

ANIMAL PROTECTION INSTITUTE OF AMERICA, ET AL.

IBLA 96-489, 96-490, 96-492

Decided February 15, 2000

Appeal from a decision of the Area Manager, White River Resource Area, Colorado, Bureau of Land Management, authorizing a gather and age selective removal of horses determined to be excess from the Piceance Basin portion of the Piceance-East Douglas Herd Management Area and the Texas Creek portion of the West Douglas Herd Area, as well as the complete removal of all horses permanently residing outside any designated HA. EA CO-017-96-72.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

A BLM decision authorizing the removal of wild horses determined to be excess from certain areas of public land based on an appropriate management level which will avert deterioration of the range and preserve a thriving natural ecological balance in accordance with section 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994), will be upheld where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

APPEARANCES: Nancy Whittaker, Public Land Wildlife Division, Animal Protection Institute of America, Sacramento, California; Barbara M. Flores, Board of Directors, American Mustang & Burro Association, Inc., Greeley, Colorado; Toni Hutcheson Moore, Chair, Colorado Wild Horse and Burro Coalition, Frito, Colorado; Andrea S.V. Gelfuso, Esq., Office of the Regional Solicitor, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The Animal Protection Institute of America (API), the American Mustang & Burro Association, Inc. (AMBA), and the Colorado Wild Horse and Burro Coalition (CWHBC) have appealed from a decision of the Area Manager, White River Resource Area (WRRRA), Bureau of Land Management (BLM), dated July 2, 1996, authorizing a gather and age selective removal of horses from the Piceance Basin portion of the Piceance-East Douglas Herd Management Area (HMA) and the Texas Creek portion of the West Douglas Herd Area (HA), and the complete removal of all horses permanently residing outside any designated HA's pursuant to section 3 of the Wild Free-Roaming Horses and Burros Act (WFHBA), as amended, 16 U.S.C. § 1333 (1994). These appeals

have been docketed as IBLA 96-489 (API), IBLA 96-490 (AMBA), and IBLA 96-492 (CWHBC). Because all appellants have appealed from the same decision and have presented similar issues for consideration, we have consolidated these appeals for review and decision.

The record discloses that the District Manager's decision was primarily based on the final White River Resource Area Wild Horse Removal Plan/Environmental Assessment (EA) (EA CO-017-96-72). This EA addressed the impacts of the proposed gathering and age selective removal of wild horses within the Piceance Basin portion of the Piceance-East Douglas Herd Management Area and the Texas Creek Pasture in the West Douglas Herd Area, and the complete removal of all horses permanently residing outside any designated HA. The EA designated the removal plan as the "Proposed Action." Helicopter drive trapping was the designated method of removal under the Proposed Action. See EA at 11. One other alternative to the removal plan, water trapping, was briefly considered but rejected based on the conclusion that, given the number of horses and time constraints involved, water trapping as an initial removal plan would not accomplish the planned objectives, though water trapping was considered a viable option for any subsequent removals needed to maintain the prescribed management levels. See EA at 16, 31. A "no action" alternative was also considered in the EA. See EA at 16, 52-53.

The EA noted that the prescribed management level for the Piceance portion of the Piceance-East Douglas HMA was 90 to 120 horses. Given the present horse population of the HMA, 364 horses needed to be gathered to attain this level out of a present effective population of 414 horses. (EA at 7.) 1/ The recommended herd management level for the Texas Creek Pasture in the West Douglas Herd Area was 30 horses which would necessitate removing about 115 horses (out of an estimated 121 horses) to meet this level. (EA at 10.) The EA examined the existing rangeland conditions within the affected areas (EA at 16 to 43), explained the procedures which would be utilized to effectuate removal of the horses (EA at 11 to 16), and analyzed the impact to various resources likely to occur with the implementation of the proposed plan (EA at 44 to 52). The EA also discussed the impacts which would result under the "no action" alternative (EA at 52-53), pointing out that adoption of this alternative would result in a failure to meet the desired objectives as described in the Rangelands Evaluation section of the EA. 2/

1/ The number of horses which needed to be gathered is greater than the total number ultimately removed because, based on past history, it was estimated that approximately 20 percent of the horses gathered would eventually be returned to the range. See EA at 7.

