



United States Department of the Interior

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



4710 (NR-015) REFER TO:

OCT 15 1993

received Oct. 21

CERTIFIED MAIL NO. P 321 020 824
RETURN RECEIPT REQUESTED

CPWH & B
c/o Ms. Cathy Barcomb
Stewart Facility
5500 Snider Ave.
Bldg. 6, Room 137
Carson City, NV 89710

NOTICE OF FULL FORCE AND EFFECT DECISION FOR THE GOSHUTE 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 (from now on referred to as the Amendment) was signed on August 2, 1993. The Goshute Gather Plan and associated Environmental Assessment (BLM/EK/PL-93/054) continues the implementation of the Amendment by gathering wild horses in the Goshute Herd Management Area (HMA) until initial herd size of 160 is achieved, as per the Amendment.

METHODS: The methods to be used will be an age selective removal within the gather area to reach the initial herd size of 160 horses within the Goshute HMA.

DATES: The action will begin on approximately October 15, 1993 and will likely be 3-5 days in duration.

LOCATION: The action will occur in the formerly designated Goshute Herd Area (HA), and the newly established Goshute HMA.

NUMBER OF HORSES INVOLVED: The approximate number of horses to be gathered is 90-100.

CAPTURE TECHNIQUES: A helicopter will be employed to move horses to the 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 cited below:

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."

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."

4720.2-1: "Upon written request from the private landowner to any representative of the BLM, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable."

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: A copy of the Draft Goshute Gather Plan and associated Preliminary Environmental Assessment (EA #BLM/EK/PL-93/054) was 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. The comment period ended on October 15, 1993; no changes were made to the draft gather plan due to the comments received and the draft plan became the Final Goshute Wild Horse Gather Plan.

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

1. Wild Horses are currently residing outside of the HMA boundary on large blocks of private land and on checkerboard land patterns. There have been numerous requests to remove these animals by the private land owners. The Wells Wild Horse Amendment states that the checkerboard land pattern areas will no longer be managed for wild horses, and the new HMA boundaries delete the checkerboard land patterns from the HMAs. Wild horses must be removed immediately to preclude resource damage to private lands by the horses.
2. Implementation of the subject plan is expected to bring the wild horse population into a state of thriving natural 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; plant vigor decreases due to successive years of over-utilization; and horses are forced to leave the HMA due to lack of water and forage. In addition, horses are currently making more than 10% 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.

3. Where horses are being removed from private lands, it is necessary that the BLM take immediate action to remove the horses under Public Law 92-195, Sec.4 as amended which states:

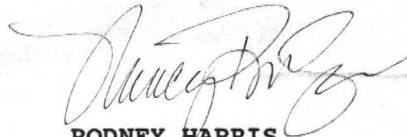
"If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshall or agent of the Secretary, who shall arrange to have the animals removed..."

The Elko District is in receipt of requests from the owners of the private land in question to remove horses from their property.

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 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.

Sincerely yours,



RODNEY HARRIS
District Manager

11/18/93

BOB MILLER
Governor

STATE OF NEVADA

CATHERINE BARCOMB
Executive Director



**COMMISSION FOR THE
PRESERVATION OF WILD HORSES**

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November 18, 1993

Mr. Rodney Harris
District Manager
Bureau of Land Management
3900 East Idaho Street
Elko, Nevada 89801

Re: Notice of Intent to Appeal- Full Force and Effect Decision for
the Goshute Wild Horse Gather

Dear Mr. Harris:

Nevada's Commission for the Preservation of Wild Horses has an established responsibility by law and affected interest status concerning the management of wild horses within the Wells Resource Area of the Elko District. Our administrative protest to the Wells Resource Management Plan Wild Horse Amendment and Decision Record was denied based upon the 1983 IBLA Decision. Management actions taken and to be taken by this Final Decision, and Strategic Plan for Management of Wild Horses and Burros on Public Lands will cause irreversible adverse impacts to the Goshute Wild Horse Herd. Pursuant to our concerns the Commission must appeal the implementation of this amendment through this Final Decision.

We find the following errors:

THE ENVIRONMENTAL ASSESSMENT IS INADEQUATE AND DOES NOT SUPPORT THE WELLS RMP WILD HORSE AMENDMENT OR FINAL DECISION.

