



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
Interior Board of Land Appeals  
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November 3, 2009

IBLA 2009-246	)	MT-C010-2009-0001
	)	
THE CLOUD FOUNDATION, INC.,	)	Wild Horses & Burros
ET AL.	)	
	)	Petition for Stay Denied

## ORDER

The Cloud Foundation, Inc., Front Range Equine Rescue, Inc., and Ginger Kathrens (collectively, appellants) have appealed from and petitioned for a stay of the effect of a BLM decision approving a Herd Management Area Plan (HMAP) for the Pryor Mountain Wild Horse Range (PMWHR).

In this order, we address the petition for stay. Appellants have the burden of showing that a stay is warranted based on the criteria in 43 C.F.R. § 4.21(b). Appellants have failed to show a likelihood of immediate and irreparable harm if a stay is not granted. For that reason, the petition for stay is denied.

### *Background*

The PMWHR is located in Carbon County, Montana, and Big Horn County, Wyoming. The Secretary of the Interior initially created the PMWHR in 1968, and it has been expanded since that time to include lands within the Custer National Forest, administered by the Forest Service (FS), U.S. Department of Agriculture, and the Bighorn Canyon National Recreation Area (NRA), administered by the National Park Service (NPS), U.S. Department of the Interior.<sup>1</sup>

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<sup>1</sup> BLM is the lead agency for wild horse management on the PMWHR, and it has authority for population management, establishing the appropriate management level (AML), habitat conditions, and monitoring associated with all portions of the PMWHR. FS and NPS have authority for management decisions, *i.e.*, fencing and water development, on their portions of the PMWHR. The AML is the optimum number of wild horses that can graze a particular area of the public lands resulting in a thriving natural ecological balance and avoiding a deterioration of the range associated with an overpopulation of wild horses. *Animal Protection Institute of America*, 109 IBLA 112, 119 (1989).

In a 1984 HMAP, BLM initially set the AML of wild horses for the PMWHR at 121 wild horses (plus or minus 5 percent). In a 1992 revised HMAP, BLM reduced the AML to 95 wild horses (plus or minus 10 percent), or 85 to 105 wild horses.

In 2008, BLM, assisted by FS and NPS, undertook an evaluation of the PMWHR to determine if, given Federal rangeland conditions, management objectives were being met. Based on that evaluation, which recommended that, given the estimated carrying capacity of the range, the PMWHR be managed for 92 to 117 wild horses, BLM proposed increasing the AML from 85 to 105 wild horses to 90 to 120 wild horses (excluding the current year's foal crop).

Following completion of the evaluation, BLM, with the assistance of FS and NPS, prepared a draft revised HMAP and preliminary environmental assessment (EA) and offered them for public comment. After reviewing the public comments, including comments from appellants, the Field Manager, Billings (Montana) Field Office, BLM, issued a Finding of No Significant Impact/Decision Record (FONSI/DR), dated May 22, 2009, adopting the proposed AML (90 to 120 wild horses) and approving the proposed HMAP.<sup>2</sup> See FONSI/DR at 7-8. The Field Manager explained that the approved actions would

increase the number of wild horses that can be managed; provide additional water sources allowing wild horses and wildlife to better use areas that are less susceptible to grazing pressure; maximize genetic interchange and diversity within the wild horse population; retain Spanish characteristics unique to this herd; maintain multiple use relationships for the area . . .; and prevent unnecessary or undue degradation of public land resources.

FONSI/DR at 2. He further noted that such actions would preserve and maintain a thriving natural ecological balance and protect the range from deterioration associated with an overpopulation of wild horses, by maximizing the number of wild

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<sup>2</sup> FS issued its own Decision Notice/FONSI on May 22, 2009, approving extension, partial realignment, and repair/maintenance of a fence on National Forest lands along the northern boundary of the PMWHR, and the improvement of one water source on National Forest lands. Appellants separately appealed that decision. However, as part of the present appeal, they challenge "BLM's and the FS's decision to construct a North Boundary Fence." See Notice of Appeal/Statement of Reasons (NA/SOR) at 8. Because FS, not BLM, issued the decision regarding the fence, that issue is not before the Board. Our jurisdiction is limited to actions authorized by BLM on public lands administered by BLM. See *Missouri Coalition for the Environment*, 172 IBLA 226, 237 (2007).

horses on the PMWHR consistent with preventing a further degradation, and even promoting a limited recovery, of rangeland conditions and herd health. *Id.* at 1, 3.

Appellants appealed timely and requested a stay of the decision to approve the proposed revised HMAP. BLM opposes a stay.

*Petition for a Stay*

Under 43 C.F.R. § 4770.3(a), any person who is adversely affected by the decision of a BLM authorized officer under 43 C.F.R. Part 4770, relating to the protection, management, and control of wild horses, may file an appeal and a petition for stay in accordance with 43 C.F.R. Part 4.

Under 43 C.F.R. § 4.21(b)(1), a petition for a stay must show sufficient justification based on the relative harm to the parties if the stay is granted or denied; the likelihood of the appellant's success on the merits; the likelihood of immediate and irreparable harm if the stay is not granted; and whether the public interest favors the granting of the stay. The party requesting the stay has the burden of showing that a stay is warranted by satisfying each of the criteria specified in the rule. 43 C.F.R. § 4.21(b)(2); *Oregon Natural Desert Association*, 176 IBLA 371, 377 n.6 (2009). Failure to satisfy any one of the criteria justifies denial of the petition.

Appellants have failed to show a likelihood of immediate and irreparable harm if a stay is not granted. In addressing the immediate and irreparable harm criterion, appellants state only that "BLM may soon undertake removals of a large number of wild horses based on the challenged HMAP" and that the removals threaten the continued existence of the herd. Petition at 14.

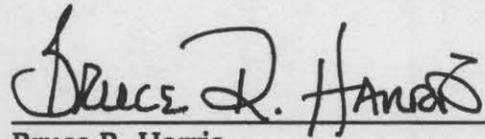
The FONSI/DR at issue approves a revised HMAP, which adopts a new AML and other management measures concerning the PMWHR. Appellants' focus on a gather/removal in their stay petition is misplaced. The present FONSI/DR does not authorize any such activity.<sup>3</sup> Were we to stay the effect of the FONSI/DR to the extent it approved a new AML, which is the focus of appellants' appeal, the status quo would be maintained, *i.e.*, continued management of the herd at the current AML of 85 to 105 wild horses, rather than the new AML of 90 to 120 wild horses. A stay

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<sup>3</sup> On Aug. 27, 2009, the Field Manager approved the 2009 PMWHR Final Gather Plan. That decision is the subject of several appeals, Jerri Tillett (IBLA 2009-319); Tina Seastrom (IBLA 2009-320); Cathy L. Bryarly (IBLA 2009-321); Nikki Tillett-Lippert, Douglas Spotted Eagle, LaForce Lonebear, and Dan Yellow Eyes-Carlson (IBLA 2009-322); and Florence Mouninou, Nastasia Shannon, and Johnathane Shannon (IBLA 2009-323).

would not increase or otherwise result in any change in the existing AML. Nor would it prevent BLM from proceeding with a gather/removal based on the current AML. Arguably, granting a stay would result in greater harm from appellants' viewpoint because more wild horses would be subject to removal. Denial of the petition is justified.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, appellants' petition for a stay is denied.

A handwritten signature in cursive script that reads "Bruce R. Harris". The signature is written in black ink and is positioned above a horizontal line.

Bruce R. Harris  
Deputy Chief Administrative Judge

APPEARANCES: