

**RELABELING OF
ACREAGE
CREATED THE
OVERPOPULATION
MYTH OF WILD
HORSES &
BURROS
by TJ Barbour**



Our wild horses are managed by both the Bureau of Land Management and the US Forest Service. Today I'm going to speak exclusively about the Bureau of Land Management (BLM) because they manage the majority of our wild horses and burros, and because they pay the bills for the few that the Forest Service does manage, so the Forest Service takes their management policies and plans from BLM.

The BLM makes the claim that there is an overpopulation problem with our nation's wild horses and burros. I am going to show you how this myth has been manufactured through some creative relabeling of land areas and by cherry picking language in laws and regulations that have been twisted to fit a narrative that supports continued livestock grazing while vilifying our wild horses and burros.

The first federal law to protect American native wild horses was passed because of a grassroots campaign that started a national movement in the 1950's. This was started by a woman named Velma Johnson, who many know as Wild Horse Annie.



During the 1950's Wild Horse Annie sought to get Congress to protect wild horses and burros from mustangers, people who would cruelly round up our wild horses mostly for commercial purposes. She became aware of the cruel manner in which these wild horses were gathered, trapped, and transported, and the fact that most of them were taken to slaughter.

In her efforts to protect them she was able to gain national attention through many articles and interviews in newspapers and magazines. She eventually found lawmakers who were willing to take on the cause to protect our wild horses from inhumane handling. As noted by the Associated Press on July 15, 1959 "*Seldom has an issue touched such a responsive chord.*"

Wild Horse Annie testified to Congress in support of the Wild Horse Annie Act in 1959. She said "*...the fight for the mustang has come a long way in the past few years...From*

a mere handful of fifty or so firm believers in his plight of survival, it has come to an awareness throughout the country of his desperate plight, resulting in a mighty plea on his behalf." And here we are, all of us, meeting this week at state capitals across the nation and at this week-long conference, once again presenting a "mighty plea" to our lawmakers to stop the inhumane treatment and disappearance of our wild horses and burros.

Wild Horse Annie's national campaign resulted in the passing of Public Law 86-234 (the Wild Horse Annie Act) on Sept 8, 1959. This prohibited the use of motorized vehicles to hunt or gather wild horses on public lands. But it did not include language she had hoped for to protect the horses and manage them on their lands.

When the BLM began to interpret the law and decide how they were going to manage the wild horses Wild Horse Annie was not impressed, but rather worried. During communications over the management of a herd in Wyoming she stated *"the BLM is confusing the term 'preserve' with another term, 'permit to exist',"* going on to express her worry that BLM was presenting a pretty picture but perhaps things were not so rosy. She said *"Although they issued a news release indicating that the mustang will now receive help, I can see no evidence that this is their intention. They plan to select certain areas in which they will 'permit certain limited numbers of mustangs to exist.' There was no talk whatsoever of setting this land aside specifically for the use of the mustang, nor is there any program to provide any form of protection for those few which are permitted to remain."* This was in 1967 although it can still be applied despite a more powerful act being passed in 1971.

Wild Horse Annie went on to do a nationwide youth campaign which had thousands of letters and postcards going to lawmakers and the president. In response, once again to public outcry, and because wild horse populations were in such steep decline, Congress unanimously passed the Wild Free-Roaming Horses and Burros Act. Now the BLM had been directed to protect wild horses and burros on the lands where they were then in 1971.

"WE NEED the tonic of wildness." President Richard Nixon quotes Thoreau, on December 18, 1971, as he signed the Wild Free-Roaming Horses & Burros Act. He went on to say:

"During the past several months, many thousands of Americans, particularly children, have concurred in Thoreau's plea with an outpouring of concern for the preservation of wild horses and burros on our Western ranges. ... I take special pleasure today, therefore, in signing strong new legislation to protect these noble animals."

"Embodying the best judgment of both the Congress and the executive branch, it should do much to insure a continuing safe habitat for wild horses and burros on the public lands of the

United States. It declares that all such animals shall be managed and protected..." Said President Richard Nixon upon signing of the bill.



RICHARD NIXON

37th President of the United States: 1969 - 1974

Statement on Signing Bill To Protect Wild Horses and Burros.

The BLM was created in 1946 by combining two existing agencies, the General Land Office and the Grazing Service. Many wild horse advocates, then and now, wonder if these agencies, who were primarily tasked with settling wild lands and protecting the interests of livestock producers using public lands, were the right people for the job. The concern is that there was, and is, a big conflict of interest right at the base.

The BLM manages a larger area of land than any other federal agency, 264 million acres, or about one-eighth of the United States. The mission of the BLM is *"to sustain the health, diversity and productivity of the public lands for the use and enjoyment of present and future generations."*

So after the passage of the 1971 Wild Free-Roaming Horses & Burros Act, referred to hereafter as the Act, or the 1971 Act, the BLM was required to do studies of the habits and habitats of free-ranging horses and burros, permitting public land to be set aside for their use. In addition, the Act required that these horses and burros be protected as "living symbols of the historic and pioneer spirit of the West". The BLM was tasked with identification of the areas where free-roaming horses and burros were found; there was no specific amount of acreage set aside, and the Act required management plans to *"manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public land."*

Although wild horse ranges were principally for the protection of the horses, the land was required to be maintained for multiple use, meaning that these areas were not to be used exclusively for the management of wild horses/burros. The BLM was also permitted to close public land to livestock grazing to protect wild horse and burro habitats.

So let's break that down to just those points that I'm speaking about because I could do

another speech entirely on the failure to uphold some of those mandates like “protection” which has never happened but rather transferred from individuals abusing the horses to the government and their contractors performing the very horrors Wild Horse Annie saw which prompted her actions. Or I could speak about the vagueness in terms like “thriving natural ecological balance” which without a clear legal definition BLM has interpreted that to mean enough forage for livestock producers, resulting in thousands of horses being removed.

Instead, I am going to focus on how relabeling, sales or transfers, and remapping have created the myth that there is a wild horse overpopulation problem. The myth was created by the way the BLM interpreted the law to create regulations that are now part of the Code of Federal Regulations that outline how the BLM will achieve the mandates first given them by the passing of the 1971 Act.

