



# United States Department of the Interior

## OFFICE OF HEARINGS AND APPEALS

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June 21, 2011

IBLA 2011-23	)	Freezemark Nos. 8726336, 8726264
	)	
HALINA C. MORLEY	)	Wild Horses
	)	
	)	Affirmed as Modified;
	)	Petition for Stay Denied

### ORDER

Halina C. Morley appeals from the October 4, 2010, decision by the Royal Gorge (Colorado) Field Office Manager, Bureau of Land Management (BLM), which canceled her private maintenance and care agreement for two wild horses (freezemark nos. 8726336 and 8726264). Morley challenges BLM's repossession of these horses before giving her notice of or an opportunity to appeal that decision. We modify and affirm BLM's decision for the reasons discussed below and deny her Petition for Stay as moot.<sup>1</sup>

### *Background*

Morley adopted the wild horses at issue in this appeal by entering into a Private Maintenance and Care Agreement (PMACA) on August 15, 2009, pursuant to rules implementing the Wild Free-Roaming Horses and Burros Act of 1972, 16 U.S.C. §§ 1331-1340 (2006). Tab 3<sup>2</sup>; see 43 C.F.R. Subpart 4750. She named them "Tumbleweed" and "Reata," and as stated in her adoption application, they were to be boarded at a facility operated by Laurie Bean in La Porte, Colorado. See Tabs 3, 25. Morley had earlier adopted another wild horse (freezemark 7601087) that she named "Liberty." Tabs 1, 2.

<sup>1</sup> Morley filed a Petition for Stay of Decision (Petition), seeking a return of her horses during the pendency of this appeal; BLM opposed that petition. Morley then submitted a statement of reasons (SOR), which BLM responded to by filing its Answer.

<sup>2</sup> The Administrative Record submitted by BLM is tabbed. For ease of reference, we refer to it by tab (e.g., Tab 3). Morley attached additional materials as exhibits to her SOR that are here referred to by their exhibit number (e.g., "Ex. X").

BLM received a call from Bean on December 11, 2009, stating that she had not been paid by Morley for boarding her horses, including both Tumbleweed and Reata. BLM subsequently received a letter from Bean requesting it to pick up its horses and representing that Morley had not paid her boarding fees, had been given notice to remove her horses, but had not made arrangements for their removal. Tabs 5, 6. Fran Ackley, Colorado Wild Horses & Burros Lead, BLM, responded by assuring Bean that BLM would pay for the care and feeding of its horses until they were removed from her facility. Tab 8. Ackley left a message with Morley seeking "her side of story," but did not talk with her until January 4, 2010, after Tumbleweed and Reata had been moved to another facility. *Id.* BLM later reimbursed Bean for her care and feeding of both its horses from December 11 through December 31, 2009.

Morley relocated Tumbleweed and Reata to Town and Country Stables in Ft. Collins, Colorado; Liberty was then being pastured with Laura Phillips, also in Ft. Collins. Tabs 11, 13. BLM inspected all three of Morley's adopted horses and found them to be in acceptable condition on February 3, 2010.<sup>3</sup> Tab 14. Audrey Horton, the owner of Town and Country Stables, contacted BLM on February 23 and requested that it remove Tumbleweed and Reata because Morley was not caring for them under her "self-care" agreement with Horton and had not fed them for two weeks. Tab 16. After Morley removed her horses on February 26, BLM was informed by Horton that Morley had never cleaned their stalls or paid for the feed Horton had given them.<sup>4</sup> Tab 19.

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<sup>3</sup> By letter dated Feb. 8, 2010, Phillips requested that Morley remove her horses because Liberty was pregnant and Phillips did not have "proper facilities for a mare and foal." Tab 14. They were removed by Morley on February 25. *See* Tabs 16, 30.