Consultation

Issues presented and recommendations made to the Resource Area on the Wells Amendment to the Resource Area plan were not recognized in the final environmental assessment and gather plan that was dictated by the Amendment to the RMP. We were not given the opportunity to review and comment on the final prior to the wild horses being removed. In fact, we received the final environmental assessment and gather plan six days **after** the capture of the horses was over. We had no opportunity to comment, appeal, appeal with a request for a stay of the action, or if necessary file an injunction.

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Chronology of events:

1) The Commission protested the draft amendment to the Resource Management Plan.

2) We received the final approved RMP with no changes and a letter notifying us that we could not appeal this document but that we would have the opportunity to seek relief through any documents, actions, or plans that implemented the RMP.

3) The first documents released implementing the RMP were the draft Spruce-Pequop and Goshute Gather Plans.

4) We met with the District and K. Lynn Bennett to discuss our concerns with a) implementing the amendment to the RMP and b) the impending gathers of the horses in those areas which implemented the RMP Decision. We had no problem with deleting the checkerboard area from the HMA, our problem was with the criteria established in the Amendment to the RMP and the implementation of such criteria.

5) We were told a final EA's and Gather Plans would be issued and we would have the opportunity to review those documents.

6) **October 21, 1993**, we received the Notice of Full Force and Effect Decision for the Goshute Wild Horse Gather dated **October 15, 1993**, stating the gather was taking place **October 15, 1993**. We were notified after the fact without the opportunity to provide input prior to the action being taken.

The Commission has a responsibility in the State of Nevada to preserve and protect Nevada's wild horse herds and their habitat. This is provided to us by law and has become impossible with the scenario of events we have listed above. The Bureau has violated our rights by law to provide meaningful input on land use planning as an interested and affected party.

CONSISTENCY WITH OTHER PLANS

We were promised input in the final stages of the gather plans and realized that by receiving the documents after the gather had been conducted that it violated our rights under FLPMA, NEPA, BLM Regulations and Policy by not giving us the opportunity to file an appeal with a request for a stay of the action.

The reduction of wild horses as dictated by the previous 1989 IBLA decisions stated that wild horse appropriate management levels will be determined through monitoring and established within a multiple use concept to attain a thriving natural ecological balance. The Bureau must determine through monitoring that the wild horses in question actually caused the sole damage and must be removed. You are violating that order by establishing an arbitrary number to be managed for in the RMP without establishing that number through monitoring.

In addition, the Strategic Plan for Management of Wild Horses and Burros on Public Lands does not have an environmental assessment or environmental impact statement to support its actions.

Riparian Habitat

The amendment environmental assessment states that wild horses cause damage to riparian systems: "...reduce concentration areas around water. Trampling and overuse leads to death of plants resulting in bare ground." However, the environmental assessment did not consider alternatives or management actions to address this major land use plan issue. In addition, no overuse of riparian areas has been attributed to any other user except wild horses, completely ignoring the fact that livestock inhabit the same area. The EA did not consider alternatives or management actions to address this major land use plan issue.

The Wells Resource Management Plan/Decision Record, land use plan, established a criteria to determine utilization limits for key vegetation species for monitoring, evaluations and manager decisions. Riparian objectives to protect 250 spring sources, 2,518 acres of deteriorated riparian areas, and improve aquatic/riparian habitat are short and long term objectives. Monitoring studies based upon the land use plan objectives were to enable the District to make multiple use decisions to adjust livestock, wildlife and wild horses to carrying capacities to maintain, protect and restore natural resources.

Allocation of Available Forage

Utilization limitations on key vegetation species were to be based upon area specific studies consistent with the Nevada Rangeland Monitoring Handbook (1984). The environmental assessment's arbitrary determination to limit wild horse use of fall key species to 10 percent was not supported by any specific study or recommendation of the Nevada Rangeland Monitoring Handbook. Allowable Use criteria established in the Nevada Rangeland Monitoring Handbook suggests moderate to heavy (50 to 90 percent) for fall grazing seasons. While we agree with many Districts that 55 percent use of annual growth by grazing animals is ecologically sound, we find limiting wild horse use to 10 percent is arbitrary and biased against wild horses. The environmental assessments suggests that 10 percent limitation on fall key species will eliminate competition for the livestock yet, not protect the critical winter use area for wild horses from livestock competition.