Relabeling

BLM has changed the label of wild horse range to 4 different labels. They are: Herd Area, Herd Management Area, Wild Horse Range and Complex.

BLM was mandated to designate areas where wild horses were on the range in 1971. At first the wording was simply ‘the range’. Wild horse ranges per the wording in the law were to be managed principally for wild horses/burros. This upset a lot of livestock producers, mostly those public lands grazing permittees who raised cattle or sheep very cheaply on public lands. They felt this principal use would severely limit their livestock numbers permitted to be out there. So BLM began a semantic game and started relabeling areas.

The BLM report to Congress in 1974 gave statistics for 1973. They admitted the number of livestock grazing the 10 western states where wild horses live at that time was over 5.5 million animals. The wild horse population was estimated to be 60,000.

However we know that by this time there had been a massive effort (before the bill and right after the passing) to remove as many horses as possible so less land, and less animals would be considered federally protected. This means the claim of our wild horses rapidly disappearing, from 2-3 million in 1900 to approximately 60,000 by the time of the first census in 1973 certainly should have prompted a unanimous bill to protect them.

The most universal use of the rangelands at this time, by livestock, wild free-roaming horses and burros, and wildlife, is the utilization of the forage produced and natural habitat provided. The Bureau administers 52 grazing districts under the authority of the Taylor Grazing Act. These districts encompass 157,324,558 acres of Federal range (table 57). During calendar year 1973, 13,759 operators (table 59) held 15,669 licenses or permits (table 60) to graze 5,546,394 livestock animals to the extent of 10,382,996 animal unit months (table 59). Gross receipts from grazing use

TABLE 63.—*Wild Free-Roaming Horses and Burros, calendar year, 1973*
(Estimated numbers)

State	Horses	Burros	Total
Arizona.....	115	10,000	10,115
California.....	3,000	3,200	6,200
Colorado.....	500	-----	500
Idaho.....	500	8	508
Montana.....	325	-----	325
Nevada.....	20,000	1,000	21,000
New Mexico.....	7,550	80	7,630
Oregon.....	5,265	16	5,281
Utah.....	1,000	50	1,050
Wyoming.....	4,411	20	4,431
Total.....	42,666	14,374	¹ 57,040

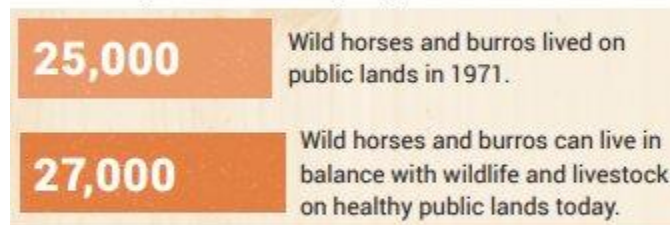
¹ Included in total numbers are 17,165 horses and 123 burros claimed under Section 5 of the Wild Horse and Burro Act. The total number also includes branded horses grazing in trespass which were not claimed.

Additionally, in the 1986 publication in the Federal Registry, BLM made the following admission in regards to amending the ACT: “(Section 4710.2 *Inventory and monitoring.*) Several comments urged that the authorized officer be required to address the numbers of horses and burros that existed in herd areas in 1971 as a basis for further management. This suggestion is not adopted in the final rulemaking. There is no indication in the Act or its legislative history that herds should be managed at their 1971 size or any other specific level. Furthermore, although estimates of 1971 population levels have been made, they are at best conjectural and highly unreliable. It is more appropriate to allow the authorized officer the flexibility to determine appropriate management levels based on analysis of competing land uses, forage availability, and public concern.”

*Note: The joint report to Congress lists the numbers of horses for 1973 AND an additional 3,000 managed by Forest Service in a chart not shown here, for a total population of 60,000.

BLM has routinely claimed that the national Appropriate Management Level (AML) comes from the number of horses that were on the land when the Act was passed in 1971. So managing the herds for approximately 27 thousand horses, which is based on what BLM claims was the census in 1971 is a lie. Additionally, why would we ever want to again see a decline in the population to a number that prompted Congress to be so alarmed that they unanimously passed an Act to protect them?

BLM's Wild Horse & Burro Program Infographic



Taken from their downloadable infographic published in 2022

Before I go further let me explain that I refer to US Code or USC. The USC is made up of the official federal statutes of the United States, and contains 53 titles. It includes laws or statutes passed by Congress.

And I refer to the Code of Federal Regulations (CFR). The CFR contains all of the regulations promulgated by executive agencies. In the context of wild horse/burro law, the CFR Title 43 contains the regulations put in place by BLM that put statutes or the 1971 Act from the USC into administrative practice. Regulations in the CFR can change every year so it is important to stay updated with the most recent version. Regulations can also be worded differently than their corresponding statute in the US Code since they are the BLM's practical implementation of the statutes.

United States Code - (USC)

The law enacted by Congress.

16 U.S. Code Chapter 30 - WILD HORSES AND BURROS

Code of Federal Regulations - (CFR)

The regulations put in place by BLM that put statutes from the USC into administrative practice

43 CFR Part 4700 - PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

As BLM interpreted the Act and began changing the labels in the CFR the BLM began calling these areas where horses were "herd areas" instead of range, naming just a few

of these areas 'Ranges' with a capital R. They are the Pryor Mountains Wild Horse Range in Montana, the Little Book Cliffs Wild Horse Range in Colorado, the Nevada Wild Horse Range in Nevada., and the Marietta Wild Burro Range, also in Nevada.

By 1978 the Ranges were named (although without any Congressional authority to split up the range as defined in the USC), and BLM established 209 other areas labeling them herd areas.

Originally, and to this day, according to the USC range is defined as:

(16 U.S. Code § 1332 - Definitions)

(c) "...the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;

This is the only definition that existed, for any acreage where wild horses and burros lived or were managed, when the act to protect them on those lands was passed until 1986. There was no range with a capital R, no herd area or herd management area, despite BLM having changed labels already in 1978.

In December of 1984 the BLM announced plans to amend the CFR defining how they were going to meet the mandates of the 1971 Act. These changes were finalized and published in the Federal Register in March of 1986.

