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# Ignoring the Rule of Law

*Thanks to activists and feckless bureaucrats,  
a lawless West is reemerging.*

*By Rachel Dahl*

**R**anchers live closest to the land and the creatures that live there with them; cattle, sheep, rabbits, coyotes, sage grouse and horses. By definition they care deeply for nature and understand better than most of us the natural laws that direct life: eat, drink, reproduce, age, die. Today's ranchers regularly provide feed and water for the feral horses that run on the same land where they run their cattle, helping to perpetuate the very system that is putting ranchers out of business. When too many wild horses flood the range, the Bureau of Land Management cuts ranchers' cattle numbers, impacting their ability to make a living, which in turn impacts their ability to provide feed and water for the horses. The laws in place to control the horse problem—the Wild Free-Roaming Horses & Burros Act of 1971 (WHBA), state water laws, and state brand laws—are being ignored and flaunted in favor of case-by-case decision-making by bureaucrats and special interests.

*We are in trouble and the solutions are being ignored—the solvers, marginalized.*

**A**s the wild-horse saga plays out on the rangelands of the American West, there is a new episode almost daily. The hourglass is turned over once again, starting the latest chapter in Eureka County, Nev., with a cast the same as it is in Sweetwater County, Wyo., Cold Creek, Nev., or Salt River, Ariz.—federal government employees, local politicians, ranchers, wild-horse activists, wildlife supporters, state water regulators, lawyers, and judges.

In February 2015, the BLM began an orderly roundup of excess horses from the Fish Creek Herd Management Area, after federal-agency prioritizing, environmental reviews, demands by wild-horse activists, memoranda of understanding, and the exercise of something we now call the Comprehensive Animal Welfare Policy. That triggered a modern-day range war, complete with death threats. After the roundup, a message left on one rancher's phone says, "You die if the horses aren't released." The local sheriff and FBI got involved, they traced the call to an animal rights activist, knocked on her door, and told her to stop.

The Eureka County commissioners are concerned about their community, with dwindling revenues as gold prices drop and mining companies close shop, and declining revenues from its agricultural and ranching industries hit hard by a four-year drought and deep cuts in grazing numbers by the Bureau of Land Management.

Prior to passage of the WHBA—which states that horses should be maintained at the same levels and in the same places as found in 1971—there were 639,000 cattle running on Nevada ranges; now there are 32 percent less. And when the law was passed there were less than 10,000 horses in the state. Since that time, close to a quarter-million horses have been adopted out from the ranges by BLM and close to 50,000 more are on welfare in holding facilities or on farms and ranches in the Midwest. Even so, there are about 30,000 left on Nevada ranges while the BLM's "appropriate management level" is 12,811. And thanks to the laws of nature the herds double every four years.

Under the WHBA, Herd Management Areas (HMAs) are designated as those in which wild horses were found in 1971 at passage of the act—and they include feed and water resources to support the herds. Herd sizes were designated and Appropriate Management Levels (AMLs) established, using scientific data to quantify the number



of horses the land could sustain, while not hurting a century-old ranching industry.

Before the gather in February 2015, there were an estimated 549 horses on the Fish Creek HMA, and Eureka County supported the original federal agency environmental assessment that called for a roundup that would leave the range at AML—a maximum of 170 horses. But then the activists got involved, stopping the gather before it was complete, and the county filed legal action that was pending as this is written.

Kevin Borba is the rancher whose ground and grazing permits overlap the Fish Creek Herd Management Area. He comes from a long line of dairy farmers in the Central Valley of California, and dreamed of being a cattle rancher. He and wife, Sue, ended up with their five kids on a little 219-acre “patch of rock” in Panoche. The kids went to the one-room schoolhouse, and the

## “The wild-horse ‘volunteer’ will probably have a BLM badge by next week and they’ll give her a pistol by Christmas.

A NEVADA RANCHER

Borba family was part of the Central Valley’s tightly knit ranching community.

But then solar energy came to town and the ranches were up for grabs, getting sold off for the development of the green-energy industry to meet the needs of a state whose elites are committed to divesting fossil fuels from the energy production industry. Over the years, increasing environmental regulations have driven many California businessmen, dairymen, and agricultural producers out of the state, and Borba was no different. He was happy to cross the state line.

