



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Mount Lewis Field Office  
50 Bastian Road  
Battle Mountain, NV 89820  
<http://www.blm.gov/nv/st/en.html>

In Reply Refer To:  
4700 (NVB0100)

**OCT 29 2010**

Dear Interested Public:

## DECISION

### **Callaghan and New Pass/Ravenswood Complex Wild Horse Gather Plan and Environmental Assessment DOI-BLM-NV-B010-2010-0087-EA.**

#### INTRODUCTION

The Bureau of Land Management (BLM) Mount Lewis Field Office (MLFO) is proposing to conduct a wild horse gather to treat approximately 323 mares with PZP-22 (Porcine Zona Pellucida) fertility control vaccine within the Callaghan Complex and New Pass Ravenswood Herd Management Area (HMA) beginning in December 2010 and to remove excess wild horses. Please refer to attached map.

The Gather Plan involves the gather of approximately 866 wild horses. All wild horses residing outside of HMA boundaries and primarily weanlings aged 7-12 months from within the HMAs would be removed from the range, in order to remove approximately 221 excess wild horses. Approximately 645 wild horses would be released back to the range following the gather with all release mares vaccinated with fertility control in order to slow population growth, maintain population size within the Appropriate Management Levels (AMLs), and to reduce the number of excess wild horses that need to be removed from the HMAs over the long-term.

Numerous changes to the livestock management systems have been made in recent years which include reductions in permitted use and changes to the season of use. Observations made during monitoring completed in 2010 found improvements to riparian areas in portions of some allotments that could be attributed to the changes in the livestock grazing systems and to the removal of excess wild horses in the recent wild horse gathers.

The Callaghan and New Pass/Ravenswood Complex Wild Horse Gather Preliminary Environmental Assessment (EA) DOI-BLM-NV-B010-2010-0087-EA (Callaghan and New Pass/Ravenswood Gather EA) was made available to the interested public on September 2, 2010 for a 30 day comment period. The comment period was extended to October 10 due to errors in the web-link and e-mail address reported in the News Release announcing the availability of the documents. All comments were reviewed and considered prior to completion of the Final Callaghan and New Pass/Ravenswood Gather EA. Several letters in support for and against the gather were received as well as numerous automatically generated form letters. These comments are summarized within Appendix E of the Final EA. Minor additions for clarity have been made to the EA; however substantial modifications were not required as a result of the comments received. The Final EA and associated documents can be viewed at [www.blm.gov/nv/st/en/fo/battle\\_mountain\\_field.html](http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html).

Based on the analysis of potential environmental impacts detailed in the Callaghan and New Pass/Ravenswood Gather EA, it was determined that the impacts associated with the Proposed Action were not significant. This was documented in the Finding of No Significant Impact (FONSI) which is attached to this Decision.

The Callaghan Complex consists of the Callaghan, Bald Mountain and Rocky Hills HMAs, and is located in Lander County, about 55 miles south of Battle Mountain, Nevada and 45 miles northwest of Eureka, Nevada. The New Pass/Ravenswood HMA is located several miles west of the Callaghan HMA, also within Lander County, and several miles northwest of Austin, Nevada. A portion of the New Pass/Ravenswood HMA is located within Churchill County within the administrative boundaries of the Carson City District Office (CCDO). The Battle Mountain District Office (BMDO) currently administers all of these HMAs.

The most recent helicopter population inventory flight for these HMAs was conducted in September, 2009. Table 1 displays the AML and population estimates for each HMA.

**Table 1. Summary of Wild Horse Population Information**

HMA	AML Range	Current Population Estimate
Callaghan	134-237	264
Bald Mountain	129-215	150
Rocky Hills	86-143	165
New Pass/Ravenswood	545-566 <sup>1</sup>	504
<b>Total</b>	<b>894-1,161</b>	<b>1,083</b>

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1. A majority of the New Pass/Ravenswood HMA has a single AML, which represents the upper level of AML. An official range has yet to be established for this HMA, and the range identified overstates the low AML, or the number of wild horses that should remain following a gather. A true range will be established in future planning documents following input from the interested public, which would set a low AML to allow an approximate 4 year gather cycle (or other appropriate cycle) based on the anticipated annual population increases. The low range of AML based on 17.5-20% annual increase and four year interval between gathers would approximate 330-350 wild horses.

The Callaghan Complex was gathered December 2008 -January 2009 to reduce the population to the established AMLs and treat released females with fertility control. Prior to this gather, an EA, FONSI and Decision were issued, following a 30 day public comment period. The EA included extensive analysis and detail about the gather area. During the gather, 1,705 wild horses were captured, 1,463 removed and 243 released back to the range, leaving an estimated post gather population of 343-349 wild horses. Of those released, 121 mares were treated with fertility control. The September 2009 inventory of this Complex resulted in a direct count of 525 wild horses. The current 2010 population is estimated to be 579 wild horses based on the 2009 inventory and the estimated 2010 foaling rate resulting from year-one fertility control effectiveness.

The New Pass/Ravenswood HMA was last gathered in November 2007. A comprehensive and detailed EA, FONSI and Decision were issued prior to the gather, following a 30 day public comment period. During the gather, 622 animals were captured, 464 removed and 92 mares treated with PZP-22 before being re-released back to the HMA. A total of 158 animals were re-released to the range, leaving a post gather estimated population of 208-268. Inventory flights were conducted in September 2008 and September 2009. The current estimated population based on the 2009 inventory and 2010 foaling rate is 504 wild horses.

During the 30 day comment period for the Callaghan and New Pass/Ravenswood Gather EA, the prior Gather EAs for the gathers identified above were also made available on the internet for the public to reference.

## **PUBLIC INVOLVEMENT**

On October 2, 2007, the Battle Mountain Field Office, sent the *New Pass/Ravenswood and Augusta Mountains HMAs Burned Area Wild Horse Removal Gather Plan and Environmental Assessment (EA) # NV062-EA07-188* to sixty-three organizations and individuals on the interested public mailing list for 30 day comment period. One response in support of the proposed gather was received from the Nevada State Historic Preservation Office. No additional comments were received from the interested public. No prior scoping was done because of the urgent nature of the gather (post wildfire) and the timelines for completion of the EA after the fire. The Finding of No Significant Impact (FONSI) and Decision were issued for this gather on October 31, 2007. No appeals were received on the Decision.

Prior to completion of the 2008 Callaghan Complex EA, a scoping letter dated April 24, 2008, was mailed to sixty-two individuals, organizations or State and Federal agencies which comprise the interested public list for the Callaghan Complex.

Responses were received from the Nevada Division of State Lands and the Nevada State Historic Preservation Office in support of the proposed wild horse gather. Additional responses were received from several individuals and organizations, involving comments, questions and recommended topics for analysis within the EA. These comments/concerns were considered and incorporated in the preparation of the EA.

On September 15, 2008, the MLFO issued the *Callaghan Complex Wild Horse Gather*

*Environmental Assessment (EA) # NV062-EA08-134* to the interested public for 30 day comment period. No comments were received from the interested public. A letter documenting support for the Callaghan Complex gather was received from the Nevada State Historic Preservation Office and Division of State Lands. The FONSI and Decision were issued for this gather on December 9, 2008. No appeals were received on the Decision.

The Notice of Availability of the Preliminary EA and Gather Plan for the Callaghan Complex and New Pass/Ravenswood HMA was sent to the interested public list for the gather area on September 2, 2010 for a 30 day review and comment period. This list included ninety individuals, organizations, County officials, and State and Federal Agencies. Among these was the Nevada State Clearinghouse which made the notification letter and EA available for review by thirty-seven Nevada State Agencies. The EA and associated documents were posted on the Battle Mountain District website, and the Nevada State Office issued a news release notifying the general public of the availability of the document for review which was also posted on BLM's external website. The news release was issued to a list of over 100 media sources in Nevada and California as well as Nevada Congressional representatives. The 2007 New Pass/Ravenswood HMA EA and 2008 Callaghan Complex EA were also posted on BLM's website for the public's information.

The comment period was extended to October 10 as a result of errors printed in the news release which incorrectly identified the e-mail address for comments. The web link to the EA was also found to be confusing for some members of the public who wished to view the document, which was also fixed.