Several comments from the public, about these amendments, were received which objected to a specific subsection (§ 4710.3-2) saying that *"numerous wild horse and burro ranges will be established on public lands"*.

At this point in 1986 the BLM changed the 'range' to 'Range' officially. This put the minds of livestock grazers at ease because BLM was making official this label with no intention of creating any further "Ranges" to be managed principally for the federally protected animals. To this day no new "Ranges" have been added.

BLM also created another label calling some acreage Herd Area (HA) and Herd Management Area (HMA). And when the final decision was published in the Federal Register in 1986 the BLM had included a definition for Herd Area replacing range as the general definition of acreage to be used. These changes were unconstitutional going against the original intent of the 1971 Act.

BLM now defined Herd Area as:

(§ 4700.0-5 (d)Definitions.)

"...the geographic area identified as having been used by a herd as its habitat in 1971"

Then to break up these large HA's the BLM developed and officially defined 2 more labels. These are Herd Management Areas or HMA's and Ranges which are defined under the management area section of the regulations in the CFR differently than the definition which still exists in the USC.

The definition in the CFR for HMA's says:

(§ 4710.3-1 *"Herd management areas."*)

The authorized officer shall establish herd management areas for the maintenance and management of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, and the relationships with other uses of the public lands...."

BLM states on their website: *"Today, the BLM manages wild horses in subsets of these Herd Areas, known as Herd Management Areas."* When did Congress authorize managing the animals on these smaller HMA's instead of the entire herd range, or Herd Area?

And ranges were officially defined in 1986 as well which read:

(.§ 4710.3-2) "...Herd management areas may also be designated by the authorized officer as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds."

BLM had to create this entry for ranges, in the regulations, to appear to still be in compliance with the Act. But notice that the definition for a range to be created or designated is based on a HMA, not the larger area now called a HA. Again, where was the legal authority to diminish the lands the Act had stated were to be used for management of these animals? BLM was not acting to carry out the mandate that was intended, but it was now clear that they were intent on twisting and turning the law to attempt to appease livestock grazers.

So this is where the BLM changed the original mandate to manage all wild horse areas "principally" for wild horses or burros to only "Ranges" had to be managed principally for them, despite already managing this way starting in 1978.

In the publication in the Federal Register in 1986 when the new regulations were finalized 43 CFR was amended in the final rulemaking to require that populations be self-sustaining and that populations of horses and burros be kept in balance with other uses as well as the productive capacity of the habitat. Again note the wording "in balance with other uses", not principal use.

Despite BLM receiving several comments urging that the language on forage allocation in the existing regulations be retained, because horses or burros had principal use right? Other comments stated that the word “comparably” was vague and should be replaced by “equivalent” in describing how wild horses and burros will be considered in relation to other resources in formulating land use plans. This request was generous in that commenters were willing to change principal use to equivalent use.

However BLM skirted giving any such verbal limitation by stating: *“Specific provision for forage allocation is not necessary because the policy is clearly stated that wild horse and burro management will maintain self-sustaining populations. This cannot be done without adequate forage. The word “comparably” is used in the existing regulations to require all resource values to be considered in proportion to their presence on the land, competition with other resources, and the interest of the public in them. Assigning equal or equivalent weight to all resources, as some comments suggested, would not allow varying circumstances to be treated appropriately.”*

So BLM has at this point done away with “principal use” in all but 4 areas. They have reduced that to comparable use with other resources, like other wildlife, and livestock. What happens after that gets even worse.

BLM started using the Federal Land Policy Management Act (FLPMA) to justify multiple use decisions which included livestock grazing. So even though the CFR (4710.5) allows for Closure to livestock grazing. Stating: *“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.”* BLM in almost every case will reduce the number of horses allowed instead of reducing the number of livestock.

BLM claims that FLPMA mandated them to manage public lands for multiple uses. Therefore they cannot manage these areas principally for wild horses but rather must consider them comparably. However, BLM ignores the line in FLPMA that says *“The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.”*

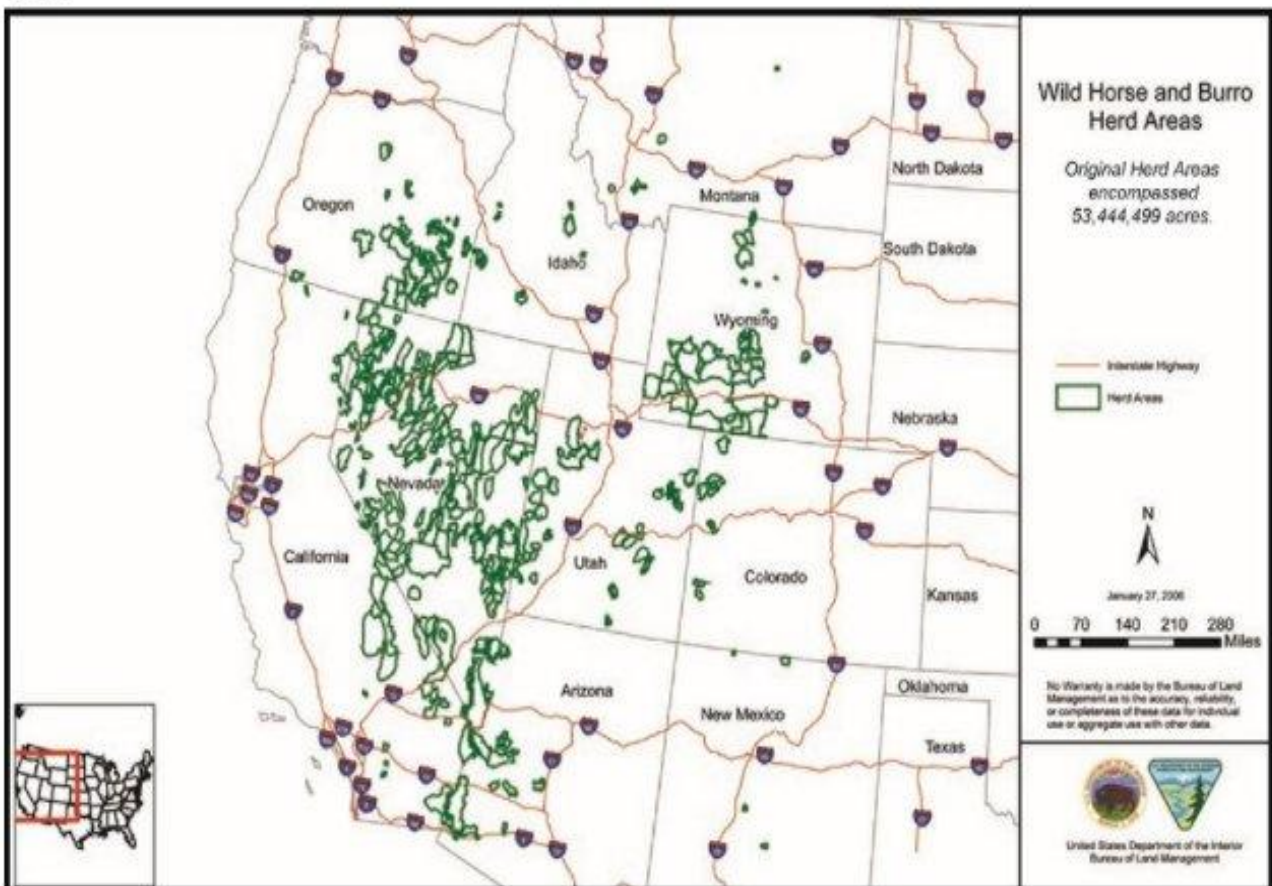
The 1971 Act was a land use policy already in existence which was upheld in *Mountain States v Hodel* where the judge ruled that: *“In structure and purpose, the Wild Free-Roaming Horses and Burros Act is nothing more than a land-use regulation enacted by Congress to ensure the survival of a particular species of wildlife.”* Therefore FLPMA does not apply to areas managed for wild horses and burros as it relates to multiple use versus principal use.