<sup>4</sup> Horton also informed BLM that Morley's boarding fees were paid by her mother, Laurel Burchell, who later contested Horton's claim that she was underpaid for the care provided to Morley's horses. Tab 19; *see* Tab 26. The record includes phone and e-mail exchanges between Burchell and BLM, which suggest that Morley authorized her mother to act as her agent on matters involving Liberty, Tumbleweed, and Reata. *See* Tabs 21-32, 34, 35, 38. In any event, Burchell stated in a Mar. 23, 2010, e-mail to BLM: "I cannot continue to financially support Halina's horses that she got from the BLM. Legally[,] 3 of her horses belong to your agency. Halina is penniless. Any money that she gets is loaned to her by me, and I will not continue to rob my retirement account for them." Tab 30. BLM responded to Burchell by letter dated Mar. 26, 2010: "If Ms. Morley is unable or unwilling to continue to meet her obligations under the terms of the PMACA, Ms. Morley should notify the BLM in writing and the BLM will cancel the agreement and repossess the animal(s)." Tab 32 at 2. Neither Burchell nor Morley replied to that BLM correspondence.

Morley informed BLM on March 5 that Tumbleweed, Reata, and Liberty were then at a facility operated by Bonnie New in Greeley, Colorado. Tab 20; see Tabs 24, 39. BLM inspected these horses at New's facility on June 11 and found them all to be "in good condition and gentle." Tab 39. Morley was granted title to Liberty four days thereafter. Tab 40; see 43 C.F.R. § 4750.5. On August 1, 2010, the News informed Morley that she was in noncompliance with their boarding agreement and that they expected her horses to be removed from their property by October 1. Tab 41. Morley was reminded of that correspondence by e-mail on August 31, which also informed her that she was in arrears for her boarding fees and requested that she immediately clean the barn where her horses were boarded because the "urine smell is getting overwhelming and the flies are terrible." Tab 47.

New contacted BLM on September 24 concerning the care Morley was providing to her horses (e.g., Morley was giving them low quality hay with limited nutritional value). Tab 44. BLM also talked with New's husband, Donald New, who recounted his concerns with the care Morley was providing her horses,<sup>5</sup> but it did not then attempt to contact Morley.

Morley e-mailed the News on September 27, demanded that they "immediately remove the two padlocks from the horse pen where my seven horses are located and return their possession to me immediately," and then asserted: "You are ILLEGALLY depriving me of possession to remove my animals . . . by 10/1/10, to which I have agreed." Tab 42. The News apparently responded by hiring an attorney to prevent Morley from coming on their property. See Tab 44 at 2. During the evening of September 30, Morley cut a pasture gate, removed two of her horses from the News' property, and was then served with a Notice of Termination of Access to Real Property from the News' attorney. Tabs 46, 49, 50. This notice states it is effective at midnight on September 30, 2010, and that an agistor's lien had been recorded,<sup>6</sup> demands payment of \$800, and informs Morley: "If you need to care for

<sup>5</sup> After one of her horses received a cut in early September, Morley hosed it for roughly 30 minutes, but Mr. New thought that was "a waste of water and poor veterinary care" and so informed Morley. Tab 44 at 1. An argument ensued, which resulted in his locking the water tap and allowing her to use it only "during specific times of the day." *Id.* Morley later disputed that restriction and claimed she was not being allowed to provide water for her horses and that the News had locked their paddock. See Tab 42 at 2.

<sup>6</sup> An agistment is a "particular kind of bailment" under which the agistor (bailee) takes in the agistee's (bailor's) horses or other livestock for consideration, and as such, an "agister is bound to take reasonable or ordinary care of the animals committed to his or her charge, but in the absence of a special contract, he or she is

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your horses, you will be allowed to do so through an agent acting on your behalf, but you will not be allowed upon the News Property.” Tab 49. The News received an e-mail from Burchell that same evening, which states:

Halina has had a place to move her horses for several days. You have repeatedly been asked to remove the lock. Since you told Halina to have her horses off of the property by October 1, 2010 and had refused to [allow her to] do so, this leave[s] Halina no choice but to leave [her] horses on your property. . . . You need to contact Halina [to] find out what to feed them. It is Halina’s belief that you will attempt to have trespassing charges filed against her if she goes onto your property.

