

## DECISION RECORD

### Tri-State-Calico Complex Wild Horse and Burro Gather Plan Environmental Assessment DOI-BLM-NV-W030-2011-0002-EA

#### INTRODUCTION

The Bureau of Land Management (BLM) plans to complete the decision made in the Calico Mountains Complex Wild Horse Gather Plan (DOI-BLM-NV-W030-2010-0001-EA) to remove excess wild horses to reach the lower range of the Appropriate Management Level (AML) and to implement population control measures. The planned action approved in 2010 was not achieved due to winter conditions (snow depth), the possible movement of horses to outside the gather area, and the horses' evasive response to gather pressure. The BLM plans to gather and remove remaining excess wild horses from the Black Rock Range East, Black Rock Range West, Calico Mountains, Granite Range, and Warm Springs Canyon Herd Management Areas (HMAs). Wild burros from McGee Mountain and Warm Springs Canyon HMA are included in the gather. Although not part of the previous gather, excess wild burros need to be gathered and removed due to a current over population of wild burros. All HMAs in gather areas are part of the Tri-State MOU (BLM-MOU-NV-91010-001). The gather area within Nevada will therefore be referred to as the Tri-State-Calico Complex (hereafter Complex) (Map 1) for the purposes of this action.

The gather area is approximately 1,041,000 acres of which approximately 584,101 acres (public and private) is within designated HMAs and 456,899 acres is outside HMAs areas. The gather area is located north and east of Gerlach, Nevada within Humboldt and Washoe counties. The entire gather area is approximately 80 miles long and 45 miles wide. A portion of the gather area is located within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area (NCA).

The Tri-State-Calico Mountains Complex Wild Horses and Burro Gather will occur in December 2011, and is expected to take 40-50 days. The intent is to start this gather directly following the High Rock Complex Wild Horse Gather. The High Rock Complex ([http://www.blm.gov/ca/st/en/fo/surprise/whb/High\\_Rock\\_Complex\\_Documents.html](http://www.blm.gov/ca/st/en/fo/surprise/whb/High_Rock_Complex_Documents.html)) and the Tri-State-Calico Complex are adjacent to each other and are separated by an administrative boundary fence that is known to be in disrepair. It is known that seasonal wild horse movement occurs between the two HMA complexes, but the extent of the interchange is not quantified at this time.

The Calico Mountain Complex is included within the Tri-State MOU. The purpose of this MOU is to improve wild/feral horse and burro management between the BLM and United States Fish and Wildlife Service (FWS) on public lands in northwest Nevada, northeast California and south central Oregon. The goal is to closely coordinate and cooperate in the management of the wild/feral horse and burro population in this Tri-State (California, Nevada and Oregon) contiguous area, recognizing different management mandates and land-use plan direction among

the agencies. As part of that goal, California BLM and Nevada BLM are working together to coordinate wild horse and burro gathers and aerial populations counts. The Surprise Field Office is scheduled to start the High Rock HMA Complex Wild Horse Gather in October 2011. The High Rock HMA Complex is located adjacent to and west of the Tri-State-Calico Complex. The proposed gather would preferably follow the Surprise Field Office's High Rock HMA Complex gather. The benefit of coordinating these wild horse gathers is that it allows for the gather of wild horses that may leave their HMAs and cross into adjacent areas due to gather pressure. In the past, wild horses that leave the area during the gather operations are not gathered because they are outside of the designated gather area. Coordinating the gathers to occur sequentially increases the effectiveness and efficiency of gathers designed to bring the wild horse population back to AML.

