

**WILD HORSE AND BURRO LITIGATION UPDATE**  
**(From September 2017 to May 2019)**

**Bureau of Land Management**

**National**

*Friends of Animals v Zinke and BLM. Case No. 2:18-cv-01473. Filed 8-9-18.*

Plaintiff challenges the BLM's issuance of the Instruction Memorandum WO IM-2018-066, Guidance for the Sale of Excess Wild Horses and Burros. The judge, with consent of the plaintiffs have dismissed this case with the BLM rescinding IM-2018-066 back to the previous policy on the sale of excess wild horses and burros (IM-2014-132).

**Arizona**

**California**

No Current Litigation

**Colorado**

No Current Litigation

**Eastern States**

No Current Litigation

**Idaho**

**Montana**

**New Mexico**

No Current Litigation

**Nevada**

*American Wild Horse Campaign, Western Watersheds, The Cloud Foundation, Laura Cunningham v Zinke, Steed. Case 1:18-cv-01529 Document 1 Filed 06/27/18.*

This case challenges the decision by the Interior Department's Bureau of Land Management ("BLM") under the Wild Free-Roaming Horses and Burros Act ("Wild Horse Act" or "WHA"), 16 U.S.C. §§ 1331-1340, to round up and permanently remove all wild horses from over 700,000 acres of public lands called the Caliente Herd Area ("HA") Complex, on the purported grounds that there is not enough forage and habitat for the horses, even though the BLM permits grazing on the same public lands by thousands of cattle and sheep that, unlike wild horses, are not statutorily "protected" as an "integral part of the natural system of the public lands."

*American Wild Horse Campaign v Zinke et al. Case No. 3:18-CV-00059-LRH-CBC. December 17, 2018.*

Plaintiffs (collectively American Wild Horse Campaign or "AWHC")<sup>1</sup> have filed a motion for summary judgment on all their claims against defendants (collectively Bureau of Land Management or "BLM"). (ECF No 32). BLM responded with its own motion for summary

judgment on July 31, 2018. (ECF No. 34). On October 29, 2018, the Court held oral arguments on both AWHC's motion for summary judgment and a similar motion in a companion case.<sup>2</sup> Following oral arguments, AWHC filed an unopposed motion for the Court to take notice of supplemental authority. (ECF No. 42). For the reasons stated below, the Court will deny AWHC's motion for summary judgment and grant BLM's motion for summary judgment.

*Friends of Animals v Silvey. Case No. 3:18-cv-0043-LRH-(WGC). Filed December 17, 2018.* Before the Court is plaintiff Friends of Animals' ("FOA")<sup>1</sup> motion for summary judgment. (ECF No. 21). Defendants, the United States Bureau of Land Management ("BLM") and Jill Silvey ("Silvey"),<sup>2</sup> filed an opposition and cross-motion for summary judgment. (ECF No. 27). FOA then filed a response (ECF No. 30) to which defendants replied (ECF No. 33). On October 29, 2018, the court held a hearing on the parties' cross-motions for summary judgment and a similar motion in a companion case.<sup>3</sup> For the reasons stated below, the Court will deny FOA's motion for summary judgment and grant defendants' motion for summary judgment.

### **Oregon**

*Kathrens, The Cloud Foundation, American Wild Horse Campaign, Animal Welfare Institute, Carol Walker v Zinke, Steed, Rose and Connell. Case 3:18-cv-01691 Filed 09/21/18.*

This case challenges a decision of the Bureau of Land Management ("BLM") seriously limiting public access to observe and document important experiments that the agency is undertaking on sterilization of wild horse mares. This case is closely related to the previous case before this Court, *Kathrens v. Jewell*, No. 2:16-cv-01650 (D. Or. filed Aug. 15, 2016) (Simon, J.), in which most of the same plaintiffs raised very similar claims regarding a nearly identical experiment—an experiment that the BLM stressed at the time would help determine whether this form of sterilizing wild mares can be considered "socially acceptable" to the public. After Plaintiffs sought a preliminary injunction in that case, the BLM abandoned that experiment. Now, only two years later, the BLM has announced an experiment on the same sterilization procedure, but inexplicably abandoned any effort to determine whether this procedure is "socially acceptable," despite the fact that the agency previously described this inquiry as a critical part of the "ultimate question in the reasonably foreseeable future of wild horse population management." And while the BLM has evidently recognized that it must provide some public observation of this experiment, it has imposed limitations that render the limited observation effectively meaningless.