Tab 48. The News forwarded that e-mail to BLM the next morning and requested that it pick up Tumbleweed and Reata “as soon as possible.” *Id*; Tab 50. Later that day, the News informed BLM that Morley would be allowed to remove her horses and that “your horses will be going with her.” Tab 51.<sup>7</sup> BLM issued its decision the following Monday, October 4, 2010, without attempting to contact Morley. Tab 52 (Decision).

The BLM Field Office Manager found that Morley was in noncompliance with her PMACA based on

a pattern of neglect caused by the difficulty you have with financially and physically caring for your adopted horses. Since adopting [Tumbleweed and Reata], you have been asked to leave at least four different boarding facilities. The BLM has been asked to remove your adopted mustangs from three of those facilities.

Decision at 2. He determined that Morley violated 43 C.F.R. § 4750.4-1(e), which specifies that adopters agree to be “financially responsible for the proper care and

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<sup>6</sup> (...continued)

not an insurer of their safety and, in the event of loss, is liable only on proof of negligence or want of ordinary care and diligence on his or her part.” 4 Am. Jur. 2d, *Animals*, § 57 (Agistment) (2007); *see also id.*, § 56. It is uncontroverted that the News are agisters and had an agister’s lien on Morley’s horses but that their lien did not apply to BLM property (*i.e.*, to Tumbleweed or Reata). *See generally* 4 Am. Jur. 2d, *Animals*, § 58 (Agister’s lien).

<sup>7</sup> The News’ attorney apparently advised them to let Morley recover her horses, sheep, and personal belongings if she would release them “of all liability, with a promise not to sue at any time in the future.” Tab 51. The record does not disclose whether the News and Morley so resolved their disputes.

treatment of all wild horses and covered by [a PMACA],” and that she committed an act prohibited by 43 C.F.R. § 9264.7(a)(13) when she failed to remove her adopted horses from the News’ facility by October 1, 2010 (*i.e.*, “abandoning an adopted wild horse or burro without making arrangements necessary for necessary food, water and shelter”).<sup>8</sup> Decision at 3. The Field Office Manager cancelled her PMACA, made his decision immediately effective, and stated that “any further requests for adoption of wild horses or burros will be disapproved.” Decision at 3 (citing 43 C.F.R. §§ 4770.2(b), 4770.3(b)). BLM served its decision on Morley the next morning, shortly after it repossessed Tumbleweed and Reata. Tabs 52, 53. This appeal followed.<sup>9</sup>

Morley contends that alleged financial disputes she may have had with boarding facilities are insufficient to support cancelling her PMACA because they are unproven allegations and any noncompliance with her PMACA was waived when BLM titled Liberty to her on June 15, 2010, adding that BLM also failed to conduct a proper investigation of those alleged violations under 43 C.F.R. § 4760.1 (*e.g.*, it never contacted her concerning them). SOR at 2-4; *see* Petition at 2-3. She further contends that BLM erred by canceling her PMACA based on a claimed abandonment of Tumbleweed and Reata at the News’ on October 1. Morley “vehemently denies” she abandoned them, asserting that the News prevented her from removing her horses and were then legally obligated to care for them. SOR at 4, 5-6, 7. Morley also claims BLM acted improperly by immediately repossessing her adopted horses and permanently barring her from adopting additional wild horses. *Id.* at 5, 7-8; Petition at 2. BLM responds by asserting that the record supports its findings that Morley failed to be financially responsible for her adopted horses and had abandoned them at the News and that it therefore properly canceled her PMACA and repossessed Tumbleweed and Reata.<sup>10</sup> Answer at 10-16, 18-19.

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<sup>8</sup> BLM’s reference to 43 C.F.R. § 9264.7(a)(13) is an apparent typographical error, as it is the rule at 43 C.F.R. § 9264.7(a)(12) that specifies that the custodian of a wild horse engages in an act prohibited under the Wild Free-Roaming Horses and Burros Act if he/she “abandons the animal without making arrangements for necessary food, water and shelter.”

<sup>9</sup> Morley was also cited for violating 43 C.F.R. § 4750.4-1(b) (transferring a wild horse “for more than 30 days to another location . . . without the prior approval of the authorized officer”), but BLM has withdrawn this as a basis for its decision. Answer at 4, n.5. The decision is so modified to delete that alleged violation. *See Noel Benoist*, 131 IBLA 138, 143 (1994); *but see Stephanie Lee*, 151 IBLA 1, 2 (1999).