BLM through relabeling, and ignoring inconvenient parts of law has managed to continually decrease the actual acreage used to manage wild horses and burros.

In February 2009, U.S. Representatives Nick Rahall, a Democrat from West Virginia, and Raul Grijalva, a Democrat from Arizona, introduced HR 1018, the "Restore Our American Mustangs Act". The act, if passed, would have amended the 1971 Act to increase available acreage for wild horses, develop additional sanctuaries, "*[forbid] the killing of healthy animals, and [allow] greater public participation in herd management decisions.*" The bill passed a House vote on July 17, 2009 with a vote of 239 for and 185 against, but died in the Senate after being referred to the Senate Energy and Natural Resources Committee.

The first areas designated after 1971 totalled 53,444,499 acres.

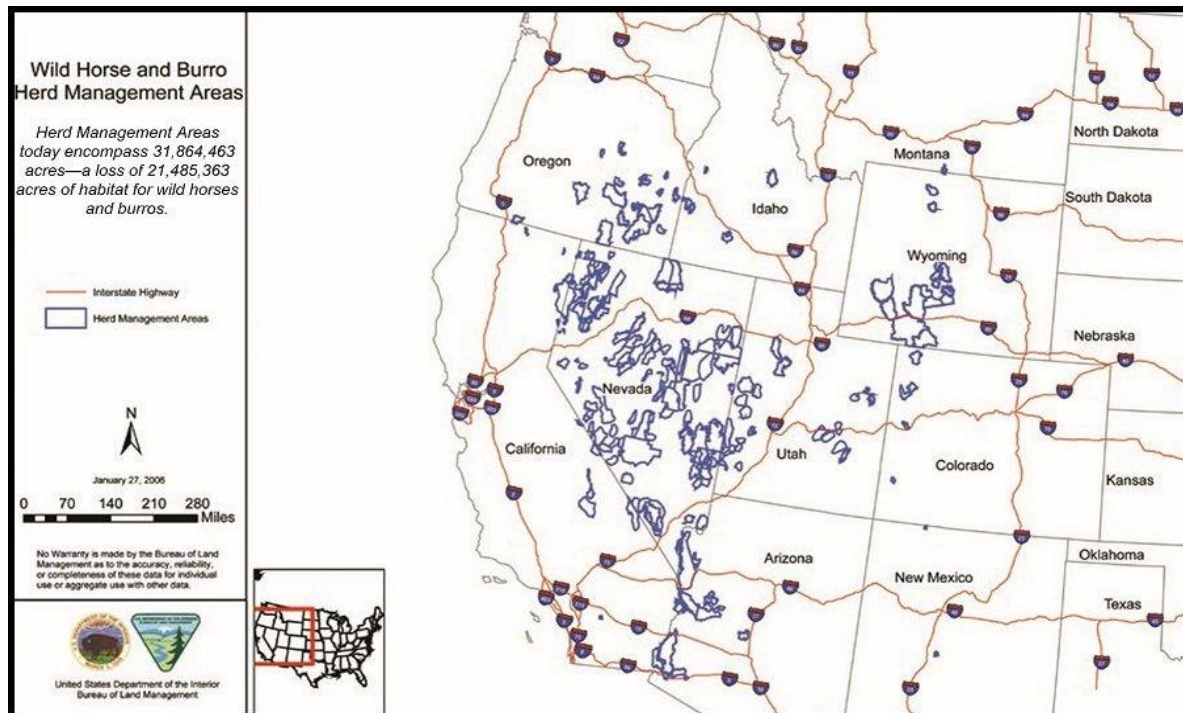
1971



By 2005 BLM was reporting that HA's were totaling approximately 53.3 million acres. However the 201 areas where horses were actually managed, now called HMA's, had an acreage of roughly 34.4 million acres.

By 2009, the BLM reported that there were 339 HA's with 51.2 million acres, and 180 HMA's and an acreage of 31.8 million acres.

Now in 2022 they manage 26.9 million acres for wild horses and burros in 177 herd management areas. And the specific acreage is impossible to verify or differentiate between HA, HMA, state, private or even fenced out areas.



