

**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  
6 Jason King, P.E.  
7 State Engineer  
8 Division of Water Resources  
9 901 S. Stewart St., Suite 2002  
10 Carson City, NV 89701  
11

12 Dear Mr. King  
13

14 It has come to the attention of the Nevada Board of Wildlife Commissioners (the  
15 Commission) that federally protected horses and burros are using waters of the  
16 State of Nevada for which they have no legal beneficial use designation. These  
17 animals are classified as Free and Wild Roaming Horses and Burros (FWRHB)  
18 by the Wild Horse and Burro Act and the federal agencies insist that they are  
19 neither wildlife nor domestic livestock. As discussed below, Nevada Law  
20 classifies all equine species (horses and burros) as livestock and clearly does not  
21 classify any equine species as wildlife and will not do so in the immediate future.  
22

23 The Commission agrees with previous classifications of beneficial use of Nevada  
24 Waters that include private lawful designations for beneficial use of water rights  
25 such as livestock, irrigation, wildlife, and wildlife habitat. The Commission has  
26 found that joint use of the same water sources by livestock and wildlife has been  
27 proven beneficial to both throughout Nevada. The Commission also agrees that  
28 any State Engineer denial of water rights in the name of the US Government or  
29 its agencies is consistent with Nevada Water Law in so much as the US  
30 Government agencies do not own wildlife or livestock or irrigated croplands that  
31 represent current classifications of beneficial use of water.  
32

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

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

2 As the Commission has reviewed the issue of water rights in Nevada we  
3 recognize that almost all ranchers in Nevada own water rights that are classified  
4 as either vested or certificated. The private ownership of the water rights is  
5 necessary for our local economies to thrive and the Board of Wildlife  
6 Commissioners supports cooperative working relations with the water rights  
7 owners as the lawful means of obtaining water for wildlife and wildlife habitat  
8 where ever possible.  
9

10 In order for a water right to be vested it must have been put to beneficial use  
11 before 1905. Certificated water rights were appropriated after 1905 and a claim  
12 to ownership started with an application to put them to beneficial use. Once the  
13 water was put to beneficial use the State Engineer issues a **Certificate of Water**  
14 **Rights**, which are subject to vested water rights, that is the vested water rights  
15 are superior for the purpose of deciding who uses the water. Appropriated water  
16 rights correctly include a reservation of water for wildlife or wildlife habitat that  
17 benefits all users when that water is located on federally controlled lands.  
18

19 Purchase of a Nevada ranch includes paying for private lands, improvements  
20 (buildings, corrals, irrigation systems, roads, fences, etc.), and property in the  
21 form of water rights and rights-of-ways or easements. Water is the rancher's  
22 most valuable asset on the ranch and the right to use that water is heavily  
23 regulated by State law. If the rancher owns water rights on the federally  
24 managed lands the rancher has (owns) a property right on that land. As public  
25 officials of the State of Nevada each Commissioner has sworn to protect the  
26 security of private property and due process of law and that includes the utmost  
27 respect and deference to private property and the property owners.  
28

29 It is important to note that all laws are a series of words put together, and all  
30 words have a specific lawfully defined meaning. This is why the courts use law  
31 dictionaries. For example: Black's Law Dictionary defines vested as: *"Having*  
32 *become a completed, consummated right for present or future enjoyment; not*  
33 *contingent, unconditional; absolute < a vested interest in the estate >,"*  
34

35 The State of Nevada has declared that there are several specific beneficial uses  
36 of water for which a water right is granted under State law. Most ranches have  
37 two distinct types of water rights: irrigation and/or livestock. Many property  
38 owners also hold water rights for wildlife or wildlife habitat uses.  
39

40 Here's the legal definition of livestock from the Black's Law Dictionary:  
41 *"Livestock; Domestic animals and fowls that (1) are kept for profit or pleasure, (2)*  
42 *can normally be confined within boundaries without seriously impairing their*  
43 *utility, and (3) do not normally intrude on others land in such a way as to harm*  
44 *the land or growing crops."*  
45

1 Are wild horses livestock? The answer by the BLM is NO and that is why the  
2 federal government is applying for water rights under the guise of "wildlife",  
3 because wildlife is also a beneficial use of water under Nevada law. However,  
4 here are some definitions of wildlife that would be accepted in a court of law:

5  
6 Webster's defines wildlife: *"living things that are neither human nor*  
7 *domesticated; esp.: mammals, birds, and fish hunted by man."*  
8

9 Black's Law Dictionary did not have wildlife but did have wild animal: *"...an*  
10 *animal that, as a matter of common knowledge, is naturally untamable,*  
11 *unpredictable, dangerous, or mischievous, (2) any animal not statutorily*  
12 *designated as a domestic animal."*  
13