<sup>10</sup> BLM also disagrees with Morley’s characterizing its decision as a permanent bar to her adopting wild horses. It represents that canceling her PMACA only makes it

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### Discussion

A PMACA “may be summarily cancelled by BLM upon good and sufficient evidence that the terms of the agreement have been violated.” *John Sampson*, 150 IBLA 92, 95 (1999). On appeal from a decision canceling a PMACA, “the adopter has the burden of establishing that such action was improper.” *Larry Vanden Heuvel*, 145 IBLA 309, 315 (1998), and cases cited; accord *Ted L. Barber*, 156 IBLA 59, 63 (2001). For the reasons discussed below, we find Morley did not meet that burden.

Morley agreed in her PMACA, as required by 43 C.F.R. § 4750.4-1(e), to be financially responsible for the care given to her adopted horses. The record shows that BLM received several statements from boarding facility operators indicating that Morley had not acted in a financially responsible manner concerning her adopted horses: Bean’s December 11 phone call and December 14 letter, Tabs 5, 6; Horton’s phone call on March 1, Tab 19; Don New’s oral statement in late September, Tab 44; and the News’ September 30 Notice of Termination of Access to Real Property, Tab 49. Had there been only one dispute concerning her unwillingness or inability to pay boarding fees, we might question whether BLM acted properly in canceling this PMACA until it had investigated that dispute or provided Morley with an opportunity to respond. See *Julie R. Hayslip*, 155 IBLA 315, 321-22 (2001); *John Sampson*, 150 IBLA at 96. But in this case, the record identifies boarding fee disputes and other issues Morley has had with various boarding facilities, including several removal requests and one that resulted in BLM paying several hundred dollars in boarding fees. See Tab 8. Morley has proffered no evidence that these disputes are specious or shown error in BLM determining that she had not acted in a financially responsible manner in caring for her adopted horses, including both Tumbleweed and Reata.<sup>11</sup>

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<sup>10</sup> (...continued)

“unlikely to authorize Appellant to continue adopting wild horses.” Answer at 22 (emphasis added); see 43 C.F.R. § 4770.2(b) (noncompliance with a PMACA “may result in . . . disapproval of requests by the adopter for additional excess wild horses and burros”). Based on that representation, we need consider this issue no further (e.g., should Morley seek to adopt additional wild horses, the circumstances of this case may be considered by BLM, along with other factors, in deciding whether to grant or deny her adoption request). See *Nikki Lippert*, 160 IBLA 149, 156 (2003) (in deciding whether to grant an adoption request, it is not “unreasonable for BLM to consider past conduct as a guide to future actions, nor error to do so”).

<sup>11</sup> Morley apparently believes BLM had withdrawn financial responsibility as a basis for its canceling her PMACA, but as noted, BLM clearly has not done so. SOR at 1-2 (citing Answer at 4, n.5); see *supra* note 13. Regardless of her belief, she has failed to  
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We find the above-history of boarding fee disputes supports BLM determining that Morley violated her PMACA and 43 C.F.R. § 4750.4-1(e) and canceling her PMACA on that basis. 43 C.F.R. § 4770.2(b) (“failure to comply with the terms and conditions of the [PMACA] may result in the cancellation of the agreement [and] repossession of wild horses and burros included in the agreement”); *see Mark L. Williams*, 140 IBLA 45, 48 (1994). It is therefore unnecessary to decide whether Morley’s PMACA could also have been canceled for allegedly abandoning Tumbleweed and Reata at the News.<sup>12</sup> Morley has also asserted that BLM acted improperly by immediately repossessing her adopted horses. We disagree.

