

To: Department of the Interior  
Bureau of Land Management  
California State Director Mike Pool  
2800 Cottage Way, Suite W-1834  
Sacramento, CA 95825-1886

From: REMOVED

March 7, 2007

RE: Clark Mountain Burros

Dear Mr. Pool:

I am writing in regards to the Clark Mountain burros, the Clark Mountain Herd Management Area/Herd Area, the recently issued decision by the Needles Field Office, Decision Record and Finding of No Significant Impacts for the Clark Mountain Herd Area Burro Removal, Fiscal Years 2007-2012, CA-690-EA04-27.

Since issuing this decision for the removals of the Clark Mountain Burros, research into the management, policies, and actions by the California Bureau of Land Management, as well as other federal and state agencies, has raised both questions and concerns that need to be addressed.

On page one of the DR/FONSI, the last paragraph states:

*"The approved action will begin in Fiscal Year 2007 and continue until the objectives are met or there is a change in land use decision, or new and pertinent information requiring re-evaluation of the capture plan and associated environmental assessment is received....The first phase of this operation is planned to begin in January 2007."*

I would like to submit new and pertinent information through the attached report, Wild Burros of the West, A Critical Analysis of the Current Status of Wild Burros on Public Lands-2006 for the purposes of re-evaluation of the decision issued, the capture plan and the associated environmental assessment as stated on page one.

Throughout this document, it will be referenced for purposes of questions and to highlight issues that, in my opinion, the Bureau of Land Management has failed to address in prior documents.

Additionally, I would like the Bureau of Land Management to address and respond to questions regarding their legal compliance to public laws, regulations, and policies in the issuance of this decision, which results in the total elimination of one of the last remaining wild burro herds in the State of California, and the extinction of the only one of its kind in the world.

The first issue that needs to be addressed is the authorization cited by BLM for burro removals based on compliance with the approved land use plans.

One page 12 of the DR/FONSI, it states that:

*“In addition, the 1994 California Desert Protection Act transferred Clark Mountain, covering 37,000 acres, to the National Park Service (NPS) in the creation of the Mohave National Preserve. This transferred the only springs containing yearlong surface water to the NPS. The burros in this area currently range between NPS and BLM lands. They are dependent upon springs in the Preserve for their survival. The NPS General Management Plan for the area does not provide for retention of burros in the Preserve.”*

The United States Congress, through the establishment of the Wild Free-Roaming Wild Horse and Burro Act of 1971 charged the Secretary of the Interior, through BLM, with the following mandate:

*“Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands”*

In 1994, BLM transferred 37,000 acres and the only yearlong surface water, the most crucial element of the wild burros habitat, to another agency, specifically, National Park Service, **knowing** that NPS did not manage or protect wild burros from capture, branding, harassment, or death or acknowledge their rights on public land as valid.

The refusal of BLM to protect the wild burros that they had been charged with protecting, through the transference of a significant portion of their range and their only acknowledged yearlong water source, constitutes a premeditated act of willful disobedience to this Congressional mandate and a violation of public law 92-195.

National Park Service is and has been quite open about their POLICY (which of course is substantially different than a law), of considering shooting wild burros as a “humane disposal method”, citing no other reason than “They don’t manage for wild horses and burros”.

Despite this publicly acknowledged and implemented disposal method on prior wild burro herds, such as in Death Valley, BLM delivered the Clark Mountain Burros, their habitat and range, and their sole water source, to an agency that kills them.

Please explain how the BLM does not consider the transference of vital and critical habitat required for the survival of the Clark Mountain burros as a failure to protect them and their continued preservation as mandated by Congress and the 1971 Wild Free-Roaming Horse and Burro Act?

Please explain how the BLM justifies transferring the vital and critical habitat of the Clark Mountain wild burros to an agency with an open policy of shooting them for disposal, and how this is compliance with their mandates to protect wild burros within their jurisdiction from unnecessary capture, harassment or death?

The authority cited by BLM to conduct removals until all wild burros were eliminated was based on decisions reached and issued in the 2002 NEMO Amendment to the California Conservation District Area Plan of 1980.

It is through the changes proposed in this amendment that prior decisions to designate the Clark Herd Area as a Herd Management Area were now reversed and the appropriate management level once established at 44 wild burros was re-established at 0.

