

July 9, 2010

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Complaint for Possible Violations of Wild Free Roaming Horse and Burros Act, 32 U.S.C.

Sections 1331 et seq.

The Nevada Dept. of Agriculture through the Fallon Livestock Exchange, Inc. in Fallon, NV plans to auction 175 horses said to be “estrays”, “abandoned” or “feral”. Accompanying this complaint and incorporated by reference as if fully set out here is a copy of the Horse Dispersal Sale notice. **The sale is set for July 10, 2010. I ask you please halt this sale and investigate possible violations of the Wild Free Roaming Horses and Burros Act in conjunction with the roundup and sale of these horses.**

Ed Foster, the Nevada Dept. of Agriculture regional manager, has stated no list or other information about the horses will be released prior to the auction date. These horses were rounded up by the Bureau of Land Management as allegedly “estrays” horses “located within Pilot Valley, Nevada. On June 23, 2010 the BLM issued a press release - http://www.blm.gov/nv/st/en/fo/elko_field_office/blm_information/newsroom/2010/june/blm_to_impound_domestic.html - indicating the agency would round up the horses beginning June 25, 2010. The BLM stated, “Once gathered the horses will be transported to the temporary holding corrals and immediately be placed under the jurisdiction of the State of Nevada.... [A] contractor will set up holding corrals on nearby private land owned by Simplot Land and Livestock”. The contents of the press release are incorporated by reference as if fully set out here only for the purpose of showing BLM’s claims in this matter.

BLM has never offered any basis, in writing or otherwise, for the agency's claim in the press release that the "horses are believed to be released or stray and descendants (sic) of horses of local property owners. Over the years the herd has grown in size and is causing considerable impacts to BLM-managed public land resources." Indeed, I incorporate by reference as if fully set out here a pdf entitled Toana Wild Horse Herd Area which details the history of wild horses in the Toana herd management area. The number of horses last reported in the HMA in Feb. 2009 (168) corresponds closely to the number of alleged "estrays" (175) said to have been rounded up outside of the HMA in Pilot Valley. As you can see from the pdf, it is common for wild horses to roam outside of an HMA. Also, there has been no indication these alleged "estrays" horses were not actually rounded up in the Toana HMA or driven from there and rounded up. BLM's own press release indicates these horses have been on public lands for some time. BLM's own records establish that there has been no agency round up of wild horses in or outside of the Toana HMA since the February, 2009 count. See: http://www.blm.gov/wo/st/en/prog/wild_horse_and_burro/wh_b_information_center/monthly_review_of/completed_gather_schedule.html

It is BLM's obligation to protect wild horses as free-roaming components of the public lands. 16 U.S.C. Sec. 1331 et seq. According to 16 U.S.C. Sec. 1332(b), "wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros on public lands of the United States". This is exactly what these horses appear to be. BLM must make a determination that horses rounded up from public lands are not wild free-roaming horses and burros and instead "estrays", as claimed in this case, or "feral". *American Horse Protection Association, v. U.S. Dept. of Interior*, 551 F.2d 432 (D.C. Cir. 1977)

Under Nevada state law, N.R.S. Sec. 569.0075. "'Estray' means any domesticated livestock or progeny of domesticated livestock showing signs of domestication, running at large upon public or private lands in the State of Nevada, whose owner is unknown in the section where the animal is found." "'Feral livestock' means any formerly domesticated livestock or progeny of domesticated livestock which have become wild and are running at large upon public or private lands in the State of Nevada, and which have no physical signs of domestication. The term does not include horses or burros that are subject to the jurisdiction of the Federal Government pursuant to the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. Sections 1331 to 1340, inclusive, and any regulations adopted pursuant thereto, or any other federal statute or regulation." Nev. Rev. Stat. § 569.080. See also the following Nevada laws:

569.080. Sale, placement or other disposition of unclaimed estray; sale or placement of unclaimed feral livestock; issuance of brand inspection clearance certificate upon sale; marking, branding or identifying required before sale or placement.

1. If an estray is not claimed within 5 working days after the last publication of the advertisement required by NRS 569.070, it must be:

(a) Sold by the Department; or

(b) Held by the Department until the estray is given a placement or other

disposition through a cooperative agreement established pursuant to NRS 569.031.

2. If feral livestock is not claimed by the date of sale published pursuant to NRS 569.075, the feral livestock must be sold by the Department pursuant to NRS 569.075 or placed pursuant to NRS 569.031.

3. If the Department sells the estray or feral livestock, the Department shall give a brand inspection clearance certificate to the purchaser.

4. Estrays and feral livestock must be marked, branded or identified with an individual animal identification before sale or placement. Nev.

Rev. Stat. Ann. § 569.075 (2009)

569.070. Publication of notice of estray required if owner cannot be determined; reimbursement of expenses for publication; sale of injured or debilitated estray.

