

## **Analysis of BLM's "Team Review and Response" to the "Triple B" Report**

This analysis includes two documents released by the Bureau of Land Management (BLM) titled "Triple B Wild Horse Gather Team Review" and "Triple B Response to Recommendations." This analysis also includes observations of operations prior to, and post, the Triple B "gather."

### **BLM "Triple B Wild Horse Gather Team Review"**

#### **Background**

The Bureau of Land Management (BLM) conducted a roundup of horses in the "Triple B" Complex in Eastern Nevada from July 2 and August 30, 2011.

BLM estimated that the population will be more than 1,460 wild horses in the Triple B HMA where the AML is 250-518 wild horses; 636 wild horses in the Maverick-Medicine HMA where the AML is 166-276 wild horses; 28 wild horses in the portion of the Antelope Valley HMA west of U.S. Highway 93 where the AML is 16-27 wild horses; and 74 wild horses in the Cherry Springs WHT where the AML is 40-68 wild horses. The estimate includes the 2011 foal crop.

To simplify this statement: The Complex comprises more than 2,500 square miles of land. BLM asserts that 472 horses is an "Appropriate Management Level" or "AML." That number includes the estimated number of animals born in 2011. Absent from this statement was the plan to birth control treat with PZP-22 a portion of the population. Note: BLM currently manages approximately 252 million acres of public land. Wild herds of horses and burros can legally exist on approximately 10% of that land base.

The final number of animals removed from the range was 1,260, about 200 animals shy of the estimated number removed. BLM stated in Court documents that it has labeled the operation "incomplete," even though the number removed is within the parameters set for "AML," although not to the desired "Low AML."

A Complaint to Conduct was filed in Federal District Court in Reno Nevada by Laura Leigh, Founder of *Wild Horse Education* (based in Nevada) and VP of *Wild Horse Freedom Federation* (based in Texas).

The roundup was halted due to the ruling of the Hon. Howard McKibben in Federal District Court that the standards for pilot conduct were not adequate. During the ruling the Judge also noted that documentation on other areas of care might not be sufficient for a ruling, yet he expressed (in no uncertain terms) displeasure in what was presented to him. The Judge also stated that the lack of recognition on the Agencies part that improvement needed to occur, and the obvious discrepancies in documents presented, were "troubling."

The Court ruled on a Temporary Restraining Order (TRO) and said it would hold a decision on Injunctive Relief unless new information was brought to the Court. New information was filed by the Plaintiff in the case that raised question that the offending behavior was continuing. The Judge ordered that the Motion for Injunctive Relief move forward.

Note: the conduct in question was documented with this contractor (Sun J) on their first day of operation back in November 2010, as Plaintiff noted to BLM the inappropriate set up at the trap site and expressed concern. Plaintiff was told by BLM personnel at the time the contractor was “just learning.” Of concern is the lack of information given to the public about that operation. Only two days of observation were allowed during the entire roundup with observers supposedly limited to “one day.” This policy was violated and discriminatory access did occur. This operation included a mare that broke her neck on panels at the inappropriately set trap, pilot issues and an inexperienced crew demonstrated the need for “training” on the very first days of operation. The webpage for that operation has never contained complete information: [http://www.blm.gov/or/resources/whb/ws\\_gather\\_reports.php](http://www.blm.gov/or/resources/whb/ws_gather_reports.php)

Plaintiff in this case continued to document the contractor with repeated instances of concern. No avenue to address these issues brought productive dialogue for change. Reports were compiled and distributed at Advisory Board meetings, workshops and many attempts were made at conversation with various Agency employees. No “investigation,” petition, or conversation led to any change in policy.

At the roundup conducted by the same contractor and BLM field offices prior to this one (Antelope Complex) documentation created the need for an investigation after complaints were made to BLM personnel and the local Sheriff. The documentation demonstrated clear evidence of identical conduct (pilot conduct, inappropriate handling, lack of water and food) discussed in this report. That investigation was completed by BLM and cleared contractor and BLM staff of any inappropriate action.

