



B

# 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) 885-6100



IN REPLY REFER TO:  
4700  
(NV-03580)

Catherine Barcomb  
Commission for the Preservation of Wild Horses  
255 W. Moana Lane, Suite 207A  
Reno, Nevada 89509

MAR 30 1005

Dear Ms. Barcomb

Attached is a copy of the administrative record for Appeal No. N3-95-02 which the Commission initiated concerning the Pinenut Mountain Wild Horse Removal Plan. If you have any questions concerning this record, please contact Richard Jacobsen or Jim Gianola of my staff at (702) 885-6000.

Sincerely,

John O. Singlaub  
**Associate** District Manager

1 - Attachment

1. Copy of administrative record for Appeal No. N3-95-02

## Table of Contents

- | Attachment No. |  |
|----------------|--|
| 1.             | Response to Appeal points 6pp.<br>- Attachments 4pp.   |
| 2.             | Commission for the Preservation of Wild Horses' Notice of Appeal 5pp.                              |
| 3.             | Cover letter, FONSI / Decision Record and Final Pinenut Mountain Wild Horse Removal Plan 9pp.      |
| 4.             | Commission for the Preservation of Wild Horses' protest letter 2pp.                                |
| 5.             | Cover letter and draft Pinenut Mountain Wild Horse Removal Plan and Environmental Assessment 12pp. |



RESPONSES TO APPEAL  
FILED BY  
COMMISSION FOR THE PRESERVATION OF WILD HORSES

1. The Decision Record Violates Federal Regulation

Appellant asserts that its rights were violated "by not allowing the appropriate comment period allowed by law" and because the "Decision denied the Commission the opportunity to appeal or request a stay of action as provided for by Federal Regulation."

Response:

The Draft Pinenut Mountain Wild Horse Removal Plan /Environmental Assessment was mailed to the Appellant on December 30, 1994. The Appellant's comments were received on January 30, 1995, which was the date specified for return of comments. The Decision was issued on February 14, 1995, in full force and effect. The opportunity to appeal and petition for a stay was provided with the Decision which the Appellant received on February 18, 1995; ten days prior to the planned gather.

2. The Decision Violates Nevada Bureau of Land Management Policy

- a. Appellant restates that it was denied time for comment and appeal.
- b. Appellant states that "Commission input was ignored."
- c. Appellant states "This gather was conducted in early March.....".
- d. Appellant asserts that the public comment period is 30 days for both the Draft Removal Plan and the Full Force and Effect Decision and that "The Draft Removal Plan provided only 21 days, the Final March 14th Decision provided only 14 days from the scheduled date of capture."
- e. Appellant asserts three distinct points regarding the gather plan:
  1. A complete map of the capture area was not provided.
  2. The release sites for older animals were not disclosed.
  3. No plan was provided for follow-up observations of released animals.

Response:

- a. The time available for comment and/or appeal is provided under Responses to Appeal Points 1 and 2b.
- b. The Appellant's comments to the Draft Removal Plan made three points. One of the points was

that a gather of the wild horses within the Pine Nut Herd Management Area (HMA) seemed imminent since the Allotment Evaluations for the grazing allotments comprising the HMA were complete. Accordingly, Appellant suggested that the proposed removal of wild horses outside the HMA be deferred and combined with the forthcoming removal of horses within the HMA, thereby avoiding having to catch the unadoptable older horses twice.

The Record of Decision states "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." The reduction in the scope of the removal from 189 to 48 horses was, in large part, in response to Appellant's comments.

- c. The gather was initiated and completed on February 28, 1995.
- d. The Draft Removal Plan was mailed on December 30, 1994, and included the request that responses be received by January 30, 1995. This was intended to provide the appropriate comment period, but it did fail to accommodate mailing time. The Appellant received the draft plan on January 4, 1995, which allowed 27 days to review and respond. Despite the fact that Appellant did not have 30 days for review, Appellant did comment on the Draft Plan and changes were made to the proposed removal based, in part, on these comments.

Instruction Memorandum No. NV-94-032 (copy attached for reference) states "Affected interests will be provided a period of time to review all final gather plans issued under full force and effect. The length of time afforded to affected interests will be commensurate on the conditions mandating issuance of the decision under full force and effect". The Decision was issued in Full Force and Effect on February 14, 1995, with a projected implementation date of February 27 or 28, 1995. Implementation in February was deemed critical because of the generally accepted restriction on gathers from March 1 to June 30 to prevent stress to pregnant mares and newborn foals. The Decision included instructions for filing an appeal and petitioning for a stay. Appellant had ten days from receipt of the Decision to appeal and petition for a stay; 30 days were available to file an appeal. Appellant's Appeal Notice is dated March 13, 1995, and was received on March 15, 1995.

- e.1. Part II of the Draft Removal Plan states "The area of concern is outside of the Pine Nut Mountain HMA. The location of the area is shown on the attached Map 1." The map depicts the entire HMA and the surrounding area where the removal was proposed.
- e.2. The Decision Record states "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 vegetative resource." This does not identify a specific geographic location for the release, but it describes the characteristics of the specific site that would be (and was) selected, based on accessibility, weather conditions and other variables at the time of the release.
- e.3. The nine wild horses that were released back into the Herd Management Area were temporarily unloaded into a fenced meadow so as to acclimate them to their new area. The area surrounding the fenced meadow has abundant water sources and adequate forage.

### 3. The Decision Record Violates NEPA--Consultation

- a. Appellant asserts that the Carson City District failed to consult affected interests concerning Environmental Assessment NV-030-95-008.
- b. Appellant asserts that the Carson City District failed to consult the public concerning the Holbrook Fire Rehabilitation Plan and Environmental Assessment (NV-03-580).

#### Response

- a. Environmental Assessment NV-030-95-008 accompanied the Draft Removal Plan which was distributed to all affected interests on December 30, 1994.
- b. The Carson City District Normal Year Fire Rehabilitation Plan /Environmental Assessment NV-030-89-020 was approved in August of 1989. It was provided to the Nevada State Clearinghouse for review and comment in accordance with the 1983 Memorandum of Understanding between the Nevada State Director and the Governor.

The Normal Year Fire Plan is a guide for all fire rehabilitation projects in the District. Once the Holbrook Fire was controlled last summer, the District fire assessment team recommended that selected portions of the Normal Year Fire Rehabilitation Plan be implemented for the Holbrook Fire Rehabilitation Project. These recommendations were forwarded in a memorandum to the District Manager. The "originator" code on this memorandum is NV-03580 which the Appellant has apparently confused for an environmental assessment control number. No additional environmental assessment was needed for the Holbrook Fire Rehabilitation Project since the action fell within the scope of the District Normal Year Fire Rehabilitation Plan/Environmental Assessment.

### 4. Decision Record Violates NEPA--Inadequate

- a. Appellant states (twice) that "The Environmental Assessment did not determine a state of emergency to justify full force and effect of the Decision Record."
- b. Appellant states that the environmental assessment does mention fire rehabilitation as justification for the removal.
- c. Appellant states that "EA (NV-030-95-008) did not identify the impacts of wild horse affecting a new seeding" and that "Environmental assessment (NV-03-580) did not propose any action affecting wild horse to rehabilitate the Holbrook Fire."
- d. Appellant states "There was no attachment of the Fire Rehabilitation Plan."
- e. Appellant asserts that no data was provided to assure the reader that sufficient forage existed at the release site.
- f. Appellant asserts that the permanent residency of wild horses outside the Herd Management Area was not established.

