaluation, EA, and decision record. That data consist of climatic data since 1960; condition and trend information in 1982, 1987, and 1992; yearly collections of utilization and actual use information; and wild horse inventory information annually since 1972. Annual intensive monitoring of the horses began in 1991.

BLM maintains that it has properly determined the number of wild horses that must be removed to maintain and restore a thriving ecological balance. BLM cites utilization and actual use summaries in the allotment management plans (AMP's) for the five allotments within the boundaries of the HMA to rebut APIA's assertion that no over-utilization is occurring there. BLM noted that it found over 80 percent utilization, and resource damage in some riparian areas and within some concentration areas (Decision Record and FONSI for Lander Resource Area EA for Evaluation of Wild Horse Herd Areas at 26-27).

[1] Section 3(b)(2) of the Act, as amended, 16 U.S.C. § 1333(b)(2) (1988), provides authority for BLM to remove "excess" wild free-roaming

fn. 1 (continued)

In this decision, we review the merits of the Feb. 24 decision to round up horses.

We also note that, in our interim decision, we dismissed the appeal of Jeannine R. Stallings, an individual who did not file a notice of appeal with BLM within 30 days after being notified of BLM's decision to conduct the roundup. Id. at 93. Although we indicated that she could request permission to appear as amicus curiae to bring her views before the Board in that role, she has not done so.

2/ BLM also did not consider as an alternative managing for "interim target numbers" of horses, because those numbers were close to the preferred alternative. The interim target numbers provided for a maximum of 810 and minimum of 490.

horses and burros from the public range. Specifically, where the Secretary of the Interior determines on the basis of information available

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) (1988). The term "excess animals" is 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) (1988).

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) (1988); Dahl v. Clark, 600 F. Supp. 585, 594 (D. Nev. 1984); see Animal Protection Institute of America, 118 IBLA 20, 23 (1991). 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, 117 IBLA 4, 5 (1990); Animal Protection Institute of America, 109 IBLA 112, 120 (1989). 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. In this case, the record establishes that the integrity of the range and its forage capability are threatened by an overpopulation of horses.

The record shows that most data was collected by grazing allotments within the HMA's. Although not all use data is species specific, observational data indicates that the horses have caused continuing overuse of riparian areas. Maximum AML numbers reflect the point at which equine out-migration begins. BLM has monitored the areas within these HMA's on an ongoing basis. We are satisfied, based on the present record, that BLM properly determined that horses should be removed from the areas in question. ^{3/} The record contains data based on extensive monitoring of wild

^{3/} BLM analyzed use within each HMA and set maximum numbers for each at the observed horse population level reached when horses would begin to migrate out of a given herd area. BLM distinguished between generally light use of upland range and excessive use of many horse concentration and riparian areas (BLM Response at 13). Excessive use in areas of wild

horse populations in those areas. That data confirms excessive wild horse use of certain sensitive riparian areas.

Although appellants disagree with BLM's conclusions concerning that data, we are unwilling to overturn a BLM decision where the appellant merely presents some other course of action which may be theoretically as correct as that chosen by BLM. The Department is entitled to rely on the reasoned analysis of its experts in matters within the realm of their expertise. In cases involving an expert's interpretation of data, it is not enough that the party objecting to the interpretation of data demonstrates that another course of action or interpretation is available or that the party's proposed course of action is also supported by the evidence. The appellant must demonstrate by a preponderance of the evidence that the BLM expert erred when collecting the underlying data, when interpreting that data, or in reaching the conclusion. Animal Protection Institute of America, 118 IBLA 63, 76 (1991). No such showing has been made here.

We find that BLM's decision was based upon reasonable analysis of data collected on an ongoing basis. To the extent any of APIA's contentions have not been specifically addressed here, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

David L. Hughes
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

fn. 3 (continued)

horse concentration has persisted despite livestock non-use, livestock herding and deferment of pasture, steps taken to reduce strain on the range as the wild horse population increased (BLM Response at 14).