During the actual operation at Triple B many conversations occurred to attempt to correct the offending conduct. After all attempts failed, Litigation ensued.

BLM’s report states: “Team members included team lead Ken Collum, BLM Eagle Lake Field Manager; Gus Warr, BLM Utah Lead Wild Horse and Burro Specialist; Steven Hall, BLM Colorado Communications Director; and Dr. Owen Henderson, APHIS Veterinarian. The team conducted their review Sept. 26 to Oct. 12, 2011, interviewing BLM staff, external animal welfare experts, and individuals from the gather contractor – Sun J Livestock. The BLM also reviewed declarations filed in U.S. District Court by public observers who documented alleged abuse at the gather. These observers were not interviewed due to ongoing litigation. In addition, the BLM reviewed 11 videos taken by public observers critical of the BLM’s Triple B gather, as well as the more extensive collection of BLM videos, photos, and reports.”

This statement fails to recognize several facts regarding the information reviewed by the “Team.” Please note that the “Team” began the review almost a month after the conclusion of the operation as the contractor and BLM field offices continued to operate wild horse “gathers.” Ken Collum contacted the Plaintiff in the case, and an observer that gave a supporting declaration, without the knowledge of ongoing litigation. It is highly unlikely that the “Team” was provided a transcript of the hearing as part of their review. The transcript would have revealed that the Judge found the declaration given of the observer to “pilot conduct” (contractor) a “blame the horse” affront. Even though a discussion with Plaintiff (that they were notified would be audio taped) was not in violation of Nevada law (where Complaint was filed and Plaintiff resides) the interviews were cancelled the date they were scheduled to occur. Documents given to the Court were extensive, however, and included photographs, video and reports of observations.

It is also of note that on the day this report was given to the public observers from the Colorado based *Cloud Foundation* reported burros be excessively hotshot. According to conversations with witnesses the trap had just brought in a group of burros and was in a rush to load them as a load of horses were coming in. The BLM report claims that operations have changed. Both the Cloud Foundation report, and reports from the Plaintiff in this case, demonstrate that very little (if anything) has actually changed “on the ground.”

### **Section Labelled “Synopsis” and “Findings”**

The “synopsis” section of the report begins with: “The obvious challenge of a review like this is the lack of consensus on what constitutes inhumane treatment. For wild horse advocates, gathering wild horses is inhumane under any conditions, while those in the livestock industry and Sun J may well view handling techniques in a very different light.”

This statement is false and an attempt to discredit the documentation and minimize the the offending conduct.

Most states in the US have humane care standards that are relatively consistent. Care standards extend into the process of handling animals that are not only privately owned, but are utilized in industry.

This statement fails to take into account that the animal “husbandry” practices in question are relative to the handling of the only animal in the history of our nation to have an entire act of Congress devoted to their protection, under law. In light of that fact it would be the expectation that the handling of these animals rise to a level that exceeds, or at minimum matches, that of care standards that apply to privately owned equines.

The entire program (wild horse and burro) and every contract that exists, does so because of the existence of the act itself. To fail to recognize this very basic premise is alarming.

The assertion that “advocates” view “gathering” animals as inhumane under any circumstances is absolutely inaccurate and does not belong in this report as it can not be backed up by any statement of fact. The Plaintiff in litigation has never made such an assertion and “as a matter of fact” has continually offered suggestions on efficiency and safety of operation.

This statement is used to describe the consensus “no single incident offered a consensus among animal welfare experts that horses were treated inhumanely,” yet this statement appears further into the report “External animal welfare experts, as well as BLM employees, split on whether or not horses had been treated inhumanely in video documentation provided by public observers.” The second statement negates the assertion made in the first and is typical in documents prepared by the agency.