So the national pasture has gone from 53.4 million acres to 26.9 million acres according to BLM statements on the surface. This is a loss of about half their original lands, which is bad enough but to add injury to insult if one researches a bit more, you find out that the acreage reported as 26.9 million acres cannot be verified using the BLM web pages and documents.

I stated “on the surface” because as you dig deeper you find more inconsistencies. For example, BLM recently put the “Herd Area and Herd Management Area Statistics as of March 1, 2021” out and the total acreage they claim is managed for HA's is 42.3 million acres. However, if you add the HA's by state that are managed currently for horses/burros you get 22.7 million acres. And the total BLM acres for HMA's is 26.9 million acres. The big difference in the HA acreage is because BLM lists in separate tables for each state the BLM acreage no longer being managed for HA's which totals 19.6 acres. If you add the 2 figures you get 44.4 million acres, which is closer to the 42.3 million they claim. And this is all from the same document published by BLM.

	BLM Acres	Total
National HA Acres	42,304,802	42,304,802
AZ	1,765,281	
CA	3,224,907	
CO	376,538	
ID	390,969	
MT	28,324	
NV	9,717,198	
NM	24,506	
OR	2,532,733	
UT	2,541,574	
WY	2,118,247	
Total HA BLM Acres According to State Totals		22,720,277
National HMA Acres	26,917,766	
AZ	1,498,207	
CA	2,053,082	
CO	365,988	
ID	383,894	
MT	27,094	
NV	14,032,947	
NM	24,506	
OR	2,733,577	
UT	2,154,456	
WY	3,644,013	
Total HMA BLM Acres According to State Totals		26,917,764

BLM Inconsistencies - all figures from current BLM Website

WILD HORSE AND BURRO ACREAGE

Land Managed for Wild Horses and Burros

In 1971, when Congress passed the Wild Free-Roaming Horses and Burros Act, these animals were found roaming across 53.8 million acres of public land, known as Herd Areas, of which 42.4 million acres were under the BLM's jurisdiction. Today, the BLM manages wild horses in subsets of these Herd Areas, known as Herd Management Areas (HMAs), that comprise 31.6 million acres.

WILD HORSE AND BURRO PROGRAM

The Bureau of Land Management manages and protects wild horses and burros on 26.9 million acres of public lands across 10 Western states as part of its mission to administer public lands for a variety of uses. The Wild Horse and Burro Program's goal is to manage healthy wild horses and burros on healthy public rangelands.

Complexes and Sales/Transfers

After the relabeling of lands and improper use of multiple use over principal use the BLM then performed 2 more twists that have taken more land from the wild horses/burros. They now have, and are still, creating Complexes. They will take several HMA's, normally 4 - 6 of them, and create a complex to be managed as one area. Then they start lowering the Appropriate Management Level (AML) or population size allowed for each HMA. Eventually they zero out 1 or 2 of the HMA's, this means they remove all animals and no longer manage those acres for them. This decreases the acreage of the complex however, complexes are often listed with the acreage of all the original HMA's but do not reflect the acreage removed when an HMA is zeroed out.

The second twist I mentioned earlier in regard to loss of acreage for wild horse and burro habitat is that BLM has sold and transferred lands where horses were. This happens most often in sales or transfers to state land trusts. I first came across this during a case in 2018 for the Muddy Creek HMA in UT. In this specific instance portions of a wild horse area were sold to Utah School and Institutional Trust Lands Administration (SITLA). This created a checkerboard area of federal public lands and state lands. Then when wild horses or burros moved from an area of public lands onto

state lands they were considered off the HMA. SITLA then sued BLM to remove the horses from these SITLA lands. So BLM agreed to gather and remove them.

In another sale to SITLA BLM stated they were selling lands with the wild horses to the state and, because the only way to keep the horses off the area would be to construct a fence which was not feasible, that HMA, Blawn Wash, was zeroed out for horses. What part of the 1971 Act gave them the authority to sell or transfer lands where the wild horses are?

In 2001, a land exchange between the BLM and the State of Utah School and Institutional Trust Lands Administration (SITLA) placed the most critical wild horse habitat of the Blawn Wash HMA lands into SITLA administration. SITLA lands comprise 43% (25,970 acres) of the Blawn Wash HMA, which produces an estimated 70% of the forage in the HMA. The forage allocations within this area are now controlled by SITLA. Wild horses managed by the BLM could not be excluded from the SITLA lands without fencing the whole boundary of the SITLA lands, which would be very difficult due to the rough terrain. Also, it would be very costly. For these reasons it was determined that the Blawn Wash HMA would be managed at an AML of zero

Adding insult to injury again, BLM continued to use the acreage for Blawn Wash in the totals when including it as an HMA in the Bible Springs Complex. They do claim zero horses, but use the acreage anyway.

Bible Springs Complex Wild Horse Gather, Removal and Fertility Treatment Plan
DOI-BLM-UT-C010-2014-0035-EA

Springs, Blawn Wash, Four Mile and Tilly Creek Wild Horse Appropriate Management Level (AML) Assessment, signed 4/18/2005 (EA# UT-040-04-47)). The current AMLs for the Complex HMAs are shown in Table 1 below.

Table 1. Current AML for Bible Springs, Blawn Wash, Four Mile, Tilly Creek HMAs

HMA	AML	Season of Use	AUMs	HA Acres	HMA Acres
Bible Springs	60-30	Year Long	720	61,863	57,890
Blawn Wash	0	Year Long	0	62,787	0
Four Mile	60-30	Year Long	720	61,273	58,710
Tilly Creek	50-20	Year Long	600	37,006	35,963
Bible Spring Complex	170-80		2040	222,929	152,563

However when BLM put out a plan to gather animals in the Complex the chart stated the HA acreage is 222,929, this included 62,787 acres that no longer exist for Blawn Wash. If the Blawn Wash acreage was taken out it would be a total of 160,142 acres. But the HMA acreage they list in the last column is 152,563 because each of the other 3

It's also important to note that all the Utah HMA webpages, give totals for the larger HA acreage even though the page is for the HMA, giving the appearance that more acreage is actually used for the animals.

