

ELIZABETH BOX

Editors Note: Request for Reconsideration Granted; BLM Decision Affirmed
Order of January 25, 2006

ELIZABETH BOX

IBLA 2002-467

Decided June 14, 2005

Appeal from a decision of the Field Manager, Jackson, Mississippi, Field Office, Bureau of Land Management, providing notice of the repossession of three horses and one burro, and canceling the Private Maintenance and Care Agreements for those animals. Freeze Marks 95174606, 99570727, 00578276, and 01575072.

Reversed.

1. Wild Free-Roaming Horses and Burros Act

BLM may properly cancel private maintenance and care agreements for wild horses and repossess the horses when there is sufficient evidence of improper care of the adopted animals to establish that the adopter violated the terms of the agreements.

2. Evidence: Sufficiency – Wild Free-Roaming Horses and Burros Act

Photographic evidence or a report from a veterinarian or a BLM official will ordinarily constitute sufficient evidence of the adopter's treatment of the adopted animal.

3. Evidence: Sufficiency – Wild Free-Roaming Horses and Burros Act

Credible reports by third parties regarding the condition of adopted animals may be used in conjunction with proof of the deteriorating condition of the animals to provide support to a BLM finding of substandard care.

APPEARANCES: Elizabeth Box, Little Rock, Arkansas, pro se; Patricia A. Woods, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Knoxville, Tennessee, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Elizabeth Box appealed the August 13, 2002, decision of the Field Manager, Jackson, Mississippi, Field Office, Bureau of Land Management (BLM), which canceled her two Private Maintenance and Care Agreements (PMACAs) for three wild horses, identified by Freeze Marks 00578276, 01575072, and 99570727, and one wild burro, identified by Freeze Mark 95174606, because these animals allegedly were not properly maintained and cared for. (Decision at 1.) BLM argues that Box did not adequately feed, water, or supply sufficient care for the adopted animals as required by the PMACA. BLM regulations provide that the PMACA may be canceled and the animals repossessed if the provisions of the PMACA are violated. See 43 CFR 4770.2(b). However, BLM did not have sufficient evidence in this case to demonstrate that Box violated the PMACAs.

On June 23, 2001, after she completed an adoption application and a PMACA, BLM assigned Box one horse, Freeze Mark 99570727, subsequently named “Wildfire’s Legend” (Wildfire), and one burro, Freeze Mark 95174606, which was named “Rosie.” BLM’s record indicates that Box received Wildfire for the reduced price of \$25, apparently because of an injury to the stud’s right rear leg.^{1/} BLM conducted a compliance inspection of Box’s residence and her treatment of Rosie and Wildfire in January 2002. At that time, BLM did not find any violations of the PMACA.

Almost a year after the adoption of Wildfire and Rosie, on June 22, 2002, Box completed another adoption application and PMACA and adopted two additional wild horses, Freeze Marks 00578276 and 01575072, which were named “Mrs. B” and “Shadow.” The three horses and one burro joined three horses that Box had previously adopted from BLM and for which she had received title, as well as several of their offspring, at her residence in Little Rock.^{2/}

The chain of events leading to the repossession of the three horses and one burro began shortly after Box adopted Mrs. B and Shadow. During the last week of June 2002, someone contacted Pulaski County Animal Services (Animal Services) and claimed that there were horses and other animals being mistreated at Box’s residence and that some of the horses were loose. See Handwritten Notes of Robert Martin (undated); Handwritten Notes of Fred Gooley (undated).

^{1/} Box asserts that the leg was infected “real bad and we weren’t sure if he would make it.” (Notice of Appeal at 4.)

^{2/} In 1997 and 1998, Box adopted three wild horses, later named “Mooney,” “Star,” and “Blaze.” Box apparently obtained title to Mooney, Star, and Blaze in 1999, and these horses are not directly involved in the current action.