The BLM also cited the Federal Land Management Policy Act of 1976 (FLPMA), the Public Range Improvement Act of 1978 (PRIA) and the Code of Federal Regulations (CFR) as granting additional authority for their decisions regarding the elimination of the Clark Mountain wild burros within their established historic Herd Area.

While Congress acknowledged that uncontrolled populations of any species, including wild horses and burros, on public lands would cause undue degradation, they delineated specific guidelines as to how public lands would be managed to achieve the thriving ecological balance and sustained multiple use.

For decades, the BLM has been required to implement population control measures for wild horses and burros on public lands so as to ensure that there would be no uncontrolled populations causing undue or excessive rangeland or riparian damage.

As the BLM Needles Field Office stated in its 2006 environmental assessment (CA-690-EA04-27) for the Clark Mountain burros, 825 wild burros had been removed by the BLM between 1985 and 2003. It is assumed that these removals were to maintain proper

balance between rangeland health and other rangeland users in the area. This, of course, was both the purpose and the goal of the FLMPA and PRIA.

Throughout the aforementioned EA, a significant amount of references were made as to “uncontrolled populations” and a wide variety of adverse impacts were cited due to this potential.

Please explain the purpose of removing 825 wild burros from the Clark Mountain area and why the populations of wild burros would ever be “uncontrolled”, as was continuously referenced as reason to eliminate them, under BLM management of wild horses and burros?

Guarantees were established by Congress within both FLPMA and PRIA that mandated that protections previously established through prior laws would not be circumvented by the implementation of proper multiple use management.

The Federal Land Policy and Management Act have several specific provisions that clearly state; “All actions by the Secretary concerned under this Act shall be subject to valid existing rights.”

The Code of Federal Regulations state in the formulation of land use plans that; *“Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.”*

And the WFRH&B Act of 1971 states that;

*“It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands”*

While these excerpts are just a brief summary of the various protections and guarantees granted wild horses and burros on public lands through a variety of laws and regulations, they illustrate the Congressional intent, mandates and BLM policies that must be adhered to when land use proposals, decisions, and actions are implemented.

The validation of BLM’s actions, and the authority they have cited based on land use plans, must first comply with requirements previously dictated in the formulation of those plans.

Please explain how the BLM complied with mandates, laws, and regulations requiring wild horse and burro protection, preservation, land use plans that considered them comparably with other resources, and as integral components of the natural system of public lands, through their formulation and agreement to the terms established in the 2002 NEMO amendment?

First, the BLM issued a decision to reduce the 233,370 acre historic Herd Area to only 75,349 acres of Herd Management Area, a loss of 158,021 acres of habitat. Then it went further through the NEMO Amendment and eliminated the last 75,349 acres for future wild burro use.

At the time of passage of the California Desert Conservation Area Plan (1980) there were 19 recognized Herd Management Areas that could be managed for burros and 14 were officially designated for that purpose within the Conservation Area alone. The combined AML's totaled 2,747 wild burros and their available habitat was 3,500,465 acres.

Today, there are only two remaining wild burro herds within this same area, with an "approved habitat" of 272,642 acres. This is a reduction of 3,227,823 million acres of their former range, and 2,518 head to "allow" only 229 wild burros have reduced the "appropriate population level". This is a reduction of over 90% of both habitat and population. Besides these two herds, there is only one other wild burro herd left in California with an appropriate management level of 86 animals.

At what point does BLM intend to start protecting wild burros and their habitat in California?

Please explain how BLM orchestrated the gutting of over 3 million acres of habitat and 90% of the wild burro population, despite being charged with protecting it, yet continued to approve the elimination of the Clark Mountain HMA and wild burros, both through the NEMO Amendment and the DR/FONSI issued in January 2007 to implement those removals?

Please explain how BLM management of wild burro populations in California has not put them at serious risk of extinction within the state?

Additionally, the original draft of the NEMO Amendment made no mention of the elimination of the Clark Mountain HMA nor that an alternative was being considered that reduced the AML from 44 to 0. It was only the Final Amendment, which was released a year and a half after the public comments closed on the draft, that "new" proposals, specifically, the elimination the Clark HMA, was incorporated.

When a "Final Plan" is released to the public, BLM will only allow issues that were addressed in the Scoping Period or Draft Plans to be addressed, challenged, or protested.