I added each HMA listed individually, I included private and state acreage along with federal land for each HMA, and only came up with 1,338,315 acres. In trying to establish what figures are accurate I found the 2018 Wells Wild Horse Resource Management Plan (RMP) Amendment which is a document that outlines not only wild horse management for that area, but would also contain plans for all other uses of that area, like livestock grazing, extraction activities and recreation etc. This amendment is the most current version of the RMP and when I added up the acreage for the 4 HMA's in this document I got a total of 1,183,340 acres. So the Complex is either 1.2, 1.3 or 1.6 million acres.

From the individual listings above these are the HMA's listed as being the Antelope/Antelope Valley Complex:

Total **1,338,315 Acres**

14

Further frustrating my attempt at finding out exactly how many acres are really managed for wild horses was the fact that BLM states they manage 26.9 million acres of public lands for wild horses and burros, but when listing acres on individual webpages they include acres that are not public lands. Some is state, some is public, and some simply has no horses on it for any measurable time, or was just zeroed out but still left listed.

For example BLM listed one entire HMA, the Ash Meadows HMA, with a total of 115,143 acres. However, the area is only managed for one horse because of the incidental use of horses migrating through the area.

While we are very happy that BLM acknowledges horses migrate, and they are allowing this area to be used for the occasional horse, it is not really an HMA with a herd being managed on it, therefore inclusion of the acres in the total really makes it appear that more land is being managed for herds than there really are.

ASH MEADOWS HMA

The Ash Meadows HMA is managed by the Ely BLM District for a population of one wild horse to account for incidental use by wild horses that travel through the area. Although the area cannot sustain a viable wild horse herd, wild horses from the adjacent Delamar Mountains HMA enter the area and will use it for a short period of time, before returning to their home range.

Further clouding the finding of the actual number of acres that wild horses can live on is the fact that the acreage for the HMA's listed by BLM will not reflect the actual acreage utilized by wild horses because almost every single HMA listed also includes cattle. This means that the acreage listed for any given area is not actual. Additionally, with cattle comes fences that keep them from parts of the HMA's they are already being limited to.

So originally we had a big box, the range, then we had a relabeling of that box to an HA, (with the exception of the 4 boxes they called Ranges), then FLPMA came into existence and multiple use mandates were used to make a small circle in the HA box that circle is labeled an HMA. And still even that HMA has to be shared with livestock and other grazing wildlife. Then BLM, combining several HMA's, makes a new area and labels it a complex. WHY not just use the original HA's then? Because creating the HMA's allowed them to map out natural water sources and prime grazing lands, which I will address later.

Because there is currently no way to determine the actual acreage with all the different numbers in BLM's various documents, plans and websites, the next best way to see how much of a "share" the horses get would be to determine forage and water allocations, In order to do this you would have to research each individual HMA, and this is found in the Land Use Plan (LUP) or Resource Management Plan (RMP) for that

area. The LUP/RMP will also give the amount of forage allocated to other wildlife, and to livestock. I find that most HMA's allow the horses approximately one-fourth of the forage. The BLM will typically give at least half to livestock, then the rest is split between wild horses/burros and other grazing wildlife. Using the proportion for forage allotted you can apply that same proportion to attempt and determine the land BLM manages them on.

For instance if an HMA is 300,000 acres, the typical forage allocations are 150,000 to livestock, 75,000 to elk/deer/bighorn sheep or antelope (other grazing wildlife) and 75,000 to the wild horses. Obviously this isn't an exact calculation because of variables like: not every acre would have forage, some areas have much less 'other wildlife', etc. Given different variables that do exist you might see a larger allocation given to livestock, but rarely would you see an increase for wild horses no matter what the circumstances. This method certainly isn't fool proof, but often tells the truth much clearer than the webpages of BLM do. BLM is required to be transparent, but the transparency thus far has proven that BLM numbers cannot be relied upon to be accurate

In my attempt to use the BLM individual HMA pages to prove the claim that BLM manages 26.9 million acres for wild horses and burros I could not verify anything. I often had to try and search for other documents or web pages because some pages gave partial information or unclear information. I found some things that make transparency of actual acreage impossible to discern. These problems include, but are not limited to:

- information that's unclear, or partial necessitating the use of other sites or documents.
- different documents for specific a HMA, such as the RMP/LUP's or even an Environmental Assessment (EA) often show different acreage for that HMA.
- all of Utah's websites for HMA's give the acreage for the HA
- BLM includes acreage that is not public land, but is private land or state lands without specifying how much of each is in each area.
- some HMA's are in more than one state and are listed in each state they are in, which could lead to adding the total acreage of that HMA twice..
- complexes are listed with total acreage, and each individual HMA is still listed, which again, could lead to adding all of these areas twice.
- BLM in one instance also listed the "area around the HMA's" of a complex which was almost the total acreage of the HMA's added together, thus trying to double the acreage when in fact the areas outside HMA's are not being managed for wild horses and burros
- one HMA shows that the wild horses were only allowed to be on a grazing allotment on the HMA, further decreasing the acreage actually used to manage that herd, but yet listing the entire HMA.

Mapping and Fencing Out

That HMA is the Tobin Range HMA. Where BLM listed 2 allotments, or livestock pastures, where the horses are allowed to be, but no acreage for those areas is listed, and if you look up the allotments to try and find out you will see that only a portion of those allotments are on the HMA. So discerning how much of the allotment can be used by the horses is as impossible as finding out how much of the HMA they can actually use is.

TOBIN RANGE HMA

Size: The area consists of 186,654 acres of BLM land and 11,582 acres of a mix of private and other public lands for a total of 198,236 acres.

Horses are to occupy the area of the HMA in the Pumpernickel and South Buffalo allotments.

What is the truth in that entry is that wild horses and burros are often not managed on the acreage BLM states just because it is the acreage given for the area whatever it's labeled. The horses are almost always fenced into smaller areas on the original lands. They are often fenced out of water. This was done when the original areas were reduced to HMA's. The lines drawn on the maps were drawn to exclude areas of natural water or prime grazing lands for livestock.

For instance the Palomino Buttes HMA boundaries, and the Warm Springs HMA boundaries in Oregon are only a few miles apart. It is likely this and many other herds in Oregon were all one herd. But through mapping boundaries the BLM has created small pockets of horses in the least desirable areas.