On June 27, 2002, an Animal Services officer made the following notes regarding the horses and burro at Box's residence:

* * * When I arrived * * * I found two horses in the neighbor yard. I ran them back into the yard of Elizabeth Box. There I found there was a total of nine horses & donkey on about 2 acres of land. They had no water. * * * She had two of the horses tied around her house with no food or water. The electric fence cable was not able to keep her animals confined at all.

Handwritten Notes of Fred Gooley (undated).^{3/} Another Animal Services officer prepared a memorandum describing his visit to Box's residence on June 28, 2002, which states:

* * * I was dispatched to [Box's residence] by Robert Martin * * * to check on the condition of several animals which consisted of ten (10) horses * * * one (1) mule * * *.

* * * I also noticed that two (2) of the horses were tied out in the open with no way to get out of the hot sun. * * * Two (2) of the horses and the mules hooves were grown out to long and were starting to split. There was only two (2) full bails of hay for ten (10) horses and the one (1) mule and that there was no green grass growing in the pasture. * * * All of the horses appeared to be blanketed (wormy).

Memorandum from Anthony T. Archer (undated).

Also on June 28, 2002, Robert Martin, the Animal Services Supervisor, conducted an inventory of the alleged infractions at Box's residence. Handwritten Notes of Robert Martin (undated). The inventory lists, in part: "Horses 9 + 1 Mule[:] Not enough Food[,], No Pasture[,], 2 Horses Tied[,], No Shelter[,], No Water in Ice chest set out for horses to Drink from[,], what little water was there was Green with Algae"; "No hay For horses"; "No water for 2 horses"; "water that was there was Dirty Not Fit for Animal Consumption"; "all animals being allowed to Breed at Will"; "Fence Not Adequate to hold horses"; "Not enough Pasture to hold that many horses without lots of Hay"; and "Horse look Wormy and Malnourished." Id.

At the behest of Animal Services, Pulaski County Humane Society President Kaye Jordan became involved, and on July 2, 2002, Jordan, Martin, and several

^{3/} Unless otherwise indicated, quotations have not been changed from their original form.

Animal Services officers reinspected Box's residence. More specifically, an Animal Services officer recounted:

I inspected the horse Lot [at Box's residence] and the condition of the horse's. I found all nine horse's to be under fed and in a demoralized condition. The horse's were eating the bark from tree's and shrubs. There was no grass for grazing or any sign of feed or hay.

The fense containing the animals was two strands of electric wire and wasn't installed properly. I witnessed one horse walk thru the fense with no trouble. Some horse's were tied to tree's with rope's and some were dragging rope's. These horse's were in danger of tangling themselves and injuring themselves or other horse's.

There wasnt enough water for the horse's and it was unfit for consumption. There wasnt proper water containers on the premises.

One of the stud horse's had a old injury on his rear foot that hadnt been treated properly and resulted in a disfigered ankle.

Handwritten Memorandum from Jimmy Carter (July 12, 2002). In addition, Jordan recorded the conditions as:

* * * The temperature at [10:30 am] was 96 degrees. * * * To the far right of the residence in the back there was a horse tied with a rope around it's neck and to a tree, this horse had no water, there was also a large top to a concrete bird bath lying on the ground and 2 empty 5 gallon buckets. I removed all of these so the horse would not get tangled and injure itself. We found 2 old ice chests and rinsed them out and filled them with water for the horse. * * * In approximately a 3 acre area fenced with barbed wire and an electric line at the top are 7 grown horses and 2 colts. This is a dead pasture meaning there is no grass at all. There are 2 bales of hay and there are 2 bathtubs for water, both empty and very dirty. Two of the horses were tied to trees by long ropes approximately 12-15 feet long. These two horses had gotten their ropes tangled and were in extreme danger of being severely injured. We untied the ropes and took one completely off the halter, the other horse ran to the back of the property dragging the length of rope. We cleaned and filled both tubs full of water. The older daughter picked up one of the ropes tied to the horse, the horse bolted and the child fell down almost being trampled by the horse.