Please explain why this alternative and proposal of zeroing out the Clark HMA was not available for public comment during the public scoping or draft phase of the NEMO Amendment, thereby effectively eliminating any public protest or legal recourse of this "surprise" addition to the plan?

Other land use planning issues within the NEMO Amendment include the continued grazing of livestock in the Clark Mountain Herd Area.

There are several references to livestock use, specifically cattle, through the Clark Mountain Allotment and the Valley Wells Cattle Allotment. Future actions cited within the various documents that approve of the wild burro removals state that continued livestock grazing would be allowed within the Clark Mountain Herd Area.

Yet, according to BLM regulations, specifically CFR 4710.5, the BLM is to place wild burros habitat and protection above livestock considerations within the Herd Area or Herd Management Area.

*“If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.”*

This regulation clearly establishes the order of priority within designated herd areas or herd management areas; that providing habitat and protection for wild burros takes precedent over livestock grazing, if necessary.

Clearly the BLM has failed to comply with this regulation in both the land use plans it agreed too, as well as within its management decisions of the Clark Mountain Herd Area.

Please explain why BLM has failed to ensure protection and habitat for wild burros in the Clark Mountain Herd Area that resulted in their complete elimination, while still allowing livestock grazing, which is in direct defiance and lack of compliance to CFR 4710.5?

One of the many factors cited in the necessity to permanently remove the Clark Mountain burros, was their trammeling effect and hoof action to desert tortoise and their habitat. The adverse impacts of the wild burros “may” degrade soil surfaces, vegetative qualities, reduce cover, create burrow damage and damage to desert tortoise through direct contact.

According to the United States Fish and Wildlife Service (USFWS) Biological Opinion released January 9, 2006, minimum impact recreation (e.g., hiking, equestrian uses, bird watching, photography, etc) would be allowed within the conservation areas.

Both equestrian use and livestock grazing are approved within the area and both of these approved uses will obviously result in trammeling effects, hoof action and may have the same adverse impacts attributed to wild burros of the area.

Please explain and provide documentation on how the BLM or the USFWS is able to differentiate between cattle hoof action, equestrian hoof action and wild burro hoof action, and

how it was determined that only the hoof action of wild burros posed a threat to the desert tortoise and its habitat?

In an August 3, 2004, order, the District Court held that the Service had relied on an invalid regulatory definition of “adverse modification” while analyzing effects to designated critical habitat in the June 17, 2002, biological opinion. The biological opinion was vacated and remanded to the Service with instructions to reissue the biological opinion after applying the appropriate definition of adverse modification, which the District Court defined as “a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for either the survival or recovery of a listed species.”

Please provide evidence and documentation that is in compliance with the District Court order that the presence of the Clark Mountain burros resulted in the “direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for either the survival or recovery of a listed species” and that the BLM has not relied on an invalid regulatory definition of adverse modification.

In the November 2006 Environmental Assessment issued by the Needles Field Office that proposed the implementation of the Clark Mountain burro removals, two factors were cited the basis for elimination. One of these was water, or the lack of it.

The EA states:

*“The 1994 California Desert Protection Act transferred the Clark Mountain proper (37,000 acres), to the National Park Service in the creation of the Mojave National Preserve. This transferred the only springs which have yearlong surface water in the eastern portion of the HA to the National Park Service. The burros in this area are dependent upon the springs for their survival. The National Park Service’s General Management Plan for the area prescribes complete removal of burros from the Mojave National Preserve, and if BLM is to maintain an HMA, the NPS would fence their boundary to preclude burros from access, and thus their ability to get water.”*

This excerpt refers only to the eastern portion of the Herd Area’s water source, yet it is used as one of the two factors in the decision for removals. The EA states that the majority of the wild burros relied on range improvement waters from the Valley Wells Cattle Allotment, yet it was the spring BLM transferred to NPS that was the only factor considered in their decision.

The BLM asserted that the Valley Wells Cattle Allotment *intends* to voluntarily relinquish the allotment. Please provide evidence of this assertion. Is there documentation of that? Has the AUM’s been permanently suspended for the allotment?

It also goes on to say that the water development has been turned off. So the primary water source on leased *public lands* was turned off, denying the majority of wild burros in the area

access to water and there wasn't anything the BLM could do about it, despite the fact that the allotment is located on *public lands*, which BLM administers and controls.

