

DRAFT letter to Nevada State Engineer from Wildlife Commission
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1 Nevada Board of Wildlife Commissioners
2 1100 Valley Rd.
3 Reno, NV 89512
4
5 Jason King, P.E.
6 State Engineer
7 Division of Water Resources
8 901 S. Stewart St., Suite 2002
9 Carson City, NV 89701

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11 Dear Mr. King:

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13 It has come to the attention of the Nevada Board of Wildlife Commissioners (the
14 Commission) that federally protected horses and burros are using waters of the
15 State of Nevada for which they have no legal beneficial use designation. These
16 animals are classified as Free and Wild Roaming Horses and Burros (FWRHB)
17 by the Wild Horse and Burro Act and the federal agencies insist that they are
18 neither wildlife nor domestic livestock. As discussed below, Nevada Law
19 classifies all equine species (horses and burros) as livestock and dearly does not
20 classify any equine species as wildlife and will not do so in the immediate future.

21
22 The Commission agrees with previous classifications of beneficial use of Nevada
23 Waters that include private lawful designations for beneficial use of water.
24 Such as livestock, irrigation, wildlife, and wildlife habitat. The Commission has
25 found that joint use of the same water sources by livestock and wildlife has been
26 proven beneficial to both throughout Nevada. The Commission also agrees that
27 any State Engineer denial of water rights in the name of the US Government or
28 its agencies is consistent with Nevada Water Law in so much as the US
29 Government agencies do not own wildlife or livestock or irrigated croplands that
30 represent current classifications of beneficial use of water. Please be advised that the
31 Nevada Wildlife Commission has been unable to identify the state law which justifies
32 any federal agency to attain a water right for a special status equine species as wildlife.

33
34 Given this and the discussion below, please include the following items as policy
35 and future action of the Division of Water Resources:

- 36 1. Notify each federal agency that is harboring Free and Wild Roaming Horses
37 and Burros that the continued use of water for which there is no designated
38 beneficial use is in violation of Nevada Law.
39 2. Notify each federal agency that the known incidents of FWRHB causing
40 degraded water qualify, often complete loss of spring or seep discharge, and
41 interference with the use of that water by Nevada wildlife is in violation of
42 Nevada Law.
43 3. Instruct the federal agencies to immediately remove any FWRHB that are
44 making unlawful use of Nevada waters.

1 Title 45 of Nevada Revised Statutes includes the following definition that identifies wild
2 animals as those found naturally in a wild state, which cannot possibly apply to horses
3 in Nevada: **NRS 501.087 "Wildlife" defined.** *"Wildlife" means any wild mammal, wild*
4 *bird, fish, reptile, amphibian, mollusk or crustacean found naturally in a wild state,*
5 *whether indigenous to Nevada or not and whether raised in captivity or not.*
6 *(Added to NRS by 1969, 1330; A 1987. 560; 1991, 259; 2007. 1798)*

7 Nevada legislators explain why they have carefully defined what is and what is not
8 wildlife in Title 45 **"NRS 501.100 Legislative declaration regarding wildlife".**

9 1. Wildlife in this State not domesticated and in its natural habitat is part of the
10 natural resources belonging to the people of the State of Nevada.

11 2. The preservation, protection, management and restoration of wildlife within the
12 State contribute immeasurably to the aesthetic, recreational and economic aspects of
13 these natural resources.

14 [Part 8:101:1947; A 1949.292; 1943 NCL § 3035.08]—(NRS A 1969,1347)

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16 This leads to the conclusion that there is no beneficial use of water for the Federal
17 government's mustangs, wild horses, or feral horses depending on how you label
18 them. Furthermore, neither the Nevada Department of Wildlife nor the US Fish and
19 Wildlife Service claim that these animals are wildlife and under their jurisdiction. The
20 waters within most of the Nevada rangeland wildlife habitats that are grazed by
21 domestic animals are owned by the rancher and shared by law and cooperation with
22 Nevada wildlife. The Federal government has no law that supersedes the State of
23 Nevada's water law (in accordance with the Tenth Amendment).

24

25 CONCLUSION

26 The timing of the arrival of horses and burros as domestic animals in the Great Basin is
27 well documented which is why they have often been referred to as feral animals. In turn
28 the claim of federal ownership of these animals dates to the Act of 1971 as does the
29 removal of the horses and burros from classification as either wildlife or domestic
30 livestock. Failure of federal agencies to properly and humanely manage these animals
31 is also well documented as is the risk to resident wildlife from FWRHB.

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33 The Nevada Board of Wildlife Commissioners would strenuously object to any attempt
34 to assign a form of beneficial use of Nevada water for these federally owned animals
35 and we find that it would be entirely appropriate for the State of Nevada instruct the
36 federal agencies to remove any federal animals that are using water in violation of
37 Nevada Law.

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39 The Commission welcomes any opportunity to work with the State Engineer and the
40 experts within the State Division of Water Resources concerning this issue.

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42

43 Sincerely,

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