

# US judge denies bid to block NV mustang roundups

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The Bureau of Land Management was well on it's way in this Jan. 30, 2004 file photo, at gathering 251 wild horses from the Lahontan Herd Management Area. U.S. District Judge Howard McKibben granted a temporary restraining order on Aug. 30 that cut short by a day a roundup near the Nevada-Utah line after he determined a helicopter flew too close to a horse in violation of the law. But he said during a hearing in Reno Thursday Jan. 26, 2012 that he was denying a new injunction request from the Texas-based Free Wild Horse Federation partly because the Bureau of Land Management has made some positive changes since then. (AP Photo/Reno Gazette-Journal. Lisa J. Tolda)

(AP) -- A federal judge in Nevada who handed horse protection advocates a rare victory last fall has rejected their latest request to block government roundups of free-roaming mustangs in the West, saying they'll have to go to Congress if they think the animals are being treated inhumanely and need more protection.

U.S. [District Judge](#) Howard McKibben granted a temporary restraining order on Aug. 30 that cut short by a day a roundup near the Nevada-Utah line after he determined a helicopter flew too close to a horse in violation of the law.

But he said during a hearing in Reno Thursday that he was denying a new injunction request from the Texas-based Free Wild Horse Federation partly because the Bureau of Land Management has made some positive changes since then. He also said he can't issue injunctions based on speculation about future abuses.

"This court is really not in a position to be the overseer of the BLM," McKibben said. "This court is not going to police all gathers in the U.S. or even all gathers in the district of northern Nevada."

"This Court is not Congress, not an administrative agency. We are not the first branch of government. We are not the second branch. We're here to consider grievances," he said.

His ruling was a disappointment to horse protection advocates who were buoyed by his court order last fall when he took the BLM to task for its actions at the Triple B complex roundup near the Nevada-Utah line northwest of Ely, Nev.

"Your honor, you are the last vestige of hope here," said Gordon Cowan, a lawyer for the group. "Basically, there is no other accountability."

Erik Petersen, a Justice Department lawyer representing BLM, said the agency took McKibben's earlier order seriously and responded with its own internal review of the Triple B roundup "in great part in response to this court's ruling on the temporary restraining order."

The law already dictates the horses be treated humanely but the agency

now has "a half dozen specific instructions" or guidelines for roundup contractors to follow, including prohibiting helicopters from flying too close to animals, Petersen said.

The BLM said in a formal review made public in December that some mustangs in the Triple B complex were whipped in the face, kicked in the head, dragged by a rope around the neck, and repeatedly shocked with electrical prods, but the agency concluded none of the mistreatment rose to the level of being inhumane. BLM Director Bob Abbey did, however, determine additional training is needed for the workers and contractors involved.

The government's wild horse program is intended to protect [wild horse](#) herds and the rangelands that support them. About 33,000 wild horses live in 10 Western states, of which about half are in Nevada. Under the program, thousands of horses are forced into holding pens, where many are vaccinated or neutered before being placed for adoption or sent to long-term corrals in the Midwest.

Animal rights advocates complain that the roundups are inhumane, but ranchers and other groups say they're needed to protect fragile grazing lands that are used by cattle, Bighorn sheep and other wildlife.

Petersen said the Triple B roundup ended the day after McKibben's previous order on Aug. 30. He said BLM has no plans to resume that roundup - the only one specifically targeted in the group's original lawsuit filed last year.

But Cowan said he said there's no question BLM eventually will return to the area for another roundup.

"They finished it to avoid your temporary restraining order," Cowan said. "They are coming back whether they say it or not. Triple B is not

over," he said.

If that happens, McKibben said the issue will be ripe again for legal challenge. He repeated several times that he couldn't understand why the critics won't acknowledge BLM is taking steps to treat the horses more humanely.

"Is your position that absolutely nothing constructive has happened ... that everything done so far is basically meaningless?" he asked Cowan, who answered "yes" each time.

"I don't happen to agree," the judge said. "I think frankly that hurts your argument."

Cowan said that's the group's position because group Vice President Laura Leigh continues to observe abuse of horses at other gathers.

McKibben said the new BLM guidelines were an improvement.

"While they have not resulted in the embodiment of new rules or regulations, I see some positive things that happened between the time we were in court before and today," he said.

"I would strongly urge the [Bureau of Land Management](#) to proceed in that direction. But that's a decision that must be made by the first branch (Congress)."

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