

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
NEEDLES FIELD OFFICE

DECISION MEMORANDUM

Based on a review of the project described in the Categorical Exclusion (DOI-BLM-CA-D090-2016-0025-CX) documentation and resource staff recommendations, I have determined that the project is in conformance with the California Desert Conservation Area Management Plan of 1980, as amended, and is categorically excluded from further environmental analysis under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9, D. Rangeland Management, (4) Removal of wild horses or burros from private lands at the request of the landowner. No further environmental analysis is required.

It is my decision to proceed with the action as required under The Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195) by utilizing wildlife friendly bait trapping techniques.

The National Wild Horse and Burro Bait Trapping Contractor or BLM wrangler crews will conduct the bait and trapping operations. The work will be accomplished in a safe and humane manner and follow the same provisions used for removing stray animals from public lands pursuant to 43 CFR Part 4720.1 and the contract specifications for bait trapping.

Typically 2- 3 bait traps will be placed within locations where burros are creating a nuisance. Location of the traps will be coordinated with the private land owner.

Each trap will be located in areas which are used by burros. Weed free or locally grown alfalfa, orchard grass or other types of hay and food supplements along with a water trough will be placed out as an attractant. Once the burros were feeding on the hay and watering, a capture pen would be constructed. Each capture pen would be approximately 50 feet by 50 feet using 5-6 foot high by 10-12 foot long portable steel pipe panels. The catch pen will have a break in the panels for burros to access the hay and water within the pen. When it was evident that the burros were fixated on the hay and water within the catch pen, a trigger gate would be erected. The trigger gate will be left open for a period of time so the burros become accustomed to coming in and out of the catch pen through the trigger gate. When it is determined the burros would readily come into the catch pen for the hay and water, the trigger gate would be set. The trigger gate would allow the burros to enter the catch pen, but not exit.

Typically, during the summer months, burros forage during the night when it is cooler. Most burros would be trapped during the night and early morning hours. The traps will be checked twice daily, once in the morning and again in the late afternoon.

If burros were found in the trap, personnel will set 2 wing panels for the stock trailer to back into and one of the catch pen panels will be swung open, allowing the burros access onto the stock trailer. The trapped burros will be minimally worked and the stress on the burro will be low.

The captured burros will then be transported to the BLM holding facility where they would be placed into the BLM's Adopt-A-Horse or Burro Program.

For injuries and disease not requiring the immediate care of a veterinarian the animal will be transported to the BLM facility where the animal will be treated upon arrival. If the animal cannot be transported, its condition is uncertain, or it can't be transported without further injury, harm or undue pain, a veterinarian will make a determination on the treatment for the animal.

When personnel are not available to monitor the catch pens, the trigger gates will be removed.

There are times when WH&B must be humanely euthanized for reasons related to health, handling and acts of mercy. Decisions to humanely euthanize animals in field situations will be made in conformance with BLM policy (Washington Office (WO) Instruction Memorandum (IM) 2009-041). Current policy reference:

[http://www.blm.gov/wo/st/en/info/regulations/Instruction Memos and Bulletins/national instruction/2009/IM 2009-041.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction%20Memos%20and%20Bulletins/national%20instruction/2009/IM%202009-041.html)

This decision is issued Effective Immediately, in accordance with Title 43 Code of Federal Regulations 4770.3(c). Pursuant to Title 43 Code of Federal Regulations 4720.2-1, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable. This action will reduce property damage within the Molycorp Mountain Pass Mine and the potential risk of burros accessing I-15 from the on/off ramp leading to the mine.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 4.21 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) 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.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal 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.



Field Manager, Needles Field Office

8-22-16
Date

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
NEEDLES FIELD OFFICE**

**CATEGORICAL EXCLUSION
DOI-BLM-CA-D090-2016-0025-CX**

**Molycorp Incorporated Mountain Pass Mine
Nuisance Wild Burro Gather**

PROPOSED ACTION:

The BLM received a request from Molycorp Incorporated to remove wild burros from their private property near Clark Mountain (exhibit A). Molycorp Inc. owns approximately 2,222 acres of property known as the Mountain Pass Mine. The presence of the burros has caused severe damage to the property and surrounding landscape. Efforts made by the land owners to protect their property have proven ineffective at deterring the animals.

The Needles Field Office proposes to utilize wildlife friendly bait trapping techniques to capture and remove approximately 120 nuisance burros. This action is in accordance with 43 CFR 4720.2-1, Removal of strayed animals from private lands.