2/ The EA also observed that the proposed plan was in conformity with the WRRRA Management Framework Plan (MFP) (1980), the White River Environmental Impact Statement (EIS) on Grazing Management (1981), the Piceance-East Douglas Herd Management Area Plan (1984) (HMAP), the Piceance Basin Resource Management Plan (1987) (Piceance RMP), and also with the management objectives described in the pending White River Resource Area RMP. See EA at 1. Furthermore, the EA asserted that the removal plan was consistent with both the Strategic Plan for the Management of Wild Horses and Burros on Public Lands (1992) and the Strategic Plan for the Management of Wild Horses and Burros in Colorado (1993). See EA at 2.

In his July 2, 1996, decision, the Area Manager elected to proceed with the Proposed Action based on the analysis provided in the EA. As explained in the decision and accompanying EA, these actions were necessitated by "trend studies which document that ecological balance currently does not exist and which reflect a decline of key forage species." (Decision Record at 2.) The decision asserted that "[t]he proposed action will reinstate the balance between wild horses and livestock that produced the desirable vegetative health which existed in 1987." Id.

Accompanying his decision, the Area Manager issued a finding of no significant impact, based on his conclusion that impacts to wild horses in the affected areas, as well as impacts to wild horse habitat and impacts to the human environment, were not expected to be significant as defined in 40 C.F.R. § 1508.27. Accordingly, he determined that preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4322(2)(C) (1994), was not required prior to implementation of the removal plan. Additionally, citing the need to protect key forage species from any further damage, the decision was placed in full force and effect pursuant to 43 C.F.R. § 4770.3(c), although a 45-day "courtesy window" of time between July 3, 1996, when the decision was mailed to interested parties and August 16, 1996, when the removal was scheduled to begin, was provided. See BLM Letter to Interested Party dated July 3, 1996.

API, AMBA, and CWHBC subsequently filed appeals from the July 2, 1996, decision of the Area Manager and, in addition, filed motions seeking the issuance of an order by the Board staying further action implementing removal of the horses pending resolution of these appeals. 3/ Because of uncertainty concerning whether or not the Area Manager's decision contemplated the total removal of horses from areas within HA's, the Board granted, in part, the requested petitions for stay. See Order dated August 22, 1996. This partial stay, however, was dissolved by Order dated September 19, 1996, because, having received the original EA after the

3/ On May 2, 1997, almost 9 months after Toni Hutcheson Moore, Chair, filed a motion to stay and appeal "For the Colorado Wild Horse and Burro Coalition," Beverly Madaris of CWHBC informed the Board that the CWHBC name was used without authorization on the motion to stay. She explained that the position of chairman of CWHBC does not allow for the use of the CWHBC name for official action without a vote of its membership. Madaris reported that a majority of members present at the Oct. 4, 1996, CWHBC meeting voted that the Board be notified of this error and "ask that it be noted that the CWHBC is not a party to this motion to stay appeal." Since Madaris' letter referred only to the motion to stay and did not mention the appeal, it is not clear whether CWHBC was withdrawing its appeal. In any event, it appears that Toni Hutcheson Moore would be qualified to file the appeal in her own behalf.

issuance of its initial Order, the Board was subsequently able to ascertain that total removal of horses from HA's was not included under the approved plan. ^{4/}

In their appeals, appellants raised a number of discrete challenges to the decision of the Area Manager. As a preliminary matter, we note that, while appellants asserted that the decision constituted an illegal reduction of horse habitat area by approximately 295,826 acres (API at 2; AMBA at 3; CWHBC at 2-3), BLM had challenged this characterization of the decision. BLM argued that the horse acreage reduction of which appellants complained was not involved in the Area Manager's July 2 decision, but rather had originally been proposed in the record of decision (the White River Rangeland Program Summary) for the 1980 MFP, and had ultimately been included in the Final EIS prepared for the White River RMP. This RMP was published on July 5, 1996, 3 days after the decision involved herein had issued. Inasmuch as no record of decision with respect to the EIS/RMP had then been issued, BLM contended that the issue of acreage reduction was not properly raised within the context of the instant appeal and, indeed, was not yet subject to any review in the absence of further action by BLM to adopt or implement the EIS/RMP.