- g. Appellant asserts that fire rehabilitation personnel's observations of animals should have been included in the removal plan.
- h. Appellant asserts the impact of duplicate captures, the time of year and stress to the habitat or established bands was not assessed.
- i. Appellant states "The EA did not consider herd restructuring or carrying capacity of the herd management area."

#### Response

- a. The Decision implementing the modified Pinenut Mountain Wild Horse Removal Plan was issued in full force and effect in accordance with the guidance in Instruction Memorandum NV-94-011 (copy attached for reference). Time was provided for review of the Draft Removal Plan and for an Appeal/Petition for a Stay to be filed before the Decision was implemented. Part VII of the Removal Plan stated that "It is anticipated that this removal will occur during February 1995".

The basis for selecting February 27-28, 1995, for implementing the Decision, thereby precluding a full 30 day period for filing an Appeal/Petition for a Stay, was the restriction on gathers from March 1 to June 30, as discussed in the Response to Appeal Point #2 d., combined with the need to remove the wild horses in the vicinity of the Holbrook Fire Rehabilitation Project. This is consistent with Instruction Memorandum NV-94-011 which states:

In evaluating the need to take expeditious action, the authorized officer should consider the following factors in determining whether a removal decision should be placed in full force and effect:

- (2) The potential for damage to rangeland resources.....
  - (4) The importance of the removal action in implementing other essential management actions.
- b. The Appellant's statement is correct but the assertion that the Environmental Assessment is, as a consequence, inadequate is not correct. The removal was based on the requirements of Public Law 92-195, Sec. 3 (b) and Sec. 9 and those of 43 CFR 4710.4 which states that "Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas".

Section I of the Removal Plan states " The proposed action would prevent further deterioration of the range threatened by over-population of wild horses which have established home ranges outside of the Pine Nut Herd Management Area" The first sentence of Environmental Assessment NV-030-95-008 states "The purpose of this action is to remove wild horses that have established home ranges outside of the Pine Nut Mountain Herd Management Area (HMA) which are causing overutilization of the vegetative resources". The Appellant's apparent confusion on this point must come from statements in the Decision Record and the cover letter to the Decision Record. The scope of this removal was reduced significantly due to public comment and other considerations. The focus of the removal went from all the wild horses outside the HMA to just those in the vicinity of the Holbrook fire rehabilitation area. The purpose of the removal did not change; only the scope of the removal was changed.

In an attempt to clarify the reduction in scope of the removal, the Decision Record states "The major action in the subject plan is removing approximately 48 wild horses from outside the Pine Nut Mountain HMA in the vicinity of the Holbrook Fire/Rehabilitation Area". The cover letter further stated "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 Pine Nut 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". These statements narrow the focus of the action but still are within the scope of the purpose of the proposed action as identified in the first sentence of the Environmental Assessment.

- c. On the assumption that this assertion refers to the EA which was provided with the Draft Removal Plan, the impacts on vegetation for the entire area outside of the HMA were addressed. These same impacts apply to the fire rehabilitation seeding. On the second point, the Appellant is confused as there was not an EA (NV-03-580) for the Holbrook Fire.
- d. The Appellant provides no rationale for why this makes the Environmental Assessment inadequate. NEPA does not require such an attachment.
- e. The Decision Record states "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". This last statement emphasizes protection of the vegetative resource but definitely implies that adequate forage would be available for the horses at the release site and, as stated in Response to Appeal Point 4. e., there was adequate forage.
- f. Aerial census information dating back to 1989 confirms the existence of wild horses outside the HMA. The 1993 aerial census was referenced in the removal plan because it was the most current.
- g. The census data provided in the Draft Capture Plan included information that there were wild horses established in the general vicinity of the Holbrook Fire. "Rehab personnel" would not have seen wild horses due to the activity associated with the rehabilitation project which would temporarily drive wild horses out of the area. Natural Resource specialists in this office were aware that the wild horses were still in the vicinity and would probably be drawn to new grasses and forbs this spring.
- h. The reference to "duplicate captures" obviously relates to the policy of releasing captured horses that are too old for the adoption program into a Herd Management Area. In this instance, the Draft Removal Plan specified that such horses would be released into the Pinenut Herd Management Area. Based on experience, 15%-20% of the 189 horses proposed for removal would have been too old for adoption. Given the expectation that the Appropriate Management Level for the Pinenut Herd Management Area was forthcoming and that a gather of wild horses inside the Herd Management Area would take place in late summer/fall of 1995, the impact to 27 to 38 horses that would be released into the Herd Management Area in February to be captured again in 6 to 7 months was considered and the final decision was modified because of this impact. The potential impact of "duplicate captures" was reduced to a minimum (9 horses versus possibly 38 horses) by limiting the removal to the horses that posed a threat to the success of the fire



rehabilitation project. These 9 horses also had their tails "bobbed" to identify them in the future and avoid recapturing them, if possible.

Bureau policy is to remove wild horses year-round with the exception of the foaling season which is March 1 to June 30. Stress to the habitat and wild horses was considered in the Environmental Assessment.

- i. The Appellant is correct in the assertion that herd restructuring was not considered. Herd restructuring is an ongoing process and the small number of horses released from this removal would have a very minimal impact on the herd structure. For consideration of carrying capacity/habitat, see the vegetative resource discussion in the Response to Appeal Point 4. e.

Attachments - 2

- 1 - Instruction Memorandum No. NV-94-011
- 2 - Instruction Memorandum No. NV-94-032

UNITED STATES DEPARTMENT OF THE INTERIOR  
 BUREAU OF LAND MANAGEMENT  
 Nevada State Office  
 P.O. Box 12000  
 Reno, Nevada 89520-0006

BUREAU OF LAND MANAGEMENT  
 CARSON CITY DISTRICT OFFICE

Oct 25 4 45 PM '93

In Reply Refer to  
 4770/1760 (NW-960)

October 21, 1993

*Carroll*

DM		10/26/93
ASSOC	<input checked="" type="checkbox"/>	(K) 10/21/93
HAZ MAT		
PAO		
RES	<input checked="" type="checkbox"/>	SS 1/28
1993		
OFC		
LRA	<input checked="" type="checkbox"/>	
WRA	<input checked="" type="checkbox"/>	AM 11/1

Instruction Memorandum No. NV-94- 011  
 Expires: 9/30/94

To: District Managers, Nevada  
 Deputy State Directors and Staff Chiefs, NSO  
 Manager, National Wild Horse and Burro Center at Palomino Valley

From: State Director, Nevada

Subject: Policy for Placing Wild Horse and Burro Removal Decisions in Full Force and Effect

Earlier this year the Department of Interior published regulations changing the effect of final agency decisions and the procedures to be used by the public to appeal final decisions. Under these new regulations (43 CFR 4.21), final decisions become effective at the end of period of time (generally 30 days after receipt of the decision) for filing a Notice of Appeal where no Petition for a Stay is filed, or 45 days after the time for filing a Notice of Appeal where a timely Petition for a Stay is filed.