The project would tentatively start mid-August 2016 and would last approximately 6 – 10 weeks addressing removal of nuisance burros from the Molycorp Mountain Pass Mine. Actions would continue, as needed, when requests or reports of burros creating a nuisance or public hazard are received.

The National Wild Horse and Burro Bait Trapping Contractor or BLM wrangler crews would conduct the bait and trapping operations. The work shall be accomplished in a safe and humane manner and follow the same provisions used for removing stray animals from public lands pursuant to 43 CFR Part 4720.1 and the contract specifications for bait trapping. Typically 2- 3 bait traps would be placed within locations where burros are creating a nuisance. Location of the traps would be coordinated with the private land owner.

Each trap would be located in areas which are used by burros. Weed free or locally grown alfalfa, orchard grass or other types of hay and food supplements along with a water trough would be placed out as an attractant. Once the burros were feeding on the hay and watering, a capture pen would be constructed. Each capture pen would be approximately 50 feet by 50 feet using 5-6 foot high by 10-12 foot long portable steel pipe panels. The catch pen would have a break in the panels for burros to access the hay and water within the pen. When it was evident that the burros were fixated on the hay and water within the catch pen, a trigger gate would be erected. The trigger gate will be left open for a period of time so the burros become accustomed to coming in and out of the catch pen through the trigger gate. When it is determined the burros would readily come into the catch pen for the hay and water, the trigger gate would be set. The trigger gate would allow the burros to enter the catch pen, but not exit.

Typically, during the summer months, burros forage during the night when it is cooler. Most burros would be trapped during the night and early morning hours. The traps will be checked twice daily, once in the morning and again in the late afternoon.

If burros were found in the trap, personnel would set 2 wing panels for the stock trailer to back into and one of the catch pen panels would be swung open, allowing the burros access onto the stock trailer. The trapped burros would be minimally worked and the stress on the burro would be low.

The captured burros would then be transported to the BLM holding facility where they would be placed into the BLM's Adopt-A-Horse or Burro Program.

For injuries and disease not requiring the immediate care of a veterinarian the animal would be transported to the BLM facility where the animal would be treated upon arrival. If the animal cannot be transported, its condition is uncertain, or it can't be transported without further injury, harm or undue pain, a veterinarian would make a determination on the treatment for the animal.

When personnel are not available to monitor the catch pens, the trigger gates would be removed.

There are times when WH&B must be humanely euthanized for reasons related to health, handling and acts of mercy. Decisions to humanely euthanize animals in field situations would be made in conformance with BLM policy (Washington Office (WO) Instruction Memorandum (IM) 2009-041). Current policy reference:

[http://www.blm.gov/wo/st/en/info/regulations/Instruction Memos and Bulletins/national instruction/2009/IM 2009-041.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction%20Memos%20and%20Bulletins/national_instruction/2009/IM_2009-041.html)

LOCATION:

San Bernardino Meridian, California

T. 16 N., R. 13 E.,

sec. 11, SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$;

sec. 12, S $\frac{1}{2}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;

sec. 13, all;

sec. 14, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$.

T. 16 N., R. 14 E.,

Sec. 30, W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 31, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

Area described contains approximately 2,222 acres of private lands.

PURPOSE AND NEED FOR PROPOSED ACTION:

Molycorp Incorporated Mountain Pass Mine
Nuisance Wild Burro Gather
DOI-BLM-CA-D090-2016-0025-CX

The purpose of this action is to respond to complaints from private land owners for removal of nuisance burros impacting property and creating a threat to public safety.

The need for this action is established by BLM's responsibility under The Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195) which states that 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.

Although the National Environmental Policy Act states that if the BLM is required by law to take an action NEPA would not apply because the law removes the BLM's decision-making discretion it was determined that the removal of the burros would not be initiated without NEPA.

SPECIAL DESIGNATION AREA:

California Desert Conservation Area (CDCA)

Northern and Eastern Mojave Desert Management Plan (NEMO)

LAND USE PLAN CONFORMANCE:

The proposed action is subject to and in conformance with the California Desert Conservation Area Management Plan of 1980, et seq. in accordance with Title 43 Code of Federal Regulations 1610.5-3. The management plan provides that wild horse and burros will be removed from lands not designated as retention areas.