### Compliance/Conformance

I have determined that the Proposed Action is in conformance with:

*The Paradise-Denio and Sonoma-Gerlach Resource Area Management Framework Plans (MFPs) approved July 9, 1982.*

The wild horse and burro section of the Sonoma -Gerlach and Paradise-Denio RODs, July 1982, *Plan and Implementation* consists of the integration of the Proposed Actions and the Livestock Reduction/Maximizing Wild Horses and Burros Alternative with the following modifications:

4. Wild horse and burro herds will be maintained in the areas described in the Livestock Reduction/Maximizing Wild Horse and Burro Alternative. However, numbers will be determined by the following criteria: Existing/current WH&B numbers (as of July 1, 1982) will be used as a starting point for monitoring purposes except where one of the following exist:
  - a. Numbers are established by adequate and supportable resource data.
  - b. Numbers are established through the CRMP process as documented in CRMP recommendations and agreed to by the District Manager.
  - c. Numbers are established by formal signed agreement between affected interests.
  - d. Numbers are established through previously developed interim capture/management plans. Plans are still supportable by parties consulted in the original plan. EA's (EAR's) were prepared and are still valid.
  - e. Numbers are established by court order.

The following is Wild Horse and Burro Objective 1 from the Sonoma-Gerlach MFP, 1982:

- **WHB-1:** Maintain a viable population of wild horses and burros on public lands where there was wild horse and burro use as of December 15, 1971, and achieve and maintain a thriving natural ecological balance on the forage resource.

The following is Wild Horse and Burro Objective 1 from the Paradise-Denio MFP, 1982:

- **WHB-1:** Maintain wild horses and burros on public lands, where there was wild horse or burro use as of December 15, 1971, and maintain a natural ecological balance on the public lands.

The Proposed Action is also in conformance with the July 2004 ROD for the *Black Rock Desert High Rock Canyon Emigrant Trails NCA Resource Management Plan (RMP)*. Applicable decisions are:

- **WHB-1:** Retain referenced HMAs (Black Rock Range East, Black Rock Range West, Calico Mountains, Warm Springs Canyon, and Granite Range) and manage wild horse or burro populations consistent with plan objectives.
- **WHB-3:** Contiguous HMAs with documented reproductive interaction will be managed as complexes to enable better management of genetic traits for the population and to improve coordination of monitoring and gathering.
- **WHB-5:** Horses and burros will be gathered from the HMAs to maintain horses and burros within the AML as funding permits. Aircraft will continue to be used for the management and, when necessary, removal of wild horses and burros. Gather activities will be scheduled to avoid high visitor use periods whenever possible.
- **WHB-6:** Gathers in Wilderness will continue to be conducted by herding the animals by helicopter or on horseback to temporary corrals, generally located outside of Wilderness. No landing of aircraft will occur in Wilderness Areas except for emergency purposes, and no motorized vehicles will be used in Wilderness in association with the gather operations unless such use was consistent with the minimum tool requirement for management of Wilderness.

The Proposed Action is consistent with the plans and policies of neighboring local, county, state, tribal and federal governments to the greatest extent practical. Under the Proposed Action, no federal, state, or local law, or requirement imposed for the protection of the environment will be threatened or violated.

The Proposed Action is in conformance with all applicable regulations at 43 CFR (Code of Federal Regulations) § 4700 and policies, as well with the 1971 Wild Free Roaming Horses and Burros Act. More specifically, this action is designed to remove excess wild horses consistent with the following regulation:

43 CFR § 4720.1: *“Upon examination of current information and a determination that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately...”*

## **DECISION**

Based on the Tri-State-Calico Complex Wild Horse and Burro Gather Plan Environmental Assessment (EA), DOI-BLM-NV-W030-2011-0002-EA, and the attached Finding of No Significant Impact (FONSI), it is my decision to implement the Proposed Action as described in the EA.

This Decision constitutes my final decision to gather and remove excess wild horses and burros from within the Complex and to remove wild horses and burros from non-HMA areas to which wild horses/burros from the Complex have moved due to population pressures, and to manage the public lands within the gather area for a thriving natural ecological balance. Pursuant to Title 43 of the Code of Federal Regulations at 4770.3(c), this decision is effective immediately and the Complex gather is approved to begin on or about December 1, 2011.

## **Rationale**

Upon analyzing the impacts of the Proposed Action, and following issuance of the EA for public review, I have determined that the Proposed Action will not have a significant impact to the human environment, and that an Environmental Impact Statement is not required. Refer to the attached FONSI.