In our Order of August 22, 1996, we recounted the arguments of the parties relating to the horse acreage reduction question and ruled that:

We agree with BLM that, to the extent appellants seek to raise the issue of the diminution in horse habitat area contemplated in the July 5 EIS, that matter is not properly before the Board at the present time. While the EIS has been finalized, no record of decision adopting it has been issued. It is, thus, neither ripe for direct review nor is it properly subject to collateral review in the instant proceeding.

(Order of August 22, 1996, at 3.) We reaffirm that ruling herein. The issues relating to the reduction of horse habitat acreage are neither

^{4/} We note that subsequent to the issuance of this second Order, API filed a document entitled "Point of Order" in which it was asserted that BLM had failed to serve it with a copy of a brief which it had apparently submitted to IBLA and upon which the Board had relied in deciding to dissolve its partial stay. API protested what it viewed as BLM's failure to serve this pleading on API. In this, API has simply misread the Board's Order.

Contrary to API's suppositions, BLM submitted no additional pleading to the Board after its Aug. 22, 1996, Order partially staying the Area Manager's decision. Rather, as the Board's Sept. 19, 1996, Order made clear, BLM provided the Board with additional documents, i.e., the case file. Included in the case file was the original EA and attached to the EA was a map which allowed the Board to determine that all of the areas slated for total removal of wild horses were clearly outside of HA's. Since the case files are part of the public records of which the Board may take official notice, see 43 C.F.R. § 4.24(b), any intimation that the Board's action in vacating its partial stay was improper is expressly rejected.

directly involved in the instant matter nor subject to collateral attack herein. Accordingly, the arguments which appellants have pressed with respect to the reduction of horse habitat acreage will not be considered further in this decision.

In addition to the reduction of acreage, however, appellants also asserted that the determination that excess horses existed within the Piceance-East Douglas HMA and the West Douglas HA was based on faulty methodology and ignored the impact of cattle use, in violation of relevant Board and Federal court precedents (API at 4-6; AMBA at 3-5; CWHBC at 4-5), and further claimed that the proposed selective removal violated the statutory and regulatory requirement that all management activities "be at the minimal feasible level," relying on 16 U.S.C. § 1333(a) (1994) and 43 C.F.R. § 4710.4 (API at 6-7; CWHBC at 6-8).

In response, BLM asserted that the decision to remove excess horses from the Piceance-East Douglas HMA and the West Douglas HA was based on substantial evidence delineated in the EA and was fully in accord with all relevant Departmental and judicial precedents (BLM at 4-7) and assailed appellants' contrary assertions as based on both unsubstantiated claims (BLM at 9) and factual inaccuracies (BLM at 11-12). It also rejected challenges by appellants to the approval of a selective removal, noting that an alternative mode of removal (water trapping) had been considered but was determined to be infeasible given the number of horses scheduled to be removed (BLM at 10). BLM argued that the difference of opinion between BLM and appellants as to the appropriateness of selective removal is the type of conflict in which the Board has traditionally deferred to BLM's experts absent an affirmative showing of error in the decision being appealed.

[1] The statutory framework relevant to the questions raised in these appeals is derived from section 3(b)(2) of the WFHBA, as amended, 16 U.S.C. § 1333(b)(2) (1994). That section provides that, where the Secretary of the Interior determines, on the basis of available information, 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). 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) (1994).

Numerous decisions of this Board as well as Federal courts have explored the application of these statutory provisions. Thus, the Board has noted that 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); Michael Blake, 138 IBLA 170, 177 (1997); American Horse Protection, Inc., 134 IBLA 24, 26 (1995); 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, trends in range condition, actual use, and climatic factors. Joey R. Deeg, 141 IBLA 67, 69 (1997); 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 future resource damage, removal is warranted. Audubon Society of Portland, 128 IBLA 370, 374-75 (1994); Animal Protection Institute of America, 109 IBLA 112, 114 (1989). BLM need not wait until actual damage to the rangeland has occurred, but, rather, may take preventative action to avoid it by removing horses before their numbers become excessive. Michael Blake, 135 IBLA 9, 15 (1996); Animal Protection Institute of America, 118 IBLA 63, 75 (1991).

