

2/14/95



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Carson City District Office  
1535 Hot Springs Road  
Carson City, Nevada 89706-0638  
PH: (702) 885-6000



IN REPLY REFER TO:  
1060  
(NV-03580)

FEB 14 1995

Dear Interested Party:

Enclosed is the Finding of No Significant Impact / Decision Record which implements the Pinenut Mountain Wild Horse Removal Plan. This decision is issued Full Force and Effect to allow for the immediate removal of wild horses in the vicinity of the Holbrook Fire / Rehabilitation Area which are outside the Pinenut Mountain HMA. Immediate removal of these wild horses is necessary to prevent damage to the fire rehabilitation / seeding project and further over-utilization of the vegetative resource. The Full Force and Effect determination is in accordance with the regulation, 43 CFR 4770.3(c).

The gather is scheduled for the last week in February and will be complete by February 28, 1995. The number of wild horses to be removed has been reduced from the proposed 189 in the draft removal plan to approximately 48 in the Decision Record. This change, and others in the plan, are in response to public input to the draft removal plan and recent aerial census data. These modifications, which will lessen the impact to wild horses, are explained further in the Decision Record.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulation, 43 CFR, Part 4. If an appeal is taken, your appeal must be filed with Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Carson City, Nevada, 89706-0638, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21(b), 58 FR 4939,4942-43 (Jan. 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to Interior Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Va 22203, and to the appropriate Office of the Solicitor, Department of the Interior, 2800 Cottage Way, Sacramento, California 95825, at the same time the original documents are filed with this office.

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay of a decision pending appeals shall show sufficient justification based on the following standards:

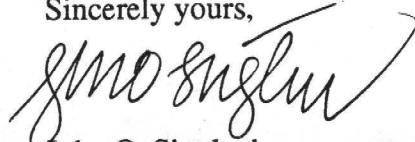
- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

For questions or comments, please contact Richard Jacobsen or Jim Gianola of my staff at 885-6000.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "John O. Singlaub".

John O. Singlaub  
District Manager

2 Enclosures:

1. FONSI/Decision Record
2. Form 1842-1

## FINDING OF NO SIGNIFICANT IMPACT AND DECISION RECORD

Decision: Implement the Pinenut Mountain Removal Plan. The major action in the subject plan is removing approximately 48 wild horses from outside the Pinenut Mountain HMA in the vicinity of the Holbrook Fire / Rehabilitation Area. The plan will guide the Bureau's actions throughout the course of the gather.

Finding of No Significant Impacts: Based on the analysis of potential environmental impacts contained in the environmental assessment, impacts are not expected to be significant and an environmental impact statement is not required.

Unavoidable impacts in the form of injuries to the horses may occur during the removal process. Death loss is not expected to exceed 1% of the horses captured at the trap site. Some stress to the horses would be associated with the capture operations, however, after adoption, the horses become accustomed to captivity. Because the loss of animals due to accidents is low, the impacts involved in the capture operation are not significant.

Rationale for Decision: The decision to implement this Removal Plan is in conformance with the Reno EIS. This action will prevent damage to the vegetative resource of the Holbrook Fire / Rehabilitation area and maintain the range in a thriving natural ecological balance, in accordance with Sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. 1333(b) (1989).

The draft removal plan proposed to remove 189 wild horses which would have required the release of approximately 30 wild horses back into the HMA. After analyzing comments from the public, it was determined that this was an unnecessary negative impact on the wild horses to be released. However, based on recent aerial census data and ground observations, there are 48 wild horses on and in the close vicinity of the Holbrook Fire / Rehabilitation area which are threatening the success of the rehabilitation project. The removal of only 48 wild horses will require that fewer horses than originally proposed be relocated back into the HMA. Population information from other HMA's indicate that approximately 16% of the population will be 10 years and older. Therefore, approximately 8 older horses will be released back into the HMA. These wild horses will be released in an area where there are presently few other wild horses resulting in a minimal impact on the vegetative resource. Also, this reduced number of wild horses to be released back into the HMA will preclude the need to capture wild horses inside the HMA at the present time.

This action will not adversely impact air quality, ACECs, cultural resources, farmlands, floodplains, Native American religious concerns, T&E species, water quality, wetlands and riparian zones, wild and scenic rivers or wilderness.

Recommend Approval:



John Matthiessen  
Area Manager  
Walker Resource Area

FEB. 13 1995

Date

Approved:



John O. Sigmaub  
District Manager  
Carson City District

2-14-95

Date

# W H O A

WILD HORSE ORGANIZED ASSISTANCE  
P.O. BOX 555  
RENO, NEVADA 89504  
(702) 851-4817



... a note from

Dawn Y. Lappin

March 13, 1995

Mr. John O. Singlaub, District Manager  
Bureau of Land Management  
1535 Hot Springs Road  
Carson City, NV 89706-0638

Re: APPEAL NOTICE-Pine Nut Mountain Wild Horse Removal Plan  
and FONSI

Dear Mr. Singlaub:

Wild Horse Organized Assistance, Inc., (hereafter WHOA) formally appeals the Full Force and Effect Pinenut Mountain Wild Horse Removal Plan. WHOA has participated actively in the land use planning process of the Bureau of Land Management and is an affected interest by definition in 43 CFR 4100.0-5; WHOA hereby states our reasons why this decision is in error. For purposes related to the horses outside the HMA boundary and the fire rehab seeding, we will not request a stay of the action.