There was a little different story provided by locals. The "other story" about the water development being turned off went something like; the pump was "stolen" from the well and when the lessee finally agreed to BLM's "cooperative agreement" to no longer allow wild burros to access the water, an employee came back with the "stolen pump" and re-installed it.

Did BLM threaten the lessee with his permit and/or his livelihood if he did not agree to comply with the BLM agenda to remove wild burros from the area?

In the January 2007 DR/FONSI under Water Trapping, it states that:

*"Burros will be excluded from waters where no trap is set, that other existing water sources may be closed off to burros including turning off the water to troughs, closing corrals, temporarily placing portable panels, or steel fence posts and wire around water sites (a temporary fence), that the temporary barriers at water sources of prime importance to deer will be at least 60 feet long on each side, and that barriers around bighorn sheep water sources will include several bighorn sheep panels to allow sheep to access the water, while excluding burros."*

Notice every reference to water sources is plural, as in many. At the very least, it indicates more than one source of water, or the one spring source located in the eastern portion of the Herd Area that was told to the public in the EA and was cited as the second significant factor for issuing the decision to permanently remove them.

So which is it? One source or several sources? Why is it prime importance to deer but not to wild burros? How is the exclusion of wild burros from all water sources, a thriving ecological balance and multiple use relationship? How is this a fulfillment of protecting wild burros and their habitat as BLM was charged to do?

The Needles Field Office cited one of the benefits of the total elimination of the Clark Mountain wild burros as, "there would be less competition of rangeland resources for native wildlife" and cited wild burros as a non-native species.

Please explain how the definition of native versus non-native applies to the Congressional mandate and public law that states wild horses and burros are to be considered an integral part of the systems of public lands?

It clearly states that, as of the passage of the Act, wild horses and burros will be considered an integral part of the systems of public lands.

For a BLM employee to attempt to redefine the role of wild horses and burros on public lands, as previously defined by Congress and Public Law, would indicate either they are ignorant of the law, their duties and their responsibilities towards wild horses and burros on public lands, or they are demonstrating a personal prejudice that has no place in balanced multiple use management of the Nations resources.

Please explain *why* the Needles Field Office used this definition, non-native, in describing the Clark Mountain burros?

Which leads to the number one factor cited in the need for the eradication of the Clark Mountain burros, to protect the threatened desert tortoise and its habitat.

The attached report, Wild Burros of the West, A Critical Analysis of the Current Status of Wild Burros on Public Lands – 2006, provides overviews of many pertinent issues relating to desert tortoise protection, habitat, population numbers, management goals, etc. Please review for additional information.

This section will question and examine statistics that are site-specific to the Clark Mountain Herd Area.

In the 2006 Environmental Assessment CA-690-EA04-27, under Wildlife, BLM reports that:

*“Thirty-eight percent of the Clark Mountain Herd Area is within the Ivanpah Critical Habitat Unit and the Shadow Valley DWMA. Data on desert tortoise on a permanent study plot in the Shadow Valley DWMA were collected in 1988, and 1992; the densities of desert tortoises of all sizes per square mile were 50, and 58 respectively (Berry 1996). Desert tortoises occur in the California desert from below sea level to an elevation of 7,300 feet, but the most favorable habitat occurs at elevations of approximately 1,000 to 3,000 feet (Schamberger and Turner 1986).”*

Thirty-eight percent of the Clark Mountain Herd Area is roughly equivalent to 90,000 acres. If the Threatened desert tortoise has been surveyed at 58 per square mile, then the estimated desert tortoise population for the Clark Herd Area would approximately be 5,220,000 million tortoises of all sizes, just in the 90,000 acres of DWMA and Critical Habitat.

Of course, the elevation factor may have bearing as to which percentage of this available habitat is most favorable. Two separate elevation levels are listed for the Clark Mountain Herd Area.

The first, cited in the Capture Plan under Topography, states that the elevations range from 800 feet to 2,417 at Clark Mountain. The second, listed under Vegetation in the 2006 Environmental Assessment states that the elevations range from 800 feet to 7,270 feet, just below the Clark Mountain Peak.

BLM transferred 37,000 acres to NPS, which was called Clark Mountain “proper”. Because of the elevation variables contained within Clark Mountain “proper”, the 37,000 acres will be removed completely from inclusion as available desert tortoise habitat.

The base of Clark Mountain was cited at 2,417 feet, well within the 1000-3000 most favorable habitat of desert tortoise, though their range was said to extend to the entirety of the available habitat, up to 7,300 feet.

