

m 12-19-03

# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
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<http://www.nv.blm.gov>

In Reply Refer To:  
N2-2004-03  
4160 (NV-930)

DEC 19 2003

## CERTIFIED MAIL-RETURN RECEIPT REQUESTED

### Memorandum

To: Office of Hearings and Appeals, Salt Lake City, Utah

From: Deputy State Director, Natural Resources, Lands, and Planning, Nevada

Subject: **MOTION FOR SUMMARY DISMISSAL** - Intent to Appeal #N2-2004-03 by Nevada Commission For The Preservation of Wild Horses (CPWH) of Paiute Meadows Final Multiple Use Decision

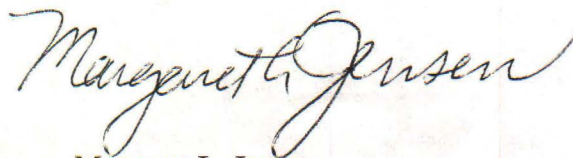
The Deputy State Director of the Bureau of Land Management (BLM) pursuant to 43 CFR 4.411(c) hereby moves to dismiss the above-captioned matter. The appellant failed to file an appeal within 30 days from the date of service as required under 43 CFR 4.470(a) and 4160.4. The *Paiute Meadows Final Multiple Used Decision* which is the subject of this "intent to appeal" was served on the appellant by Certified Mail on or before October 20, 2003. The individual who signed for the decision did not date the return receipt card. The Winnemucca Field Office received the receipt card on October 20, 2003.

Using October 20, 2003, as the date of service, the 30-day appeal period for CPWH ended on November 19, 2003. The document from CPWH which includes the phrase "notification of intent to appeal" was transmitted to the Winnemucca Field Office by facsimile machine on December 2, 2003, which is 13 days beyond the end of their appeal period. The regulation at 4.411(c) provides that, "No extension of time will be granted for filing the notice of appeal."

With regard to the grace period for filing provided under 4.401(a), the document was not filed within the grace period provided. This regulation provides two criteria for waiving the delay in filing. The document must be (1) "filed no later 10 days after it was required to be filed" and (2) "it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed." The subject document meets neither of these criteria. The document was filed one day after the end of the 10-day grace. The date at the top of the letter is December 2, 2003, as is the facsimile information imprinted on the top of the faxed letter. This is clear evidence that the document was in fact not transmitted before the end of the appeal period.



Accordingly, the BLM respectfully requests that this tribunal dismiss the subject appeal as provided under 43 CFR 4.411(c).



Margaret L. Jensen  
Deputy State Director  
Natural Resources, Lands, and Planning

cc:  
Field Solicitor, Salt Lake City, UT  
Field Office Manager, Battle Mountain

Certified Mail to:  
State of Nevada  
Department of Conservation and Natural Resources  
Commission For The Preservation of Wild Horses  
885 Eastlake Blvd  
Carson City, Nevada 89704