After watering all of the animals and watching them drink hungrily, I telephoned Elizabeth Box at work. I stated to her that since I had last been out in December of 2001, things at her residence with her animals had gotten even worse than when I first started working with her. * * *

(Memorandum from Kaye Jordan (July 2, 2002).) Also on this date, Martin and Jordan told Box that she had ten days in which to improve conditions and prove the horses were negative for equine infectious anemia using the Coggins test. Handwritten Notes of Robert Martin (undated); Memorandum of Kaye Jordan (July 2, 2002); Memorandum from Anthony T. Archer (undated).

Animal Services returned to Box's residence on July 4, 2002, after receiving a complaint that a horse was loose. See Memorandum from Anthony T. Archer (undated). Box recaptured the animal before Animal Services arrived. Id. She later explained that Mrs. B had escaped after being startled by neighborhood fireworks. Letter from Elizabeth Box to Vicki Craft, BLM (Aug. 21, 2002); Notice of Appeal Addendum, at #4 and #12. At that time, Archer observed that very few improvements had been made to the property. See Memorandum from Anthony T. Archer (undated).

On July 12, 2002, Animal Services and the Humane Society revisited Box's residence and apparently determined that she had not made sufficient improvements. See Handwritten Notes of Robert Martin (undated). There is little documentation and many conflicting statements about what transpired on that date. However, there are two occurrences of consequence that are not disputed, although the events surrounding them are.

First, Box surrendered some animals, although not necessarily any horses or burros, to the permanent custody of the Humane Society.^{4/} Martin's notes reflect that he talked Box into signing over some animals; however, he does not indicate what types of animals she relinquished. Id. BLM's record contains a form from the Humane Society signed by Box in which Box surrenders her rights to four animals. Jordan also initialed and dated this document on July 12, 2002. At the top of the form "3 BLM Horses" and "1 Mare 2 Studs 1 Burrow" is written. However, Box claims that she only gave the Humane Society some small animals and did not

^{4/} Box claims to be a life-long animal lover and rescuer. She submits various statements of family, friends, and neighbors asserting the truth of this characterization and noting that people regularly left animals for Box to nurture back to health. It is not disputed that the Animal Services officers found not only horses and a burro but also cats, dogs, rabbits, chickens, turkeys, and goats on her property.

surrender any horse or burro to the Humane Society. (Notice of Appeal Addendum, at #7.)

Second, on July 12, 2002, Wildfire, Mrs. B, Shadow, and Rosie were moved to the residence of Box's friend, Blenda Breedlove, for approximately 30 days. Martin's notes indicate that he believed the Humane Society contacted BLM, who picked up the animals at issue. (Handwritten Notes of Robert Martin (undated).) In an undated statement, BLM formally approved the temporary transfer of the animals to Breedlove.^{5/} See Marty Neugebauer, BLM Boarding Authorization (undated). However, Breedlove apparently was under the impression that she could permanently keep Wildfire. See Letter from Blenda Breedlove to Vickie Craft, BLM (Aug. 12, 2002). Box also asserts that she arranged for the transfer of the animals to Breedlove's residence herself and understood that they would remain at Breedlove's residence temporarily while she improved her residence. Letter from Elizabeth Box to Vicki Craft, BLM (Aug. 21, 2002); Letter from Joey Livingston (Nov. 25, 2002).

What is not clear from the record is the condition of the horses and burro on July 12, 2002, when Animal Services and the Humane Society removed the animals. In a letter to BLM asking for boarding costs, Breedlove notes that "I received these animals all in poor health and very maltreated." See Letter from Blenda Breedlove to Vickie, BLM (Aug. 12, 2002). However, she later backs away from that statement.^{6/} See Letter from Blenda Breedlove to BLM (Sept. 6, 2002); Letter from Blenda Breedlove to the Board (Dec. 2, 2002). The record does not indicate that any veterinary examinations were performed on the adopted animals; however, it appears that a veterinarian took blood samples on Box's other horses on July 13, 2002. (Handwritten notes of Robert Martin (undated).) According to Martin, the veterinarian indicated that only one of the horses, an older mare not involved in this action, was "very malnourished."^{7/} Id.