*Front Range Equine Rescue v Zinke, Steed, and Rose. Civil Action No. 18-cv-220. Filed September 24, 2018.*

This case challenges a shocking decision by the federal agency responsible for caring for America's wild horses, to perform dangerous invasive "research" in the form of surgical sterilization of wild mares – including horses in various but unknown stages of pregnancy. This radical departure from the bounds of science and humane treatment is unauthorized, uncalled-for, and illegal.

*Friends of Animals v. Jeff Rose. Case 2:19-cv-00878-SU Filed 6/6/2019*

This case claims violations of the Wild Free-Roaming Horses and Burros Act by failing to conduct management activities affecting wild horse in accordance with approved land use plans

and failing to manage wild horse at the minimum feasible level; BLM violated the Administrative Procedure Act, National Environmental Policy Act, and FLPMA.

## **Utah**

### **Wyoming**

*American Wild Horse Campaign v. Zinke, 17-cv-170-NDF* (D. Wyo.)

Petitioners challenged the BLM, Rock Springs and Rawlins Field Offices' August 29, 2017 decision to remove approximately 1,560 excess wild horses to reach appropriate management levels in the Adobe Town, Salt Wells Creek, and Great Divide Basin herd management areas. Petitioners alleged that the BLM violated the Wild Free-Roaming Horses and Burros Act by removing foals that were never determined to be excess animals under the act. Petitioners also argued that the BLM's associated environmental assessment (EA) failed to adequately disclose and analyze the removal of foals, in violation of the National Environmental Policy Act. On October 13, 2017, the court denied the Petitioners' motion for a preliminary injunction, and the gather was completed later that month. Ultimately, on January 9, 2019, the Court ruled against the BLM and remanded for further proceedings. The issue for the Court was the manner in which BLM determined the number of excess wild horses to be removed, and whether that method represented a departure from the BLM's past practice. For the 2017 gather, BLM used recent survey results to estimate the number of excess animals without use of a 20% multiplier, as it had done in some previous gathers. The Court found that BLM did indeed depart from past practice, but did not supply a clear rationale for the change. Accordingly, the Court ruled that BLM's determination was arbitrary and capricious and without observance procedures required by law, and vacated BLM's EA, finding of no significant impact and decision record, and remanded them to BLM for further proceedings. The BLM and interveners (State of Wyoming and Rock Springs Grazing Association) did not pursue appeal of the Court's decision.

*Wild Horse Observers Association, IBLA 2017-0048*

The BLM Rawlins Wyoming Field Office authorized a gather via bait trapping of wild horses in the Adobe Town Herd Management Area. The gather would allow the University of Wyoming to proceed with a research study that would involve placing radio collars on 30 mares, which would track horse movements and habitat use. On December 8, 2016, Wild Horse Observers Association, with Citizens Against Equine Slaughter and Oregon Wild Horse and Burro Association, filed an Appeal, Statement of Reasons and Petition for Stay of the decision. The BLM's Opposition for Petition for Stay was filed December 19, 2017. The Board denied the stay and dismissed Citizens Against Equine Slaughter and Oregon Wild Horse and Burro Association from the appeal for lack of standing on January 23, 2017. The BLM filed its answer to the statement of reasons on February 8, 2017. On February 11, 2017, Appellants sought reconsideration of the denial of stay and dismissal of the two groups. The BLM objected to that motion on March 7, 2017. The motion for reconsideration was denied April 12, 2017. The parties are waiting on a decision on the merits.