1. Except as otherwise provided in subsection 4, if the owner or probable owner of an estray cannot with reasonable diligence be determined by the Department or its authorized agent, the Department shall advertise the estray or cause it to be advertised.

2. A notice of the estray, with a full description, giving brands, marks and colors thereon, must be published in a newspaper published at the county seat of the county in which the estray was taken up. If there is no newspaper published at the county seat of the county, the notice must be published in the newspaper published at the nearest point to that county.

3. Expenses incurred in carrying out the provisions of subsections 1 and 2 must be deducted from the proceeds of the sale of the estray advertised.

4. The Department may sell an injured, sick or otherwise debilitated estray if, as determined by the Department, the sale of the estray is necessary to facilitate the placement or other disposition of the estray. If an estray is sold pursuant to this subsection, the Department shall give a brand inspection clearance certificate to the purchaser.

569.075. Sale of feral livestock gathered by Department; publication of notice of sale of feral livestock; sale of injured or debilitated feral livestock.

1. The Department may sell all feral livestock which it has gathered if the Department determines that the sale of the feral livestock is necessary to facilitate the placement or other disposition of the feral livestock.

2. Except as otherwise provided in subsection 3, before the Department may sell feral livestock, the Department must publish notice of the sale of the feral livestock in a newspaper published at the county seat of the county in which the gathering of

the feral livestock occurred. If there is no newspaper published at the county seat of the county, the notice must be published in the newspaper published at the nearest point to that county seat. A notice of a sale published pursuant to this section need not include full descriptions of the feral livestock, but may include such information and details as the Department determines necessary.

3. The Department may sell injured, sick or otherwise debilitated feral livestock if, as determined by the Department, the sale of the feral livestock is necessary to facilitate the placement or other disposition of the feral livestock. If feral livestock is sold pursuant to this subsection, the Department shall give a brand inspection clearance certificate to the purchaser.

BLM does not appear to have made the requisite determination the alleged “estrays” horses are in fact “estrays” as claimed in the agency’s press release and not “wild horses” subject to the protections of the WFRHBA. There is also absolutely no indication these horses could be called “feral”, and, in fact, BLM has never described them that way. There is no indication at all that these horses are “formerly domesticated livestock or progeny of domesticated livestock”.

There is simply no legal basis establishing the horses to be sold at auction on July 10 are other than wild horses within the meaning of the WFRHBA. The Horse Dispersal Sale notice indicates the horses are “not broke to ride” and “not halter broke”. There are no reported “signs of domestication”, no brands, nothing. In fact, the BLM describes the alleged stray horses as a “herd” that has been in the area a long time.

The BLM has refused to respond to inquiries about the basis for calling the horses “estrays”. BLM issued its press release just two days before the roundup.

The location of these 175 alleged “estrays” horses ostensibly in Pilot Valley virtually next door and just outside the Toana HMA is strong evidence these horses are actually wild horses observed in virtually the same number in the Toana HMA or outside of it in February, 2009.

Notably, there is no tangible evidence the state Dept. of Agriculture placed a notice as required in a newspaper “with a full description, giving brands, marks and colors thereon”. NRS 569.070. Curiously, though Mr. Foster has vaguely said an ad was placed, he has made clear the list of alleged stray horses will not be made public till the day of the auction; yet, the law requires a public advertisement with a description of each horse as part of the “reasonable diligence” that must be taken to locate owners of stray horses. Why the secrecy in view of the law’s clear requirement for public advertisement of a detailed description of the horses? It is an understatement to say there is no evidence at all the State has acted with “reasonable diligence” to try to locate owners who, after all, should be held responsible for alleged stray horses.

Before selling feral horses the Dept. is supposed to place a public advertisement about the sale and include “information and details as the Dept. determines necessary”. Surely, it is necessary to publicize any information the BLM or Dept. has to show the horses are not wild.

In effect, neither the BLM nor the Dept. will release any information as to whether a determination was made the horses are “estrays” as BLM claims or even feral as the Dept. states, or the basis for any such determination.

The Dept.’s possible failure to comply with laws regarding estrays and ferals as well as the secrecy that has surrounded the round up and auction is substantial evidence the Dept does not believe the horses are stray, that they are wild horses illegally rounded up by BLM for sale at auction.

There may be a number of egregious criminal violations of WFRHBA, § 1338 by BLM employees and others that merit a halt to the sale and immediate investigation:

(a) Any person who--

(1) willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority ..., or

(2) converts a wild free-roaming horse or burro to private use, without authority....., or

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(4) except as provided in section 3(e), processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

....

(6) willfully violates a regulation issued pursuant to this Act.

It is well known and obvious these alleged stray horses to be sold on July 10 will most likely end up slaughtered in Canada or Mexico, all as a result of possible actions by an agency that is supposed to protect them as free-roaming components of the public lands.

Thank you for your assistance in this urgent matter.

Laura Allen, Esq.

Executive Director

Animal Law Coalition

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