Approximately 2,550 comments were received following the notice of availability of the Preliminary EA, 30 day comment period and subsequent extension of the comment period. The overwhelming majority of these comments were fashioned from a mass form letter from an animal welfare organization. These "form letters" were reviewed and considered, however, only yielded 10 distinct comments. Unique comments or letters were received from approximately 12 individuals or agencies or organizations. Comments ranged from questions requiring additional information or clarification to comments for or against the gather. Many comments were not specific to this Proposed Action but generally addressed the BLMs wild horse and burro program. All comments were reviewed in preparation of the Final EA. These comments are summarized within Appendix E of the Final EA. Some additions were made to the EA for clarification purposes; however, no substantial modifications were made to the EA as a result of the comments received. Most comments reviewed fell among but were not limited to the following themes:

*Support the action/importance of maintaining AMLs*  
*Herd growth/animal numbers incorrect*  
*Genetic health*  
*AMLs too low/not based on science*  
*Effectiveness/reversibility/undesirable effects of PZP*  
*Insufficient Alternatives/model scenarios*  
*Outside of scope of analysis*  
*Viewpoint/matter of opinion*  
*Concerns/effects of use of helicopters*

*Public viewing opportunities during gathers  
Manage primarily for wild horses/remove or reduce livestock*

Public hearings are held annually on a state-wide basis regarding the use of helicopters and motorized vehicles to capture and transport wild horses and burros. During these meetings, the public is given the opportunity to present new information and to voice any concerns regarding the use of these methods to capture wild horses and burros. The Elko District Office held the state-wide meeting on July 1, 2010; thirteen public participants attended and their comments were entered into the record for this hearing. Most were in support of the use of helicopters and the gathering of excess wild horses and burros. Standard Operating Procedures were reviewed in response to these concerns and no changes to the SOPs were indicated based on this review.

## **DECISION**

In accordance with the Final Callaghan and New Pass/Ravenswood Complex Wild Horse Gather EA DOI-BLM-NV-B010-2010-0087-EA, it is my decision to:

1. *Implement the Callaghan and New Pass/Ravenswood Gather Plan*
2. *Capture about 866 wild horses in order to remove 221 excess animals and release all remaining gathered horses after applying PZP-22 fertility control vaccine to all the released mares (approximately 323 animals). All wild horses residing outside the HMA boundaries would be removed from the range, as well as weanlings and any additional horses necessary to achieve a population at or near the low range of AML.*
3. *Implement the mitigation measures specified in EA DOI-BLM-NV-B010-2010-0087-EA, Section 3.10*

In accordance with 43 CFR § 4720.1, upon examination of current information, I have determined that an excess of wild horses or burros exists, and that the excess animals should be immediately removed. I have also determined that immediate action is necessary to help maintain the wild horse populations at a level that allow degraded rangelands to recover and that will result in a thriving natural ecological balance.

Pursuant to 43 CFR § 4770.3(c), this decision is effective immediately and the Callaghan Complex and New Pass/Ravenswood HMA gather is approved to begin on or about December 1, 2010.

## **RATIONALE**

In recent years, the public has expressed opposition to the removal of wild horses from the range in order to meet land management and herd objectives, and has instead encouraged increased use of fertility control or other population controls to reduce herd growth rates, decrease gather frequency and ultimately reduce the number of excess animals that must be removed from the range through gathers.

The BLM has been applying various formulas of the fertility control vaccine PZP to Nevada wild horse herds since 1992, and BLM's current policy direction is to increase use of fertility control

and to repeat such applications as necessary to reduce the rate of wild horse population growth and to minimize the necessity of removing excess wild horses from the public lands.

BLM Director Bob Abbey:

*“The BLM finds itself in the predicament of needing to gather overpopulated herds from the Western range each year while its holding costs keep rising – with no end in sight. Recognizing this unsustainable situation, the Government Accountability Office, in a report issued in October 2008, found the Bureau to be at a “critical crossroads” because of spiraling off-the-range holding costs and its limited management options concerning unadopted horses.*

*In response, Secretary of the Interior Ken Salazar and I announced on October 7, 2009, a new and sustainable way forward for managing our nation’s wild horse horses and burros. We recommended **applying new strategies aimed at balancing wild horse and burro population growth rates with public adoption demand to control holding costs** [emphasized in original]. This effort would involve slowing population growth rates of wild horses on Western public rangelands through the aggressive use of fertility control, the active management of sex ratios on the range, and perhaps even the introduction of non-reproducing herds in some of the BLM’s existing Herd Management Areas in 10 Western states”. Refer to the entire message at [http://www.blm.gov/wo/st/en/prog/wild\\_horse\\_and\\_burro/national/about/director.html](http://www.blm.gov/wo/st/en/prog/wild_horse_and_burro/national/about/director.html)*

Humane Society for the United States (HSUS):

