



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ELKO DISTRICT OFFICE
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P.O. BOX 831
ELKO, NEVADA 89801



IN REPLY REFER TO:

4710 (NV-015)

OCT 14 1993

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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 SPRUCE-PEQUOP AREA 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 Spruce-Pequop Area Gather Plan and associated Environmental Assessment (BLM/EK/PL-93/037) begins the implementation of the Amendment by gathering wild horses occupying portions of checkerboard land patterns, blocked areas of private land, and areas outside the designated Spruce-Pequop Herd Management Area (HMA). Initial herd size in the HMA will begin at 82 horses.

METHODS: The methods to be used will be an age selective removal within the HMA to reach the initial herd size and a complete removal in the checkerboard and private land patterns, with the relocation of those animals over nine (9) years of age to the Spruce-Pequop HMA.

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

LOCATION: The action will occur in the formerly designated Spruce-Pequop Herd Area (HA), the newly established Spruce-Pequop HMA, the Toano HA, and checkerboard land patterns in the Wood Hills, Independence, Goshute, and Pilot Creek Valleys.

NUMBER OF HORSES INVOLVED: The approximate number of horses to be gathered is 150. Approximately 18 horses will be older than the specified age group for removal and will be relocated. Eighty-two horses will remain in the Spruce-Pequop HMA.

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 Spruce-Pequop Area Gather Plan and associated Preliminary Environmental Assessment (EA #BLM/EK/PL-93/037) 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. No comments were received and the Draft Plan became the Final Spruce-Pequop Area 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. Water availability in the northern portion of the formerly designated Spruce-Pequop Herd Area is extremely limited and mostly located on private lands. The only water that is reliable yearlong is located six miles to the west of the formerly designated HA on a large block of private land. Removing horses from this area and placing the older horses well south of the checkerboard area near reliable water sources will alleviate this problem.
3. Implementation of the subject plan is expected to bring the wild horse population 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; 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 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.

4. 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:

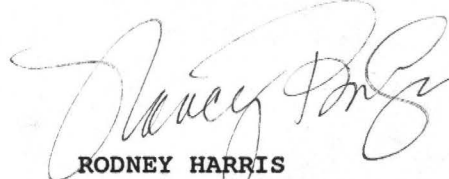
"If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary, who shall arrange to have the animals removed . . ."

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

11/12/93

BOB MILLER
Governor

STATE OF NEVADA

CATHERINE BARCOMB
Executive Director



**COMMISSION FOR THE
PRESERVATION OF WILD HORSES**

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November 12, 1993

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

Re: Appeal- Full Force and Effect Decision for Pequop Area 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, Interim Spruce Allotment Management Plan and Strategic Plan for Management of Wild Horses and Burros on Public Lands will cause irreversible adverse impacts to the Pequop 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

The environmental assessments to support the Final Decision does not seek or consider consultation given by the Commission. Representatives of the Commission met with the Resource Area and the Nevada Associate State Director K. Lynn Bennett, to provide input and recommendations to the draft environmental assessment and gather plan implementing the Wild Horse Amendment to the Wells Resource Management Plan. Issues presented and recommendations made to the Resource Area were not recognized in the final environmental assessment and gather plan. In fact, the final plan

states specifically that no comments were received on those documents, when in fact we had provided two hours of comments. In addition, 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.

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 gather of the horses in that area 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 and Gather Plan would be issued and we would have the opportunity to review those documents.

6) **October 19, 1993**, we received the Notice of Full Force and Effect Decision for the Spruce-Pequop Area Wild Horse Gather dated **October 14, 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. In addition to that gather, on **October 21, 1993**, we received notice of the Goshute gather dated October 15, 1993, stating the gather had taken place starting **October 15, 1993**.

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

The Interim Spruce Allotment Management Plan/Agreement (AMP), was signed by the permittee and Resource Area Manager on April 13, 1993. Bill Baker, BLM District Manager, Billy Templeton, Nevada State Director, and the Permittees had met in June of 1991, and decided among themselves to allow the Permittee and Resource

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Concepts write the AMP. A singular special interest writing the management plan for an allotment that affected all users was allowed without participation by all affected interests. The agreement was rewritten four times from 1991 to 1993, was signed in April of 1993 and implemented without being sent out for public comment and participation. This is a violation of NEPA, BLM Regulations and Policy. After interested parties discovered this had been done, the Area Manager sent the AMP out "for your information only." Ourselves along with others appealed this document. The livestock in this area had been issued a **temporary** license since 1964, pending analysis and an EA on the change in kind of use from sheep to livestock. We are now 29 years later with the same "temporary" license. This document affected the Amendment to the RMP as well as finally, the gather of the wild horse herds.

Respondent to four appeals of this agreement, the Resource Area Manager issued an after-the-fact draft environmental assessment to support the agreement. Comments to this draft have been sent to the District and resolution of those appeals are pending.

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

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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. Environmental assessments suggests that 10 percent limitation on fall key species will eliminate competition for the livestock reclassification from domestic sheep to cattle found in the Interim Spruce Allotment Management Plan/Agreement.

Carrying Capacities

Monitoring studies based upon meeting allowable use levels overutilization limits of key vegetation species were to establish carrying capacities for grazing animals. The environmental assessment analyzed 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 present no data or computation that would support the RMP Wild Horse Amendment's initial Spruce-Pequop Herd (82 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 Spruce-Pequop 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. 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".

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 PREVIOUS AGREEMENTS WERE ARBITRARY AND INFLUENCED THE FINAL DECISION, THESE ARE IMPROPER PROCEDURES FOR MAKING THESE DECISIONS.