In applying these principles, the Board has noted that where a decision authorizing removal of excess wild horses from an HMA or HA is predicated on an analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors that demonstrate that maintenance of a 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 Act, 16 U.S.C. § 1333(b) (1994), that decision will be affirmed. *See, e.g.,* Joey R. Deeg, *supra* at 69-70; American Horse Protection, Inc., 134 IBLA at 26-27. An individual challenging a BLM decision to remove wild horses from an area of the public lands bears the burden of demonstrating, by a preponderance of the evidence, that BLM committed an error in ascertaining, collecting, or interpreting the data upon which it relies in its decision. Joey R. Deeg, *supra* at 70; Michael Blake, *supra* at 14.

In their statement of reasons, appellants objected to the total removal of horses from five areas (Reagles, Square S (Pastures A and B), Little Hills, North Dry Fork, and Cathedral Creek) outside HA's. *See* AMBA at 3; CWHBC at 3-4. The basis for this objection was appellants' claim that horses existed in these areas in 1971 and that the current West Douglas HA and Piceance-East Douglas HMA boundaries did not accurately define the areas in which wild horses resided in 1971. However, not only have appellants presented no evidence to support this claim, it is clear that any challenge to the present HA boundaries has been brought far too late.

These boundaries (with acreage aggregating 443,979 acres) have clearly been in existence since 1981, inasmuch as they were referenced in the White River Rangeland Program Summary which issued in that year. There is no indication that any appellant challenged these boundaries at that time or at any time prior to the instant appeal. Given that the basis

of the original HA boundaries was utilization of the acreage by the wild horse population as habitat in 1971, the failure of any of the appellants to timely challenge these determinations waives any right to do so at the present time. See Animal Protection Institute of America, 118 IBLA 20, 25 (1991). Since BLM is clearly authorized to remove all wild horses and burros from areas which are not within HA's (see, e.g., Craig C. Downer, 111 IBLA 339, 342-43 (1989); 43 C.F.R. § 4110.4) the BLM decision to remove all horses from the five areas identified above must be affirmed.

This brings us to the main issue presented by these appeals, *viz.*, whether BLM has properly decided to remove wild horses from within the Piceance-East Douglas HMA and the West Douglas HA. Appellants claim that the determination that excess horses existed on the Piceance-East Douglas HMA and the West Douglas HA was based on faulty methodology and ignored the impact of cattle use, in violation of relevant Board and Federal court precedents. For reasons provided below, however, we must conclude that BLM properly determined that excess horses existed on the Piceance-East Douglas HMA and the West Douglas HA.

The rangeland evaluation sections of the EA provide the data on which BLM based its horse removal determination. See Rangeland Evaluation-Piceance Portion of the Piceance-East Douglas HMA (EA at 17-32), and Rangeland Evaluation-Texas Creek Pasture Summary within West Douglas Herd Area (EA at 32-38). The EA noted that a census was conducted for the entire Piceance-East Douglas HMA from February 27, 1995, through March 1, 1995. This HMA consists of two grazing allotments: the Yellow Creek allotment which is composed of three separate units (Rocky Ridge, Barcus-Pinto, and Boxelder) and the Pasture C component of the Square S allotment. The EA noted that the actual use by cattle of these areas amounted to 3,025 animal unit months (AUM's) in 1993, 2,971 AUM's in 1994, and 2,700 AUM's in 1995. Based on the 1995 census of the wild horse population, the estimated consumption by wild horses in the same area was 5,175 AUM's on a yearly basis. ^{5/} See EA at 18-19.

The EA included utilization studies which used the Key Forage Plant method and which were conducted on wild horse key use areas sustaining seasonal and continuous year-long use by wild horses. The EA stated that since, with only one exception, the wild horse key use areas had received little cattle use, livestock utilization was considered as a fixed factor in the equation and thus, any impacts or trends observed were directly attributable to wild horse use. Furthermore, where cattle use of a wild horse key area was anticipated, utilization studies were conducted prior to the cattle's arrival. See EA at 20-21.