*“The HSUS strongly supports an increase in the use of fertility control – specifically the Porcine Zona Pellucida (PZP) immunocontraception vaccine – and sex ratio adjustments to slow population growth. This work should immediately be expanded to as many herds as possible as an alternative to gathers and long term holding. With an efficacy rate of over 90%, a comprehensive contraception program could dramatically reduce the financial burden on the agency and allow the BLM to once again focus its resources and efforts on range management programs” (HSUS 2010).*

BLM Instruction Memorandum No. 2010-135 conveys this policy by directing the authorized officer to “*consider a range of alternatives to reduce (slow) population growth rates and extend gather cycles for all wild horse herds with annual growth rates greater than or equal to 5%. These alternatives may include (but are not limited to): fertility control, adjustments in the sex ratio in favor of males, a combination of fertility control and sex ratio adjustment, and management of selected HMAs for non-reproducing wild horses”*.

To further implement this strategy of increasing population controls as a management tool, the 2011 BLM wild horse gather schedule includes numerous gathers that are identified as “Capture, Treat and Release, with Limited Removals”, where the objective is to re-gather areas that are not substantially in excess of AML (thus reducing the number of excess animals that have to be

removed), re-treat gathered mares with fertility control and release most horses back to the range. This strategy would result in the removal of only limited numbers of excess wild horses consisting mainly of weanlings, for which there is the greatest adoption demand.

The Callaghan Complex and New Pass/Ravenswood HMA gather is consistent with this direction. The gather is needed to slow population growth, maintain population size within AML, and to reduce the number of excess wild horses that need to be removed from these HMAs in future gathers. The action would result in fewer wild horses being placed in short or long-term holding or in the adoption and sale programs over the next 10-20 years. By maintaining population size within AML, rangeland resources would be protected from the deterioration associated with wild horse overpopulation, and a thriving natural ecological balance and multiple use relationship on public lands would be maintained consistent with the provisions of Section 1333(a) of the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA).

The objective for the gather is to remove primarily weanlings (7-12 months of age) and some yearlings. It is estimated that approximately 156 horses or 70% of the 221 excess animals to be removed would be weanlings or yearlings. Younger animals removed from the range would be healthy and highly adoptable and would not be shipped to Long Term Holding Pastures (LTHPs). If necessary to meet gather objectives, all ages of wild horses could be removed, but would be limited to mostly young animals less than 3 years of age, if possible. All animals residing outside of HMA boundaries; regardless of age would be removed from the range, which is estimated to be approximately 65 (or 30%) of the 221 wild horses that would be removed. It is estimated that few excess animals would need to be sent to LTHPs. The goal of the gather and removal for each HMA would be to achieve the low AML if possible. No sex ratio adjustment is planned in conjunction with the Proposed Action.

The estimated gather, removal, post gather populations and numbers of mares treated with fertility control is displayed in the following table:

**Table 2. Summary of Proposed Wild Horse Gather Estimates**

HMA	2010 Estimated Population <sup>2</sup>	2010 Est. Gather Numbers <sup>3</sup>	2010 Removal Numbers	2010 Post Gather Population <sup>4</sup>	2010 Fertility Control (mares)
Callaghan	264	211	60	204	79
Bald Mountain	150	120	21	129	43
Rocky Hills	165	132	40	125	49
New Pass/Ravenswood	504	403	100	404	152
<b>Total</b>	<b>1,083</b>	<b>866</b>	<b>221</b>	<b>862</b>	<b>323</b>

The current population and gather and removal numbers are based on the most recent inventory flight. Due to terrain, vegetation, topography and seasonal movement, the current population is based on the best available data and may change with subsequent population inventories.

2. A pre-gather inventory flight will be conducted in mid-November and gather and removal numbers adjusted accordingly.
3. Gather target based on the ability to gather 80% of the population. The gather efficiency will depend upon weather and site specific conditions of the gather and could be greater or less than the estimate.
4. The post gather population equals the estimated 20% un-captured wild horses plus the wild horses released.

The above table reflects an estimated post gather population for the Callaghan, Bald Mountain and Rocky Hills HMAs within the established AML ranges. The New Pass/Ravenswood HMA post gather population is lower than the identified AML range. The New Pass/Ravenswood HMA does not have a true or official low AML range established, and thus the existing range which is a result of a range set on only a small portion of the HMA, overstates the low end of AML. As described in footnote 1 and Section 1.1 of the EA, the low AML for this HMA would approximate 330-350 wild horses, and the low AML for the entire gather Complex would approximate 679-699.

