

Litigation Update

October 4, 2011

California

In Defense of Animals v. Salazar, (Case 2:10-at-00993) (E.D. Calif) (Filed 7/15/10) Plaintiff, In Defense of Animals (IDA) et al., brought suit seeking to enjoin BLM's gather of excess wild horses from the Twin Peaks HMA in Northeastern California and challenging the legality of placing wild horses in long-term holding. The District Court denied the request for injunction. Plaintiffs appealed this denial to the Ninth Circuit, however the Ninth Circuit denied plaintiffs' request for an emergency injunction. The wild horse gather operations began on Wednesday, August 11, 2010 and ended on September 23, 2010. Plaintiffs did not withdraw their appeal from the denial of the injunction after hearing oral argument on that appeal, on August 15, 2011, the Ninth Circuit dismissed that appeal as moot. The District Court denied the United States' motion to dismiss this litigation as moot and the parties will be briefing the merits of the case.

Colorado

Colorado Wild Horse and Burro Coalition, Inc., et al. v. Salazar, 10 CV 1645 (D.D.C.) (proposed gather for West Douglas Herd Area).

Plaintiffs filed a Complaint and a motion for preliminary injunction (PI) and temporary restraining order (TRO) alleging the proposed gather to remove all horses in the West Douglas Herd Area would violate the Wild Free-Roaming Horses and Burros Act, NEPA, FLPMA and the Information Quality Act (IQA). The motion for PI/TRO was denied due to BLM's postponement of the gather. BLM's answer, administrative record, and motion to dismiss the IQA claim were filed November 9, 2010. The motion to dismiss was denied on June 24, 2011. On November 10, 2010, White River Conservation District, Douglas Creek Conservation District, Colorado Association of Conservation Districts, Colorado Cattleman's Association, Colorado Farm Bureau Federation, Public Lands Council, and four individuals moved to intervene in the case as defendant-interveners aligned with BLM. A ruling on the motion to intervene is pending as a dispute over supplementation of the administrative record. BLM notified the Court on its decision to withdraw the 2010 Gather Plan on February 21, 2011. The court ruled on June 24, 2011 that the case will proceed on the merits of the 2005 RMP amendment, and a briefing schedule is due to the court by July 15, 2011.

Habitat for Horses, et al. v. Salazar, 10 CV 7684 (S.D.N.Y.) (N. Piceance Herd Area gather).

On October 7, 2010, Plaintiffs filed a complaint in the U.S. District Court for the Southern District of New York that alleges BLM's proposed gather of excess wild horses within the North Piceance Herd Area (HA) violates the Wild Free-Roaming Horses and Burro Act, the National Environmental Policy Act, the Federal Land Policy Management Act, and the Information Quality Act. The claims are very similar to those made in *Colorado Wild Horse and Burro Coalition, Inc., et al. v. Salazar*, 10 CV 1645 (D.D.C.). On October 14, 2011, Plaintiffs filed a motion for preliminary injunction (PI) and temporary restraining order (TRO) with additional request that the gather in the HA be ceased immediately. After briefing and a hearing, the Court also denied Plaintiffs' motion for PI/TRO. The Court ruled that although they had established

irreparable harm, Plaintiffs had not demonstrated a likelihood of success on the merits. BLM's motion to dismiss for mootness and failure to state a claim was filed January 28, 2011 and granted on September 7, 2011.

James Kleinert, Spirit Riders Foundation, and David Glynn v. Salazar et al. (including a long-retired state director) 11-cv-02428-CMA-BNB (U.S. Dist. Court of Colorado) (Spring Creek Basin HMA gather).

On September 14, 2011, Plaintiffs filed a complaint based on alleged violations of Wild Horse & Burro Act and NEPA. A motion for temporary restraining order was filed *ex parte* and was denied on September 19, 2011. The court deemed plaintiff's request for a TRO as a request for a preliminary injunction hearing. The court requested briefing on the issue of standing in connection with plaintiffs' claims no later than September 26, 2011. Note: This gather is complete.

David Glynn, a plaintiff cited above, also filed an appeal with IBLA alleging the same violations that are found in the above complaint.

Montana

The Cloud Foundation v. Kempthorne D.C. no. 1:06-cv-00111-REC

Litigation to require the US Forest Service to expand the Pryor Mountain Herd Management Area (Territory) in the 9th Circuit Court of Appeals was dropped by the plaintiff and accepted by the court.

The Cloud Foundation, et.al. v. Salazar 09-cv-01651. On September 2009, the U.S. District Court for the District of Columbia denied a Temporary Restraining Order (TRO) request to stop the Pryor gather. BLM proceeded with the gather and adopted or sold all of the excess wild horses that were gathered. The plaintiff filed an amended complaint concerning the gather and while a ruling was pending the case was re-assigned to a different judge located in Ohio although the case is still technically in the U.S. District Court for the District of Columbia.