Until recently, these new regulations were seen as an alternative to 43 CFR 4770.3(c) to rapidly implement removal actions. In August the Interior Board of Land Appeals (IBLA) issued the following ruling on A Notice of Appeal and Petition for a Stay of a final decision to remove wild horses:

"The provision of 43 CFR 4.21(a), 58 Federal Register 4939, 4942-43 (Jan. 19, 1993), govern the effect of a decision pending appeal "[e]xcept as otherwise provided by law or pertinent regulation." Because 43 CFR 4770.3(c) authorizes BLM to place into full force and effect a decision to remove wild horses from public or private land regardless of an appeal, the effect of such removal decisions pending appeal are controlled by that regulation, not 43 CFR 4.21(a), and the BLM's failure to place such a decision into full force and effect effectively stays the removal decision pending appeal."

As a result of this ruling, it appears that all removal decisions issued under 43 CFR 4.21(a), and subsequently appealed, will be suspended pending an IBLA ruling. This policy effectively requires BLM to issue all removal decisions under 43 CFR 4770.3(c), to avoid being delayed for 1 to 2 years pending the outcome of an appeal.

Rules amending 43 CFR 4770.3 which provide for placing removal actions in full force and effect became effective on August 5, 1992. These regulations allow the authorized officer to place a final removal decision in full force and effect. Instruction Memorandum 92-369, established criteria for the use of full force and effect in removal decisions. Removal decisions placed in full force and effect may include release or relocation of selected animals, fertility control, and any other action which is integral to successful completion of the planned removal. Wild horse and burro decisions effecting actions other than removal actions (i.e., setting appropriate management levels, range improvements and herd area management plans) may not be placed in full force and effect. When a decision document is issued which combines action, i.e., a removal action with a herd area management plan, only the garter plan may be implemented full force and effect. The remaining actions are to be issued under 43 CFR 4.21 and are subject to the provisions of this rule.

In evaluating the need to take expeditious action, the authorized officer should consider the following factors in determining whether a removal decision should be placed in full force and effect:

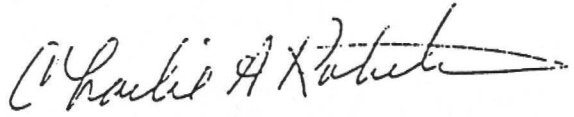
- (1) The potential for loss or damage to the health of animals or unborn foals due to starvation, disease, dehydration, etc.
- (2) The potential for damage to rangeland resources or other ecosystem values.
- (3) An increase in the cost of conducting the proposed action or the time needed to restore a thriving natural ecological balance to the range.
- (4) The importance of the removal action in implementing other essential management actions.
- (5) A requirement to remove wild horses or burros to comply with a court order, from outside of a herd area or from private land.

The list is not intended to be all inclusive and other factors may be appropriate to specific situations. However, it is essential that the authorized officer carefully consider any and all factors influencing the need to place a decision to remove animals in full force and effect.

Prior to issuing a final decision, the authorized officer shall document in writing, all considerations and rationale that were used to support the need for placing the decision in full force and effect. This documentation will be in addition to and separate from the information used to justify removing excess wild horses and burros. The line official at least one level above the authorized officer signing the final decision shall be informed of the decision to place a removal decision in full force and effect and concur with the rationale.

The authorized officer will assure that the need for the planned removal action is discussed with affected interests through the issuance of the draft removal plan for public review. Support documents will be prepared and released for public comment to the extent that time allows. However, when extraordinary conditions require immediate action to prevent severe or long-lasting damage to wild horses and burros or other components of the rangeland ecosystem, the authorized officer may waive issuance of a draft decision and the 30-day public comment period. Final decisions to remove animals under these conditions will be supported, at a minimum, by an environmental assessment.

Please direct any questions or concerns regarding full force and effect removal decisions to Tom Pogacnik or Bruce Dawson at (702) 785-6583.



Charlie A. Robertson  
Acting

Distribution  
Director (200) - 1 Room 5650, MIB  
DSC (210)

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
NEVADA STATE OFFICE

P.O. Box 12000  
850 Harvard Way  
Reno, Nevada 89520-0006.

**COPY**

In Reply Refer To  
4720.1 (NV-960)

December 9, 1993

Instruction Memorandum No. NV-94- 032  
Expires 9/30/94

To: District Managers, Nevada  
Deputy State Directors and Staff Chiefs, NSO  
Manager, National Wild Horse and Burro Center

From: State Director, Nevada

Subject: Issuance of Wild Horse and Burro Decisions under Full Force and Effect

Under 43 CFR 4770.3(c), the authorized officer may place a decision to remove excess wild horses and burros in full force and effect. Nevada Instruction Memorandum NV-94-011, details the conditions under which a full force and effect removal decision may be issued.

In an effort to provide the interested public with notification of impending gathers to be implemented under full force and effect, the following policy will apply to all Nevada wild horse and burro removal decisions issued under those rules.

Affected interests will be provided a period of time to review all final gather plans issued under full force and effect. The length of time afforded to affected interests will be commensurate on the conditions mandating issuance of the decision under full force and effect.

All draft gather plans will be made available to affected interests for a 30-day comment period except when herd or habitat conditions are critical and immediate action is required. The cover letter transmitting the draft capture plan will identify that, after consideration of all comments, the final removal decision will be placed in full force and effect.

The final removal decision/gather plan will provide for a full 30 day delay from the date of issuance when such a delay will not jeopardize the health of the animals or their habitat. When herd or habitat conditions preclude allowing the normal 30 day delay in removing


animals, the time allowed between issuance of the final removal decision/gather plan and the effective date of the decision will be based upon the severity of animal or habitat conditions. This waiting period may range from the full 30 days to implementation on the date of issuance. When conditions do not allow the full 30 day delay in taking action, those affected interests which have provided comment on the draft plan will be contacted to inform them of the need to expedite the proposed action.

The public shall be notified that there will be no extension of the delay period and that the proposed action will begin on or about the specified date. The public shall also be notified that any request for stay must comply with 43 CFR 4.21(b) and that it is commensurate upon the appellant to provide factual support for that request. The intent of this policy is to ensure that affected interests are afforded advance notification of our placing a removal decision/gather plan in full force and effect. Specialists in contact with affected interests should emphasize the importance of their participation in the establishment of an appropriate management level (the allotment evaluation and multiple-use decision) and the draft gather plan. Affected interests should be discouraged from waiting to comment until issuance of the final decision because input at this time limits their capability to influence the decision and our ability to incorporate any new data in the decision. In addition, failure to comment on a draft decision may limit an affected interest's ability to prevail on appeal to the Interior Board of Land Appeals (IBLA).

Because this policy is new and provides managers some discretion and flexibility, it is important that the Districts coordinate very closely with the Wild Horse and Burro National Program Office to ensure consistency in its application.

In addition to the normal rationale for placing a removal decision in full force and effect, Nevada Districts will also identify the anticipated amount of time which will be provided between the issuance of a decision and the initiation of the proposed removal action. The policy incorporated in this memorandum does not change the time frame or procedures for filing an appeal of wild horse and burro removal decisions.

If you have any questions concerning this policy please contact Tom Pogacnik at (702) 785-6476.