In the case of the Palomino Buttes and Warm Springs HMA's what's in the area between the 2 that has been excluded for wild horse use? As shown by the little blue area WATER is what was mapped out of the HMA.



This drawing of lines on a map very often is to avoid the law. The 1971 Act is a land management plan therefore it comes with water rights. Thus far all the water rights have gone firstly to livestock, mining etc., not the horses/burros.

If you look at the BLM maps for each state you see how the HA's often touch one another, the way to deal with the idea of big areas of land being used principally for wild horses or burros was to draw them on the map as if they were somehow different herds, then create HMA's that were smaller, and maybe separate those if there's any good water for livestock, mapping the wild horse out. Then when they can no longer reduce the area on the map they just start fencing.

All this has continued because BLM uses FLPMA to support whatever narrative they want. For example, we know they use the multiple use mandate in FLPMA to claim cows can be on wild horse lands, but when wild horses were eliminated from areas in the Ely District in Nevada an advocate asked why the Secretary did not notify Congress when a resource (the wild horses) was eliminated per FLPMA mandates.

The response from BLM was to define principal or major use, which according to FLPMA: *"includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production."*

This letter is in response to your October 27, 2009 letter to Senator Harry Reid regarding the Bureau of Land Management (BLM) eliminating herd management areas (HMAs) within the Ely District as a result of implementing the Ely Resource Management Plan (RMP). You also cited provisions of the *Federal Lands Policy Management Act of 1976* (FLPMA) Sec. 202 (e)(2) [43 USC 1712(e)(2)], which requires the Secretary to notify Congress when a management decision is made or action taken that "excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more...". The Senator asked that BLM respond directly to you.

The provision you cited of the FLPMA Sec. 202 (e)(2) [43 USC 1712(e)(2)] does requires the Secretary to notify Congress when a management decision is made or action taken that "excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more...". However, we first must review the legal definition of principal or major uses as defined by the FLPMA, Sec. 103 (l)[43 USC 1702]: The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

This statute does not include, address or apply to the management of wild horses and burros. As a result, the statute you cited does not apply to the elimination of the HMAs resulting from the implementation of the Ely RMP. We hope this clarifies any misunderstanding of this statute.

BLM went on to erroneously state that the statute doesn't apply to wild horses, because the definition doesn't say wild horses ignoring the legal determinations in several court cases that establish our wild horses as wildlife. *Mountain States v. Hodel* is one such case where the judge ruled that "...wild horses and burros are no less "wild" animals than are the grizzly bears..."

This is just one example of how BLM will use a law, such as FLPMA to manage for multiple uses, but then turn around and say that very law doesn't apply to wild horses.

This letter was also just one example of the bias BLM holds against our horses. And, by using semantics, relabeling areas, selling and transferring lands, and by mapping out and fencing off water or forage originally used by the herds the BLM has effectively created an illusion that wild horses are overpopulated.

This overpopulation claim has been coupled with terms like overgrazing and now drought. Because BLM's mission is the same as it was when they were the Grazing Service, they continue to protect those who use our public lands to graze their livestock. The overgrazing is blamed on wild horses when there is 1 horse for each 10 cows in these areas. Any damage including to habitats for critical or endangered species is very often blamed first on wild horses, causing their removal.

Adversely, there has never been a case where livestock were removed and wild horses were not. There has never been a wild horse area that was closed to livestock due to drought or lack of forage so that the horses could remain. This is accepted because of the wording used to make it palatable.

Wording matters, and for the wild horses, BLM has added words like "CONTROL" to the original mandate to protect and manage. This was seen in the 1986 amendments. The 1986 amendments where words changed the meanings, made it seem the original intent of the act was different.

Some of those changes are seen comparing the USC language to the CFR language. A few examples are:

Wording in the Act in the USC

"The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands..."

BLM wording in the CFR

"The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management."

It may seem like a small issue but when you believe the BLM needs to “control” something, it gives the impression that there is some problem that needs to be managed. BLM used that word to imply that populations need to be controlled, when in fact they really wanted to control where the horses were allowed to be, and were making the areas smaller, while also giving themselves a twisted interpretation of FLPMA to apply multiple use versus principal use mandates.

The “*natural ecological balance of all wildlife*” became “*balance with other uses and the productive capacity*” removing wildlife but again mentioning multiple “*other*” uses. The addition of productive capacity means profit making uses of the land.

Instead of receiving principal use, they were now considered comparably, at least in regulations, although land use plans typically show them receiving less than comparable rations of forage and water allocations.

And despite BLM being told by their own geneticist that a herd needs at least 150 horses to be genetically healthy or self-sustaining, almost no herd is that large. Herds have all been reduced to populations that in no way can be “self-sustaining” but BLM explains this away by saying they will import horses from other areas when genetic studies indicate the need.

Wording in the Act in the USC

*“All management activities shall be at the minimal feasible level and shall be carried out... in order to protect the **natural ecological balance of all wildlife** species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.”*

BLM wording in the CFR

§ 4700.0-2 “Objectives. The objectives of these regulations are **management** of wild horses and burros as an integral part of the natural system of the public lands **under the principle of multiple use...**”

BLM wording in the CFR

§4700.0-6 Policy.

(a) Wild horses and burros shall be managed as **self-sustaining populations** of healthy animals in **balance with other uses and the productive capacity** of their habitat.

(b) Wild horses and burros shall be considered **comparably with other resource values** in the formulation of land use plans.

(c) Management activities affecting wild horses and burros shall be undertaken with the **goal of maintaining free-roaming behavior.**

The BLM is supposed to manage the horses with the goal of ‘maintaining free-roaming behavior.’ The National Academy of Science did a report evaluating the BLM Wild Horse and Burro Program, and stated in that report that they use the terms free-ranging

and semi-free-ranging.