If the 37,000 acres of Clark Mountain “proper” is also removed from acres of favorable desert tortoise habitat within the DWMA and the Ivanpah Critical Habitat Unit, at 58 desert tortoise per square mile, the estimated population within this area alone, as provided by BLM statistics, are approximately 913,793 desert tortoises to 100-150 wild burros.

Of course, this is just one of six recovery units established in the West for desert tortoise habitat and recovery. On the other hand, the estimated population of the Clark Mountain wild burros at 100-150 at the time of removals happens to be the only one of it’s kind in the world.

In the 2006 Environmental Assessment, page 31, the BLM clearly states:

*“There has been some genetic analysis work done by Dr. Gus Cothran from the University of Texas A&M who is continuing to study the genetics of burro populations across the west. Cumulative reductions in habitat available for burros and subsequent reductions in burro populations, resulting in reduced representation of this species has likely compromised their gene pool. The ability for populations to maintain genetically viable herds, with representation of their unique genetic characteristics would be lost”.*

To reiterate, the BLM calls the wild burros of Clark Mountain Herd Area, **“this species” and implies they are a distinct population segment of wild burros.**

BLM also states, through BLM’s decisions to reduce their habitat and their populations, this distinct population segment has likely compromised their gene pool, and that those decisions issued by BLM have rendered a self-sustaining, genetically viable herd, obsolete.

BLM goes on to state that not only has the Clark Mountain Burros been recognized as a species but that, due to the current management being implemented by BLM **their unique genetic characteristics would be lost!**

Please explain how the BLM can issue an “appropriate” number of these recognized genetically unique burros at zero in order to manage for 900,000 Threatened desert tortoises, just in this one “Recovery Unit” alone?

In the January 9, 2006 USFWS Biological Opinion, it states that:

*“The designation of special management areas, including, but not limited to special areas and areas of critical environmental concern, which require “special management attention ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.”*

Congress declared through The Wild Free-Roaming Wild Horse and Burro Act of 1971 that “Wild horses and burros are living symbols of the historic and pioneer spirit of the West, that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people. ... as well as to be considered, where presently found, an integral part of the natural system of public lands.”

Please explain how the extermination of the Clark Mountain burros, a historic herd in isolation for over 200 years which resulted in a distinct population segment and unique genetic characteristics, *as proven by BLM’s own studies*, did not qualify for several of the recommendations of the USFWS Biological Opinion published in 2006, *before* the BLM issued the RD/FONSI in 2007 to gather them to extinction?

Please explain how the BLM determined that the protection of one desert tortoise recovery unit with an estimated population of several hundred thousand took precedence over the one, the only and the last of its kind, the Clark Mountain burros?

The BLM also placed special emphasis on the management of desert bighorn sheep within the Clark Mountain Herd Area, citing them as a “sensitive species” protected within California. So are wild, undomesticated burros.

According to California Fish and Game Code – 4600, the following protections have been granted to undomesticated or “wild burros” within the state of California. The Code reads as follows:

*“It is unlawful to kill, wound, capture, or have in possession any undomesticated burro. An undomesticated burro is a wild burro or a burro which has not been tamed or domesticated for a period of three years after its capture. The fact that a burro was killed, wounded, or captured on publicly owned land, or on land owned by a person other than the person who killed, wounded, or captured the burro is prima facie evidence that the burro was an undomesticated burro at the time it was killed, wounded, or captured.”*

*“Neither the commission nor any other department or agency has any power to modify the provisions of this section by any order, rule, or regulation.”*

BLM cites bighorns as a “sensitive species”, requiring special care and attention. As of 2004, the estimated adult bighorn population ranged from 3,383 to 5,500. If the population has remained relatively stable, the current ratio of bighorn in California is approximately 10-16 times higher than California wild burro populations.

Please describe what the wild burro population would be defined as, if a “sensitive species” requiring special management and care outnumbers wild burros by over 10-1?

In the USFWS January 2006 Biological Opinion, the following statement was issued;

*“Fencing may also be used to reduce or eliminate competition for water sources or forage to benefit particular species of wildlife. Some valuable wildlife resources may require assistance in the way of habitat restoration or enhancement.”*

Please describe what “valuable wildlife” they are referring too? Would it be the bighorn sheep in the Clark Mountain area? Please describe what species of wildlife is being managed that requires assistance in the way of habitat restoration or enhancement?