  
Billy R. Templeton

Distribution

Director (200) - 1 Room 5650, MIB  
DSC (210) - 1



BUREAU OF LAND MANAGEMENT  
CARSON CITY DISTRICT OFFICE  
MAR 15 12 00 PM '95



**COMMISSION FOR THE  
PRESERVATION OF WILD HORSES**

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

*Loomis  
Ginnola*

March 13, 1995

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

INITIAL/DATE	
DM	✓
ASSOC	(R) 3/15/95
HAZ MAT	
PAO	
LE	
RES	✓
ADMIN	
OPS	
LRA	
WRA	X JM 3/16

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

John Singlaub, District Manager  
March 13, 1995  
Page 2

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).



John Singlaub, District Manager  
March 13, 1995  
Page 3

#### 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  
March 13, 1995  
Page 4

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  
Page 5

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





# 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:

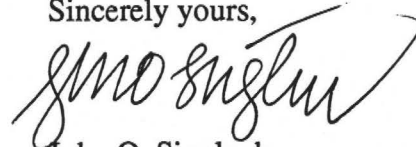
- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,

(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 1985

Date

Approved:



John O. Signlaub  
District Manager  
Carson City District

2-14-95

Date



## PINE NUT MOUNTAIN WILD HORSE REMOVAL PLAN

### I. Purpose and Authority

The proposed action is to restore the range to a thriving ecological balance and to be in compliance with existing laws and regulations. The proposed action would prevent further deterioration of the range threatened by an over-population of wild horses which have established home ranges outside of the Pine Nut Mountain Herd Management Area (HMA). The proposed action will remove those wild horses with home ranges outside of the HMA. The Wild Horse and Burro Act of 1971 (Public Law 92-195, Sec. 3(b) and Sec. 9) and 43 CFR 4710.4 provide the authority for the proposed action.

### II. Area of Concern

The area of concern is outside of the Pine Nut Mountain HMA. The location of the area is shown on the attached Map 1.

### III. Numbers of Wild Horses

Based on the most recent census conducted in July of 1993, there are at least 189 wild horses outside of the HMA.

### IV. Methods for Removal and Safety

The methods employed during this capture operation will be herding horses with a helicopter to a trap built with portable panels. The Bureau of Land Management will contract with a private party for this operation. Bureau employees will be supervising the contractor at all times during the gathering operation. The following stipulations and procedures will be followed during the contract to ensure the welfare, safety and humane treatment of wild horses, and that wild horses are removed from proper areas. Minimum specifications are contained within the State Gather Contract (Contract Number 1422-N651-C4-3067).

#### A. Roundup Procedures within Contract Area:

The Contracting Officer's Representative (COR) or Project Inspectors (PIs) will determine specific roundup areas and numbers of animals within general contract areas as animal concentration, terrain, physical barriers and weather conditions dictate. Upon determination of the specific roundup areas, the COR/PI will select the general location of trap sites in which to herd the animals. Animal concentration, terrain, physical barriers and weather conditions will all be considered when selecting trap sites. All wild horses will be removed from areas outside of the HMA. It is estimated that a minimum of 189 wild horses will need to be removed.

## B. Motorized Equipment

All motorized equipment employed in the transportation of captured animals shall be in compliance with appropriate State and Federal laws and regulations applicable to the humane transportation of animals. Minimum specifications are contained within the State Gather Contract. Should conditions warrant the COR/PI have the authority to further modify the specifications.

All vehicles used for transportation shall be at least 6 feet 6 inches in height. The floors and loading chute shall be covered with non-skid material. Animals to be loaded and transported in any vehicle shall be as directed by the COR/PI and may include limitations on numbers according to age, size, sex, temperament and animal condition. A minimum of 1.4 linear foot per adult animal and .75 linear foot per foal shall be allowed per standard eight foot wide stock trailer/truck.

The COR/PI shall consider the condition of the animals, weather conditions, types of vehicles, distance to be transported, and other factors when planning for the movement of captured animals. The COR/PI shall provide for any brand inspection or other inspection services required for the captured animals.

## C. Trapping and Care

All capture attempts of wild horses shall be accomplished by the utilization of a helicopter. A minimum of one saddle horse shall be immediately available at the trap site to accomplish roping if necessary. Under no circumstances shall animals be tied down for more than one hour.

The helicopter shall be used in such a manner that bands of horses will remain together. Foals shall not be left behind.

The rate of movement and distance the animals travel shall not exceed limitations set by the COR/PI who will consider terrain, physical barriers, weather, condition of the animals and other factors.

It is estimated that several trap locations will be required to accomplish the work. All trap locations and holding facilities must be approved by the COR/PI prior to construction. The contractor may also be required to change or move trap locations as determined by the COR/PI. All traps and holding facilities not located on public lands must have prior written approval of the landowner.

All traps, wings and holding facilities shall be constructed, maintained and operated to handle the animals in a safe and humane manner and be in accordance with the State Gather Contracts.

If the route the contractor wishes to herd horses passes through a fence, the contractor will be required to roll up the fencing material and pull up the posts to provide a gap. The standing fence on each side of the gap will be well-flagged.

When dust conditions occur within or adjacent to the trap or holding facility, the contractor shall be required to wet down the ground with water.

Alternate pens, within the holding facility shall be furnished by the contractor to separate mares with small foals, sick and injured animals, and estray animals from the other horses. Animals shall be sorted as to age, number, size, temperament, sex, and condition when in the holding facility so as to minimize injury due to fighting and trampling.

As a minimum, studs will be separated from the mares and foals when the animals are held overnight.

#### V. Disposition of Removed Animals

All of the adoptable wild horses will be sent to Palomino Valley Wild Horse and Burro Placement Center (PVC) to be processed for adoption. Unadoptable/older horses will be released back into the HMA.

Impounded, privately-owned animals will be processed as outlined in the Bureau of Land Management, Nevada State Office Instruction Memoranda NV-84-116 and NV-85-416.

#### VI. Responsibility

The District Manager is responsible for maintaining and protecting the health and welfare of the wild horses. To ensure the contractor's compliance with the contract stipulations, the COR and PIs all from the Carson City District, will be on site. Also, the Walker Area Manager and the Carson City District Manager are very involved with guidance and input into this removal plan and with contract monitoring. The health and welfare of the animals is the overriding concern of the District Manager, Area Manager, COR and PIs.