To “prevent severe or long-term damage to the animal’s health,” the Department issued an interim rule in 1991 that allowed BLM to cancel a PMACA and immediately repossess adopted wild horses “to protect the animals’ welfare.” 56 Fed. Reg. 786 (Jan. 9, 1991); 43 C.F.R. § 4770.3(b) (1992).<sup>13</sup> When that rule was finalized in 1994, 43 C.F.R. § 4770.3(b), the Department emphasized:

The rule does not in any way limit the right of appeal of persons whose PMACAs are revoked, and allows such persons to petition for a stay of such decisions. It merely allows animals to be repossessed for their protection until issues raised on appeal can be considered.

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<sup>11</sup> (...continued)  
meet her burden on appeal.

<sup>12</sup> Morley gave care and feeding instructions to the News on October 1 and believed they would care for her horses until she was allowed to remove them from their property. SOR at 5-9; *see* Ex. 5; *supra* note 6. We need not decide whether this record would support a claim of abandonment under 43 C.F.R. § 9264.7(a)(13), based solely on a failure to remove her adopted horses from the News’ property by Oct. 1, 2010. *But see Julie R. Hayslip*, 155 IBLA at 321 (cancellation for abandonment set aside where adopter “had every reason to believe that [the boarding facility] was taking care of her horses”); *see also Noel Benoist*, 131 IBLA at 144 (a boarding facility’s request that BLM repossess its horses based on an alleged failure to pay boarding fees is insufficient to support cancellation based on a claim of abandonment).

<sup>13</sup> BLM had long been allowed to take immediate possession of an adopted horse if it was being “inhumanely treated” or “commercially exploited” under 43 C.F.R. § 4740.2(d), (e) (1990), but it did not believe that rule authorized its taking such action if the adopter’s abuse or neglect only “threatens the welfare” of an adopted horse, which is the lacuna addressed by this interim rule. 56 Fed. Reg. at 786.

59 Fed. Reg. 7642 (Feb. 16, 1994); see *Noel Benoist*, 131 IBLA at 144 (in granting a stay of decision, the Board may require the return of “the repossessed horse or burro to the adopter during the pendency of the appeal”). Moreover, in affirming BLM decisions canceling a PMACA, we have consistently affirmed its taking immediate possession of adopted wild horses covered by those PMACAs. See *Larry Vanden Heuvel*, 145 IBLA at 316, and cases cited; *Mark L. Williams*, 140 IBLA at 48-49, and cases cited; *William J. Ahrndt*, 132 IBLA 126, 130 (1995).

In issuing the decision in this case, BLM stated it “is effective immediately as authorized by [43 C.F.R. § 4770.3(b)].” Decision at 3. It here asserts Tumbleweed and Reata were properly repossessed because “circumstances had reached a point where their welfare was in *imminent jeopardy*.” Answer at 13-14 (emphasis added). While we hesitate to accept that characterization<sup>14</sup> and believe BLM could have provided Morley with an opportunity to respond (or resolve her difference with the News), we nevertheless find its actions were animated solely by an intent “to protect the animals’ welfare” under 43 C.F.R. § 4770.3(b) and reject Morley’s unsupported claim that BLM and the News were engaged in “an active conspiracy and attempt to deprive” her of Tumbleweed and Reata. SOR at 5. We therefore conclude that BLM properly repossessed Morley’s adopted horses on October 5, 2010. See *Mark L. Williams*, 140 IBLA at 48-49 (immediate repossession affirmed; cancellation of PMACA arising out of disputed board fees affirmed).

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<sup>14</sup> Unlike the circumstances presented in *Larry Vanden Heuvel*, 145 IBLA at 316 (adopted horses receiving “substandard care” at “substandard facilities”) or *William J. Ahrndt*, 132 IBLA at 130 (adopted horses “in a deteriorated condition”), the record in this case indicates that Morley’s horses had shelter, water, and access to a pasture at the News’ boarding facility, were not in any “physical distress,” were then in the same Henneke class as when they were inspected on June 14, 2010, and that Morley gave the News care and feeding instructions for her horses on Oct. 1, 2010. Answer at 13, 18, 19; see Ex. 5; Tabs 39, Tab 53.



Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the October 4, 2010, decision by the Royal Gorge Field Office is affirmed as modified herein.

\_\_\_\_\_/s/  
James K. Jackson  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
Sara B. Greenberg  
Administrative Judge