Additionally, the current population of the New Pass/Ravenswood HMA has resulted from removals during the 2007 gather which reduced the population below the existing AML range due to extensive wildfire in the northern portion of the HMA, and the need to protect these recovering areas to promote successful rehabilitation. These areas are still recovering at this time (refer to the 2007 Gather EA). It is for these reasons that the post gather population of the New Pass/Ravenswood HMA is identified as 404 wild horses.

The BLM intends to return to these areas in 2-3 years to re-treat mares in order to continue with population control activities as well as to remove any excess wild horses. Re-application of fertility control in 2010 and at regular intervals in the future would potentially eliminate the need to remove wild horses that are in older age groups, typically not highly adoptable, and which the BLM currently maintains in LTHPs for the rest of their lives.

The 2010 gather would remove approximately 20% of the existing population, in contrast to prior gathers where 80-90% of the population needed to be removed in order to achieve the AML, due to high annual reproduction rates, the long intervals between gathers and inconsistent use of fertility control or other population control methods. Many of the animals removed were older and are currently cared for in LTHPs. During the most recent gather of the Callaghan HMA for example, 46% of the 951 wild horses gathered were 5 years of age or older, for which there would typically be a lower adoption demand. Current BLM data indicates that at least 462 wild horses gathered between 2007 and 2009 from the Callaghan, Bald Mountain, New Pass/Ravenswood and Rocky Hills HMAs are currently held in LTHPs.

Under this gather plan, the post gather population would represent approximately 80% of the existing wild horse population through the release of horses back to the range and through the horses that evade capture<sup>5</sup>. Population modeling detailed within the Gather EA indicates that continued re-treatment through the years could eliminate the need to remove any horses from these HMAs, as the fertility control alone would eventually be sufficient to maintain the populations within the AML ranges.

In summary, the planned wild horse gathers and application of fertility control within the Callaghan Complex and New Pass/Ravenswood HMAs will:

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5. The estimated gather efficiency is 80%, which assumes 20% of the population would not be captured. The 80% efficiency was utilized for the population modeling and for gather and removal estimates. This figure was chosen based on gather efficiency experienced during the previous gathers of these areas and derived through pre and post gather inventory flights.

- Maintain the populations within these HMAs at a level that is consistent with the established AMLs,
- Reduce population growth rates, resulting in the need to gather less frequently and remove fewer animals in the future,
- Reduce or eliminate the number of wild horses that must be held in LTHPs over the long term,
- Result in the removal of approximately 20% of the existing population, with 70% of those estimated to be young, healthy and adoptable 7-12 month old weanlings and yearlings,
- Promote the continued improvement of wild horse habitat within these HMAs by allowing rangeland health to improve and avoiding impacts from an overpopulation of wild horses, which will result in significant progress towards attainment of Standards for Rangeland Health and ensure healthy populations of wild horses for generations to come.

Based on the above factors, the MLFO has determined that an estimated 221 excess wild horses are present both within and outside of the boundaries of the Callaghan, Rocky Hills, Bald Mountain and New Pass/Ravenswood HMAs.

The following constitutes the rationale for issuing this decision effective upon issuance:

a). Potential Damage to Rangeland and Riparian Resources.

The rangeland and riparian resources within the proposed gather Complex are detailed in the EAs completed for the prior gathers of these areas as well as within the current Gather EA. The gather area is located within the Great Basin, known as a “cold desert”, with annual precipitation levels far below the national average ranging from 6-8 inches in the valley bottoms and up to 16+ inches in the mountains. The area is prone to drought in four of every 10 years on average. As a result, the soils are poorly developed for the most part and native plant communities easily degraded by overuse by grazing animals, especially during drought years.

As detailed in the Gather EAs for the prior gathers of these HMAs, much of the habitat within the HMAs is characterized by a presence of key grass species far below the potential for the sites and in many cases key grass species that are important forage for wild horses are missing completely due to historical overuse, particularly by large overpopulations of wild horses. It is common for the riparian areas and springs within these HMAs to have been heavily utilized by wild horses, particularly during drought periods. Heavy and concentrated use by wild horses has degraded many of the riparian areas within these HMAs.

Some improvement in the presence and vigor of the vegetation in these HMAs has been noted since the most recent gathers; however, significant improvement will require many years to attain and will require maintaining proper management of grazing animals in these areas so that rangeland health continues to improve and improvements are not reversed. Changes to livestock management have already been made following Rangeland Health Assessments and Decisions which modified the grazing systems in

these areas. Maintaining wild horse populations within the AML and preventing an overpopulation of wild horses is essential in order to foster improvement of the rangeland health within these HMAs.