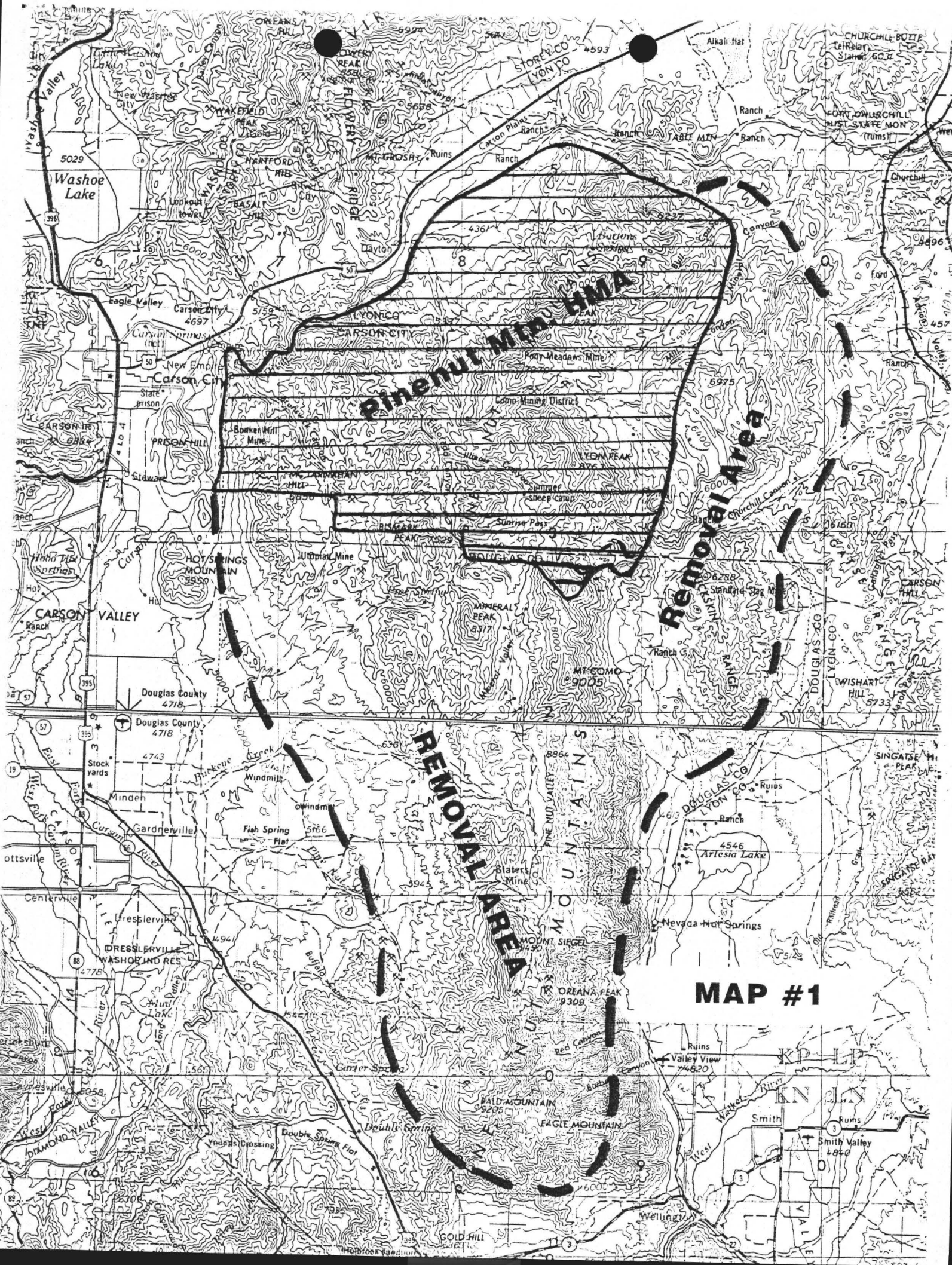
The COR and/or PI will constantly, through observation, evaluate the contractor's ability to perform the required work in accordance with the contract stipulations. Compliance with the contract stipulations will be through issuance of written instructions to the contractor, stop work orders and default procedures should the contractor not perform work according to the stipulations.

Prior to issuance of the "Notice to Proceed" to the contractor, the COR and PIs will inspect the equipment to be used during the contract, to ensure the equipment meets or exceeds the standards contained in the contract stipulations. Prior (less than 20 days) to the start of the contract and constantly during the course of the contract, the COR and/or PIs will evaluate the conditions which may cause undue stress to the animals. The factors considered will include animal

condition, prevailing temperatures, drought conditions, soil conditions, topography, animal distribution, distance animals travel to water, quantity of available water and condition of roads that animals are to be transported over. These factors will be evaluated to determine if additional constraints other than those already discussed need be initiated in order to safely capture and transport the animals (i.e., veterinarian present, or delay of capture operations).

## VII. Time Frame

It is anticipated that this removal will occur during February 1995. Due to the dense concentration of pinyon and juniper trees, a complete removal of animals from areas outside of the HMA is unlikely. This combined with the continual movement and establishment of horses outside the HMA will require additional removals in the future. Therefore, this plan will remain in effect until conditions change substantially.



Removal Area

Removal Area

Removal Area

MAP #1

KP-11





COMMISSION FOR THE  
PRESERVATION OF WILD HORSES

255 W. Moana Lane

Suite 207A

Reno, Nevada 89509

(702) 688-2626

January 30, 1995

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

INITIAL/DATE

DM	
ASSOC	R 1/30/95
HAZ MAT	
PAO	
LE	
RES	✓ has copy
ADMIN	
OPS	
LRA	
WRA	X Jan 2/1

Dear Mr. Singlaub,

Thank you for the opportunity to review and comment on the draft Pinenut Mountain Wild Horse Removal Plan and Environmental Assessment.

We support the purpose and your authority for the removal of the wild horses that have established home ranges outside of the Pinenut Mountain Wild Horse Herd Management Area. However, in review of the document it is needlessly absent of full explanation for this action at this time. We received the draft plan on January 4, 1995, of which we understand we have thirty days to review and respond with comments. Your request for response by January 30, shortened our comment period by a week. In addition you state in this draft that you intend to gather horses during February 1995.

In the draft you do not identify a "state of emergency" for this gather and the census information you are using is from July 1993, which indicates that you've known the horses have resided outside their herd area since that time. Correct us if we are wrong but there is not the appropriate time frame to issue a final gather under normal circumstances allowing the 30 day comment period on the final document and still gather horses in February. The documents were received by the public on or about January 4. A 30 day review would place that time to February 4, allowing appropriate time for your agency to review and address the comments, then issuing the final gather plan with the thirty day comment period allowed by law would then place your gather time within the foaling period for wild horses. Bureau policy dictates that wild horses aren't gathered from March 1 through June 30. We are confused as to your intent?

John Singlaub, District Manager  
January 30, 1995  
Page 2

Though we support your position and the gathering of wild horses that have established their home ranges outside of their designated herd management areas we formally protest your proposed actions for the following reasons:

1) In the draft gather plan and EA you identify placing unadoptable/older animals back in the herd area and exchanging them for younger animals. The EA does not address this action as well as re-structuring of the herd.

2) How can your District propose an action within the herd management area without a completed draft gather plan and EA for the areas within the herd management area (HMA). This EA should also include re-structuring of the herd. The draft gather plan and EA you have sent us for review only addresses those horses outside the HMA. The map included in your draft does not identify the HMA as a gather area.

3) Your District has done a terrific job in evaluating all of the allotments within the Pinenut Mountain HMA. We feel that by evaluating all of the allotments contained in the HMA that you are seriously considering the needs and impacts to the wild horse herds. With the completion of the AE's and forthcoming proposed and final multiple use decisions this would establish the appropriate carrying capacities for the allotments and HMA. It would be more cost effective and humane for the two actions to be addressed together which also facilitate population modeling and restructuring of the herd. If your intent is to gather older animals now, place them back in the HMA and then recapture them again shortly, we wonder how much stress these older animals can handle without increasing their chances for death.