^{5/} The estimated AUM's consumed by wild horses was computed by use of a forage formula which equated the monthly consumption of forage by a horse to 1.25 AUM's and then multiplied this forage factor by the number of horses (345) and then multiplied this total by 12 to obtain the estimated yearly consumption in AUM's. While AMBA challenges utilization of the 1.25 forage factor for horses, this Board has already affirmed its use (see American Mustang and Burro Association, 144 IBLA 148, 151 (1998)), and appellant has provided no reasons why the Board should revisit that question.

According to the EA, these studies showed that, when consumption was adjusted for the time of the survey and the higher than average precipitation which the range had received that year, all of the key areas showed use in the heavy range and, in some areas, at the higher end of the heavy range. See EA at 20-23. The EA then incorporated this data into a trend analysis designed to show changes from 1980 to 1995 in the presence of various key species in specific areas. This data generally showed significant declines in key species, particularly Indian ricegrass and western wheatgrass. See EA at 24-29. The 1995 declines were particularly notable because the 1995 precipitation (22.45 inches) was 46 percent above average and, more significantly, the distribution of almost half (10.46 inches) of this moisture in April, May, and June, had created optimum conditions for plant production and cover, conditions which occur very infrequently. See EA at 27.

In reviewing how the present wild horse population impacted on various management objectives of the HMA, the EA noted that, to the extent that the objective was to maintain a healthy, viable breeding population of wild horses, the plan had not merely been met, but vastly exceeded, since the estimated 1996 effective population of 414 was the highest recorded. ^{6/} However, with respect to the objective of improving range conditions and maintaining a moderate level of use, it was clear that this objective had not been reached given the high to severe levels of use shown in the utilization studies. The EA concluded that the failure to achieve this objective was primarily the result of a failure to manage horse numbers within the HMA and that removal of at least 300 horses was necessary to bring horse stocking rates to a level which would permit an improvement in range trend and ecological condition. See EA at 30-31.

The EA also recommended that future decisions with respect to stocking adjustments should be based (at least at the present time) on a specific utilization rate standard (40%) for ranges used on a year-long basis (Barcus-Pinto and Rocky Ridge) as well as a specific utilization rate standard (50%) for those ranges (Boxelder and Square S) used on a continuous seasonal basis. These standards were intentionally set at a low level so as to "mitigate the inevitable impact of repeat defoliation of key forage species that occurs on wild horse ranges grazed on both an extended seasonal and continuous year-long basis." See EA at 32. These standards were, however, expressly designed to be subject to adjustment as future trend data warranted. Id.

The EA also provided a rangeland evaluation for the Texas Creek portion of the West Douglas HA. Trend data was gathered from six separate plots within the Texas Creek grazing allotment. All of these plots, with one exception, had been established in 1979. See EA at 32-35. With the sole exception of the Texas Mountain #1 plot, all of the trend data developed from these plots showed declining available forage. The EA's summary of this data was stark:

^{6/} This wild horse population represented a five-fold increase in the stocking rate since 1985, when the population was 79. See EA at 30.

Cattle use on Texas Creek during the 1995 G.S. is estimated at 100 AUMs. Considering the extensive area and the well distributed waters, there should have been only light grazing use. In conducting and preparing of these studies utilization rates far exceeded that attributable to cattle. Sign (feces) throughout the area indicated the heavy use was the result of wild horses. Overall use is estimated at heavy 60-80% (20% attributable to cattle), and considering the period of use being throughout the growing season, the impacts to the rangelands are not only negative, but without some change in use by horses, the area will be devastated. If we are to manage this area appropriately we need to bring down the utilization rate to a maximum of 40% by horses and 20% by cattle. In terms of numbers we estimate that Texas Creek can handle no more than 30 horses on a year round basis.

(EA at 36-37.) Utilization studies showed that, with respect to key forage species, utilization rates on bottomlands and uplands ranged from heavy (60%) to severe (80%).

As noted above, appellants have assailed the EA on a number of bases. Thus, they argue that the EA ignored the impact of cattle use. This, however, is simply not true. The EA is replete with references to cattle use. See, e.g., EA at 18-19, 20-21, 34, 35, 36, 37-38. Moreover, we agree with BLM that the data clearly establishes that the decline in forage conditions is directly attributable to the increases in wild horse population. Thus, overall cattle use in the Piceance portion of the Piceance-East Douglas HMA had declined from 1993 through 1995, yet range conditions had substantially worsened during the same time notwithstanding unusually good precipitation in 1995. Similarly, cattle use in the Texas Creek allotment was only 100 AUM's during the 1995 grazing season (EA at 36), yet range conditions continued to deteriorate. Both the trend data and the utilization studies are consistent with BLM's conclusion that the causative factor in the decline of the range is the increase in horse usage.