With his muleskinner’s hat pulled down low over his ears and his plaid shirt snapped all the way up to his chin, Borba got way down deep in his Wranglers and headed for Nevada. Little did he know that the simple matter of a brand (his, the B Bar over a quarter circle) and the com-



ABOVE: View from Hwy. 50 (“The Loneliest Road in America”) looking south toward the Fish Creek HMA. BELOW: Water is so scarce on this year’s desert that the horses are mostly sucking mud—if they can get that. BOTTOM: Kevin Borba with the B Bar quarter circle brand on his boots. Borba paid for permits for 924 cows but is only allowed to run 247. OPPOSITE: The stallion called Warrior has fought many other studs (including his own sons) to keep his mares to himself. His scars show a few of the battles.



plicated nature of water law would weave their way through what was to become a saga fit for daytime television, and culminate with a BLM Battle Mountain manager suggesting Borba change his role and become a shoe salesman, and a BLM manager in Ely telling the cowboy she would prefer that he run sheep.

Another character in the saga, Laura Leigh (last name rhymes with “pee” not “neigh”), is the self-appointed wild-horse expert and, depending on

the day and the issue, is either a venomous critic or an official volunteer of and for the BLM. A woman Hollywood would have cast as a schoolmarm, her issue-driven-propa-

ganda-producing-always-fundraising website spins the ongoing plight of wild horses from an anti-ranching, anti-livestock point of view.

Leigh has been a thorn in the side of the BLM for years, litigating at the drop of a hat everything from trap-site access and First Amendment rights to using hot-shots to load horses in the trailer, and now emerges with VIP access to BLM wild-horse gathers, its data, on-site cameras, and water sources. (One rancher says he thinks she’ll probably have a BLM badge by next week and they’ll give her a pistol by Christmas.)

When the February gather commenced, it was Laura Leigh, with her officially designated “approved volunteer” status, her own observation trailer, cell phone, and propaganda machine, who called short the gather before it reached 170 AML. Apparently the horses at Fish Creek are suffering stress and as a result their natural cycles are off, resulting in an early crop of foals. Leigh cried foul





Due to too many feral horses and almost no management, many of the herds are doing poorly. In late September, some Eureka County residents found three fresh pits out on the range, with buried horses. "It smelled bad," one said. "We couldn't tell how many—probably close to a hundred—but the graves are big and were made with a Cat. There's lots of feed out here so they must have died of dehydration. You could see outlines of the bodies and hair from some of the tails." TOP LEFT: This young male is covered with bite marks from other studs, trying to keep him away from their mares. ABOVE RIGHT: This mare and foal are

hanging on to life in the Cold Creek herd west of Las Vegas. Some of the horses were in such poor condition, out of an act of kindness, the BLM had 28 euthanized.

LEFT: Studs in battle for the harem. BELOW: The results from these fights can be ugly.



at the number of day-old babies that got caught up in the politics and the BLM caved, setting aside its mission to reach AML.

Of the total horses gathered at Fish Creek, 102 of the mares were given a fertility control treatment, branded with "KB," and turned back out on the range in spite of legal action brought by the ranchers and Eureka County to prevent a return of excess horses. Additionally, 81 of the gathered stallions were given a "12" brand to signify for monitoring purposes the HMA to which they were returned, intact and able to make more babies.

The problem is, if a person looks up those two brands in the state of Nevada official livestock brand book, it says that the 12 brand is registered to Kelly Burroughs in Ruby Valley. According to Nevada law, and Flint Wright, the administrator of the Livestock Identification Division of the Nevada Department of Agriculture, Burroughs is now the legal owner of 81 stud horses gathered off the Nevada desert under the guidelines of the WHBA. Should Burroughs be so inclined, he could legally catch any or all of

those horses and dispose of them in any way he sees fit.

When Borba actually saw the brands on horses out on the Fish Creek HMA that overlaps his Antelope/Fish Creek grazing allotment later, he met Shawna Richardson in Ely and asked the wild-horse specialist for the Battle Mountain BLM district what the KB brand stood for. As the story goes, in a classic case of "he said, she said" (which she says "absolutely did not happen"), Borba says Richardson told him: "We branded the studs with a 12 and the mares with a K." Then Borba said, "KB is my name. Am I going to see horses with my initials on my range?" She replied: "We did that because we kicked butt and it meant we won and got to turn the horses back out."

Richardson's boss, state director John Ruhs, said he wasn't going to waste time to figure out if she really said it. "We have to go back to core values of respect for others, integrity and accountability, and that's the kind of direction I'll give and if people can't do that, they'll have a tough time."