In conclusion, in the draft documents you identify no emergency and it is our recommendation that you provide 1) sufficient comment time to the interested and affected parties; 2) that you take into consideration the humane aspects of your actions; and 3) provide the proper gather plans and EA's that fully identify your proposed actions. If you have any questions, please contact me at 851-4817.

Sincerely,



CATHERINE BARCOMB  
Executive Director

cc: Steven Fulstone  
Tom Pogacnik







# 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) 885-6100

IN REPLY REFER TO:  
1060  
(NV-03580)

DEC 30 1994

Dear Interested Party:

Enclosed for your review and comment is the draft Pinenut Mountain Wild Horse Removal Plan and Environmental Assessment. This plan proposes to remove approximately one hundred and eighty-nine wild horses from outside the Pinenut Mountain Herd Management Area.

Please send your comments to this office by January 30, 1995. If you have any questions concerning this document, please contact Richard Jacobsen or Jim Gianola of my staff at (702) 885-6000.

Sincerely yours,

John O. Singlaub  
District Manager

**ACTING**

1 Enclosure:

1. Draft Pinenut Mountain Wild Horse Removal Plan and Environmental Assessment

# DRAFT

## PINE NUT MOUNTAIN WILD HORSE REMOVAL PLAN

### I. Purpose and Authority

The proposed action is to restore the range to a thriving ecological balance and to be in compliance with existing laws and regulations. The proposed action would prevent further deterioration of the range threatened by an over-population of wild horses which have established home ranges outside of the Pine Nut Mountain Herd Management Area (HMA). The proposed action will remove those wild horses with home ranges outside of the HMA. The Wild Horse and Burro Act of 1971 (Public Law 92-195), Sec. 10, and 43 CFR 4710.4 provide the authority for the proposed action.

### II. Area of Concern

The area of concern is outside of the Pine Nut Mountain HMA. The location of the area is shown on the attached Map 1.

### III. Numbers of Wild Horses

Based on the most recent census conducted in July of 1993, there are at least 189 wild horses outside of the HMA.

### IV. Methods for Removal and Safety

The methods employed during this capture operation will be herding horses with a helicopter to a trap built with portable panels. The Bureau of Land Management will contract with a private party for this operation. Bureau employees will be supervising the contractor at all times during the gathering operation. The following stipulations and procedures will be followed during the contract to ensure the welfare, safety and humane treatment of wild horses, and that wild horses are removed from proper areas. Minimum specifications are contained within the State Gather Contract (Contract Number 1422-N651-C4-3067).

#### A. Roundup Procedures within Contract Area:

The Contracting Officer's Representative (COR) or Project Inspectors (PIs) will determine specific roundup areas and numbers of animals within general contract areas as animal concentration, terrain, physical barriers and weather conditions dictate. Upon determination of the specific roundup areas, the COR/PI will select the general location of trap sites in which to herd the animals. Animal concentration, terrain, physical barriers and weather conditions will all be considered when selecting trap sites. All wild horses will be removed from areas outside of the HMA. It is estimated that a minimum of 189 wild horses will need to be removed.

## B. Motorized Equipment

All motorized equipment employed in the transportation of captured animals shall be in compliance with appropriate State and Federal laws and regulations applicable to the humane transportation of animals. Minimum specifications are contained within the State Gather Contract. Should conditions warrant the COR/PI have the authority to further modify the specifications.

All vehicles used for transportation shall be at least 6 feet 6 inches in height. The floors and loading chute shall be covered with non-skid material. Animals to be loaded and transported in any vehicle shall be as directed by the COR/PI and may include limitations on numbers according to age, size, sex, temperament and animal condition. A minimum of 1.4 linear foot per adult animal and .75 linear foot per foal shall be allowed per standard eight foot wide stock trailer/truck.

The COR/PI shall consider the condition of the animals, weather conditions, types of vehicles, distance to be transported, and other factors when planning for the movement of captured animals. The COR/PI shall provide for any brand inspection or other inspection services required for the captured animals.

## C. Trapping and Care

All capture attempts of wild horses shall be accomplished by the utilization of a helicopter. A minimum of one saddle horse shall be immediately available at the trap site to accomplish roping if necessary. Under no circumstances shall animals be tied down for more than one hour.

The helicopter shall be used in such a manner that bands of horses will remain together. Foals shall not be left behind.

The rate of movement and distance the animals travel shall not exceed limitations set by the COR/PI who will consider terrain, physical barriers, weather, condition of the animals and other factors.

It is estimated that several trap locations will be required to accomplish the work. All trap locations and holding facilities must be approved by the COR/PI prior to construction. The contractor may also be required to change or move trap locations as determined by the COR/PI. All traps and holding facilities not located on public lands must have prior written approval of the landowner.

All traps, wings and holding facilities shall be constructed, maintained and operated to handle the animals in a safe and humane manner and be in accordance with the State Gather Contracts.

If the route the contractor wishes to herd horses passes through a fence, the contractor will be required to roll up the fencing material and pull up the posts to provide a gap. The standing fence on each side of the gap will be well-flagged.

When dust conditions occur within or adjacent to the trap or holding facility, the contractor shall be required to wet down the ground with water.

Alternate pens, within the holding facility shall be furnished by the contractor to separate mares with small foals, sick and injured animals, and estray animals from the other horses. Animals shall be sorted as to age, number, size, temperament, sex, and condition when in the holding facility so as to minimize injury due to fighting and trampling.

As a minimum, studs will be separated from the mares and foals when the animals are held overnight.

#### V. Disposition of Removed Animals

All of the adoptable wild horses will be sent to Palomino Valley Wild Horse and Burro Placement Center (PVC) to be processed for adoption. Unadoptable/older horses will be released back into the HMA.

Impounded, privately-owned animals will be processed as outlined in the Bureau of Land Management, Nevada State Office Instruction Memoranda NV-84-116 and NV-85-416.

#### VI. Responsibility

The District Manager is responsible for maintaining and protecting the health and welfare of the wild horses. To ensure the contractor's compliance with the contract stipulations, the COR and PIs all from the Carson City District, will be on site. Also, the Walker Area Manager and the Carson City District Manager are very involved with guidance and input into this removal plan and with contract monitoring. The health and welfare of the animals is the overriding concern of the District Manager, Area Manager, COR and PIs.

The COR and/or PI will constantly, through observation, evaluate the contractor's ability to perform the required work in accordance with the contract stipulations. Compliance with the contract stipulations will be through issuance of written instructions to the contractor, stop work orders and default procedures should the contractor not perform work according to the stipulations.

Prior to issuance of the "Notice to Proceed" to the contractor, the COR and PIs will inspect the equipment to be used during the contract, to ensure the equipment meets or exceeds the standards contained in the contract stipulations. Prior (less than 20 days) to the start of the contract and constantly during the course of the contract, the COR and/or PIs will evaluate the conditions which may cause undue stress to the animals. The factors considered will include animal

condition, prevailing temperatures, drought conditions, soil conditions, topography, animal distribution, distance animals travel to water, quantity of available water and condition of roads that animals are to be transported over. These factors will be evaluated to determine if additional constraints other than those already discussed need be initiated in order to safely capture and transport the animals (i.e., veterinarian present, or delay of capture operations).