The plaintiff who had previously appealed the Pryor Mountain Wild Horse Range Herd Management Area Plan (HMAP) that was affirmed in January 2010 by IBLA, subsequently filed a second amended complaint (SAC) to the U.S. District Court for the 2009 gather challenging the HMAP and the use of Categorical Exclusions (CX) for adoption events and feeding/care of removed excess wild horses while also litigating the U.S. Forest Service Custer National Forest to expand the Pryor Mountain Herd Management Area (Territory). The gather and first amended complaint were dismissed as moot but the SAC was allowed by the U.S. District Court. The SAC has been argued and a ruling is pending.

Jerri Tillet Appeal and Petition for stay to IBLA for use of five year fertility control via remote darting through the 2009 HMAP and Tiered Environmental Assessment (EA). IBLA denied the petition for stay and affirmed BLM's decision to apply fertility control through the 2009 HMAP with a tiered EA.

Nevada

Laura Leigh v. Salazar, Case No. 3:10-cv-00417-LRH-VPC (D. Nev.) (Filed 7-9-10)

Plaintiff, Laura Leigh filed a motion for a Temporary Restraining Order (TRO) and Preliminary Injunction, alleging a violation of her First Amendment rights on the basis that BLM would likely place unreasonable restrictions on her access the Silver King Herd Management area to observe wild horse gather operations. On September 27, 2010, the district court issued an Order denying Plaintiff's request for a TRO. Gather operations began at the Silver King HMA on September 26, 2010 and ended October 13, 2010. Plaintiff voluntarily dismissed this case.

Cloud Foundation, et al v. Salazar, Case No. 3:11-cv-00459-HDM -VPC (D. Nev.) (Filed 6-29-11 and 07/07/11)

Plaintiff, Cloud Foundation, et al. filed a Complaint for Declaratory and Injunctive Relief (06/29/11) and a Motion for Preliminary Injunction (07/07/11) alleging a violation of the Wild and Free-Roaming Horses and Burros Act ("WFRHBA") by failing to manage the Triple B, Maverick-Medicine and Antelope Valley Herd Management Areas (hereafter "Triple B HMA" or "HMA") principally for wild horses and burros, and by approving the use of overly invasive management activities for the wild horses in these management areas which go above and beyond the minimum feasible level necessary. Plaintiffs also allege that BLM violated the National Environmental Policy Act's ("NEPA") requirement to fully consider and analyze all reasonable alternatives to the Proposed Action by failing to consider an alternative which would reduce livestock grazing to allocate more resources to wild horses and burros. On July 15, 2011, the district court issued an Order denying Plaintiff's request for the preliminary injunction. On July 15, 2011, the Plaintiff filed an emergency motion for injunctive relief pending appeal, to halt appellees' round-up of wild horses in the Triple B with the Ninth Circuit Court of Appeals, which granted the emergency injunction. After the U.S. filed its response to the motion for emergency injunction, on July 19, 2011, the Ninth Circuit issued an order that denied plaintiffs' emergency motion for injunctive relief, and allowed gather operations to begin at the Triple B Complex on July 20, 2011. Gather operations ended August 31, 2011. On September 7, 2011, the Plaintiff filed a Motion to voluntarily dismiss its appeal to the Ninth Circuit from the District Court's denial of its motion for preliminary injunction, and this motion was granted.

The parties are waiting on a schedule for briefing on the merits of the case and a case management conference is scheduled for November 1, 2011.

Laura Leigh v. Salazar, Case No. 3:11-cv-00608-LRH -RAM (D. Nev.) (Filed 08/24/11)

Plaintiff, Laura Leigh filed a complaint for declaratory and injunctive relief on the Triple B gather on August 24, 2011, and submitted a motion for an emergency restraining order to stop alleged "inhumane treatment" of wild horses during the Triple B gather by the gather contractor. On August 30, 2011, the District Court judge granted an emergency restraining order to prohibit the use of a helicopter to strike or fly the skid or helicopter dangerously or unreasonably close to the horses during the remaining day for the gather. The gather operations ended on August 31, 2011. The Plaintiff filed an Amended Complaint on September 8, 2011.

Laura Leigh v. Salazar, Case No. 10-597-LRH (D. Nev.) (formerly Case No. 10-1634)

Plaintiff alleged that the Bureau of Land Management (“BLM”) violated the Wild Free-Roaming Horses and Burros Act and the First Amendment of the United States Constitution in connection with an ongoing gather of wild horses and burros in the Silver King herd management area, which is located in southern Nevada. Plaintiff sought a preliminary injunction. Ultimately, Plaintiff’s motion was denied as moot. Plaintiff is currently appealing this ruling in the Court of Appeals for the Ninth Circuit.