It is our understanding of BLM policy that comment period for public participation is 30 days. The Draft Removal Plan provided only 21 days. The Final March 14th Decision provided only 14 days from the scheduled date of capture. shortened that period by nearly a week, with the Final March 14th Decision, only 14 days from the scheduled date of capture. It is also our understanding of Nevada Policy that unless an "emergency" has been declared, which it wasn't even addressed, that we have 30 days from Final in which to seek remedies. It is written Nevada Policy to provide for the full 30 days unless specified in either the draft or final plans. No disclosure as to the reasons for an abbreviated review period was provided.

The Capture Plan did not address the following issues as required:

- \* Complete map of entire capture area, both inside and outside the herd area
- \* Did not disclose release sites of older aged animals to be released
- \* Nor were there any plans for follow-up observation of released animals into unfamiliar habitat addressed.

The Environmental Assessment was inadequate and failed to address the following issues:

- \* Nowhere in the document was "emergency" discussed
- \* Nowhere in the document was "seeding or fire rehab" addressed

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- \* There was no attachment of the Fire Rehab plan
- \* No analysis of whether sufficient forage exists at the release sites to accomodate more animals
- \* No data, other than the 1993 census, that established that these animals had established permanent residence outside herd area, as required
  
- \* Despite the fact that rehab personnel were in the vicinity, no data was included regarding observation of animals at the rehab site.
- \* Nowhere in the document is the impact, of duplicate captures, within months of one another, during the highly stressful winter months assessed.

In conclusion, we find the Capture Plan and Environmental Assessment to be extremely short-sighted and inadequate. The District has violated written Nevada Policies, as well as NEPA. We argue that Carson District has put wild horses at risk during a particularly stressful time of the year due to a lack of planning and coordination. Attitude regarding these animals is at the very heart of this issue. The Carson District is not an island unto itself, and the following of well established policies permit the BLM not only to address the horses outside the herd area, but the seeding, as well as the release of older animals, without conflict. That the Carson District chose conflict in defiance of law and policies lay at the Resource Area and not the fault of interested parties that monitor whether BLM is endeavoring to protect the health and welfare of the animals.

Most sincerely,

Dawn Y. Lappin (Mrs.)  
Director



**COMMISSION FOR THE  
PRESERVATION OF WILD HORSES**

255 W. Moana Lane  
Suite 207A  
Reno, Nevada 89509  
(702) 688-2626

March 13, 1995

Mr. John O. Singlaub, District Manager  
BLM-Carson City District Office  
1535 Hot Springs Road  
Carson City, Nevada 89706-0638

RE: APPEAL NOTICE - Pine Nut Mountain Wild Horse Removal Plan

Dear Mr. Singlaub,

The State of Nevada Commission for the Preservation of Wild Horses formally appeals the Full Force and Effect Pinenut Mountain Wild Horse Removal Plan. The Commission has participated actively in the land use planning process of the Bureau of Land Management and is recognized as an interested and affected party by definition in 43 CFR 4100.0-5. In reference to the 1971 Wild Horse and Burro Act, the Bureau must consult with the appropriate state wildlife agencies on all matters concerning wild horses in the states where the Bureau operates. The 1991 Nevada Legislature designated the Nevada Wild Horse Commission by Nevada Statute as that appropriate agency.

In review of your proposed gather plan and final plan we find violations of regulations, NEPA, and Bureau policy with complete disregard for the wild horses as well as those agencies representing the State of Nevada interests and the public at large affected by your actions.

**The Decision Record Violates Federal Regulation**

For purposes related to the wild horses outside the HMA boundary within the fire rehabilitation seeding, the State of Nevada would most definitely have exercised our option provided to us by law to request a stay of the action. However, you have violated our rights to that action by not allowing the appropriate comment period allowed us by law. The action was noticed and done with no allowance for time to request the "stay of action."

Federal Regulation allows time for appeal and petition of stay (43 CFR 4.21 (b), 58 FR 4939, 4942-43). The Decision Record of



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February 14, 1995, implemented a gather of wild horses on February 27, 1995. The Decision denied the Commission the opportunity to appeal or request a stay of action as provided for by Federal Regulation.

**The Decision Violates Nevada Bureau of Land Management Policy**

Nevada policy requires the District to provide the Commission adequate comment time and review of proposed decisions. As stated in the previous points of this appeal, the Commission input was ignored and opportunity to appeal denied.

Nevada policy for gathers avoids captures during the foaling season for wild horses. This gather was conducted in early March during a season when foaling is known to occur in northern Nevada.