## VII. Time Frame

It is anticipated that this removal will occur during February 1995. Due to the dense concentration of pinyon and juniper trees, a complete removal of animals from areas outside of the HMA is unlikely. This combined with the continual movement and establishment of horses outside the HMA will require additional removals in the future. Therefore, this plan will remain in effect until conditions change substantially.

## ENVIRONMENTAL ASSESSMENT

### Pine Nut Wild Horse Removal

#### A. INTRODUCTION

##### Purpose

The purpose of this action is to remove wild horses that have established home ranges outside of the Pine Nut Mountain Herd Management Area (HMA) which are causing overutilization of the vegetative resource. These horses are also utilizing private lands not administered by the BLM.

##### Relationship to Other Environmental Documents

This EA is tiered to the Reno Environmental Impact Statement (EIS) which analyzed the general ecological impacts of managing rangelands in the Walker Resource Area under a program including the monitoring and adjustment of wild horses and livestock. This EA is a project specific refinement of the EIS focused in the management of wild horses in the Pine Nut Mountain HMA. These documents are available for public review at the Carson City District Office.

##### Relationship to Statutes, Regulations, or Other Plans

Both the Code of Federal Regulations (4710.4) and the Wild Horse and Burro Act of 1971, state that wild horses shall be maintained within HMA'S.

#### B. PROPOSED ACTION AND ALTERNATIVES

##### Proposed Action

The proposed action is to remove excess wild horses from outside the Pine Nut Mountain HMA with the use of a helicopter and other motorized equipment. The wild horses would be herded by a helicopter into traps constructed of portable steel panels. The Bureau of Land Management will contract with a private party for the removal operation. The contractor would be supervised at all times by at least two Bureau employees. A minimum of 189 excess wild horses are proposed for removal. The adoptable animals would be placed into the Bureau's Adopt-a -Horse Program. The excess unadoptable /older animals would be released back into the HMA, and approximately the same number of adoptable horses would

be removed from within the HMA. This will maintain the population of the HMA at the same level as before the removal.

### Alternatives

#### Alternative No. 1

Conduct the removal operation through the use of water traps. Traps consisting of portable panels would be constructed around water sources and the horses captured when coming to water.

#### No Action Alternative

The no action alternative is to not implement the removal plan.

#### Alternative Considered But Not Analysed

Capture of wild horses from horseback was not analyzed due to the time, difficulty and low success rate involved in removing a large number of animals using this method.

### C. Affected Environment

The affected environment is described in the Reno EIS.

### D. Environmental Impacts

#### 1. Proposed Action

##### a. Impacts on Vegetation

The removal of the wild horse population would allow plant species such as Indian Ricegrass (*Oryzopsis hymenoides*), Needlegrass (*Stipa* sp.), and Squirreltail (*Sitanion* sp.) to increase in quantity and improve their vigor. Riparian areas would improve in condition without the impact of wild horse grazing and trampling.

Small localized areas (less than 1/2 acre) within the vicinity of traps and holding facilities would receive trampling and possible loss of vegetation. Overall, the vegetative resource would improve due to the reduction in grazing pressure.

##### b. Impacts on Wild Horses

Unavoidable impacts in the form of injuries to the horses may occur as a result of the removal process. Death loss is not expected to exceed 1% of the horses captured at the trap site. Potential injuries and fatalities can be limited through strict enforcement of



contract specifications for safety and humane treatment of animals. BLM representatives would be monitoring the contractor's activities at all times during removal to ensure compliance with specifications and humane treatment of animals.

Some stress to the horses would be associated with the helicopter herding operations, however, after adoption, the horses would become accustomed to captivity and most would receive proper care.

c. Impacts on Wildlife

Removing wild horses would have only a positive impact on wildlife. The removal of wild horses would improve vegetative condition, thus increasing the amount of forage and cover available for wildlife. The absence of wild horses would also mean more water and space would be available for wildlife.

d. Other Impacts

The proposed action would not adversely impact air quality, areas of critical environmental concern, cultural resources, recreation, farmlands, floodplains, Native American religious concerns, threatened and endangered species, wastes, water quality, wetlands and riparian zones, wild and scenic rivers or wilderness.

No impacts would occur to cultural resources as proposed trap sites and holding facilities, would be surveyed prior to construction to avoid disturbance of these areas.

2. Alternative No. 1 - Water Trapping

This method of capture is initially the least injurious and stressful to the wild horses, however, once captured, the level of impact is identical to those discussed in the proposed action. Water trapping is most successful when small numbers of horses are to be removed from isolated areas served by 2 or less water sources neither or which is the case in this situation. When the above described scenario occurs, this would be the preferred form of removal.

3. Alternative No. 2 - No Action

The "no action" alternative would result in no wild horses being removed. The animals would not undergo stress, injuries, nor fatalities related to capture, handling and transportation.

The population would continue to expand adversely impacting the vegetation and wildlife. This would lead to the loss of wildlife through starvation or dispersal. The physical condition of the wild horses ultimately would deteriorate.

Habitat improvement would not be realized with this alternative. The frequency of key forage species would decline further. The animals would continue to search for food and

further degrade their habitat, thereby reducing the carrying capacity of the area which would eventually lead to starvation. Accelerated erosion would continue and basal cover would continue to decline from excess utilization. Riparian areas would continue to be over-utilized further deteriorating the wildlife habitat. Further deterioration of the range would occur and the area would not be in a state of thriving natural ecological balance between wild horses, wildlife and domestic livestock.

E. Coordination and Consultation

This EA has been sent to the following persons, groups and government agencies in order to solicit comments:

- American Bashkir Curley Register, % Mrs. Sunny Martin, P.O. Box 453, Ely, NV 89301
- American Horse Protection Assn., 1000 29th St. NW, Suite T100, Washington, D.C. 2007
- American Mustang and Burro Association, P.O. Box 788, Lincoln, CA 95648
- Animal Protection Institute, P.O. Box 22505, Sacramento, CA 95822
- Ann Earle, 167 Perry St., New York, NY 10014
- Barbara Eustis-Cross, Executive Director, L.I.F.E. Foundation, 6455 N. Quail, Inyokern, CA 93527
- Bobbi Royle, 5900 Foxtail Drive, Reno, NV 89502
- Borda Brothers Co., 909 W. Musser St., Carson City, NV 89703
- Buckeye Ranch, P.O. Box 127, Minden, NV 89423
- Carson City District Grazing Advisory Board, 13333 Stillwater Road, Fallon, NV 89406
- Nevada State Clearinghouse Coordinator, Division of Administration, Capitol Complex, Carson City, NV 89710
- Craig C. Downer, P.O. Box 456, Minden, NV 89423
- Dan Keiserman, 5160 S. Eastern Avenue, Suite E, Las Vegas, NV 89119
- Donald Shehady, P.O. Box 154, Wellington, NV 89444
- Edie Wilson, 917A Village Drive East, North Brunswick, NJ 08902
- FIM, Inc., P.O. Box 12, Smith, NV 89430
- F.M. Fulstone, Inc., P.O. Box 34, Smith, NV 89703
- Fund for Animals, 200 West 57th St., New York, NY 10019
- ISPMB, Karen A. Sussman, 6212 E. Sweetwater Ave., Scottsdale, AZ 85254
- Kathy McCovey, 435 Alaska, Reno, NV 89506
- Michael Kirk, D.V.M., P.O. Box 5896, Reno, NV 89513
- National Mustang Association, Inc. P.O. Box 42, Newcastle, UT 84756
- Nevada Cattlemen's Association, 1111 Water St., Elko, NV 89801
- Nevada Commission for the Preservation of Wild Horses, 255 West Moana, Suite 207A, Reno, NV 89509
- Nevada Humane Society, % Mr. Mark McGuire, P.O. box KIND, Sparks, NV 89431
- Nevada Division of Wildlife, Regional Manager, Region I, 380 West B St., Fallon, NV 89406