14 Title 45 of Nevada Revised Statutes includes the following definition that  
15 identifies wild animals as those found naturally in a wild state, which cannot  
16 possibly apply to horses in Nevada: **NRS 501.09? "Wildlife" defined.**  
17 *"Wildlife" means any wild mammal, wild bird, fish, reptile, amphibian, mollusk or*  
18 *crustacean found naturally in a wild state, whether indigenous to Nevada or not*  
19 *and whether raised in captivity or not.*

20 *(Added to NRS by 1969, 1350; A 1987, 560; 1991, 259; 2007, 1798)*

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

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

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

29 [Part 8:101:1947; A 1949, 292; 1943 NCL § 3035.08]—(NRS A 1969, 1347)

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

39 Please consider that the Constitution of the United States is quite clear in the  
40 Fifth amendment where it states in pertinent part: "..... Nor be deprived of life,  
41 liberty, or property, without due process of law; nor shall private property be  
42 taken for public use, without just compensation." This means that the  
43 Commission cannot condone the unlawful "taking" of water held under Nevada  
44 Water law any more than the Commission can condone the form of management

1 of FWRHB that is damaging wildlife habitats and interfering with the  
2 Commission's obligation to provide thriving wildlife populations for the benefit of  
3 our citizens.  
4

5 As the Wildlife Commission, we have a foremost obligation to properly manage  
6 the wildlife of Nevada and its habitats. In doing so, professional wildlife  
7 management is guided by the example of mismanagement found in the Kaibab  
8 Plateau in Arizona. Under federal Forest Service control the Kaibab Plateau was  
9 called the "Grand Canyon National Game Preserve in 1906. Hunting and grazing  
10 were prohibited and with no technical management of the numbers of mule deer,  
11 the deer increased from 4,000 to over 100,000 and by the 1920s the habitat was  
12 no longer able to provide forage for the deer. The result of this form of  
13 management, meaning letting nature take its course through the uncontrolled  
14 increase in numbers of herbivorous animals, always is the damage and  
15 deterioration of rangeland vegetation and massive die-off of animals. Over  
16 80,000 deer died of starvation inside of the Kaibab Plateau mule deer refuge..  
17 For a brief description of the mule deer in the Kaibab Plateau see: Charles E.  
18 Kay. 2010. The Kaibab Deer Incident: Myths, Lies, and Scientific Fraud, Western  
19 institute for Study of the Environment Colloquium.

20 For some reason the federal agencies choose not to apply this lesson to the Free  
21 and Wild Roaming Horses and Burros. This is well documented and, for  
22 example, an essay by Cliff Gardner February 5, 2010, "*A look at the history of*  
23 *mismanagement of the Nevada mustang*" describes some fourteen catastrophic  
24 die offs of FWRHB since the animals were protected by federal law in 1971. Of  
25 particular interest is the death by starvation of hundreds of horses within the  
26 Nellis Air Force Range. In 1991, it was reported that dead horse carcasses  
27 littered the landscape on the Nellis Air Force Bombing and Gunnery Range north  
28 of Las Vegas. That die off of horses followed the over grazing destruction of  
29 forage plants over an area of at least 500,000 acres. This Nellis AFB die off of  
30 horses represents exactly the same scenario as occurred with mule deer in the  
31 Kaibab Plateau seventy years before and the federal managers chose to ignore  
32 the experience of wildlife professionals.  
33

34 Because of these examples of mismanagement of horses by the federal  
35 agencies, and the careless choice to ignore hard won wildlife management  
36 lessons by those agencies. The Commission can only conclude that the  
37 presence of any federally protected Free and Wild Roaming Horses and Burros  
38 will always be improperly managed and will always be a threat to healthy and  
39 thriving wildlife populations in Nevada.  
40

#### 41 42 CONCLUSION

43 The timing of the arrival of horses and burros as domestic animals in the Great  
44 Basin is well documented which is why they have often been referred to as feral

1 animals. In turn the claim of federal ownership of these animals dates to the Act  
2 of 1971 as does the removal of the horses and burros from classification as  
3 either wildlife or domestic livestock. Failure of federal agencies to properly and  
4 humanely manage these animals is also well documented as is the risk to  
5 resident wildlife from FWRHB.  
6

7 The Nevada Board of Wildlife Commissioners would strenuously object to any  
8 attempt to assign a form of beneficial use of Nevada water for these federally  
9 owned animals and we find that it would be entirely appropriate for the State of  
10 Nevada instruct the federal agencies to remove any federal animals that are  
11 using water in violation of Nevada law.  
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13 The Commission welcomes any opportunity to work with the State Engineer and  
14 the experts within the State Division of Water Resources concerning this issue.  
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17  
18 Sincerely  
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