

**Virginia Range Transfer of Ownership RFP Questions -
Round 2**
Animal Industry Division



1. Questions regarding branding:

- 1.1 **Q:** Will the group taking ownership of the horses be required to brand them?
A: No.
- 1.2 **Q:** If the horses do not have to be branded, how will the "owned" horses be differentiated from other horses that may be present in the area, including BLM horses and privately-owned horses that have been dumped or have gotten loose on the range? How would liability be assigned, given that damages from any horse on the range could not be definitively attributed to a VRE horse?
A: BLM has no claim on the horses located in the Virginia Range area, as they deemed this area free of wild horses in 1982. All horses located in the Virginia Range area, regardless of their origin, fall under Nevada's feral/stray livestock laws and therefore would all be included in the transfer of ownership. After the transfer of ownership is complete, all horses found in the Virginia Range area will be classified as privately-owned livestock and governed by the same laws all private livestock owners are bound by.
- 1.3 **Q:** If the horses do have to be branded, how will the NDA determine which horses are actually part of the Virginia Range Estray (VRE) population, and which ones are not? The NDA has collected DNA data that proves that BLM horses do cross into the VRE territories, and that they do interbreed with the VRE horses, so will the new owner be expected to take on responsibility and liability for these BLM horses and any other non VRE horses as well? If so, would it not be illegal to force someone to be responsible for animals that are not theirs?
A: Not applicable. See response to question 1.1.
- 1.4 **Q:** If the horses do have to be branded, what does the NDA realistically expect the necessary rounding up for purposes of branding to cost, based on your past experience of expenditures involved in gathering horses?
A: Not applicable. See response to question 1.1.
- 1.5 **Q:** If the horses do have to be branded, how long of a time period would the new owners have in which to accomplish the branding?
A: Not applicable. See response to question 1.1.
- 1.6 **Q:** If the horses do have to be branded, at what point would the job be considered "done", how would you determine this, and would any adult horses seen amongst the branded ones after that point be considered the responsibility of the new owners or not? If not, whose responsibility would they be?
A: Not applicable. See response to question 1.1.

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- 1.7 **Q:** If the horses do have to be branded, will subsequent foals produced by branded horses also have to be branded? If so, at what intervals? Would there be any penalty incurred if the foals were not branded as specified?
A: Not applicable. See response to question 1.1.
- 1.8 **Q:** If foals do have to be branded, what does the NDA speculate the cost would be to conduct the rounding up and branding each time it needs to be done?
A: Not applicable. See response to question 1.1.
- 1.9 **Q:** If the NDA does want all horses branded, is it realistic to expect that any group would be able to access and capture all the horses in all areas of this very large range?
A: Not applicable. See response to question 1.1.
- 1.10 **Q:** If the NDA does want the horses branded, how do they suggest this could happen, given that many of the horses live on or graze through private lands where people may be opposed to roundups/branding?
A: Not applicable. See response to question 1.1.
- 1.11 **Q:** If the NDA does want the horses branded, at what point does ownership actually transfer - once the branding is completed or before that? If before that, would the new owners be liable for damage to property or persons that might occur before or during the attempts to round up the horses? If they are held liable, how could it be determined that the damages were indeed caused by a VRE horse, vs. a BLM horse or someone's personal horses that had been dumped or escaped onto the range?
A: Not applicable. See response to question 1.1.

2. Questions regarding laws and liability:

- 2.1 **Q:** Please explain what liabilities would apply to the VRE horses once ownership is transferred, and **please explain how you expect the new owner to get liability insurance, given that multiple horse advocacy non-profit groups have inquired with various carriers who work with open-range ranchers about the possibility of getting insurance to cover the liabilities involved in the VRE situation, and they have all been told unequivocally that no company would ever issue such a policy because the exposure is simply too great, and that even if you *could* get such coverage, the policy would likely cost \$500,000 or more, making it prohibitively expensive.** Specifically, did the NDA research avenues for liability insurance for a non-profit wanting to take ownership of the horses in this specific context, and if so, can you please share what sources you found that would make getting such insurance possible? If you did not research and find such a source, what makes you believe that getting such insurance would actually be possible? Given that every group that has inquired has been told that getting such insurance would not be

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- possible, does the NDA still believe that this transfer of ownership is realistic? If so, how?
- A:** The RFP is looking for well-resourced non-profit entities that will be responsible owners. The decision whether to obtain insurance or self-insure will rest with the entity, as liability insurance is not required by NRS or the RFP.
- 2.2 **Q:** NRS 568.300, section 1, states: "*It shall be unlawful for any person to herd or graze any livestock upon the lands of another without having first obtained the consent of the owner of the lands so to do.*" Since the VRE horses will be considered livestock, would the new owner have to get permission for the horses to be on private land? If so, how do you suggest this could be accomplished, given that there are thousands of private parcels upon which the horses currently roam, and some owners would no doubt refuse to give permission, even if you could manage to contact them all?
- A:** In any response to the RFP, the evaluation committee will look for a plan of action that has a reasonable chance of success at accomplishing the scope of work described therein, including addressing issues with respect to landowners whose agreement may be necessary to enable the feral and stray horses to lawfully remain on the range. Per NRS 569.450, An owner or manager of livestock is not liable for any property damage caused by trespass livestock unless the damaged property is enclosed by a legal fence.
- 2.3 **Q:** NRS 568.300, section 2 states: "*The livestock which is herded or grazed upon the lands of another, contrary to the provisions of subsection 1, shall be liable for all damages done by such livestock while being unlawfully herded or grazed on the lands of another, together with costs of suit and reasonable counsel fees, to be fixed by the court trying an action therefor.*" Since it is highly unlikely that any group would be able to secure permission for the VRE horses to roam freely on every one of thousands of private land parcels, they would inevitably end up 'trespassing', and the new owner would therefore be liable for damages, if this section applies. How do you envision the new owner being able to cover this and any other liability risks (see 2.1)?
- A:** See responses to questions 2.1 and 2.2.
- 2.4 **Q:** NRS 568.340, section 1 states: "*It shall be unlawful for any person owning or having charge of any livestock to drive or herd or permit the same to be herded or driven on the lands or possessory claims of other persons, or at any spring or springs, well or wells, belonging to another, to the damage thereof, or to herd the same or to permit them to be herded within 1 mile of a bona fide home or a bona fide ranch house,*" and section 2 states: "*The owner or agent of the owner of livestock violating the provisions of subsection 1, on complaint of the person injured in any court of competent jurisdiction, shall be liable to the person injured for actual and exemplary damages.*" Since the current territory of the VRE horses includes many

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- parcels of private land that may have springs, and many parcels of private land that have homes on them, how do you suggest it will be possible to keep them away from such springs -- which may be critical for their survival -- and further than a mile away from all homes? If the horses cannot realistically be kept away from such areas, how do you imagine that getting liability coverage would be possible, given the reality that no insurance carriers we spoke to are willing to issue such coverage (see 2.1)?
- A:** See responses to questions 2.1 and 2.2.
- 2.5 **Q:** NRS 568.355 defines open range to mean "...all unenclosed land outside of cities and towns..." What does "outside of" mean? Does it mean 1 mile, as stated in NRS 568.340, section 1?
- A:** "Outside of" is undefined and therefore would have its ordinary meaning, such as that which would be found in a dictionary.
- 2.6 **Q:** If "outside of" does mean 1 mile, does this mean that NRS 568.360, section 1, which states: "*No person, firm or corporation owning, controlling or in possession of any domestic animal running on open range has the duty to keep the animal off any highway traversing or located on the open range, and no such person, firm or corporation is liable for damages to any property or for injury to any person caused by any collision between a motor vehicle and the animal occurring on such a highway*" would apply to the VRE horses when they are 1 mile or more away from city/town areas (homes), but not if they are less than 1 mile away? If that is the case, how do you suggest that the new owner could get liability coverage for the horses that are within 1 mile of a home/town/city (see 2.1)?
- A:** See response to question 2.5.
- 2.7 **Q:** NRS 568.360, section 2, states: "*Any person, firm or corporation negligently allowing a domestic animal to enter within a fenced right-of-way of a highway is liable for damages caused by a collision between a motor vehicle and the animal occurring on the highway.*" Since the VRE horses have an enormous range and may sometimes end up within fenced rights-of-way of highways, how do you suggest that the new owner could get liability coverage for this (see 2.1)?
- A:** See response to question 2.1.
- 2.8 **Q:** If damages of any kind occur in relation to a horse on the Virginia Range, how would it be determined that the horse involved in the damages is actually one belonging to the new owner? If they are not branded, this would be impossible. If they are branded, would persons suing for damages have to have some kind of proof, photographic or otherwise, of the specific horse and its brand? If not, how could liability be fairly assigned when there are non-VRE horses present on the range at any given time?

