



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

IN REPLY REFER TO:

FEB 28 1996

SENT CERTIFIED

IBLA 96-102, 103	:	NV-04-95-09, NV-04-95-10
	:	Wild Horse Gather
COMMISSION FOR THE PRESERVATION OF	:	Final Multiple Use Decision
WILD HORSES	:	Cases Consolidated
	:	Petition for Stay Denied

ORDER

Appeals have been filed by the Commission for the Preservation of Wild Horses from the Decision Record/Finding of No Significant Impact (FONSI) for the Diamond Hills South Herd Management Area (HMA) Removal Plan (IBLA 96-102) and from the Wild Horse and Burro portion of the Final Multiple Use Decision for the Railroad Pass Allotment (IBLA 96-103). These appeals have been consolidated for review in light of the common factual background and related issues presented.

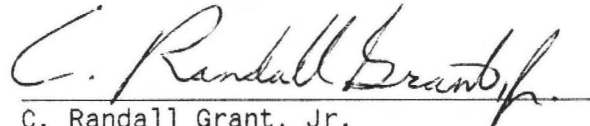
It appears from the record that the decision to implement the removal plan was made effective pending appeal by BLM on the ground it is necessary to maintain a thriving ecological balance and prevent the imminent threat of overgrazing. 43 CFR 4770.3(c). In the appeal of the removal plan (IBLA 96-102), appellant has filed a petition for stay of the scheduled wild horse removal. In support of the stay request, appellant asserts that a minimum of 50 wild horses is necessary to sustain the genetic viability of a herd and that the planned removal will reduce the number in the herd below this level. In response, the District Manager, Ely, Nevada, Bureau of Land Management (BLM), has stated that this HMA is adjacent to other HMA's and that movement and genetic exchange among these HMA's occurs as a routine matter.

The standards for adjudicating a petition for stay mandate consideration of the relative harm to the parties if the stay is granted or denied, the likelihood that appellant will prevail on the merits, the likelihood of immediate and irreparable harm if the stay is not granted, and whether granting the stay is in the public interest. See 43 CFR 4.21(b). These factors have long been recognized and applied by the courts, e.g., Placid Oil Co. v. United States Department of the Interior, 491 F. Supp. 895 (N.D. Texas 1980), and this Board, e.g., Marathon Oil Co., 90 IBLA 236, 93 I.D. 6 (1986). The burden of proving that a stay should be granted is upon the petitioner. See 43 CFR 4.21(b)(2). In this case, the crux of the argument for a stay is the threat to the genetic viability of the herd posed by the limited numbers left after removal. However, BLM has indicated that

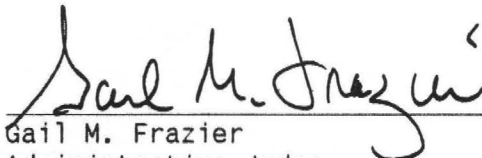
this movement and genetic exchange occurs between this herd and other herds. This Board has previously rejected challenges based on low numbers of horses where the record indicated that the horses were part of a much larger genetic pool including horses from other herds with which they mingled. Commission for the Preservation of Wild Horses, 133 IBLA 97, 101-102 (1995). Accordingly, the petition for a stay of implementation of the removal plan is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, it is hereby ordered that:

1. These cases are consolidated for review by the Board.
2. The petition for stay is denied.


C. Randall Grant, Jr.
Administrative Judge

I concur:


Gail M. Frazier
Administrative Judge

APPEARANCES:

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