



United States Department of the Interior

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



IN REPLY REFER TO:

4710 (NV-015)

OCT 26 1994

CERTIFIED MAIL NO. Z 278 655 925
RETURN RECEIPT REQUESTED

**NOTICE OF FULL FORCE AND EFFECT DECISION
FOR THE ROCK CREEK HERD AREA WILD HORSE GATHER**

MANAGEMENT ACTION: The action is the implementation of the Rock Creek Emergency Fire Rehabilitation (EFR) Plan, the Rock Creek Herd Area Wild Horse Gather Plan and associated Environmental Assessment (EA# BLM/EK/PL-94-038).

The action is to gather horses in the area of the Mahogany Springs EFR project within the Rock Creek HA to reduce the impacts of wild horses on the recovering natural resources, such as soils and vegetation. This calls for a removal of those horses residing in the burn and the area to be fenced, approximately 145 horses, leaving 580 in the HA.

METHODS: The method to be used is an age selective/complete removal within the EFR project area. Those animals which do not meet the age selective criteria will be released back into the HA well away from the project area. The gather will be conducted through the Fiscal Year 95 Nevada Wild Horse/Burro Removal Requirements Contract and supervised by a Contracting Officer's Representative.

DATES: The action will begin on or about November 25, 1994, and will likely be 7 days in duration. Affected interests will have approximately 30 days from the issuance of the Full Force and Effect decision and the initiation of the proposed removal action.

LOCATION: The action will occur in the Rock Creek HA.

NUMBER OF HORSES INVOLVED: The approximate number of horses to be gathered and removed is 145. 580 horses will remain in the Rock Creek HA.

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 land use plans and herd management area plans."

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 Rock Creek Wild Horse Gather Plan and the associated preliminary Environmental Assessment (EA# BLM/EK/PL-94/038) 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 preliminary EA are required:

1. On page 1 of the preliminary Environmental Assessment, the last sentence of the first paragraph will be corrected to read: "The HA is fenced on the northern and western boundaries; this somewhat impedes movement between the Snowstorm HMA and the Owyhee HA. The Rock Creek HA is not fenced on the southern and eastern boundaries; horses are frequently observed outside the HA boundary, particularly to the east."
2. On page 6 of the preliminary Environmental Assessment, the section on Native American Religious Concerns will be reworded to read: "Trap locations are dependent on: horse locations, weather, road conditions and access. Because of these factors, trap site locations can not be determined in advance of the gather. On-the-ground consultation with Native American tribal representatives will be made immediately prior to trap site selection and the gather. Any potential impacts would be eliminated by relocating trap sites if Native American religious concerns were identified."

These changes to the preliminary Environmental Assessment constitute the final Environmental Assessment for this action. Based on the analysis of Environmental Assessment BLM/EK/PL-94/038, it has been determined that the action will not have a significant effect on the human environment, and therefore, an Environmental Impact Statement (EIS) will not be prepared.

The Final Rock Creek Herd Area Wild Horse Gather Plan and Environmental Assessment covering this action are available upon request at the Elko District Office.

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

1. 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.

2. The 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. Without limiting livestock and wild horse use of the area, the recovery of the vegetation would be severely diminished. Grazing animals would be extremely attracted to the highly palatable regrowth and new vegetation. This concentrated use would diminish root reserves for plants that resprout, inhibit establishment of new seedlings and create an opportunity for annual vegetation to establish.
3. If the action is not placed in Full Force and Effect, there would be an increase in the time needed to restore a thriving natural ecological balance to the range due to the establishment of annual vegetation in the burn area as a result of continued heavy grazing.

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.

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