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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

In re the Appeal of)	IBLA NO. 92-188
)	
Commission for the Preservation)	MOTION TO PLACE
of Wild Horses, N2-92-3)	DECISION IN FULL
and)	FORCE AND EFFECT
Wild Horse Organized Assistance,)	
N2-92-4)	
and)	
Nevada Department of Wildlife,)	
N2-92-5)	
and)	
Natural Resources Defense Council/)	
Sierra Club, N2-92-6)	
and)	
American Horse Protection)	
Association/The Humane Society)	
of the United States, N2-92-7)	
)	

The Bureau of Land Management respectfully requests that the Wild Horse and Burro Management Decision, which is contained on pages 11 and 12 of the Final Multiple Use Decision of the Paiute Meadows allotment issued on November 22, 1991, be placed in full force and effect so as to allow the roundup of wild horses and burros, proposed therein, to take place prior to March 1st of 1992. The affidavit of Area Manager Scott R. Billing, attached to this motion as Exhibit A, details, in paragraph 7, the reasons why the wild

1 horse and burro roundup must terminate as of March 1st. BLM
2 advises that if this roundup is to take place, the Area
3 Manager's decision must be placed in full force and effect
4 prior to February 14th of 1992. All parties or their
5 attorneys have been notified orally that BLM is filing this
6 motion to place this decision in full force and effect. All
7 appellants are being served by Federal Express in order to
8 expedite consideration by the Board of this request.

9 The Board in Marathon Oil Company, 90 IBLA 236 at 245-
10 46, 93 I.D. 6, 11, 12 (1986) found certain factors to be
11 particularly relevant in determining whether to place a BLM
12 decision in full force and effect or leave in place the
13 automatic stay contained in 43 C.F.R. § 4.21(a). Under 43
14 C.F.R. § 4.21(a), the Board has the authority to place a BLM
15 decision subject to appeal into full force and effect, and
16 thus lift the automatic stay imposed by that regulation,
17 where the "public interest requires." In Marathon Oil
18 Company, supra, the Board adopted the rationale in Placid
19 Oil Company v. U.S. Department of Interior, 491 F.Supp 895
20 (N.D. Texas, 1980), to determine whether a decision should
21 be made effective pending appeal. The four factors which
22 the Board finds relevant are: 1) substantial likelihood of
23 success on the merits; 2) the substantial threat of
24 irreparable injury to the moving party if the decision is
25 not made immediately effective; 3) whether the threatened
26 injury to the moving party outweighs the potential harm the
27 stay may cause to the non-moving party; and 4) whether the

1 stay is contrary to the public interest. The Bureau of Land
2 Management asserts that consideration of each of these four
3 factors leads to the conclusion that the Area Manager's
4 decision to remove wild horses from the Paiute Meadows
5 allotment should be made effective pending consideration of
6 this appeal.

7 Attached hereto, as Exhibit No. 2, is the affidavit of
8 Michael Borman, a range scientist, which describes the
9 condition of the Paiute Meadows allotment and supports BLM's
10 decision to remove excessive numbers of wild horses
11 therefrom. Attached hereto as Exhibit No. 3 is a letter
12 from William A. Molini, the Director of the State of Nevada
13 Department of Wildlife, cogently setting forth the
14 Department's concern over the excessive wild horse
15 populations which exist on the Paiute Meadows allotment.
16 The documents contained in the administrative record and the
17 exhibits to this motion, clearly demonstrate that an
18 overpopulation of wild horses exists on the Paiute Meadows
19 allotment; that overpopulation is causing severe damage to
20 the grazing resource and riparian habitat on the allotment.
21 Appellants have, as yet, submitted no evidence to refute the
22 condition of the Paiute Meadows allotment as described in
23 Exhibit Nos. 1, 2, and 3. The Bureau of Land Management
24 believes that appellants do not have any evidence which
25 would in any way refute the conclusions reached by Messrs.
26 Billing, Borman and Molini on the range forage condition of
27 the allotment. BLM asserts that the exhibits and

1 administrative record demonstrate that the Bureau and the
2 public lands will suffer irreparable injury if excessive
3 numbers of wild horses are not removed from the allotment.
4 The Billing affidavit sets forth in detail the damage that
5 will be done to the vegetative resource and, hence, the
6 public interest if excessive numbers of wild horses are not
7 eliminated from this allotment. See paragraphs 4 and 5.
8 Likewise, affiant Borman concurs with Billing's analysis
9 (paragraph 14).

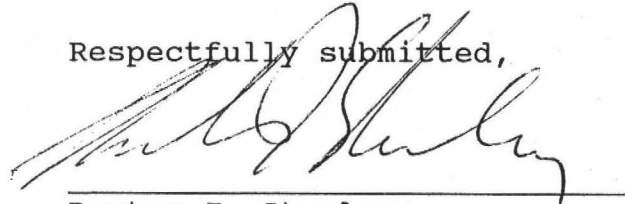
10 BLM asserts that appellant, the non-moving party, will
11 not be prejudiced by the immediate removal of excessive
12 numbers of wild horses from the Paiute Meadows allotment.
13 The Area Manager has taken care to assure that the wild
14 horse herd, which exists in the Paiute Meadows allotment,
15 will be maintained at viable population levels (Billing
16 affidavit, paragraph 6).

17 As the Board is well aware, the provisions of 16 U.S.C.
18 § 1333(b)(2) require the Secretary to immediately remove
19 excess animals from the range so as to achieve appropriate
20 management levels. The removal must take place until all
21 excess animals have been removed so as to restore a thriving
22 natural ecological balance to the range. The administrative
23 record supports the conclusion that the Area Manager has
24 properly applied the statute in his decision to remove
25 excessive wild horses from the Paiute Meadows allotment.
26 The Bureau of Land Management has calculated the number of
27 wild horses which should appropriately be managed on the

1 allotment in order to achieve a thriving natural ecological
2 balance on the federal range (Billing affidavit paragraph
3 6).

4 The undisputed evidence before the Board is that the
5 thriving natural ecological balance desired by BLM cannot be
6 achieved until such time as excessive wild horses are
7 removed. BLM respectfully requests that this Board place
8 into full force and effect the wild horse removal decisions
9 contained in the decision appealed from for the reasons
10 above set forth herein.

11 Respectfully submitted,

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13 _____
14 Burton J. Stanley
15 Attorney for Bureau of
16 Land Management
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CERTIFICATE OF SERVICE

The foregoing "Motion to Place Decision In Full Force and Effect" was sent "Federal Express" on January 31, 1992, to:

Office of Hearings and Appeals
Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, VA 22203

Copies of the foregoing "Motion to Place Decision In Full Force and Effect" were sent "Federal Express" on January 31, 1992, to:

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A copy of the foregoing "Motion to Place Decision In Full Force and Effect" was sent via "Certified Mail--Return Receipt Requested" on January 31, 1991, to:

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Jan. 31, 1992
(Date)

Barbara L. Johnson
Barbara L. Johnson