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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
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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
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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 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 501.097 "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 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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18 Sincerely
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