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April 7, 2014

**Sent by Email and Facsimilie**

Amy Lueders  
BLM Nevada Director  
1340 Financial Blvd.  
Reno, Nevada 89502

Juan Palma  
Utah BLM Director  
440 West 200 Suite 500  
Salt Lake City, Utah 84101

County Sheriff Mark Gower  
County Commissioner Alma Adams  
County Commissioner Dale Brinkerhoff  
County Commissioner David Miller  
68 South 100 East  
Parowan, Utah 84761

**Re: Threats To Roundup Wild Horses In Violation Of  
Federal Law**

Dear Directors Lueders and Palma, Sheriff Gower, and Commissioners Adams, Brinkerhoff, and Miller:

I am writing on behalf of our clients the American Wild Horse Preservation Campaign, Return to Freedom and the Cloud Foundation in response to recent news reports that local Utah officials are threatening to round up wild horses from public lands in Utah, and that, in response to that threat, the State BLM office may be acceding to demands to remove such horses in violation of federal law. *See, e.g., Salt Lake Tribune, "Iron County to Feels: Remove Horses or*



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*We Will*, "April 4, 2014; Salt Lake Tribune, "Iron County, BLM Working on Wild Horse Deal," April 4, 2014); and The Spectrum, "BLM Responds to Ultimatum," April 4, 2014.

These threats are apparently being made in response to requests by the Utah BLM that livestock permittees reduce grazing levels, and in response to the Nevada BLM Office's recent enforcement of the law with respect to a rancher who was grazing livestock on public lands in Nevada in violation of federal permitting laws since at least 1998 when a federal judge ordered the removal of the cattle.

My clients strongly support the BLM's enforcement of federal regulations that govern private commercial livestock grazing on public lands, and specifically the efforts of the Nevada BLM to remove long-standing illegal trespassing livestock from public lands in Clark County, Nevada. Indeed, it is imperative that BLM uphold its obligations under federal law to enforce grazing restrictions and requirements regarding the use of public land.

In this regard, please be advised that any attempt by non-BLM officials to round up and remove wild horses and/or burros from BLM lands in Nevada, Utah, or anywhere else in the West would violate the expressed dictates of the Wild Free-Roaming Horses and Burros Act (WHA), 16 U.S.C. § 1331, and in particular § 1338, which provides that it is a *federal crime* to "willfully remove[] or attempt[] to remove a wild free-roaming horse or burro from public lands, without authority from the Secretary," subject to a fine of \$2,000, imprisonment, or both.

Further, BLM may not give any such permission or otherwise engage in the removal of any such horses from public lands without complying with all of the requirements of the WHA, as well as the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321- 4370(f) – none of which has occurred here to our knowledge.

The WHA mandates that "wild free-roaming horses and burros *shall be protected from capture, branding, harassment, [and] death.*" 16 U.S.C. § 1331 (emphasis added). In sharp contrast, the Taylor Grazing Act (TGA), 43 U.S.C. §§ 315-315r, merely "authorizes" the Secretary of the Interior, through the BLM, to issue permits for the grazing of livestock on public lands. 43 U.S.C. § 315b. Moreover, as that statute also makes clear – contrary to the apparent belief of livestock owners in the West – "the creation of a grazing district or the issuance of a [grazing] permit . . . *shall not create any right, title, interest, or estate in or to*" these public lands. *Id.* (emphasis added); *see also United States v. Fuller*, 409 U.S. 488, 494 (1973) ("The provisions of the Taylor Grazing Act . . . make clear the congressional intent that *no compensable property might be created in the permit lands themselves as a result of the issuance of the permit*") (emphasis added); *Federal Lands Legal Consortium ex rel. Robart Estate v. United States*, 195 F.3d 1190, 1196 (10th Cir. 1999) ("A grazing permit . . . gives the permittee merely a license to use federal land, *not a vested right in that land.*"); *id.* at 1198 ("[T]he very determinations of whether to renew grazing permits and whether public lands should even be designated for grazing purposes . . . are matters *completely within the Secretary of Interior's*

*discretion.*”) (citations omitted) (internal quotations omitted).

Indeed, the TGA also provides that the Secretary “is authorized, in his discretion, to . . . classify any lands within a grazing district, which are . . . more valuable or suitable for any other use,” 43 U.S.C. § 315f, including use by wild horses that, again, are *required* to be protected under the WHA. *See* 16 U.S.C. § 1333(a). Implementing regulations further provide that “[i]f necessary to provide habitat for wild horses or burros . . . or to protect wild horses or burros . . . [BLM] *may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock,*” 43 C.F.R. § 4710.5(a) (emphasis added), and that BLM may also “establish conditions for the removal of unauthorized livestock from public lands *adjacent to or within areas occupied by wild horses or burros.*” *Id.* § 4710.6 (emphasis added).

Therefore, because the statutes at issue here provide a clear preference for protecting wild horses and burros over private livestock when these animals come into conflict on *public* lands, BLM must stop caving to the private financial interests of livestock owners whenever they complain about the protected wild horses using the limited resources that are available on such lands. These horses belong to *everyone* – in the words of the WHA, they are “living symbols of the historic and pioneer spirit of the West,” and “contribute to the diversity of life forms within the Nation and enrich the lives of the American people.” 16 U.S.C. § 1331. Accordingly, they must be protected to the greatest extent of the law.

Finally, the notion that BLM is currently meeting with Utah officials to discuss the immediate removal of wild horses from the public lands in that state is particularly troubling. *Salt Lake Tribune*, “*Iron County, BLM Working on Wild Horse Deal,*” *April 4, 2014*); and *The Spectrum*, “*BLM Responds to Ultimatum,*” *April 4, 2014*. The BLM’s own Management Handbook provides that “[t]he capture of wild horses by using a helicopter to herd animals is ***prohibited during the foaling period*** . . . generally March 1 to June 30,” to “assure that young foals are mature enough to be able to remain with their band” during such traumatic activities. *See* BLM Wild Horses and Burros Management Handbook § 4.4.4 (emphasis added).

The BLM Wild Horse and Burro Management Handbook also makes clear that BLM cannot use a claimed “emergency” to local livestock as justification to conduct roundups to remove wild horses in response to this threat. According to the Handbook:

*Emergencies generally are unexpected events **that threaten the health and welfare of a WH&B population and/or their habitat.** Examples of emergencies include fire, insect infestation, disease, or other events of a catastrophic and unanticipated nature.* Handbook § 4.7.2 (emphasis added).

For all of the above reasons, we urge the Utah officials – who have no jurisdiction in this matter – to refrain from removing wild horses from BLM lands in violation of federal law. We also urge the Utah and Nevada BLM offices to adhere to the federal laws, policies and procedures

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that are in place to protect wild horses. Given the current budgetary and holding space restrictions of the BLM Wild Horse and Burro Program, the BLM cannot responsibly remove wild horses from this area, especially during the foaling season and because the current situation simply does not constitute an "emergency" as defined by the BLM's own Handbook. Additionally, as explained above, no removals can take place in the absence of full compliance with both the WHA and NEPA.

We hereby formally request that we be advised of any and all plans or other actions by local officials and/or the BLM to undertake the removals of any wild horses or burros as discussed in this letter, so that our clients will have an opportunity to avail themselves of all necessary remedial measures.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Meyer", with a long horizontal flourish extending to the right.

Katherine A. Meyer

cc: Neil Kornze, Principle Deputy Director of BLM