In addition the proposed action is in accordance with:

- Wild Free Roaming Horse and Burro Act of 1971 (Public Law 92-195)
- Codes of Federal Regulations 43 CFR 4720.2-1, Removal of strayed animals from private lands:

EXCEPTIONS REVIEW:

The Departmental Manual 516 DM 2.3 requires that before any categorical exclusion is used, the exceptions must be reviewed for applicability. The proposed action cannot be categorically excluded if one or more of the exceptions apply.

The proposed action qualifies as a Categorical Exclusion pursuant to 516 DM 11.9, D.4. "*Removal of wild horses or burros from private lands at the request of the landowner*".

2.1 Has significant impacts on public health or safety.

Comment: Exception does not apply.

Rationale: *The capture and removal burros from private lands will have no significant impacts on public health or safety. This action will be beneficial for the land owners. It will also eliminate or reduce the safety risks caused by wild burros crossing Interstate 15 as well as other roads in the area.*

2.2 Has significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

Comment: Exception does not apply.

Rationale: *The capture and removal of burros from the project area will have no significant impacts to cultural resources. The private land owner will be coordinating with the capture crew on location of trap sites.*

2.3 Has highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].

Comment: Exception does not apply.

Rationale: *The removal of wild burros from the project areas will not have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources.*

2.4 Has highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

Comment: Exception does not apply.

Rationale: *As the wild burros are being gathered for their own safety and for the safety of the public, and as prior gathers have been previously conducted in the same manner as will be carried out here, this action will not have highly uncertain or potentially significant environmental effects or involve unknown environmental risks.*

2.5 Establishes a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

Comment: Exception does not apply.

Rationale: *This action was initiated at the request of a private land owner whose land is currently being occupied by the wild burros. Addressing the need to remove those burros is in the interest of health and safety and is required by public law 92-195.*

This action will not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects as wild horse and burro gathers are common.

2.6 Has a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

Comment: Exception does not apply.

Rationale: *This action will not have a direct relationship to other actions with individually*

insignificant, but cumulatively significant environmental effects as the burros being removed are outside the herd area and herd management area. Wild burros removed will be transported to a BLM Wild Horse and Burro Holding Facility where they will be placed into the BLM's Adopt-A-Horse or Burro Program.

2.7 Has significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.

Comment: Exception does not apply.

Rationale: *Pursuant to the State Protocol Agreement between the California State Director of the Bureau of Land Management and the California State Historic Preservation Officer (2015) and in accordance with 36 CFR Part 800, the BLM has reviewed this undertaking for any actions that would include public or private lands. The BLM is not authorized to complete the Section 106 review on Tribal Lands, which is under the purview of the Bureau of Indian Affairs.*

"In order to assure no Historic Properties would be affected by the burro gather, the BLM will conduct a Class III survey on any private or public lands that are proposed to serve as a capture area. If potential Historic properties are identified, the BLM archaeologist will work with the BLM archaeologist or head of the wrangler crew to identify an alternative location that is void of cultural resources."

2.8 Has significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

Comment: Exception does not apply.

Rationale: *The project area is not within desert tortoise habitat. As an extra precaution, the terms and conditions for this project specify extra protective measures for the desert tortoise that will be followed during the project.*

2.9 Violates a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

Comment: Exception does not apply.

Rationale: *This action will not violate a federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment. On the contrary, BLM was requested to take action for the removal of strayed animals from private lands consistent with the provisions of The Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195).*

2.10 Has a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

Comment: Exception does not apply.

Rationale: *This action will not have a high or adverse effect on low income or minority populations as the gather will take place within boundaries of the land owner's private property. The burros will be transported to a BLM Wild Horse and Burro Holding Facility, where they will*

be placed into the BLM's Adopt-A-Horse or Burro Program.

2.11 Limits access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).

Comment: Exception does not apply.

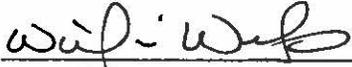
Rationale: *This action will impose no limits on access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites.*

2.12 Contributes to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

Comment: Exception does not apply.

Rationale: *This action will not contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species. The gather will take place on lands privately owned and previously disturbed by these wild animals. Additionally, locally grown hay or certified weed free hay will be used for baiting the traps.*

REVIEWED:



Planning and Environmental Coordinator

8-22-16
Date

APPROVED:



Needles Field Office Manager

8-22-16
Date