It turns out, though, when Borba looked up the KB brand in the state registry to see what it really meant, he found that it didn't even exist. So in April 2015, in accordance with state brand laws, he registered the KB brand, and again in compliance with state law is now the legal

owner of animals bearing that brand, including the 102 mares the BLM gathered, branded, fertility treated, and turned back out. The Nevada Department of Agriculture, responsible for the orderly conduct of the state branding program, is currently investigating the entire situation.

When the BLM finished the Fish Creek gather and turnout, there was a total of 302 horses on the HMA, but that was before the mares finished foaling. In 1997, the BLM actually had a plan to reduce Fish Creek numbers to the high end of 170 by using gathers and birth control, but said it would take 19 years to implement. Those measures were never put into place and so this year, 18 years later, when success should be within reach, the 18-year-old goal of achieving AML is short by 132. And by now there is a new crop of colts adding to that number. If the scientific data—that horse herds double every four years—is correct there will be 604 head on the HMA by 2019.

Historically, the ranch had run 32,000 Animal Unit Months (AUMs), a measure



indicating what a cow and calf (or five sheep) will eat in one month. Over the years BLM management decisions have slowly eroded the ability of ranchers to fully exercise their grazing permits, legal property that they own and on which they pay taxes. Based on “sound science” and pressure from environmental groups using the strong arm of litigation, ranches across the West have been decimated by these reductions in the numbers of cattle they can run. Fish Creek has been no different. The ranchers who previously owned it suffered when the AUMs were cut to 18,900 in 1994, and then again to 4,800 in the late '90s.

When Kevin and Sue Borba bought the Fish Creek Ranch just southwest of the old mining town of Eureka four years ago, they made their decision based on the numbers the BLM was allowing in 2010: roughly 418 cows (3,090 AUMs) on their Duckwater allotment for five months, and 506 cows (2,530 AUMs) on Antelope/Fish Creek for five months. They were to run on their private land for several months and use winter range on the desert. They didn't buy the

**“We have to go back to core values of respect for others, integrity and accountability, and that's the kind of direction I'll give and if people can't do that, they'll have a tough time.”**

JOHN RUHS, BLM

ranch to get rich...they were buying a dream—to run cattle and raise their kids in the ranching lifestyle. They knew that to generate a basic living for a family with so few cows, they would have to work tirelessly, but that was the whole point of the dream.

Today Borba is running 107 cows (instead of 506) on the Antelope/Fish Creek allotment and 140 cows (instead of 418) on his Duckwater allotment, because that's all the BLM will allow. And he is worried that government agents will break another promise and not let him turn cows out in November on his winter ground at all. In an ultimate insult, when it drastically cut Borba's allotment, the BLM suggested he convert his cattle permit on Duckwater to run 1,006 sheep instead.

As a rancher, Borba, who owns all of the water rights on that range, spends all his time



FROM TOP: Doug Furtado (cap and sunglasses) is flanked by his muscle, Jon Sherve. The National Geographic stringer is wearing a white shirt. CENTER: Flint Wright, left, Nevada Department of Agriculture livestock administrator, rancher Kevin Borba, center, and BLM's John Ruhs. LEFT: Jake Tibbitts, Eureka County natural resource boss, led the tour.

turns out that one of the BLM water sources at Fish Creek isn't even inside the HMA boundaries and lures horses off their designated range on a regular basis. One day, close to Highway 50, Borba and his daughter, Sage Rose (11) and son Dustin (19), came across a little stallion lying in the mud, hungry and thirsty, in need of rescue.

Since he had been taking care of these horses all year anyway, and because ranchers take care of animals, Borba's natural instinct was to get the horse in the trailer and get him some water. He hauled the horse to the ranch house and called the BLM and the Eureka County sheriff to let them know what he was doing to save the colt.

Incredibly, wild-horse activists always find a use for the law when it's convenient, and in this case they claimed that only “authorized personnel” are allowed to feed and water a wild horse. Now they are pushing for Borba's arrest because they claim he lured the stallion off the HMA. Never mind that the BLM doesn't get cited or threatened

and money caring for the land. In the summer he makes improvements and does regular maintenance on all water sources—even though he's not making enough money on cattle to pay for it. In the winter he spends his days breaking ice so animals including the horses can drink. There are days when the horses are waiting for him at the troughs. He is the daily caretaker of not only his cattle but all wildlife on that range.

