

6-28-01

United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Ely Field Office
HC 33 Box 33500 (702 No. Industrial Way)
Ely, Nevada 89301-9408
<http://www.nv.blm.gov>



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RETURN RECEIPT REQUESTED

NOTICE OF FINAL DECISION FULL FORCE AND EFFECT

JAKES WASH HERD MANAGEMENT AREA (HMA) EMERGENCY REMOVAL

A severe water shortage exists within the Jakes Wash HMA. Forage quality has been reduced, and water quality and quantity has been limited. Forage quality in the Jakes Wash HMA was determined to be poor in late June. Water availability was assessed in late June during several field visits, and water conditions were determined to be dire. From these field observations it has been determined the wild horses and their habitat are being adversely impacted.

Approximately 100 wild horses must be gathered and removed from the entire Jakes Wash HMA. All wild horses gathered will be placed into the adoption program or removed to a sanctuary. The gather operation will be conducted by helicopter drive-trapping, roping, and/or water trapping. Upon completion of the gather, approximately 50 wild horses will remain in the area, based on population estimates.

Domestic livestock have already been removed from the Tom Plain, Indian Jake, Badger Spring and Giroux Wash Allotments per compliance with term grazing permits. Livestock use within this area is during a winter season of use in conjunction with water hauling and private wells being pumped. Livestock have been removed prior to any water shortages occurring.

Due to the emergency nature of these conditions, it is necessary to implement this action immediately through a Full Force and Effect Decision. This decision will be implemented on or about July 1, 2001 and will continue until the action is completed. The rationale for placing this decision in Full Force and Effect are as follows:

1. Extremely dry and unseasonably hot conditions have critically reduced forage and water availability for wild horses. The Jakes Wash HMA is receiving moderate to heavy use in areas, and has not received measurable precipitation since May 1, 2001, which is 2" below normal for the growing season. Animals are concentrating around the few remaining productive water sources. Other water sources are drying up with horses refusing to leave these areas in search

of other waters. Long term forecasts do not indicate that improvements in the current situation are likely to occur, and there are doubts as to whether the current water situation will sustain the concentrated animal use currently occurring in the areas.

2. Water availability is decreasing daily at natural springs, and the only two dependable water sources are producing at extremely low flows.

AUTHORITY: The authority for this decision is contained in Sec.3(a) and (b) and Sec.4 of the Wild Free-Roaming Horse and Burro Act (P.L. 92-195) as amended and Title 43 of the Code of Federal Regulations. The authority for the Full Force and Effect decision can be found at 43 CFR 4770.3(c) which states:

"Notwithstanding the provisions of paragraph (a) of 4.21 of this title, the authorized officer may provide that the decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision."

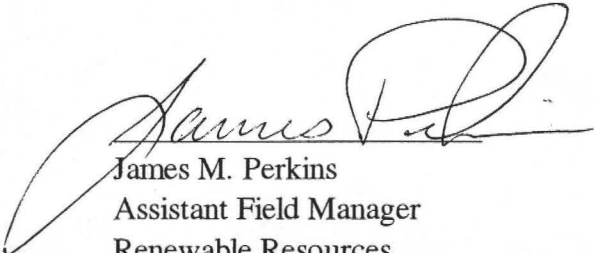
APPEALS: Within 30 days of receipt of this decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c). Within 30 days after filing a Notice of Appeal, you are required to provide a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file an appeal and petition for a stay, the petition for a stay must accompany your notice of appeal and be in accordance with 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(c). Copies of the Notice of Appeal and Petition for a Stay must be submitted to (1) the Interior Board of Land Appeals, Office of Hearing and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, (2) the Regional Solicitor's Office, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890, and (3) BLM Ely Field Office, HC 33 Box 33500, Ely, NV 89301-9408. The original documents should be 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 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.

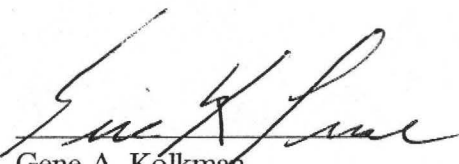
ADDITIONAL INFORMATION: Contact Jared Bybee, Wild Horse & Burro Specialist, of my staff at (775) 289-1889 or write to the above address.

Concurrence:


James M. Perkins
Assistant Field Manager
Renewable Resources
Ely Field Office

6/25/01
Date

Approval:


Gene A. Kolkman
Field Manager
Ely Field Office

for

6/25/01
Date

Enclosure (1):

1. Jakes Wash Herd Management Area Emergency Gather Plan (4pp)