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A: To the extent that there is any basis for liability on the part of the potential owner, apportionment of liability would be determined according to requirements of tort liability. The NDA encourages all potential owners to seek their own legal advice before submitting a proposal.

3. Other questions:

3.1 **Q:** Many people believe that no appropriate group will actually apply for ownership of the VRE horses, as it is not possible to get liability coverage, and the expenses are simply out of range for virtually any group that would be qualified to take on such a scenario. If no appropriate group applies, what are the plans of the NDA regarding the VRE horses?

A: We are hopeful a reputable animal advocate organization that has the experience, knowledge, tools, resources and financial ability to manage the VREs will submit a proposal. If no groups apply, we will evaluate the resources we have available to determine the next course of action at that time.

3.2 **Q:** Many people also believe that the NDA is well aware that no appropriate group would be able to take on ownership of the VRE horses, and thus this whole RFP process is merely a ploy that will then enable the NDA to claim to have "tried" to get someone to step forward and save the horses, but that since no one did, the NDA now has no choice but to start removing them. Is this true? If not, how did you determine that the transfer of ownership would be possible, given that no one can get liability insurance for this scenario (see 2.1)?

A: Per the RFP, our intent is to place the ownership of the VREs with a reputable animal advocate organization that has the experience, knowledge, tools, resources and financial ability to manage the horses according to their needs. It is intended that the selected owner will work to keep the horse population on the range and will facilitate adoptions of any horses removed from the range. Also, per the RFP, the new owner would be subject to all existing livestock laws, including NRS 568.360, which limits liability of livestock owners running animals on open range.

3.3 **Q:** Currently, the NDA is responsible for dealing with people who are illegally interacting with the horses -- feeding, harassing, touching, stealing, etc. Would the laws designed to protect the horses from harm still apply, and if so, who would be the party able to uphold these laws? If the laws would no longer apply, how can you justify leaving the horses out on the range unprotected? If you want to say that they would have the same protections as other "livestock" on open range, how can that apply, given that much of their territory is not open range at all, thus exposing them to many more dangers, and given that their range includes many private parcels that cannot be patrolled for their protection, and given that the horses range through many inaccessible areas that cannot be patrolled for their protection? We believe that should

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- the NDA relinquish ownership of the horses, it will be "open season" for anyone wanting to steal, harass, or otherwise harm the horses. Do you disagree?
A: Per the RFP, the new owner would be subject to all livestock laws, including NRS 569.431-569.471.
- 3.4 **Q:** Not one of the local wild horse advocacy groups who care passionately about the VRE horses, and who know the local situation, the range, the horses, the roads, etc., has seen any possible way to make ownership of the horse's work, and therefore none plan to apply. Does that mean that you are considering turning over ownership to a group who has no idea what the local realities are? We have already seen what happens when you bring in outside groups -- is that your plan again?
A: The intent of the RFP is to place the ownership of the VREs with a reputable animal advocate organization that has the experience, knowledge, tools, resources and financial ability to manage the horses according to their needs. It is intended that the selected owner will work to keep the horse population on the range and will facilitate adoptions of any horses removed from the range
- 3.5 **Q:** You are planning "potential owner presentations" around May 7th-11th. Will the leaders of the local horse advocate groups be allowed to attend these presentations and give their input, since they are the ones who have been hands-on, boots-on-the-ground in dealing with these horses for years, and since they have invested many tens of thousands of dollars and countless man hours working with the horses, both of which should have earned them the right to at least listen and give their input on the groups applying?
A: Per the RFP, the NDA may require presentations. Details regarding presentation format will be released if and when a presentation requirement is announced.
- 3.6 **Q:** The public has spoken, time and time again, to tell you that we oppose what you are doing. Even the Governor has said he wants you to go back to negotiations with advocates instead of pursuing this transfer of ownership. What makes you believe that you, as public servants, have the right to completely and blatantly ignore the will of the people?
A: The NDA has consulted and intends to continue to consult with our Deputy Attorney General to ensure the RFP is in accordance with NRS 569.010 and NRS 569.031.
- 3.7 **Q:** The AWHC has announced that they are planning to pursue legal action to stop the transfer of ownership. How is this going to affect the RFP going forward?
A: The NDA has been consulting and will continue to consult with our Deputy Attorney General on the pending lawsuit.