By July, the 302 head of wild horses the BLM left on Fish Creek were dangerously close to being out of water and they had strayed off their HMA looking for relief. It



with arrest when the water it uses is located on the edge of or in some cases outside of an HMA and it “lures” horses outside its boundaries. In the meantime, activists have claimed “Sarge” for their own: the little scoundrel stud horse from Fish Creek has become Mr. Ed, with words put in his mouth, “speaking” online on behalf of wild horses everywhere. But it’s a mixed message—“save the horses” has become “don’t touch those horses and don’t water them or we will put you in jail.”

Things had gotten so bad at Fish Creek by August that the Eureka County Natural Resources Advisory Board (NRAB) called for a tour of the Fish Creek HMA. It hosted county commissioners, BLM director Ruhs, who was accompanied by the Battle Mountain district manager Doug Furtado, and his “muscle,” Jon Sherve. [See “The Grass March,” *RANGE*, Summer 2015 at [www.rangemagazine.com](http://www.rangemagazine.com).] There were also members of the ranching community and the public, along with a whole passel of the press including a stringer from *National Geographic*. Curiously, Laura Leigh was nowhere to be found.

Jake Tibbitts, Eureka County’s natural resource director, led the tour. He spoke at length of the history of Fish Creek and presented several action items for the board to discuss and eventually present to the commissioners. Tibbitts reminded attendees that before he went to work at the BLM, Furtado had worked for Eureka County under John Balliet, Tibbitts’ predecessor. Furtado had actually authored some of the language found in existing Eureka County natural-resource policy.

Kerry O’Brien, a blogger and supporter of the BLM birth-control program, had spent some time with Richardson and Leigh in the days leading up to the tour. When the issue of the KB brand was brought up, Ruhs was surprised and vowed to find out what the brand stood for. O’Brien then stepped up to explain the two-letter brand as a coding



*Kevin and Sue Borba with 19-year-old son, Dustin (a rodeo champion bronc rider and one of five children), at the Borba Ranch east of Eureka, Nev. Kevin and Sue are both prize-winning former bull riders and bronc riders. They are constantly battling emotional copy about “Save the horses. They are almost extinct.” How can stars like Sheryl Crowe, Willie Nelson and Ed Harris babble about “these horses are endangered” when there are more than 50,000 on welfare in holding pens at taxpayer-supported “ranches” in the Midwest, and close to a quarter-million excess horses have already been adopted out?*

scheme the BLM uses when it applies birth control to gathered mares that are then turned back out on the range.

Confirmed later by Furtado, who called back to his office to make sure, O’Brien says that in 2004 the BLM started marking mares with an AA. The first letter stands for the fiscal year of the gather, and the second letter corresponds to the place of the gather. It was J.J. Goicoechea, Eureka County commissioner and veterinarian, who brought up the fact that under that reasoning, 2015 would be L, so those mares probably should have borne an LB brand. But that brand isn’t registered at the state brand office either, although Larry and Patricia Bute in Ely own the L Hanging B.

About halfway through the tour, Leigh materialized in a jacked-up pickup but stayed

hidden behind darkly tinted windows, except to pop out through the window like a prairie dog to shoot photos of the crowd. She was chaperoning the *National Geographic* stringer and his buddy from Wildlands Defense who had previously served as media director for the anti-cow activists running Western Watersheds Project in Idaho and whose car couldn’t make it through the desert for the tour.

Leigh went on afterwards to accuse Eureka County of holding the tour in secret despite its requirements as a public body to post notice under the Open Meeting Laws of the state of Nevada, advertised for the whole world to see. Because Leigh reportedly knows when a gnat sneezes on the hind end of a wild horse in Colorado, her contemptuous indictment of the county claiming she was unaware of the tour and uninvited was wholly disingenuous. She later accused the BLM of “creating the current crisis” at Fish Creek and demanded the immediate removal of Ruhs in an inflammatory letter to Neil Kornze, who heads the BLM from Washington, D.C.—a man who, for anyone interested in politics on the Potomac, worked for Nevada Sen. Harry Reid for several years. It was Kornze who sent ATF and other heavily armed storm troop-

ers and cops to take Cliven Bundy’s cattle off an allotment in southern Nevada in 2014. [See “Patterns of Harassment” at [www.rangemagazine.com](http://www.rangemagazine.com), *RANGE*, Fall 2014.]