This was much different than their idea of free-roaming to which the report said:

“Although the 1971 legislation calls horses and burros in the western United States free-roaming, the committee chose to use the term free-ranging to reflect the purposeful and spatially adaptive uses of the rangelands that the horses and burros inhabit. Such populations are allowed to use spatially extensive habitats in ways that increase access to forage, improve their physiological condition, and increase the probability of their own and their population’s viability. “

Additionally, the report states that this was done to:

“acknowledge that when fences or other constraints are placed on wild horse areas this would make these horses semi-free-ranging given that there is still enough room for the animals to move freely over larger areas than typical farms or ranches.”

The practice of fencing them out of water only affects the horses, not other grazing wildlife who jump fences. And in fact, BLM authorizes water improvements for every other wildlife and domestic animal on public lands, but not for wild horses.

Below are just a few examples I pulled from public inspection documents I have. There are hundreds more. In these examples, the top 2 are pipelines and a tank to improve livestock areas, the third is for elk, the last is a letter in which the BLM responds to an advocate who offered help to haul water or build wells for wild horses. BLM tells them no and gives their reasoning. We believe this is still the current policy or attitude of BLM because in 2020 Utah BLM arrested 2 campers for providing water to wild horses and burros.

BLM's purpose and need for the fence, water pipeline and trough is to improve livestock management on the Murphy Gap and South Coal Valley Allotments through better distribution and to implement a guideline to help continue progress toward achieving the standards and guidelines for rangeland health as approved by Nevada's Mojave-Southern Great Basin Resource Advisory Council (1997).

2010 plan

Summary of Proposed Action and Alternatives

The proposed action associated with EA NV-043-08-012 is to install a permanent water storage tank with a short pipe into a livestock watering trough in the Maverick Springs Range on the Maverick Springs Allotment/Triple B Wild Horse Herd Management Area (HMA) in FY2009. The site is currently a temporary water haul site. The project site is located entirely within T 24 N, R 59 E, Section 6. The proposed action will be in accordance to the description provided in EA NV-043-012.

The need for the proposal is to make the site a permanent livestock water source thereby improving livestock distribution across the Maverick Springs Allotment and enhancing range and habitat management.

) December 2009.

"The purpose and need for the EA was to construct a new water development to more evenly distribute big game use in the area, particularly of elk. An additional source of water that lasts through summer would lessen the likelihood of big game animals using manmade water sources on the mine property and may reduce use of the Kimberly water development which could allow it to remain useable throughout the year, avoiding the need for continued tanker fill-ups. Big game occurrence and use would be more evenly distributed across the landscape rather than concentrated around the Kimberly Guzzler." (Giroux Wash and Horse Range Water Developments EA (DOI-BLM-NV-L010-2009-0018 December 2009 pg. 3)

BLM generally avoids developing artificial water (such as wells) for wild horses and burros. We try to rely on naturally occurring water instead. When we establish the appropriate management level (AML), we carefully consider the amount of forage and perennial water which is available. We attempt to achieve the goal of establishing a thriving natural ecological balance at the minimum feasible level of management. While we recognize that wild horses and burros do utilize artificially developed water sources, we try to make sure the animals are not dependent on these waters as their only source. This is because if horses depend on artificial water and that source should fail, their lives could be at risk. An exception to this is where we develop a spring source which allows water to be maintained at the source while delivering water off site for the animals.

They claim to carefully consider the amount of forage and water but what they don't point out is that cattle are on the land for less than a year. And they don't clarify that this is always during the months when the snow is melting off the mountain tops, and the spring plants are coming in and everything is nice and green. The cattle are left out until everything is dried up, dead and/or consumed. But, when BLM wants to claim horses do more damage than livestock they are very quick to point out that horses are there year round and livestock are not. This constant perversion of facts has painted a lopsided picture.

BLM claims that artificial water sources habituate the wild horses to a specific area or water source, but when livestock producers put water out for livestock that's okay. However, we have watched, over and over, in every state, livestock get removed at the

end of their permitted schedule, during the hottest, driest months of the year. The livestock producers are no longer providing water in these troughs or tanks. They also often illegally leave gates closed which stops the horses from roaming to find alternate water sources. So, now when we're into the dry season and the livestock producer just stops hauling water where wild animals are acclimated to getting their water, advocates for the horses are not allowed to begin hauling. BLM would rather claim drought and remove the horses.

Not only does making the areas smaller and smaller present a problem for access to water, forage, and even each other for genetic health, but it also produces the illusion that the wild horses have overpopulated and are utilizing resources such as food and water at such great rates that they are destroying the habitat, leaving nothing for other wildlife, and livestock, so they must be reduced.

What we see when we look at the big picture, and all of the twisting and deception that has happened over the past 51 years, is that BLM drew a pasture boundary on a map, then kept making it smaller and smaller, until finally they could scream overpopulation, when in fact the pasture has just gotten too small.

BLM insists on managing for a number, and that number is supposed to be the number of horses that were on the land in 1971, when they admit that number was pure conjecture. If BLM is supposed to manage them on the lands where they were in 1971 then they need to repatriate at least 26.5 million acres to the program. If BLM wants to keep cows on herd areas they need to follow the mandate in the law that gives wild horses and burros principal use.

We want Congress to go back to that 1971 law. We want them to think about the intent of a law passed to protect and manage a "fast-disappearing", integral part of our public lands. We want them to look at the changes in language, the relabeling of areas in order to remove them, the illegal sales of lands that should have been considered withdrawn for having a specific purpose. Congress must see how deceptive BLM is by putting out numbers that contradict each other, never really giving a clear, transparent picture of how many horses are on how many acres, and what other animals share that specific acreage.

The Horse & Burro program needs to be run by people with no conflict of interest. Transparency that is required has never happened with BLM, and that is getting worse. The ones who suffer the most at the hands of the greedy, and the lawmakers who haven't heard us, or who have ignored us, are our wild horses and burros.

BLM announced recently that for a second year in a row our national population is in decline. We strongly agree, and we recognize that they are in such sparse areas, in

such small herds that they are soon going to be genetically extinct if Congress does not act now.

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Acronyms

BLM - Bureau of Land Management
AML - Appropriate Management Level (population)
HA - Herd Area
HMA - Herd Management Area
FLPMA - Federal Land Policy Management Act
RMP - Resource Management Plan
LUP - Land Use Plan
USC - United States Code or US Code
CFR - Code of Federal Regulations

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