Removal of excess wild horses and burros is necessary to achieve a thriving natural ecological balance between wild horse/burro populations, wildlife, livestock, vegetation, and the available water as mandated under Section 3(b)(2) of the 1971 Wild Free-Roaming Horses and Burros Act (WFRHBA) and consistent with section 302(b) of the Federal Land Policy and Management Act of 1976.

The gather will:

- Promote vegetative health by preventing over utilization and/or use during critical growth periods for perennial grasses in the upland, wetland and stream bank riparian habitats associated with the Tri-State Calico Complex;
- decrease resource competition among wild horses/burros, wildlife, and livestock;
- contribute to improved vegetation density, increased plant vigor, seed production, seedling establishment, and forage production over current conditions by reducing grazing pressures caused by excess wild horse and burro numbers; and
- slow wild horse population growth rates through implementation of fertility control treatment and sex ratio modification which could extend the amount of time between gathers to remove excess horses as required under the WFRHBA of 1971.

Fertility control treatments and modification of sex ratios of released animals will slow population growth, reduce the number of animals needing to be removed through future gathers and potentially increase the time period before another gather is necessary.

Managing wild horses/burros at the established AML will also maintain genetic health, long-term viability, and future reproductive success of mares/jennies within the herd. Reduced growth rates and lower population sizes will also allow for improvements to range condition, with long-term benefits to wild horse/burro habitat quality, and will allow BLM to manage wild horses/burro at a level that will ensure a thriving natural ecological balance.

BLM has determined that 1,030 excess wild horses and 140 excess burros are currently present within the Complex and need to be removed. The action is in compliance with the *Wild Free-Roaming Horses and Burros Act of 1971* (WFRHBA) by achieving the established AMLs, restoring a thriving natural ecological balance and preventing degradation of rangeland resources resulting from an overpopulation of wild horses and burros. This assessment is based on factors including, but not limited to the following rationale:

- Based on the population inventory completed June 2010, the population of wild horses is approximately 1,312 animals; with the expected 2011 foal crop this equates to 1,602 horses, which is 1,030 wild horses in excess of the low range of AML or 650 wild horses in excess of the high range of AML. Preliminary results from the June 2011 Tri-State Inventory Flights indicate that the landscape (Tri-State-Calico Complex and High Rock Complex) 2011 population estimate is consistent with estimations in the Tri-State-Calico Complex Wild Horse and Burro Gather Plan EA and High Rock Complex Wild Horse Population Management Plan EA. The results from the 2011 Tri-States Inventory flights will be made publically available when USGS releases their analyses of the inventory data.
- Based on BLM's direct observations and projected 2011 foal crop, the expected population of wild burros is 179 animals within the McGee Mountain and Warm Springs HMAs. This equates to 140 wild burros in excess of the low range of AML or 117 wild burros in excess of the high range of AML.
- Wild horses in excess of AML were identified as causal factors contributing to the non-attainment of Resource Advisory Committee (RAC) Standards for Rangeland Health in the Soldier Meadows and Paiute Meadows Allotments assessed within the 2003 Rangeland Health Assessments. Although there are currently fewer excess wild horses following the 2009/2010 gather, there is still a need to reduce wild horse populations down to low range AML. Once wild horse populations are at low range AML and remain within the AML range and BLM is able to collect sufficient resource monitoring data, it will be possible to determine if wild horses are still causing impacts that lead to non-attainment of standards for the next Rangeland Health Assessments or whether any adjustments to the AML can be made.
- Wild horses have moved outside of the Warm Springs Canyon and Black Rock West HMA onto Tribal lands causing property damage to newly built private fences and are causing impacts to habitat for Lahontan cutthroat trout (LCT), a threatened species under the Endangered Species Act. Summit Lake Paiute Tribe has contacted the BLM to express its concerns regarding wild horse impacts on the sensitive shores of Summit Lake and have requested the removal of these horses from tribal lands.