Accompanying BLM's record are twelve undated photographs, presumably depicting the conditions at Elizabeth Box's residence during the summer of 2002. These photographs contain unidentified images of many different horses, and the

^{5/} The statement notes that the animals "were picked up from [Box] due to starvation and abuse." See Statement from Marty Neugebauer, BLM (undated).

^{6/} In a later letter in support of Box, Breedlove states that she was lied to by the Humane Society about the instant case and believes that Box should have her horses returned.

^{7/} Box provides a copy of a veterinary report for Blaze dated July 27, 2002, which indicates that she appeared thin. (Invoice # 9311, Redfield Veterinary Hospital.) The vet notes "[m]are should begin to gain weight." Id.

horses' Freeze Marks are not visible.^{8/} Box herself identifies many of the horses in the photographs in her response to BLM's Answer. According to Box and consistent with BLM's description of the colt in the adoption materials, Exhibit E shows a frontal view of Shadow, a yearling colt that Box had adopted in June 2002 and that BLM repossessed. Shadow's halter is tied with a long rope to something and does not appear to have much food or water nearby. The picture appears to show that Shadow could reach a limited amount of vegetation and could possibly reach the shade of a tree. The photograph does not show all of the area that Shadow could reach, and therefore does not conclusively prove the nature of his condition or treatment. Box contends that there was a 30-gallon container just out of view of the camera. Shadow, a yearling, does appear thin in the photograph, but no ribs are visible, and, according to general BLM information, it is not unexpected that a newly adopted horse would appear leaner than a domestic horse. See BLM, "Information For Your Adopted Wild Horse or Burro."

The horse Box identifies as Wildfire in Exhibit F is shown from a front three-quarter perspective and matches BLM's description in the adoption materials of a now three-year-old sorrel stud. The horse has its front feet in an empty feed trough; it does appear slender but no ribs are visible. From the angle of the photograph, there does not appear to be any grass in the enclosure. The fence looks to be made primarily of wire and some portion may be electrified. There does appear to be one or two strands of barbed wire at the top of the wire fence, although it does not appear to fully circumvent the enclosure.

BLM Exhibits A, C, and H all show a burro, presumably Rosie. In some of the photographs, Rosie appears to be tied by a long rope from her halter to something, although she could just be dragging a rope. Exhibits A and C show Rosie in an enclosure with other horses. These pictures do not show any grass in the pasture. However, in Exhibit H, she appears to be in a field with a substantial amount of grass. Rosie is not visibly unhealthy.

In some of the photographs, horses that are not the subject of this proceeding appear thin and the ribs of at least two different horses are visible. A significant portion of the bark of one of the trees in Exhibit C is missing.^{2/} However, Rosie is

^{8/} Breedlove sent a letter to the Board on Dec. 2, 2002, indicating that one of the horses in the pictures provided by BLM was actually hers. According to Breedlove, the horse was staying at Box's property because it had become ill after it was bitten by a snake and Box was helping to care for it. It is unclear as to what horse or to what photograph Breedlove is referring.

^{2/} Box explains that the trees affected are sweet gum trees, which the horses eat
(continued...)

the only one of the animals at issue in this proceeding that can be identified in this picture. Most of the horses have ropes attached to their halters, although it is unclear whether they are actually tied to something stationary or are dragging the ropes. A few of the horses appear to have access to grass, although most are standing in a dirt pasture. Most of the horses appear to have access to shade.