The Final Decision's reduction of the Spruce-Pequop Wild Horse Herd area and population has no biological rationale to support reducing the herd from 150 to 82 horses. Information found in the "Interim Allotment Management Plan For Spruce Allotment", March 9, 1993, by the consulting firm Resource Concepts, contains similar agreements and projects found in the Wells RMP Wild Horse Amendment. According to this signed agreement with the Resource Manager, the permittee's position on wild horses management is "the allotment should be designated as horse-free." To this end, the permittee and Bureau agreed to jointly fund 16 miles of allotment fences by FY 93. Though not specifically delineated in the interim agreement, these fences most likely include those identified in the RMP amendment to limit horse distribution.

The Final Decision's determination to limit wild horses to 10 percent of winter key forage prior to livestock turnout corresponds to agreements made in the "Interim Allotment Management Plan for Spruce Allotment". This allotment agreement converted domestic sheep to cattle and increase competition with wild horses. The permittee agreed to have utilization levels set for key species, but only agreed to 60 percent allowable utilization on seedings paid for by the Bureau of Land Management. Signatory, BLM and permittee, made no specific agreement to utilization limitations addressing competition of cattle with wild horses.

Nevada BLM Planning Budget specifically identifies the Wells RMP Elk Amendment for FY94. Introduction of elk into the Spruce-Pequop Wild Horse Herd and Spruce Allotment will increase competition for key perennial grass species. 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.

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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 of the Interim Spruce Allotment Management Plan were not 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 EXECUTES A PROCESS TO ELIMINATE THE SPRUCE-PEQUOP WILD HORSE HERD.

The Final Decision adjusts the existing population from 150 animals to 82 animals for an interim period. The Final Decision established the Standard Operational Procedure to further reduce the herd based upon the arbitrary and excessive limitation of 10 percent of winter key species prior to livestock turn out. Implementation of the Strategic Plan for the Management of Wild Horses will require the Final Decision to leave older age class horses within the herd area. These combined actions will reduce the Spruce-Pequop Wild Horse Herd below its biological threshold and jeopardize the herd in the long term.

If it can be assumed that by reducing the herd 50 percent, that utilization of winter key species will result in 50 percent use, then implementation of the Final Decision will result in the following:

1994 Actual Wild Horse Use = 82 head or 984 AUMs
Actual Utilization = 25 percent utilization
Desired Utilization = 10 percent

Using TR 4400-7 Example D Uniform Utilization

$$\frac{984 \text{ aums}}{25 \text{ percent}} = \frac{\text{desired stocking rate}}{10 \text{ percent}}$$

Desired Stocking Rate = 393.6 AUMs
Appropriate Management Level = 33 horses

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If it can be assumed that the gather will only remove those horses in the "checkerboard lands", then the density of horses within the key winter range will remain the same. It then can be assumed that utilization of key winter species will remain the same as prior to the gather. In this example, TR 4400-7 Example D Utilization Uniform would apply as follows:

$$\frac{984 \text{ AUMs}}{50 \text{ percent}} = \frac{\text{desired stocking rate}}{10 \text{ percent}}$$

Desired Stocking Rate = 492 AUMs
Appropriate Management Level = 5 horses

Elimination of all young productive horses for adoptions will result in all surviving horses being over 10 years of age. Such a reduced herd below its potential will not be able to retain its genetic pool to retain a viable herd beyond the next gather. Restructuring of the age classes jeopardizes the herd existence due to winter kill and disease.

This is contrary to law and a violation of the 1971 Wild Horse and Burro Act mandating that the BLM manage wild horses where they were found in 1971, as well as to manage them for a thriving natural ecological balance. This would not be a balance that wild horses could sustain.

THE FINAL DECISION IS BIASED AGAINST WILD HORSES.

The Final Decision provides forage for the livestock conversion of the Interim Spruce Allotment Management Plan/Agreement and Wells RMP Elk Amendment. 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 to eliminate the Spruce-Peguop Wild Horse Herd to provide forage for livestock and elk not present in the Wells Resource Management Area. 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 result in multiple use or a balance of ungulates within the capacity of existing range conditions. This Final Decision does not represent equitable actions in light of the pending amendment or existing livestock agreement within the Spruce-Peguop 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

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horses from the Spruce-Pequop 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, the material set forth above demonstrates that the herd would in all likelihood be reduced to 33 head, and quite possibly to 5 animals, based upon the 10 percent utilization limit set for horses. In either event, the viability of the herd would be imperiled. Reduction to these numbers would hold serious consequences for the herd's social structure, its residual gene pool, and its biological ability to sustain itself. These adverse impacts would be magnified by the herd age restructuring resulting from the BLM Strategic Plan for the Management of Wild Horses and Burros.

The BLM has never evaluated these impacts on this herd or any herd arising from such actions. In all likelihood, the ultimate result for this herd would be its elimination. This appeal suggests that this in fact is the purpose of the decision, and such purpose is clearly illegal.

On the other hand, the BLM has already halved the Spruce-Pequop herd. Even accepting, for the sake of argument only, 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, the RMP Amendment and the Interim Allotment Management Plan--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, and the summary elimination of the Spruce-Pequop herd, a clearly illegal purpose.

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(3) Immediate and irreparable harm. As set forth above, further reduction of horses in the Spruce-Pequop herd poses dire hazards for the herd. The herd would likely become nonviable if reduced in numbers and restructured as set forth in the decision. And contrary to the representations of the BLM, wild horses are not a fungible resource, allowing augmentation or transplantedation of horses from other herds to reinvigorate this herd. Each herd has unique physical and social characteristics which can only be preserved by maintaining the existing herd. Introduction of new animals into the herd area would cause adverse impacts to the herd which could not thereafter be corrected.

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 halving 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 Spruce 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 Spruce-Pequop EA and Gather Plan.

Sincerely,



CATHERINE BARCOMB
Executive Director