Carrying Capacities

Monitoring studies based upon meeting allowable use levels overutilization limits of key vegetation species were to establish carrying capacities for grazing animals. This environmental assessment does not analyze wild horse use pattern mapping data for winter key forage species in relationship to an arbitrary 10 percent utilization limit for wild horses. The environment assessment presents no data or computation that would support the

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RMP Wild Horse Amendment's initial Goshute Herd (160 animals) would meet 10 percent utilization prior to livestock turnout or meet 55 percent overall use after the livestock grazing season.

Wild Horse Distribution and Habitat

Reduction of the Goshute Wild Horse Herd Area did not consider the biological needs of the herd. The environmental assessment only excluded the "checkerboard lands" without considering the seasonal use or distribution of the herd. You even state in your document that without a fence for control, wild horses will immediately return back to the private and checkerboard lands. For example, if winter range is the limiting factor of grazing animals within the herd area, then distribution and population data should have been analyzed to determine the "initial herd" of the RMP Wild Horse Amendment. Precluding wild horses to "checkerboard lands" will eliminate percentages of summer or winter ranges, the environmental assessment did not analyze habitat in determining the "initial herd". In fact, your EA shows that "habit" will play an integral role in horses moving back into the checkerboard and private lands.

Restructuring of the Wild Horse Herd

The 1993 wild horse gather and future gathers are governed by the Strategic Plan for Management of Wild Horses and Burros on Public Lands. Plan Assumption E. states: "Only adoptable animals will be removed from public lands." This assumption is being implemented in Nevada in gathers to release all horses in excess of their carrying capacities and restructuring the herds to older age classes. These two issues were not assessed in the environmental assessment for the Wild Horse RMP Amendment.

No Consideration for the Social or Economic Impacts

The Strategic Plan for the Management of Wild Horses and Burros was finalized without public input stating that input could be provided in documents or actions implementing the plan. In this gather plan and associated EA there was no consideration for the social structure, biological diversity, age and sex classification, or the long term impacts to the herds by implementation of this action. In addition no alternative social or economic avenues were explored.

THE DECISION WAS ARBITRARY, THESE ARE IMPROPER PROCEDURES FOR MAKING THESE DECISIONS.

The Final Decision's reduction of the Goshute Wild Horse Herd area and population has no biological rationale to support reducing the herd from 250 to 160 horses.

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The Final Decision's determination to limit wild horses to 10 percent of winter key forage prior to livestock turnout is arbitrarily targeting wild horses for the only reduction to protect habitat and reserve habitat for livestock without considering the critical needs of the herds for their winter use area.

The BLM's decision to amend the RMP for wild horses suggests that previous agreements to provide forage for other ungulates have influenced the Final Decision.

CARRYING CAPACITIES WERE NOT ESTABLISHED, THE DECISION WAS ARBITRARY.

The Final Decision did not establish a carrying capacity to justify the initial herd. Carrying capacity computations must consider all land use plan objectives. Riparian habitat was not assessed in the environmental assessment and must be considered. As an example, using existing data the following computation could be applied to establish an appropriate management level:

$$\frac{\text{wild horse and livestock aums}}{80 \text{ percent or heavy utliz.}} = \frac{\text{carrying capacity}}{55 \text{ percent Desired utl.}}$$

Allocation of the carrying capacity or desired stocking rate could be proportional to the composition of existing animals. Further adjustments in wild horses could be proportional to percentage of loss in habitat necessary to support the remaining herd. Livestock adjustments would be made to meet a natural ecological balance.

Livestock stocking rates have not been established under the same criteria as the Final Decision for wild horses. It would appear that the above carrying capacity computation (TR 4400-7 BLM Manual), could be applied based upon existing monitoring data to set a livestock carrying capacity and appropriate management level for wild horses in a multiple use decision.

THE FINAL DECISION IS BIASED AGAINST WILD HORSES.