Other photographs that BLM presents depict water containers. Exhibit I shows the remains of a child's swimming pool. Box states that she placed this in the pasture because the horses liked to splash around in it. (Notice of Appeal Addendum, at Exhibit I.) Exhibits J and L display pictures of old bathtubs that are used as water troughs. There is water in the tub in Exhibit J, which appears to be dirty below the water line. The bathtub in Exhibit L is completely empty and there is a lot of dirt, small twigs, and/or algae in the bottom. Exhibit K is an empty red cooler, which also has dirt and/or algae at the bottom. The red cooler in Exhibit K is consistent with the one shown with two horses presumably not involved in this proceeding in Exhibit B.

Box asserts that the three horses and the burro that BLM repossessed were in a healthy condition. She describes her treatment of Wildfire's injury and rehabilitation and details how she learned to clip hooves. Box claims that she vaccinated and wormed all of the horses and fed them high protein feed and fertilized hay. She also specifically disputes some of the details provided by the Animal Services and Humane Society officials.^{10/}

Significantly, Box has provided a note from Mike Pallone from the Pallone Veterinary Hospital that states their clinic visited three horses and a burro at Breedlove's residence. The note states:

* * * These were horses that [Breedlove] was providing foster care for[;] these animals did not appear to be abused or mistreated. Two of the horses had just been adopted and were in fair condition.

^{9/} (...continued)

notwithstanding the availability of hay.

^{10/} Specifically, Box notes that she had five bales of hay and plenty of water for the horses on the days described by the Animal Services officers. (Notice of Appeal Addendum at (013).) She also mentions that Shadow, which she had just adopted, had worms at the time of adoption, and that the two weeks was not enough time to significantly improve his condition. Id. Box also denies the use of barbed wire in her fencing. Id. at (015) and (016).

The 3 yr old Stud has been treated by us in the past and was deemed as sound. He do[es] have proud flesh and scar tissue over an old wound but is sound.

The 7 yr old Jenny needed to be groomed but was in fair to good condition otherwise.

The 2 yr old Mare was in good condition.

The 1 yr old Stud was in fair condition.

This is the only known statement of a veterinarian regarding the condition of the adopted animals shortly after their removal from Box's residence.

In addition, Box has presented copies of receipts for horse feed and hay dated September 13, 2001, and May 10, June 24, June 29, July 5, July 12, and August 14, 2002. There are also letters from people who state that she bought hay from them. See Letter from Grady E. Hopf (dated Sept. 4, 2002) (stating that Box had bought between two and four rolls of hay about every two weeks since August 2001, including 11 bales in 2002).

Box provides copies of various reports and receipts, most from several years before or several months following the events in question or relating to horses not at issue in this case. ^{11/} Included in these papers is a receipt for six Coggins tests in July 2001, although it is not specified which horses received those tests. There is also a veterinary record for Wildfire from July 26, 2001, discussing the wound on his right

^{11/} The most probative veterinary examination that Box submitted is a copy of a note by a veterinarian written in regard to Box's remaining horses several months after the adopted horses were taken. The note states:

On 7-13-02, I drew blood samples on 6 horses owned by Elizabeth Box. These samples were sent to [illegible] for EIA testing.

The horses were housed in a small wooded lot which was heavily burdened with feces & mud. I would classify the over all general health as below average. These horses were poorly muscled with enlarged abdomens. The oldest mare was the most severely affected, she was very thin with ventral edema around her udder. However, there was no physical signs of abuse.

(Dr. Chris Ward, Letter (Sept. 6, 2002).) The BLM did not have this statement at the time it canceled the PMACAs.

rear leg. The Discharge Summary from that visit states that Wildfire is not lame and had improved greatly since Dr. Ward's initial examination, while in Box's care. See George Martin, DVM, Discharge Summary (July 26, 2001).

On August 13, 2002, BLM canceled Box's two PMACAs, and the four animals were subsequently repossessed from Breedlove's residence into BLM's care. Box filed her Notice of Appeal and Statement of Reasons on September 9, 2002. In these documents, as well as others she has subsequently filed, she disputes many of the BLM's allegations and contends that she did not violate the PMACAs.