For an in depth look at the “value” of a bighorn sheep, please review the report, Wild Burros of the West, A Critical Analysis of the Current Status of Wild Burros on Public Lands-2006, located at the back of this document.

There are several water developments or “guzzlers” installed through out the area for the purposes of promoting bighorn sheep populations.

Please explain why the bighorn sheep, which outnumber wild burro populations throughout the state by at least 10-1, continue to be managed, despite the fact that they are not capable of maintaining self-sustaining herds within the productive capacity of their environment, while the wild burros of Clark Mountain *were* capable of self-sustaining herds, until BLM managed them to extinction?

Also, please explain why BLM, who has been charged with the management and preservation of *multiple uses* on public lands is issuing decisions that favor exclusive use for particular species?

As for the Capture Plan, 2007-2012, only phase one was referenced in the capture and removal operations. Please describe the other “phases” of this capture and removal plan.

While the majority of all documentation regarding the Clark Mountain burros pertains to their capture and gather methods; humane care, strict adherence to a wide variety of operating procedures carefully detailed to conform to prescribed and established methods for removal, please explain why it also cites under the Proposed Action:

*“The removal methods can either be BLM in house, BLM contracted or BLM Cooperative Agreements with the National Park Service or other parties in completing the gather operations”.*

What exactly is meant by “other parties” and why is no criteria named for special education, skills or qualifications, or any other requirement? Aren’t only authorized officers allowed to handle gather operations under specific gather requirements? Isn’t the “safety of the gather operations” so important that seven rangers were present during the initial gather of Clark Mountain burros, plus an undercover officer? How then, can “Other Parties” qualify for gather and removals? Please explain.

As for actual compliance with all those very detailed requirements, witnesses at the gather reported **no water was provided at the capture site throughout the course of the days events at any time** to the captured burros.

It was mentioned that in prior BLM gathers (unknown origin) that wrangler’s horses had been known to die from dehydration during the gather operations. Could this attest to the fact that indeed, BLM fails to fulfill its obligation by providing water to animals on the site?

If wrangler horses, who are trained and of somewhat more value than an untrained wild horse or burro, are treated like this, how does that speak of the concern the contractors have for the animals that BLM awards these gather contracts too?

There were also reports of wild burros being run for well over ten miles, including foals, despite the fact that the capture plan states that they would not be run over five. There is film footage of burros being “nudged” with the helicopter skids, there are reports that allege burros were run down steep ravines and washes at top speed, were run straight into trailers, were forced to stand in the trailers all day, in addition to no water being provided, neither was food, and the animals were not separated by sex in order to protect jennies and foals from aggressive jack behavior.

The burros being nudged with the helicopter skids is on film, so that activity does not need a reply. As for the other questions regarding the adherence by BLM to gather procedures once out in the field, besides merely “stating” that this did not happen, can BLM provide any evidence that can refute these eyewitness testimonies?

Every environmental factor that the wild burros depend on has been manipulated by the BLM to eliminate them from the area; whether it was fencing their water sources, shutting water sources off, entering into “agreements” with livestock operators, reducing then eliminating their habitat, citing burros possible impacts to desert tortoises and habitat while ignoring the same impacts for other rangeland users, citing populations that are significantly higher as more important and more “valuable” than the wild burros, ignoring their unique genetic markers, and ignoring BLM’s mandates, regulations, state laws, and federal laws that require BLM manage for the burros *protection*.

In other words, the BLM has deliberately and intentionally set out to destroy the Clark Mountain Herd. I have provided a substantial amount of evidence to attest to this fact. What evidence can you provide that substantiates your mandates to protect them and preserve them for future generations? Or any wild burro herd that fell under the California BLM jurisdiction?

If the BLM reports to Congress that they have eliminated 75% of wild burro habitat in California, almost 90% of wild burro populations and that the current National management strategies have cut 50% of habitat and are now managed for a population that use to exist in Southern California alone, how do you think Congress would view BLM’s “*protection policies*”?

If the statistics of the remaining burro populations and habitat in the State of California were submitted to the Government Accounting Fraud Office or a Grand Jury Investigation for the purposes of substantiating malfeasance and illegal activity demonstrated towards the wild burros placed in the Bureau’s charge, how does the BLM believe it’s activities would stand up?