- Wild horses/burros have also moved onto public lands that fall outside of designated HMA boundaries. Under regulations at 43 CFR § 4710.4, BLM is required to manage wild horses/burros within their HMAs and to remove wild horses/burros that take up residence outside of HMA boundaries.
- Water is a very limited resource within the Complex and becomes a limiting factor when wild horse/burro populations exceed high range AML. There are several hundred springs and seeps in the Complex, but available water is unreliable and often unavailable as springs/seeps recharge from past years of drought. Range improvements are present in the Complex but many are non-functioning.

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

- a) Potential Damage to Rangeland and Riparian Resources  
Wild Horse and Burro population and resource monitoring data shows that current wild horse and burro populations are exceeding the range's ability to sustain them over the long-term. Wild horses and burros are now permanently residing outside the Complex as more wild horses/burros compete for limited forage, space and water resources. Resource damage is occurring and will continue without immediate action. Riparian areas are receiving heavy utilization and trampling impacts.
- b) Necessity of Prompt Removal of Excess Wild Horses  
With the collaborative effort to uniformly gather the entire Tri-State area, BLM seeks to increase the gather efficiency and more effectively bring the wild horse and burro populations in that landscape down to low range AML. A delay of the Tri-State-Calico Complex Wild Horse and Burro Gather and inability to coordinate the gather with that of the High Rock HMA Complex in California will create a situation similar to the last gather where gather efficiencies were reduced due to seasonal movements within and outside the HMAs and winter storm conditions.

The Proposed Action is in conformance with the Standards and Guidelines for Management of Wild Horses and Burros of the Sierra Front-Northwest Great Basin Area.

In accordance with 43 CFR § 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.

I selected implementation of the Proposed Action over Alternative 2 for the following reason:

There is greater opportunity to decrease the annual growth rate and reduce the necessity for and frequency of future gathers.

I selected implementation of the Proposed Action over the No Action for the following reason (EA at Chapter 4 Wild Horses):

Under the No Action alternative, AML will not be achieved within the Complex and wild

horses and burros will not be removed from areas outside of the boundaries of designated HMAs including Tribal lands, which removal is mandated by the WFRHBA. There will be no active management to control the size of the wild horse/burro population at this time. Wild horse populations will continue to increase at an average rate of 20-27% per year; wild burro populations, by 11% per year. Without a gather and removal now, the wild horse/burro population in the Complex will exceed 4,300 horses and 300 burros within 5 years and 12,000 horses and 500 burros within 10 years based on population annual reproduction rate estimates. These population levels will continue to exceed the carrying capacity of the range.

The AML for the Complex represents the population range at which thriving natural ecological balance can be maintained and the level at which multiple uses of the public lands can occur without deterioration of the rangeland. Allowing the wild horse population to increase even further in excess of AML will result in greater competition for limited waters and forage resources among wild horses/burros and with other multiple uses. Excessive utilization, trampling, and trailing by wild horses/burros will degrade the vegetation, prevent improvement of range that is already in less than desirable or degraded condition, will degrade currently healthy rangelands, and will not allow for sufficient availability of forage and water especially during drought years or severe winters for either wild horses or other ungulates.

In accordance with 43 CFR §4720.1, upon examination of current information, I have determined that an excess of wild horses and burros exist outside the HMA boundaries, and that the excess animals should be immediately removed. I have also determined that immediate action is necessary to reduce the wild horse and burro population with the Tri-State-Calico Complex to AML to maintain or improve rangeland resources and to achieve a thriving natural ecological balance.

## **Public Involvement**

### Preliminary EA

The Preliminary Tri-State-Calico Complex Wild Horse and Burro Gather Plan EA # DOI-BLM-NV-W030-2011-0002-EA was sent to the interested public list for the gather area on June 15, 2011, for a review and comment period that ended July 18, 2011. This list included fifty one individuals, organizations, County officials, State and Federal Agencies, and Tribes. Among these was the Nevada State Clearinghouse which made the preliminary EA available for review by thirty-seven Nevada State Agencies. The EA and associated documents were posted on the Winnemucca District website, and the Nevada State Office issued a news release notifying the general public of the availability of the document for review through 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 2009-2010 Calico Mountain Complex Wild Horse Gather Plan EA was also posted on BLM's website for access by the public.