It is our understanding of BLM policy that the comment period for public participation is 30 days. The Draft Removal Plan provided only 21 days, the Final March 14th Decision provided only 14 days from the scheduled date of capture. It is also our understanding of Nevada Policy that unless and "emergency" has been declared, which wasn't ever addressed in either document, that the public has 30 days from receipt of the FINAL in which to seek remedies. It is written Nevada Policy to provide for the full 30 days unless specified in either the draft or final plans. No disclosure as the reasons for an abbreviated review period was ever provided.

In addition, the Capture Plan did not address the following issues as required:

- 1) A complete map of entire capture area, both inside and outside the herd area.
- 2) Did not disclose release sites of older aged animals to be released.
- 3) No plan were provided or even addressed for any follow-up observation of released animals into unfamiliar habitat as well as contingencies for those animals if problems arose.

**The Decision Record Violates NEPA**

**Consultation**

The District failed to consult affected interests concerning the environmental assessment was approved on December 27, 1994, prior to consulting on the draft Pinenut Mountain Wild Horse Removal Plan.

The District failed to consult the public concerning the Holbrook Fire Rehabilitation Plan and Environmental Assessment (NV-03-580).



#### Inadequate

The Environmental Assessment did not determine a state of emergency to justify full force and effect of the Decision Record.

The Environmental Assessment (EA), was inadequate and failed to address the following issues:

1) The EA did not determine a state of emergency to justify full force and effect status of the Decision Record.

2) Not once in the document was "seeding or fire rehabilitation" mentioned or used as justification for the removal.

3) The EA (NV-030-95-008) did not identify the impacts of wild horse affecting a new seeding. Environmental assessment (NV-03-580) did not propose any action affecting wild horse to rehabilitate the Holbrook Fire.

4) There was no attachment of the Fire Rehabilitation Plan.

5) No data was provided nor analysis of such data was mentioned to assure the reader that sufficient forage existed at the release sites to accommodate additional animals to those already in the area of release.

6) No data, as required by law, other than the summer 1993 census was provided, that established that these animals had established permanent residency outside the herd area. A 1 1/2 year old, one point in time census is grossly inadequate and not substantial. In addition, the fact that it was a summer census versus winter census would not provide accurate information considering seasonal movement. Wild horse data was limited to a 1993 summer inventory flight. Other data to establish permanent residency outside the herd management area may have been available and was not used. Herd distribution is required to justify a removal outside the herd area.

7) Despite the fact that rehabilitation personnel were in the vicinity, no data was included regarding observation of animals at the rehabilitation site.

8) Not at any point in the document is the impact of duplicate captures, within months of one another, during the highly stressful months assessed. The EA did not consider the time of year and stress to the habitat or established bands.

9) The EA did not consider herd restructuring or carrying capacity of the herd management area. Older age class horses were

John Singlaub, District Manager  
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released into the herd management area without regard to the habitat or established bands.

#### **Summary and Relief**

In conclusion, the appeal to the Decision Record is to prevent undue harm to the wild horses of the Pine Nut Range Wild Horse Herd. Procedures taken to implement the removal of 48 wild horses outside of the Pine Nut Herd Management Area are in violation of policy, regulation and law. Implementation of the Decision Record potentially stressed pregnant mares, killed foals and increased competition within wild horse bands inhabiting the herd management area. These issues were not considered and the Bureau of Land Management ignored regulations and policies to implement the action.

We find the Capture Plan and Environmental Assessment to be extremely short-sighted and inadequate. The District has violated written Nevada Policies, regulations, and NEPA. We contend that the Carson District has put wild horses at unnecessary and unsubstantiated risk during a particularly stressful time of year for the herds due to the Districts gross lack of planning and coordination. Attitude regarding these animals is at the very heart of this issue.

The Carson District is not an island unto itself. The guidance and following of well established policies permits the BLM not only to address the horses outside the herd area, the seeding, as well as the release of older animals, without conflict. That the Carson District chose conflict in defiance of law and policies lay at the Resource Area at fault and not the fault of interested parties and State agencies charged with monitoring Bureau activity in Nevada. It is my charge by law, as a Nevada State agency, to preserve and protect Nevada's wild horse population and monitor whether the Bureau is endeavoring to protect the health and welfare of the animals and the habitat wherein they reside. We are concerned with the protection of the habitat for all users but it is impossible for State involvement when the Bureau flagrantly disregards the State as an affected party and violates our rights for participation and conflict resolution.

If you have any questions, we would welcome the opportunity to discuss this matter in anticipation that this will not happen again.

John Singlaub, District Manager  
March 13, 1995  
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Sincerely,

CATHERINE BARCOMB  
Executive Director

cc: Ann Morgan, Nevada State Director  
Bruce Dawson, National Wild Horse and Burro Program Leader  
Bob Bainbridge, BLM Washington Office  
Wayne Howle, Deputy Attorney General  
Steven Fulstone, Wild Horse Commissioner  
Interior Board of Land Appeals