Amending the land use plan to initially adjust the wild horse herds to resolve the private land owner conflicts can be justified on the federal governments ability to manage "checkerboard lands". However, the Final Decision's implementation of the Wells RMP Wild Horse Amendment sets criteria and planning without monitoring data to substantially reduce the Goshute Wild Horse Herd to provide forage for livestock is blatantly biased for one ungulate over another. The 1971 Wild Horse and Burro Act requires that a viable herd be maintained within a thriving natural ecological balance under the mandates of multiple use of the Federal Land Management and Policy Act. Land use plan amendments must set proper Standards and Procedures that are based upon natural resources that will

Rodney Harris, District Manager

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result in multiple use or a balance of ungulates within the capacity of existing range conditions. This Final Decision does not represent equitable actions within the Goshute Wild Horse Herd.

Request for a Stay of Action of any Further Removals of Wild Horses

We are formally requesting, pursuant to 43 C.F.R. § 4.21 that a stay of action be granted preventing the further removal of horses from the Goshute Herd Area pending resolution of this appeal. Each of the criteria for a stay are met in this case.

(1) Relative harm. The harm to wild horses in the Herd Area from further removal would be irreparable. Although the number of additional horses which would be removed is nowhere precisely identified or even estimated. Implementation of the Strategic Plan for the Management of Wild Horses and Burros by the Bureau has never evaluated these impacts on this herd or any herd arising from such actions. This appeal suggests that in fact the purpose of the Amendment to the RMP had a predetermined agenda to reduce wild horses only, not with the objective of protecting the habitat but with the goal of protecting the habitat for livestock use at the expense of the horse herd.

BLM's assertions about the harm to the range caused by horses, the further harm which would result from grazing by the reduced herd pending decision on appeal would be minimal at most. The ameliorative forces of herd reduction are already begun. Such harm as there might be, furthermore, would not be irreversible. Thus the balance of harms clearly favors a stay of further reductions of the herd.

(2) Likelihood of success on the merits. Appellants will prevail on the merits. On its face, the NEPA documentation for this decision is woefully inadequate, both in its consideration of alternatives and of environmental impacts, particularly impacts to the horses.

Further, events surrounding development of the underlying documents--the Strategic Plan and the RMP Amendment are compelling evidence that the basis for this decision is arbitrary under relevant law. Through a pattern of misrepresentation, evasion, and obfuscation, the Elko District and the Nevada State Office have avoided addressing the Appellant's legitimate concerns at every juncture. Appellants can demonstrate that the ultimate purpose behind the decision is the protection of livestock grazing at existing levels, clearly biased illegal purpose.

Rodney Harris, District Manager

November 18, 1993

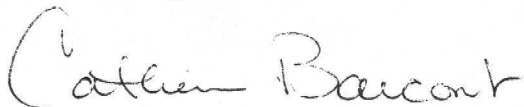
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(3) Immediate and irreparable harm. The immediacy of the harm arises from the normal delay in appeals being heard. The next round of reductions could well occur in 1994, while this appeal will be pending for considerably longer. By this circumstance, this appeal could be made moot during its pendency unless a stay is issued.

(4) Public interest. The public interest in protecting wild horses is manifest in the Wild and Free-Roaming Horses and Burros Act. Appellant does not dispute that other public interests are likewise enshrined in statute. But though these interests may exist, there is only one such interest which anyone maintains in this case is at ultimate risk, and that is the public interest in preserving the wild horses. The other interests are already benefitted by the reduction of the wild horse herd, and will not suffer permanently, if at all, from the preservation of the current status quo. The public interest therefore clearly aligns with issuing a stay until this matter may be fully heard.

In addition to showing the adverse impacts to wild horses by the Goshute Gather Plan and EA, we have also presented the biased and arbitrary decision made in the Amendment to the RMP as well as the potential irreparable harm to the wild horse herds by gathering horses using the criteria established in the Amendment. Therefore, with the concerns we have presented, we are formally requesting a stay of action for the removal of any wild horses affected by the Amendment to the Wells Resource Management Plan pending review and settlement of allegations made in this Appeal of the Goshute EA and Gather Plan.

Sincerely,



CATHERINE BARCOMB
Executive Director