Next the report goes on to site some specifics with the caveat: “Nevertheless, after reviewing specific video clips from the gather the review team concluded that there were incidents where horses were not handled appropriately, and animal welfare experts cited several examples where handling techniques were inappropriate.”

Such “incidents” include: “These incidents seemed in part due to a combination of poorly designed loading set up at the trap site, as well as unprofessional conduct by handlers at the trap site. Horses were observed being struck in the face, and often confused due to aggressive loading procedures and excessive pressure by multiple handlers. Several videos reveal that a few horses were repeatedly shocked with an electrical animal prod, sometimes in the face, and in one case, the use of this electrical prod led to a horse becoming stuck in a panel at the loading site. Some videos reveal horses being struck in more than one instance with the trailer gate to induce loading, and in one instance a horse appears to have been kicked in the head by a Sun J employee. In one video it appears that a horse was dragged into a trailer by a rope around its neck.”

Please note that these “incidents” were reported at the time they occurred and the BLM COTR representation on the ground said the conduct was “appropriate.”

Also of note is the use of the word “incident.” BLM gather reports on days such conduct has, and does continue to occur, will include the statement “gathered with no incident.” The BLM does not report to the public any detail on daily operations instead simply claiming no “incident” as animals are run excessive distance, in extreme temperatures, collide in the trap due to inexperienced and rushed handling, are roped, hot shot and kicked in the head.

The report then states “The BLM Contract Technical Representatives (COTR) were on site when all of these activities occurred, but did not directly observe some of the incidents recorded by public observers. Overall, the BLM COTR noted that the Sun J contractor ground crew at times seemed impatient, lacking experience, and in need of more supervision to effectively and efficiently handle wild horses at the trap site. The COTR’s reluctance to address incidents may

stem from a lack of clarity on what constitutes effective wild horse handling techniques combined with a tendency within the BLM to defer to the contractor.”

It is distressing that the public observers are more attentive to conduct than those paid by the Federal government to do so. On more than one occasion it was documented that the contractor and BLM COTR (that has, under law, discretion of operation) were seen to argue over issues as basic as water at the trap site for foals kept there the majority of the day and at temporary holding.

The report then states: “Video footage provided by some public observers allegedly shows a helicopter bumping a horse. Sun J stated that the helicopter did not strike any horses during the gather, and BLM COTR did not observe a horse being struck. The horse shown in the video also did not appear to have been injured by the incident that was recorded. However, whether or not the helicopter pilot used the helicopter to bump a horse during gather operations is incidental as the consensus – after viewing some of the videos – was that the helicopter operated too close to the horses at least twice involving two different horses. Helicopters should not ever make contact with wild horses. Animal welfare experts agreed that the helicopter operations likely did not injure the horses involved.”

In this instance it is extremely alarming that BLM utilized the statements that in a Courtroom were found to have no merit. The entire issue of the horse “being struck” is what prompted the TRO motion. In declarations supplied by the Agency assertions as to what happened in that instance went so far as to claim the pilot was moving the horse closer to the trap. The documentation raised serious question as to the validity made in that entire declaration. The assessment of “injury” to the animal were limited to immediate observation and do not follow the animal after capture.

The report notes: “BLM Nevada operations and staff have improved significantly from past gathers, according to the BLM staff interviewed by the review team.” It is interesting that in the findings of the report the staff is allowed to assess their own level of improvement. It is of note that the claim for Injunctive Relief was allowed to move forward because information was provided that conduct continues.

Observations at roundups as this very report was being compiled and since it’s completion continue to demonstrate the identical conduct raised in this report.

Observations at Barren Valley (OR), High Rock (CA/NV) and the ongoing Calico Complex operation (NV) continue to document the same inappropriate handling discussed in this report including, but not limited to:

- Inappropriate and excessive use of flagging
- Excessive use of hotshots
- Disagreements between the COTR and contractor

- Kicking, slamming of gates, pinning in gates, twisting of tails during horse loading processes
- Lack of water at the trap for foals held until operations end
- Water and feed issues at temporary holding
- Rushing and crowding of animals during sorting
- The ability to assess the distance animals are being moved has been highly restricted, yet bands have been documented arriving at the trap lathered, steaming and one horse so exhausted that it could not rise after inappropriate flagging caused it to run into a panel.