The comment period for the preliminary environmental assessment was open for thirty five days,

ending midnight July 18, 2011. All comments received during the 35-day comment period were reviewed and considered prior to finalizing the Tri-State-Calico Complex Wild Horse and Burro Gather Plan EA.

In excess of 1,100 comments were received from individuals, organizations and agencies. The vast majority of these comments were one of three form letters. All comment letters were reviewed and considered, but were summarized in approximately 80 unique comments. Substantive comments were utilized to finalize the EA as appropriate. The Response to Comments table is attached to this Decision.

Although BLM's review of public comments did not indicate that substantive changes to the conclusions presented in the preliminary EA were warranted, they did lead to changes throughout the document to better explain and clarify BLM's analysis in response to comments, which resulted in a more comprehensive and complete document. As a result, the reader should be more informed regarding the proposal and its effects.

- The Introduction (Section 1.0) and Background Information (Section 2.0) of the EA was revised to articulate the intent of the action.
- The proposed action no longer includes gelding stallion for release back into the Complex as a non-breeding herd, and was consequently removed from analysis. The proposed action still meets the Purpose and Need by removing excess wild horses/burros to return wild horse and burro populations to low range AML and implementing fertility control measures to extend the time before another gather would be needed.
- In response to comments received on the Preliminary EA the following modifications were made to this EA
  - Analyzed Field Darting PZP Treatment in Section 2.1.5.
  - Clarified how BLM distinguishes wild horse and burro use from cattle use in Section 3.2.6.
  - Clarified how the proposed action will affect tourism and recreation use in Section 3.3.4 and 4.12.
  - Added more current information to Water Quality (Surface and Ground) Section 3.2.6 and Wetlands and Riparian Zones Section 3.2.7.
  - Invasive Non-native Species (Sections 3.2.2 and 4.2) and the associated Appendix D were added to the EA.
  - Wild Horse and Burro Section 3.3.8 was updated to reflect that there are no Wild Horse Ranges within the Winnemucca District.
  - Wild Horse and Burro Section 3.3.8 was updated to include genetic variability results from past gathers, and how BLM is managing to maintain/improve genetic health of wild horses and burros within the Complex.
  - References section was updated to reflect sources used within the document.
  - Population models were ran for Alternative 2, reduced removal (Appendix F).
- Native American Religious Concerns (Sections 3.2.4 and 4.4) were updated with the results of consultation efforts.
- Public Health and Safety Sections 3.3.2 and 4.10 were updated to reflect current policy.

- Rangeland Management Section 3.3.3 was edited to update active use.
- Special Status Species Sections 3.3.6 and 4.14 was updated to reflect current species list.
- Past and Present Actions Section 5.1 was updated to include the Sheldon National Wildlife Refuge Feral Horse Gather.
- Consultation and Coordination Chapter 8.0 and Public Involvement Chapter 9.0 were updated with the results of consultation efforts.

Native American Consultation

Tribe	Date Preliminary EA was Mailed	Dates of Consultation Meetings
Summit Lake Paiute Tribe	June 7, 2011	June 18 and July 16, 2011
Cedarville Rancheria	June 7, 2011	-
Pyramid Lake Paiute Tribe	June 7, 2011	-
Fort McDermitt Paiute-Shoshone Tribe	June 8, 2011	July 18, 2011
Fort Bidwell Tribal Council	June 8, 2011	-

Consultation meetings were held with the Summit Lake Paiute Tribe on June 18<sup>th</sup> and July 16<sup>th</sup> in which the PEA was discussed. The tribal council was supportive of the gather but expressed concerns that: 1) the genetic diversity of the herds be maintained; 2) the BLM consider allowing less livestock grazing in the area surrounding the reservation, so that it will support a larger wild horse population; and 3) assistance in maintaining the reservation fence. The tribe submitted a formal comment letter on July 19<sup>th</sup>, 2011, supporting the gather, but in the letter noted:

- 1) While fertility control treatments can keep the population of horses down on the range, the treated horses can still degrade riparian and wetland areas.
- 2) The use of two trap sites in proximity to the reservation could indirectly result in damage to their reservation fence.