It is clear from a review of the EA that BLM's decision to remove horses from the HMA and HA is supported by years of comprehensive studies. BLM's decision reflects compliance with the WFHBA's mandate to "restore a thriving natural ecological balance to the range." 16 U.S.C. § 1333(b)(2) (1994). ^{7/} In keeping with Federal Court and Board precedents, BLM's

^{7/} The suggestion by appellant API that the term "thriving natural ecological balance" should not include domestic livestock within its ambit (Point of Order, supra at 3) is flatly contradicted by the legislative history of that term. Thus, in recommending adoption of this standard, the House conference committee stated:

"The goal of wild horse and burro management * * * should be to maintain a thriving ecological balance between wild horse and burro populations, wildlife, livestock, and vegetation, and to protect the range from deterioration associated with overpopulation of wild horses and burros." H.R. Conf. Rep. No. 1737, 95th Cong., 2d Sess. 15 (reprinted in 1979 U.S.C.C.A.N. 4069, 4131).

decision was based on its monitoring data, and there is no indication that the target numbers of horses were drawn randomly or for administrative convenience. See Dahl v. Clark, *supra* at 595; Michael Blake, 135 IBLA at 15; Audubon Society of Portland, *supra* at 376; Animal Protection Institute of America, 109 IBLA at 118. We expressly find that the determination to remove the horses as outlined in the EA and the Area Manager's decision is fully in consonance with the applicable law.

Appellants contend that the proposed age selective removal violates the statutory and regulatory requirement that all management activities "be at the minimal feasible level," relying on 16 U.S.C. § 1333(a) (1994) and 43 C.F.R. § 4710.4. See API at 6-7; CWHBC at 6-8. The EA explained that the removal of horses would be age selective in accordance with the Strategic Plan for Management of Wild Horses and Burros on Public Lands (1992) and BLM Policy. This method of removal involves returning older, unadoptable horses to the unit where they were trapped, with the exception of horses trapped outside designated management areas. Unadoptables from those areas would be relocated within the HMA. Older, unadoptable horses gathered from the West Douglas HA would be returned to the location from which they are gathered. (EA at 2.) The EA stated that, to the extent possible, emphasis would be placed on maintaining individual herds with a balanced age and sex structure after the removal in accordance with the Piceance-East Douglas HMAP. *Id.*

The EA acknowledged that short term negative impacts could result from age selective removal, but added that these impacts would not significantly affect the herds' long term viability. According to the EA, the impacts of returning older horses to the range could be mitigated by placing a maximum number of older studs in the adoption program, by periodically releasing unrelated mares or studs into the HMA if necessary and, similarly, by introducing both mares and/or studs from the HMA into Texas Creek at any time the situation warrants such action. See EA at 51-52.

While we do not doubt the sincerity of appellants' objection to the removal process, it is clear that this is not a situation in which BLM has ignored potential adverse side-effects in its decisional process. Rather, BLM has considered a variety of possible adverse consequences, posited steps which could be taken to ameliorate specific problems should they develop, and otherwise determined that the risks posed are acceptable and in accord with its management policies. While appellants argue that age selective removal is inappropriate, the Board will not substitute its judgment for that of BLM when, as in the instant case, BLM's decision is based upon its technical expertise and our independent review of the record fails to establish that BLM's conclusions were in error. American Mustang and Burro Association, Inc., *supra* at 150; American Horse Protection Inc., 134 IBLA at 27.

We conclude that the record in this case supports BLM's removal decision, which is based on an analysis of monitoring data and trends in range condition. Appellants have simply not met their burden of demonstrating that the data upon which BLM based its horse removal action is in

error. While appellants may disagree with BLM's analyses and conclusions, such disagreements, without more, are insufficient to render BLM's findings invalid or to provide an adequate basis for this Board to justify reversal of the decision below. See generally, Animal Protection Institute of America, 117 IBLA at 8.

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

James L. Burski
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