The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. §§ 1331-1340 (2000), authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. See 43 CFR Subpart 4750. Title to horses placed in private care remains with the Government for a minimum of 1 year after placement and execution of the PMACA and until BLM issues a Certificate of Title.^{12/} 16 U.S.C. § 1333(c) (2000); 43 CFR 4750.4 and 4750.5. Regulations 43 CFR 4760.1(a) and 4770.1(g) require the adopter to comply with the PMACA and the regulations.

BLM alleges that Box violated the 2001 and 2002 PMACAs by failing to properly maintain and care for three horses and one burro. Both of the PMACAs between BLM and Box state that the agreements cover the "maintenance, protection, and the welfare of wild horses and burros," and each PMACA contains a list of prohibited acts found in the regulations. Specifically, the regulations and the list of prohibited actions on a PMACA forbid "treating a wild horse or burro inhumanely." 43 CFR 4770.1(f). "Inhumane treatment" is defined as "any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community."^{13/} 43 CFR 4700.0-5(f). In addition, the regulations note that the adopter must "(3) [h]ave adequate feed, water, and facilities to provide humane care to the number of the animals requested. * * *, [and that] (iv) [f]eed and water shall be adequate to meet the nutritional requirements of the animals,

^{12/} Box had met the year requirement to receive a title to Rosie and Wildfire, however, the animals were taken before Box could request title. Ironically, in correspondence postmarked Dec. 9, 2002, over 3 months after the horse and burro were repossessed, BLM sent Box a form whereby she could request title to Rosie and Wildfire.

^{13/} Likewise, "[h]umane treatment' means handling compatible with animal husbandry practices accepted in the veterinary community, without causing unnecessary stress or suffering to a wild horse or burro." 43 CFR. 4700.0-5(e) (emphasis omitted).

based on their age, physiological condition, and level of activity * * *.” 43 CFR 4750.3-2(a).^{14/} Thus, proper treatment of a horse or burro generally requires a minimum of sufficient food, water, shelter, and health maintenance (predominantly, hoof trimming, current vaccinations, worm control, and proper sanitation).

[1] BLM may properly cancel a PMACA and repossess the animals when there is sufficient evidence to demonstrate that the PMACA was violated. See, e.g., Jerry Dixon, 165 IBLA 125, 127 (2005) (BLM may summarily cancel a PMACA “upon good and sufficient evidence that the terms of the agreement have been violated.”); Dennis Turnipseed, 66 IBLA 63, 67 (1982) (“All that is required on the part of the BLM officer is that there be good and sufficient evidence that the animals were, in fact, treated inhumanely or in violation of the cooperative agreement.”). If BLM shows that it had sufficient evidence the PMACA was violated, then the burden is placed on the adopter to establish that the BLM’s cancellation of a PMACA was improper. See Larry Vanden Heuvel, 145 IBLA 309, 315 (1998).

[2] In most cases, before BLM cancels a PMACA because an animal allegedly received inhumane treatment, it has specific evidence in the form of a report from a BLM official or a veterinarian, or in the form of clear, identified photographic evidence to demonstrate that the animal adopted was not receiving the proper amount of food, water, shelter, or health maintenance. See, e.g., Jerry Dixon, 165 IBLA at 127 (“In this case, the photographs taken on the day of the [BLM] inspection provide irrefutable evidence of the deteriorating condition of the animals.”); Larry Vanden Heuvel, 145 IBLA at 312-13 (BLM specialist observed adopted horses standing in 24 inches of manure and a post-repossession veterinary investigation revealed that the hooves of one adopted mare were severely overgrown.); Thana Conk, 114 IBLA 263, 265-68 (1990) (BLM inspector observed the horse was underweight, had long hooves, and no water; and the post-repossession veterinary records indicated that the animal was neglected.); Esther E. Lenox, 102 IBLA 224, 227 (1988) (Pre-repossession veterinary report detailed foot problems of several horses, including one adopted horse; post-repossession exam by BLM found the adopted horse was overfed; and appellant acknowledged that the adopted horse was one of those examined by the veterinarian.); Dennis Turnipseed, 66 IBLA at 64 (BLM officer observed and photographed the poor condition of the animals five days after local authorities removed the animals from the adopter’s care based on a sheriff’s testimony of inhumane treatment.).