On July 18<sup>th</sup>, 2011, the PEA was discussed in a consultation meeting with the Fort McDermitt Paiute and Shoshone Tribe. The tribe supported the gather as long as it was held in the late fall or winter. The tribal council felt holding a gather in the summer would cause too much stress for the horses.

Consultation and Coordination in Development of Preliminary EA

On-going consultation with Resource Advisory Councils (RACs), the Nevada Department of Wildlife, U.S. Fish and Wildlife Service, livestock operators and others, underscores the need for BLM to maintain wild horse and burro populations within AML.

A Notice of Proposed Action (NOPA) was sent to Wilderness and Wilderness Study Area Interested Publics mailing list on June 15, 2011. The Friends of Nevada Wilderness wrote in support of the Proposed Action as described in the NOPA.

Issues identified in the EA at Chapter 1 were identified as a result of consultation and coordination relative to BLM's management of wild horses and burros in the planning area.

Public hearings are held annually on a state-wide basis regarding the use of helicopters and motorized vehicles to gather and transport wild horses (or burros). During these meetings, the public is given the opportunity to present new information and to voice any concerns or opinions regarding the use of these methods to gather and transport wild horses (or burros). The Ely District Office held a meeting on June 15, 2011.

The BLM has been gathering excess wild horses and burros from public lands since 1975, and has been using helicopters for such gathers since the late 1970's. Refer to Appendix A for information about methods that are utilized to reduce injury or stress to wild horses and burros during gathers. Since 2004, BLM Nevada has gathered over 26,000 excess animals. Of these, gather related mortality has averaged 0.5%, which is very low when handling wild animals. Another 0.6% of the animals captured were humanely euthanized due to pre-existing conditions and in accordance with BLM policy. This data confirms that appropriate use of helicopters and motorized vehicles are a safe, humane, effective and practical means for gathering and removing excess wild horses and burros from the range. BLM policy prohibits the gathering of wild horses with a helicopter (unless under emergency conditions) during the period of March 1 to June 30 which includes and covers the six weeks that precede and follow the peak of foaling (mid-April to mid-May).

## **AUTHORITY**

The authority for this decision is contained in Section 3(b)(2) of the 1971 Free-Roaming Wild Horses and Burros Act, Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700.

### **43 C.F.R. §4700.0-6 Policy**

- (a) Wild horse 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 C.F.R. §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 C.F.R. §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 gathered 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>1</sup>

#### 43 C.F.R. §4740.1 Use of Motor Vehicles or Air-Craft

- (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 or 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 or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

#### 43 C.F.R. §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.
- (b) 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.

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<sup>1</sup> Congress has prohibited the use of appropriated funds to destroy healthy excess wild horses or burros in FY 2011. It is also contrary to BLM policy to destroy healthy excess animals and therefore, the BLM is not implementing this portion of the CFRs. Future changes to BLM policy would not occur without opportunity for public involvement and comment.

**APPEAL PROVISIONS**

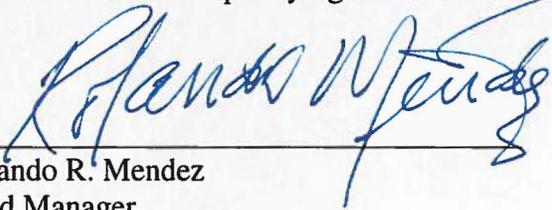
Within 30 days of receipt of this wild horse decision, you have the right to appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR 4.4. If an appeal is taken, you must follow the procedures outlined in the enclosed, "Information on Taking Appeals 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.

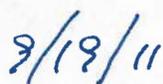
In addition, within 30 days of receipt of this decision you have a right to file a petition for a stay (suspension) of the decision *together* with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties identified in items 2, 3, and 4 of the enclosed 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)).

  
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Rolando R. Mendez  
Field Manager  
Black Rock Field Office

  
\_\_\_\_\_  
Date

Attachments