- Paul Clifford, Museum of Natural History, One Wade Oval, Univ. Circle, Cleveland, OH 44106
- Paula S. Askew, 2995 White Pine, Carson City, NV 89704
- Rebecca Kunow, 3548 Shawnee, Carson City, NV 89701
- Resource Concepts, Inc., 340 N. Minnesota Street, Carson City, NV 89703
- Richard Huntsberger, , 160 Hudson-Aurora Rd., Smith, NV 89430
- Rutgers University, S.I. Newhouse Center for Law and Justice, 15 Washington St., Newark, NJ 07102
- Steven Fulstone, 30 Rivers Road, Smith, NV 89403
- The Mule Deer Foundation, 1005 Terminal Way, Suite 110, Reno, NV 89502
- Jan Nachlinger, Nevada Protection Planner, The Nature Conservancy, 1885 S. Arlington Ave. #1, Reno, NV 89509-3370
- U.S. Fish and Wildlife Service, ATTN: Bob Hallock, 4600 Kietzke, Bldg. C., Reno, NV 89502
- U.S. Humane Society, 2100 "L" Street NW, Washington, D.C. 20037
- Vanessa Kelling, P.O. Box 30, Shingletown, C A 96088
- W.B. Park, 860 Hwy. 395, Gardnerville, NV 89410
- Wild Horse Organized Assistance, P.O. Box 555, Reno, NV 89504

F. Signatures

Prepared by:



Richard Jacobsen  
Wild Horse & Burro Specialist  
Walker Resource Area

23 DEC 94  
Date

Reviewed by:



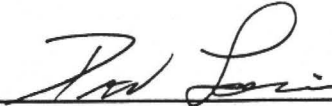
Jim Gianola  
Wild Horse & Burro Specialist  
District Resources Staff

1-27-94  
Date




Rick Brigham  
Wildlife Biologist  
District Resources Staff

1-27-94  
Date

  
\_\_\_\_\_  
David Loomis  
Environmental Planner  
District Resources Staff

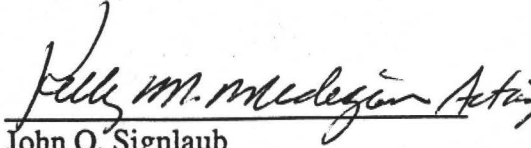
1-27-94  
Date

Recommend Approval:

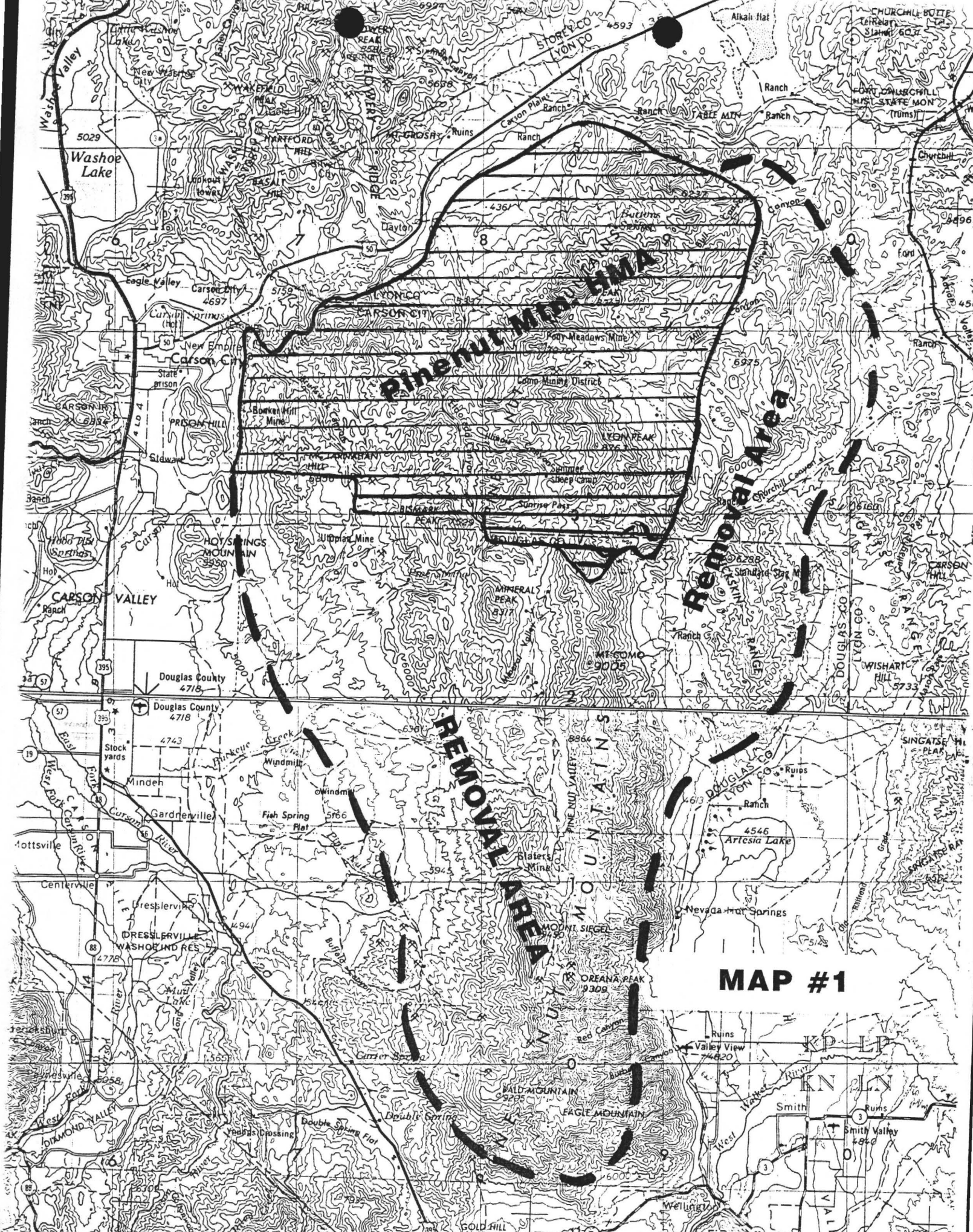
  
\_\_\_\_\_  
John Matthiessen  
Area Manager  
Walker Resource Area

DEC. 27 1994  
Date

Approved:

  
\_\_\_\_\_  
John O. Signlaub  
District Manager  
Carson City District

12/27/94  
Date



**REMOVAL AREA**

**REMOVAL AREA**

**REMOVAL AREA**

**MAP #1**