Past chronic overpopulation of wild horses and past use by livestock has degraded the rangeland and riparian habitat within all four of the involved HMAs. Completing the proposed gather and applying fertility control will help eliminate further degradation and reverse past trends by reducing wild horse pressure on the range and ensuring that wild horses are managed consistent with AMLs so that wild horse populations are in balance with the capacity of the habitat and other multiple uses within these areas. Delaying this gather would allow the AML to be exceeded prior to the next gather, and would result in impacts to the upland and riparian resources through excessive utilization, trailing, and trampling, further deteriorating the health of these sensitive desert ecosystems and precluding rangeland health improvements that could otherwise occur.

**b). Necessity of Prompt Removal of Excess Wild Horses**

Delay of a gather to remove excess wild horses beyond the 2012 foaling season would result in a further increase in the population to an estimated 1,228 wild horses, exceeding the AML in at least 3 of the 4 HMAs. The current populations already exceed AML in 2 of the 4 HMAs. Waiting to conduct a gather would result in the need to remove an estimated 364 excess wild horses in order to achieve the low range of AML within the gather Complex, which exceeds the current Proposed Action by 143 additional excess wild horses. Inventory flights also document wild horses existing outside of HMA boundaries. As the population increases above the established AML, more wild horses move outside of the HMA boundaries into areas that are not designated for wild horses.

**AUTHORITY**

The authority for this decision is contained in Section 1333(a) of the 1971 (WFRHBA), Section 302 (a) and (b) of the Federal Land Policy and Management Act (FLPMA) of 1976, the Public Rangelands Improvement Act (PRIA) of 1978 (Pub. L. 95-514, Sec. 4) and Code of Federal Regulations (CFR) at 43 CFR §4700.

**43 CFR § 4700.0-6 Policy.**

- (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;
- (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans;
- (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior;
- (d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

#### **43 CFR § 4710.4 Constraints on Management**

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.

#### **43 CFR § 4720.1 Removal of excess animals from public lands**

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 animal immediately in the following order.

- (a) Old, sick, or lame animals shall be destroyed in accordance with subpart 4730 of this title;
- (b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely captured and made available for private maintenance in accordance with subpart 4750 of this title; and
- (c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this part<sup>6</sup>

#### **43 CFR § 4740.1 Use of motor vehicles or aircraft**

(a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses and burros for capture or destruction. All such use shall be conducted in a humane manner.

(b) Before using helicopters or motor vehicles in the management of wild horses and burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

#### **43 CFR § 4770.3 Administrative Remedies**

(a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR, part 4.

(c) Notwithstanding the provisions of paragraph (a) of §4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving natural ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

**43 USC Sec. 1901(4):** Continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and disposal of excess wild free-roaming horses and burros which pose a threat to themselves and their habitat and to other rangeland values.

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6. The Bureau of Land Management is currently not implementing this portion of the CFRs. Future decisions regarding this option would not occur before public involvement and comment. Healthy wild horses that are not adopted are transported to long term holding pastures or are sold (with limitations) to private individuals, but are not sold to slaughter nor euthanized.

**42 USC Sec. 1732(b):** In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

### **APPEAL PROVISIONS**

Within 30 days of receipt of this wild horse decision, you have the right to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR 4.4. If an appeal is taken, you must follow the procedures outlined in the enclosed, "Information on Taking Appeals to the Board of Land Appeals." Please also provide this office with a copy of your Statement of Reasons. An appeal should be in writing and specify the reasons, clearly and concisely, as to why you think the decision is in error.

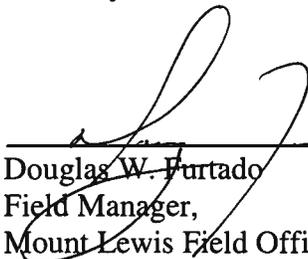
In addition, within 30 days of receipt of this decision you have a right to file a petition for a stay (suspension) of the decision together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties identified in items 2, 3, and 4 of the enclosed form titled "Information on Taking Appeals to the Board of Land Appeals." The appellant has the burden of proof to demonstrate that a stay should be granted.

A petition for a stay of 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 of 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.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.401 (c) (2)).

Sincerely,

  
\_\_\_\_\_  
Douglas W. Furtado  
Field Manager,  
Mount Lewis Field Office

10/29/10  
Date

Attachments (3)