^{14/} 43 CFR 4750.3-2(a) also specifies the following: “(ii) Until fence broken, adult horses shall be maintained in an enclosure * * *. Materials shall be protrusion-free and shall not include large-mesh woven or barbed wire; (iii) Shelter shall be available to mitigate the effects of inclement weather and temperature extremes * * *.” Although there is some indication of barbed wire and inadequate shelter, BLM does not argue that Box violated her PMACAs on these grounds.

Based upon the evidence in the BLM record, we conclude BLM did not clearly support its determination that Box violated the PMACAs. After listing the four animals involved in this action, BLM's decision stated, in its entirety:

Wild horse regulations state animals must be maintained in accordance with the adoption agreement, and that title shall remain with the Federal Government until a Certificate of Title is issued. Animals cannot be sold, traded, or given away. The Humane Society of Pulaski County has informed our office that these animals have not been properly maintained and cared for. The Criminal Penalties Section 4770.5 of the CFR states that any person who violates these regulations is subject to a fine of not more than \$2,000, or imprisonment for not more than 1 year, or both for each violation.

Based upon the above information your PMACA has been cancelled. You will also be prohibited from adopting any wild horses or burros in the future.

Such a cursory statement does little to explain BLM's evidence or analysis leading to the repossession the animals in Box's care. Nor does BLM's decision even mention a specific regulation Box allegedly violated.

Most of the evidence BLM presented to the Board indicates that the PMACAs were canceled because Box purportedly provided the horses and burro with inhumane treatment.^{15/} But BLM's record does not provide any statements or reports from BLM officers or veterinarians regarding the condition of the health of the four animals or the facilities or treatment they were receiving from Box at the time of the repossession. And, as discussed above, the photographs that accompany BLM's record are at best ambiguous. None of the animals pictured is identified by the BLM or can be identified by its Freeze Mark. While the photographs show that at least two horses appear thin with visible ribs, it is unclear that these horses are involved in this appeal or even belonged to Box. Using Box's identification of the animals, Rosie, Wildfire, and Shadow do not appear to be obviously unhealthy or thin. The other horse, Mrs. B, could not be positively identified in any of the photographs.

[3] To support its decision to cancel the PMACAs, BLM relies solely on the generalized statements of third parties. Credible third party statements may be used

^{15/} By including the sentence "[a]nimals cannot be sold, traded, or given away" in its decision, BLM may have attempted to state that since Box "voluntarily surrendered" her animals to the Humane Society, she violated the PMACA by improperly transferring her animals. However, in this case, we will not infer that violation based only on that alleged event.

to support a BLM decision to cancel a PMACA if they confirm a showing that the adopted animals were in a deteriorated condition. Specifically, BLM may rely on “the evidence of substandard care presented by the deteriorating condition of the animals themselves and by the credible reports of third parties.” Dennis Turnipseed, 66 IBLA at 67 (BLM inspector confirmed the observations of the local officials who took the animal.). But we have not to date upheld the cancellation of a PMACA based on the reports of local authorities or other third parties unless those reports were corroborated with clear photographic evidence or a pre-repossession or post-repossession veterinary examination or BLM examination. Thus, if BLM is going to rely on evidence provided by third parties it must constitute sufficient evidence to support a finding that the horse is in deteriorating condition.