Oregon

Loren and Piper Stout v. U.S. Forst Service, Case 2:09-cv-00152-HA (D. OR) (Filed 2-5-2009)

Plaintiffs have filed suit against the US Forest Service alleging failure to comply with the National Forest Management Act and Administrative Procedure Act by allowing excess horses to remain in the Murderers Creek Wild Horse Territory. The requested relief is a Court Order requiring management at the 100 head level identified in the Malheur National Forest Plan. The plaintiffs filed an amended complaint alleging USFS/BLM did not complete an Endangered Species Act (ESA) consultation on the 2007 Territory/ Herd Management Area plan. In December 2010, the BLM was dismissed from this action. In March 2011, the plaintiffs were granted partial summary judgment. The 2007 territory plan was remanded to the Forest Service and consultation was to be initiated within one year. The Malheur NF is currently preparing a biological assessment for Section 7 consultation with National Marine Fisheries Service. In June 2011, the Forest Service declined a proposed settlement agreement of the remaining claims and is on schedule to meet the court order regarding Section 7 Consultation.

In September 2011, the plaintiff’s motioned for summary judgment on the remaining claims and the suit is ongoing.

Sheri Welsh IBLA appeal of the Stinking Water Wild Horse Gather

Burns District received an Appeal of the Stinking Water wild horse gather on July 27, 2010. There was not a petition for stay and horses were gathered in mid-August. The Appeal and Administrative record were sent to IBLA on August 20, 2010. A motion to dismiss was sent on October 20, 2010. IBLA dismissed the case in May 2011. The case was dismissed because the appellant lacked standing and the appellant did not show why the decision was in error.

The main points of the appeal centered on population estimates, genetics, herd viability, fertility control, request for scientific analysis for range conditions, AMLs levels, and cost estimates for the Stinking Water gather.

Downer Litigation - Kiger/Riddle HMA’s

Craig Downer in July, 2011 filed for a TRO on the Kiger/Riddle gather (Case # CV’11-816-SU), based on genetic viability, violation of the WH&B Act and Congressional intent of the Act. On July 6, 2011, the Judge denied the TRO on failure to comply with rule 65(b) (1) (b) and Rule 65 (c). On July 20, 2011 the Appellant filed an amended complaint Case # 2:11-CV-816-SU with the Cloud Foundation on the basis of not complying with the established BLM gather schedule, genetics and violation of the WH&B Act, inadequate range of alternatives/ NEPA analysis.

BLM (US Attorney) filed its answer (Defendants answer to the first complaint) on September 6, 2011. A conference call will occur in the near future to determine the briefing schedule.

Wyoming

Appeal of BLM's Decision to Cancel Two Private Maintenance and Care Agreements
BLM's decision to cancel two adopter's Private Maintenance and Care Agreement (PMCA) was appealed to the Interior Board of Land Appeals on November 18, 2010. IBLA upheld the Rawlins Field Office decision to cancel both PMCAs.

American Wild Horse Preservation Campaign, et al., v. Ken Salazar, Secretary Department of the Interior, et al. Civ. No. 11-01352 (ABJ) (Little Colorado White Mountain gather and population management)

Plaintiff filed a motion for a Temporary Restraining Order (TRO) and Preliminary Injunction against BLM's initial decision to create a non-reproductive herd by spaying mares and gelding stallions. Plaintiff raised issues regarding violations of the Administrative Procedures Act, NEPA and stated that the defendant failed to:

- Provide public an opportunity to comment,
- Consider several major environmental impacts,
- Consider impacts on individual horses and herds' social structures,
- Analyze the impacts of its actions on the genetic viability of the herds, and
- Analyze whether its chosen management approach would actually meet the agency's state objectives.

The Modified Decision of June 22, 2011 to manage for a non-reproductive herd component of geldings along with the removal of excess animals was rescinded and on August 4, 2011. BLM issued a second Modified Decision Record that changed the course of action to gather, treat and release for altering sex ratios to favor males and treat with fertility control along with the removal of excess animals. The case was dismissed as moot after the gather was completed.

Rock Springs Grazing Association, a Wyoming Corporation; v. Ken Salazar and Robert V. Abbey.

Plaintiff filed petition for relief to enforce the judgment and order in the case of Mountain States Legal Foundation and Rock Springs Grazing Association v. Clark, Secretary of Department of the Interior, Civ. No. 79-275, and direct the defendants to remove all of the wild horses that have strayed onto the RSGA lands within the Wyoming Checkerboard. Case is pending.