### **Section Marked “Recommendations”**

BLM again begins this section with an assertion that conduct was not “inhumane.” It qualifies that by stating that “During the reviewed incidents, which constituted only a small percentage of the overall gather operations, some instances of inappropriate handling and operational decisions were noted as detailed above.”

Please note that BLM personnel makes claim to not have witnessed first hand much of the documentation provided by the public. This raises serious questions as to the ability of any of BLM personnel to have the necessary first hand information to make any claim that the majority of operations were “humane.”

The Plaintiff in the case was personally overwhelmed by the infractions that occurred simply in the first week of operation. The infractions were so numerous that the reports she submitted to various agencies begin with “of the numerous incidents witnessed today” before she goes on to describe what was documented.

This assertion is false. It points to the very clear lack of oversight into the conduct that occurs during gather operations.

The number of times this report notes a reluctance to change and difficulty implementing change is alarming.

In this section BLM outlines the following “recommendations:”

- BLM needs to review and update Standard Operating Procedures, contract provisions, procedures and guidelines for gather operations to ensure clarity of management expectations on what is appropriate and what is inappropriate.
- BLM needs to provide continuous training to all gather participants, in order to manage and implement the ICS system and new process expectations outlined
- Guidelines for helicopter operations should be issued to prohibit helicopters from making contact with any wild horses or burros during a gather. Guidelines should also be developed for the capture of small groups and single horses, as to when, when not and how much time should

be expended guiding them to the trap site. Exact guidelines for helicopter operations are problematic and exceptions will always come into play, given the challenge of wild horse gathers and the lack of clear guidelines for the use of helicopters in wild horse gathers or for operations involving other wildlife, where many of the same challenges apply.

- BLM should develop training on appropriate wild horse handling and corral management at trap sites and holding pens to make the handling of wild horses more efficient and less stressful on the horses. This training should include BLM and contractor staff.
- A system for tracking incidents, from the use of electrical prods to roping to injuries or reports of animal welfare concerns, should be developed to provide data on the BLM's handling of wild horses. The review team believes this will demonstrate that issues like the specific incidents at the Triple B gather are the exception, not the rule. A tracking system like this will further the BLM's effort to improve wild horse welfare during gathers.
- The use of electric prods should only occur after the approval of the COTR unless an animal's health or immediate safety is in jeopardy. As a general principle, electric prods are not used routinely on wild horses or burros, except when animal or human safety is in jeopardy or as a last resort. The BLM should develop a policy that directs specific use of electric prods and identifies the types of circumstances when they should or should not be used. All uses of a hotshot should be documented as to the rationale and outcome.
- Horses should be roped only after approval by the COTR. Any roping or tying of a horse should be followed up by an onsite veterinarian examination. A roping/tying protocol should be developed by the BLM for all gathers. All roping incidents should be documented as to the rationale and outcome.
- Horses on the ground should never be dragged by their head or neck. The BLM should investigate and implement alternative methods of moving horses that are on the ground, including use of horse "rescue straps" or sliding boards to protect horses that must be moved while on the ground. All necessary incidences where a horse is dragged should be documented as to the rationale and outcome, including a veterinarian report.
- Selected footage from this and other gathers should be used to train and to re-enforce appropriate handling techniques and proper trap, loading and holding facility for BLM and contractor staff. Wild horses should never be kicked, struck in the face, or be struck by trailer gates as a means of encouraging animals to load into trailers.
- Wet mares and foals should be paired up as quickly as possible, usually within 4 hours of capture. Water for foals should also be provided within 4 hours of capture or even sooner if young foals are being handled.