The third party information in this case describes the events leading up to BLM’s repossession of the animals and the general condition of some of the horses at Box’s residence. ^{16/} While the third party statements consistently describe Box’s residence as lacking sufficient water, food, pasture, and fencing for all of the animals, they do not, in this case, carry the weight of unambiguous evidence.

In BLM’s record, only Breedlove’s statement specifically describes the adopted horses as being mistreated, but, as discussed supra note 6, she later calls that statement into doubt. In addition, one of the Animal Services officers opines that all of the horses looked underfed and that he saw no sign of feed or hay. (Handwritten Memorandum from Jimmy Carter (July 12, 2002).) This not clearly substantiated by the pictures. Moreover, two of the other Animal Services or Humane Society officers note the presence of at least two bales of hay, and do not describe the horses as thin. See Memorandum from Anthony T. Archer (undated); Memorandum from Kaye Jordan (July 2, 2002). In addition, some of the photographs appear to contradict third party statements regarding the availability of pasture, water, and shelter. Most significantly, the unsubstantiated conclusions of the third parties are undercut by the only contemporaneous documentation of a veterinary examination of the animals, conducted while they were in Breedlove’s custody. This report indicates that all of the animals were in fair to good condition. See Mike Pallone, Pallone Veterinary Hospital (undated). Thus, while the third party evidence may indicate that Box’s residence was less than ideal, there is very little to justify BLM’s findings

^{16/} Box attempts to argue that all of the third party evidence against her is hearsay and should be disregarded by the Board. Even if any of the reports, statements, or memoranda from the Animal Services or Humane Society officers could properly be classified as hearsay, the Board will not reject them as inadmissible, but view them with regard to their probativeness. See Ramona & Boyd Lawson, 159 IBLA 184, 191 n.8 (2003).

that the animals were not receiving humane treatment and were actually in a deteriorating condition.^{17/}

In Patrick E. Hammond, 60 IBLA 205 (1981), the Board determined that BLM's cancellation of a PMACA was improper because there was not any evidence of inhumane treatment. In that case, BLM cancelled Hammond's "cooperative agreement," which was a precursor to the PMACA, and repossessed four horses that he had adopted after a fifth horse, adopted in his wife's name, died while Hammond was trying to recapture it. Id. at 206. The Board determined that BLM improperly canceled the cooperative agreement because "[t]here is no evidence in the record that any of the four horses, specifically assigned to appellant, was ever inhumanely treated." Id. at 207. In addition, a veterinary examination after repossession revealed that the four horses were sound. Id. at 206. The Board recognized that BLM could properly cancel a PMACA, "when there is sufficient evidence of mistreatment of an animal or animals under another cooperative agreement." But, the record in Hammond, like the record in the instant case, did not support such a finding. Id. at 208 n.4.

In repossessing the animals, BLM may look to the conditions of other horses and burros in an adopter's care when determining whether a PMACA was violated. Esther E. Lenox, 102 IBLA at 228 ("[T]he Board has indicated that the condition of other horses in an adopter's care may affect the status of a [PMACA]."); see also Susan A. Moll, 101 IBLA 45, 49-51 (1988) (same). However, in this case, BLM has failed to present sufficient evidence the adopted animals were in a deteriorated condition. The credible third party evidence that BLM has presented shows, at the most, that the conditions at Box's residence were not always ideal. Thus, BLM did not have sufficient evidence to cancel Box's PMACAs and repossess the horses and burro.^{18/}

^{17/} Indeed, Wildfire appears to have improved while he was in Box's care. See George Martin, DVM, Discharge Summary (July 26, 2001).

^{18/} Our decision in this case should not be read as requiring the BLM to support every repossession for alleged inhumane treatment with a report of a veterinarian, BLM official, or other similar individual. However, if BLM is going to rely on accounts from credible third parties, it must also show sufficient corroborating evidence to support BLM's finding of inhumane treatment.

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

Will A. Irwin
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge