



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ELKO DISTRICT OFFICE
3900 E. IDAHO STREET
P.O. BOX 831
ELKO, NEVADA 89801

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4710 (NV-015)

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Wild Horse Organized Assistance
Ms. Dawn Lappin
P.O. Box 555
Reno, NV 89504

NOTICE OF FULL FORCE AND EFFECT DECISION FOR THE ANTELOPE VALLEY WILD HORSE GATHER

MANAGEMENT ACTION: The action is the implementation of the Wild Horse Amendment to the Wells Resource Management Plan (RMP). The Wild Horse Amendment (the Amendment) was signed on August 2, 1993. The Antelope Valley Wild Horse Gather Plan and associated Environmental Assessment (BLM/EK/PL-94/022) continues the implementation of the Amendment by gathering wild horses to initial herd size as specified in the Amendment. Initial herd size in the Antelope Valley Herd Management Area (HMA) is 240 horses.

METHODS: The method to be used will be an age selective removal within the HMA to reach the initial herd size.

DATES: The action will begin on or about October 24, 1994 and will likely be 10 days in duration.

LOCATION: The action will occur in the Antelope Valley HMA.

NUMBER OF HORSES INVOLVED: The approximate number of horses to be gathered and removed is 215; 240 horses will remain in the Antelope Valley HMA.

CAPTURE TECHNIQUES: A helicopter will be employed to move horses into temporary traps. Motorized vehicles will be employed to transport the horses to their final destination.

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, which states in pertinent parts:

4700.0-6(a): "Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat."

4710.4: "Management of wild horses and burros shall be undertaken with the objective of limiting the animals distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved lands use plans and herd management area plans."

4720.1: "Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately..."

4770.3(c): "The authorized officer may place in full force and effect decisions to remove wild horses or burros from public or private lands if removal is required by applicable law or to preserve or maintain a thriving ecological balance and multiple use relationship. Full force and effect decisions shall take effect on the date specified, regardless of an appeal. Appeals and petitions for stay of decisions shall be filed with the Interior Board of Land Appeals as specified in this part."

ADDITIONAL INFORMATION: Copies of the Draft Antelope Valley Wild Horse Gather Plan and the associated Preliminary Environmental Assessment (EA #BLM/EK/PL-94/022) were sent to all organizations and individuals who expressed an interest in the wild horse program in the Elko District. The organizations and individuals were allowed a 30 day comment period. Through this process, all input from affected interests has been considered in the finalization of the draft gather plan. After consideration of input received through the comment period, it has been determined that the following changes to the draft document are required:

1. On page 2 of the draft gather plan, the foal recruitment rate will be changed from the statewide average of 18 percent to 16 percent for the Antelope Valley HMA. This will change the approximate number of horses in the Antelope Valley HMA from 463 to 455 and change the number to be removed from 223 to 215.
2. On page 5 of the draft gather plan, the second paragraph, under D. Branded and Claimed Animals, shall be reworded to read as follows:

The COR/PI will coordinate closely with the District Brand Inspector to make arrangements for dates and times when brand inspections will be needed. A reasonable effort will be made to allow for a brand inspection of the older horses which do not meet the age selective removal criteria before they are released back to the public lands.

To expedite the removal, this decision is being placed in Full Force and Effect. The rationale is as follows:

1. Implementation of the subject plan is expected to bring the wild horse populations into a state of thriving ecological balance as determined in the Wells Wild Horse Amendment.

Monitoring data has shown that when horse numbers become excessive, such as they have in the HMA in question, water quality and quantity declines due to trampling of soil and vegetation around springs and plant vigor decreases due to successive years of over-utilization. In addition, horses are currently making more than 10 percent utilization in winter use areas prior to livestock entry. Reducing horses to the initial herd size as outlined in the Amendment should alleviate this problem.

2. If the removal is not placed in Full Force and Effect, the potential for loss and damage to the health of the ecosystem would increase due to the length of time required for the Interior Board of Land Appeals to review the decision should it be appealed.
3. This action is required to prevent further deterioration of the rangeland and to avoid further irreparable damage to the natural ecological balance of the area's vegetative resource.

The Finding of No Significant Impact and Decision Record for the Environmental Assessment covering this action are available for review upon request at the Elko District Office.


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 regulations 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. In addition to the copies you must file with the Board of Land Appeals and the Regional Solicitor, please also forward a copy to the BLM, Elko District Office, P.O. Box 831, Elko, NV 89803. A copy of your Notice of Appeal and Statement of Reasons must also be served on any party adversely affected by this decision. 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 the Interior Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, and to the Regional Solicitor's Office, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890, 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.

Sincerely yours,



RODNEY HARRIS
District Manager



**COMMISSION FOR THE
PRESERVATION OF WILD HORSES**

255 W. Moana Lane

Suite 207A

Reno, Nevada 89509

(702) 688-2626

October 3, 1994

Bill Baker, Area Manager
Elko District Office
3900 E. Idaho St.
Box 831
Elko, Nevada 89801

RE: Antelope Valley Wild Horse Gather Decision

Dear Mr. Baker,

We were in receipt of a full force and effect decision for the gather of the Antelope Wild Horse Herd. It was the intent of the Wells Amendment to adjust HMA's based upon conflicts with private lands and to establish initial herd levels for new HMA's. These new herd areas, Antelope and Maverick-Medicine, were to have AML's established based on achieving a thriving natural ecological balance with other uses. This determination of AML's were to be based upon LUP criteria and monitoring data as described in the 1989 IBLA Decision.

We have reviewed, through the consultation process, the Wells Amendment, Wells Amendment Environmental Assessment, Antelope Gather Plan/EA, and the Antelope Valley Allotment Evaluation and cannot determine how the AML of this decision was determined. For example, the District contends that use pattern mapping was weight averaged, 10% desired utilization for winter forage, and yield indexing were applied in the carrying capacity computations. These computations were not found in the Wells Amendment EA nor Antelope Valley Allotment Evaluation.

As a matter of Federal Regulation, we have an opportunity to request a stay of action and appeal. We received this decision on October 3, 1994, this decision states a gather scheduled for October 24, 1994, and is mandating implementation of the gather prior to the 30 day comment period allowed us by law. Unless you can establish that this gather is in "emergency" status we respectfully request that this gather be postponed until the 30 day comment period has expired.

Bill Baker, Area Manager
October 3, 1994
Page 2

We encourage you to provide us with the specific information regarding this AML at you earliest convenience. If you have any questions, please feel free to call.

Sincerely,



CATHERINE BARCOMB
Executive Director

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