By September the wild-horse saga had shifted to southern Nevada, where the drought forced the BLM to emergency gather more than 200 horses from the Cold Creek area of Wheeler Pass HMA. Twenty-eight of those horses were so starved and dehydrated that they had to be euthanized by the BLM. In a complete about-face, horrified activists cried that volunteers could have “helped them recover.” Apparently volunteers are capable and appropriate in assisting distressed wild horses, but ranchers who deal with animals on a daily basis are not.

While Kevin Borba worries about his ranch, his cattle, his family, and what comes

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next, Eureka County leadership worries what these blows to the grazing industry will have on the entire community. With the mining industry always in flux—gold has gone from a high of \$1,900 an ounce down to \$1,100 this year, and two of Nevada's biggest gold mines are laying off employees and selling off property—ranching has always been the stabilizing force in providing revenues for the community. According to Tom Harris, director of the Center for Economic Development at the University of Nevada in Reno, when gold is up, the living in rural communities is large, but when gold is down, cattle ranching pays the basic bills. He says farming and ranching are economic constants because when costs fluctuate, it's the rancher or farmer who absorbs losses and still provides the revenues on which local governments rely.

Things have gotten so bad in Eureka County that commissioners and Natural Resource Advisory Board members—who have lived through this volatility for years, relying on the steadying force of agriculture—are now desperately worried not only for county interests, but for individual ranchers. Those families stand to lose everything due to arbitrary decision-making about their range and their cattle, because the rule of law apparently no longer matters.

Even BLM's Ruhs, who is a fan of onsite contraception, is concerned and frustrated. He says: "We are being tasked to control the horses and we haven't been able to use the tools the law gives us." The WHBA specifically states: "The Secretary shall cause additional excess wild free-roaming horses and burros, for which an adoption demand by qualified individuals does not exist, to be destroyed in the most humane and cost-effective manner possible."

The Wild Free-Roaming Horses & Burros Act isn't being followed and state brand laws have been made a mockery. Meanwhile, American taxpayers foot the bill to feed and house feral horses that nobody wants at a westwide cost in 2014 estimated at \$77.2 million—and the BLM thinks it will help if Kevin Borba runs sheep. ■

*Rachel Dahl, working toward her first Pulitzer, writes from Fallon, Nev. She has mad skills in peopling, sleuthing, and politicking and extensive experience in water policy. She has taught public school, and currently teaches at Western Nevada College.*

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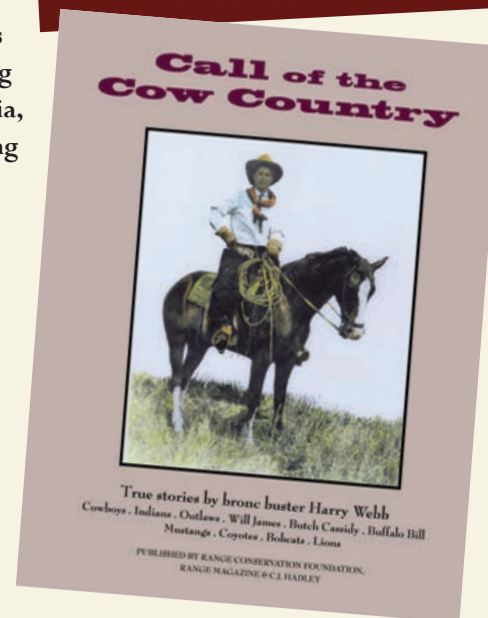
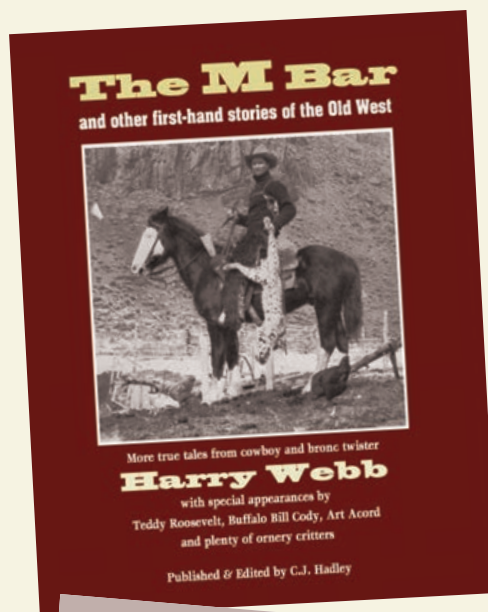
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