In the Capture and Removal Plan, the BLM cites their authority to remove the Clark Mountain burros because they have been deemed “excessive”. The BLM must cite this as the reason for removals because Congress granted the BLM no other authority to remove healthy animals.

Please explain, if the current “appropriate management level” for the state of California is 345 wild burros, how is the 100-150 estimated Clark Mountain wild burros considered “excessive” when viewed beyond the narrow scope of site-specific management?

The Record of Decision and Finding of No Significant Impact stated that the approved action would continue until the objectives were met or there is a change in land use decisions, or new and pertinent information requiring re-evaluation of the capture plan and associated environmental assessment is received.

The information now submitted regarding the overview of wild burros on public lands, and most especially, the critical state that they have reached in California, most certainly qualifies as pertinent information. Based on the research and information submitted, I request a re-evaluation of the capture, removal and management plans that results in extinction of the this unique genetic herd.

Furthermore, why hasn't the Bureau of Land Management petitioned the Secretary of the Interior to declare the wild burros of California a Threatened Species? With over 75% of their range eliminated in California and with their populations at dangerously low levels, their continued preservation and survival has become a critical concern.

Why hasn't the Bureau of Land Management declared the Clark Mountain Burros a distinct population segment of **world wide significance** to wild burro populations, due to the documentation established by BLM and Dr. Gus Cothran of the University of Texas A&M, that clearly states their unique gene pool and genetic characteristics will be irreparably lost without immediate and drastic recovery plans?

By establishing their population and habitat needs as a critical concern, the establishment of issuing a Threatened Status would result in the National Park Service having to coordinate its management activities in such a manner as to support the preservation of the Clark Mountain burros and their habitat *as well as* the other wildlife in the areas. While management activities by USFWS and NPS could continue within the area, they would be prohibited from excluding the wild burros from accessing the only yearlong spring source that they have watered at for the last two hundred years or shooting them for disposal.

As for the effects USFWS stated the wild burros "may have" on the desert tortoise environment, BLM's Code of Federal Regulations clearly state that if necessary to provide habitat for wild burros, the BLM is authorized to close the area to some or all of livestock grazing. The reduction or removal of cattle within the area should compensate for wild burros possible impacts.

The appropriate management level for the Clark Mountain Herd should be re-established at 150 wild burros, as this is the most comfortable level for maintaining genetic viability until such time as additional evidence is offered that adjustments would not compromise the genetic integrity of this unique herd.

Since bighorn populations throughout the State of California are estimated at a population that exceeds the current *National* Management Level being implemented for burros, the bighorn sheep within the Clark region should be given third priority, submitting to the exceptions of the Clark Mountain genetic pool and the Threatened desert tortoise and its recovery.

The authority granted for this petition is through the Endangered Species Act of 1973, which includes, but is not limited to the following:

The Endangered Species Act, SEC. 2 (a), FINDINGS states:

- (1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;
- (2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;
- (3) these species of fish, wildlife, and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

SEC. 2 (c) POLICY states:

- (1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.
- (2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

SEC. 3, DEFINITIONS states:

- (1) The term “alternative courses of action” means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

- (6) The term “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.
- (8) The term “fish or wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird....
- (15) The term “species” includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature.
- (18) The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.
- (19) The term “threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Determination of Endangered Species and Threatened Species, SEC. 4 (a), GENERAL:

- (1) The Secretary shall by regulation and promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms;
- (E) other natural or manmade factors affecting its continued existence.

(e) SIMILARITY OF APPEARANCE CASES:

The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this ACT if he finds-

- (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;
- (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species;

In conclusion, the facts speak for themselves. BLM has a responsibility to re-submit a new plan for the preservation and management of the Clark Mountain burros and their habitat. Though only a few now remain, the irreparable harm that will result by BLM refusing to face these facts, and reverse this current course of extinction, will result in a true crime being perpetuated on the American people.

To blatantly ignore the two-hundred years of history and evolution that has resulted in, *in BLM's own words*, "***this species***" and ***their unique genetic characteristics being lost!***, would demonstrate a unparalleled level of mismanagement and malfeasance.

Please don't continue this course of action and cause the extinction of the Clark Mountain burros.

Sincerely,  
REMOVED

CC: Tom Pogacnik  
Sterling White  
Steven Borchard  
Alex Neiberg