- Prepare better video documentation of gathers to provide a more useful record, and make the best use of technology to improve transparency and provide a record to improve future gather operations. Importantly, BLM documentation should be indexed and archived. BLM staff should be equipped with cameras and/or binoculars comparable to what can be expected from media and public observers.

### **Document titled “Response to Recommendations”**

This document states in brief the same premises within the “Team Review” with the addition of a “response” section.

Three sections appear under the premise: “Corrective actions and responses to the team’s recommendations fall into three areas: National Policy/Comprehensive Animal Welfare; Helicopter Gather Contracts; Training.”

The first section “(a) National Policy/Comprehensive Animal Welfare,” outlines several areas where “CAWP” (Comprehensive Animal Welfare Policy) will be developed. Completion of this policy is primarily expected in 30 with one exception. “IMs that clarify the Gather Incident Command System, Gather Public Observation/Communications and Euthanasia Protocol and Policy are under development by BLM staff. Completion is expected within 90 days. (Recommendations 2, 11).”

Please note that ongoing litigation is also present in the area of access to document and report on the “hands-on” care of wild horses and burros. A case currently awaits a hearing next month in the Ninth Circuit Court of Appeals.

The second section “(b) Helicopter Gather Contracts,” states: “Helicopter Gather Contract Review and Recommendation Team” consisting of contracting specialists, field and Washington Office staff and managers was established on November 28, 2011. The team is charged with reviewing the existing helicopter gather contracts to determine and define what areas of improvement are possible to be incorporated into contracts, whether by modification of existing contracts, or issuance of new Requests for Proposal. This team expects to provide recommendations by January 2012. (Recommendation 3)”

This section does not outline areas of concern such as the current “per animal” payment method of existing contracts that are more reflective of “livestock” management than those that should be held under the current mandates of the ’71 Act that define the program as managing a “wild and integral” population. This payment method puts “quantity” ahead of “quality” of performance.

The last section “(c) Training,” states: “The BLM Wild Horse and Burro Program will establish a team of wild horse and burro specialists, managers and curricula development experts from the BLM National Training Center (NTC) to review current training courses and recommend additional curricula. NTC courses cover topics such as compliance and animal health, wild horse and burro herd management, and the Wild Horse and Burro Program System. Training agreements cover topics such as immunocontraception application, environmental assessments and humane euthanasia. (Recommendations 2, 4, 9)”

## **Recommendations**

In consideration of the extensive documentation of continuing conduct, and issues that continue to exist between BLM COTR and contractors, it is recommended that operations cease until a comprehensive plan has been outlined and implemented. This plan must include consequence for violation of unacceptable conduct.

To continue removal operations until such a plan has been crafted and implemented is irresponsible. The basic premise of the Wild Free Roaming Horse and Burro Act was to protect these animals from “harassment and death.” It outlines clearly that the Wild Horse and Burro Program is to act as the first line of advocacy toward that protection. To continue to remove one more protected animal from public land before basic protocols can be demonstrated in practice is to ignore basic decency in light of the findings contained in this report.

As most of the recommendations can be implemented in less than 30 days (with one exception) it appears that any inconvenience to the scheduled operations is minimal.

Gather operations at the Calico Complex have removed enough animals to be within the range of AML. That operation could be suspended and still be in compliance with the legal mandates as outlined by the Agency. The current published numbers indicate that only 52 more animals need to be removed.

Upcoming operations at McGee (removal 127 burros, dated from Dec. 1-Jan 10), Pancakes (removal 800 horses, dated Jan 12- Feb 22) and Flanigan Complex (removal 280, dated Jan. 15-Jan. 21) would not create a disruption so great that it equals the damage done by continuing operations without standards of care.

## **Conclusion**

**Suspend operations until a care standard has been defined and consequence for violation of that standard clearly outlined. Any protocol put in place could be amended, expanded or changed during a prescribed implementation period.**

