

PETITION FOR STAY

Pursuant to 43 C.F.R. § 4.21 Appellants WWP hereby Petitions for Stay of the challenged decision. Appellants hereby requests the Board of Land Appeals in the Office of Hearing and Appeals, Office of the Secretary of the Interior, to stay these contested decisions until the appeal is resolved.

Relative Harm to Parties - Harm to Appellant.

Appellant's members, who actively recreate on this portion of public land of the United States, will be harmed if this Decision is permitted to proceed as proposed. The implementation of this Decision will result in a violation of federal laws and regulations as documented in the Statement of Reasons (incorporated herein by reference) and Appeal, and the loss of the ability of Appellants and their members to experience the land in question without viewing and experiencing ongoing degradation of important public resources and values. Further, if this flawed and weak decision is implemented, the losses to the public will be significant, and may be long-term and irreversible. Appellant is not appealing the desert dace fence, and is not petitioning for stay that limited portion of BLM's decision.

BLM's FD immediately shifts large and increased numbers of livestock to the South Use Area with no rest during the critical growing period as well as for a prolonged winter period. BLM treats these magnificent public lands as a sacrifice area to the livestock industry. The environmental impacts of this drastically increased use and several other elements of the FD, were never analyzed in BLM's 2003 EA. In that EA, BLM never even bothered to evaluate any alternatives other than the No Grazing Alternative that would decrease or reduce livestock use, and thus failed to evaluate a reasonable range of alternatives, as required under NEPA. All EA grazing action alternatives other than "no action" were developed by the permittee. The PD was developed by the permittee. Now, in its FD, BLM again parrots the permittee's newest grazing scheme. BLM has exhibited overwhelming bias towards the interests of a private livestock business over the wealth of unique and nationally important public lands resources and values here.

If the proposed levels and systems of grazing use are enacted, they would result in accelerated and irreparable damage to the SM lands, watersheds, waters and the species that inhabit them. More livestock will be able to be grazed across the entire South Use Area than have been grazed in the past. Native bunchgrasses will lose vigor or die from excessive use at damaging levels as high as 50-60% during sensitive critical growing periods (Anderson 1991). Sage grouse populations will decline, as necessary nesting cover is devoured by livestock to heights too low for successful nesting. Sage grouse require 7-9" of residual cover for nesting, yet at proposed utilization levels of the Decision, this essential nesting cover will not be present. Numerous springs, seeps and streams are unstudied and unassessed by BLM across the allotment. See BLM 1:100,000 High Rock Canyon land status map, showing Cow Creek, Buck Springs, Cottonwood Creek and numerous springs in their vicinity; Clapper Creek and numerous springs across the west face of the Black Rock Range; Clear Springs, another Buck Springs, Mustang

Springs and other areas. They will continue to be unassessed and degraded with no protective stubble heights applied – only a hand full of riparian areas across the allotment rate any stubble heights protection whatsoever. Plus several damaged riparian areas will continue to be subject to hot season use the northern Use Areas. Lands with moderate or high soil erosion hazard (see PRMP/EIS Maps 3-1 and 3-2) across the South Use Area and some other areas will be exposed to increased removal of vegetative cover by livestock and direct disturbance. Trampling damage to microbiotic crusts and compression of soil surfaces will be particularly acute across the South Use Area, and very high utilization levels will strip the watersheds of protective cover. Irreversible soil erosion loss will occur. Undue degradation of the public lands and special status species habitats will occur as new livestock damage to uplands and riparian areas continues unameliorated.

Lands of the South Use Area and other winter use areas will be swamped with cattle during critical periods of the year for wintering wildlife and wild horses (FD Tables 2 and 3 and PRMP-EIS Maps 3-6, 3-7, 3-8, 3-9, 3-11). Wintering wildlife will now face disturbance, displacement and resultant stress from livestock competition and management activities in winter months across the South Use Area. As both livestock, wildlife and wild horses are compressed into small areas of winter range, the vegetation of winter ranges will be depleted, thus reducing its ability to support viable populations of wildlife, or healthy populations of wild horses. As disturbance and depletion increase, new and accelerated spread of weeds, including aggressive highly flammable annuals that choke out native vegetation, will occur under the high stocking rates and shifted use. Animals may move into other allotments, increasing conflicts for scarce resources in other areas.

Each Wilderness Area in the South Use Area (Calico Mountains, High Rock Lake, Pahute Peak WAs) will face immediate large-scale increases in livestock use without rest during both the winter and the critical growing period. Livestock use is greatly expanded during sensitive wintering periods for wildlife and wild horses, as well as during the critical growing period for native bunchgrasses and forbs. Ecological conditions and the naturalness of the Wilderness Areas will be degraded by harm from dramatically increased grazing. Example: Under the FD Interim and Final Grazing systems, grazing use would be more than doubled here. See Appeal discussion of Wilderness. This manner of grazing was never analyzed in BLM's EA alternatives.

BLM admits that increased stocking rates will lead to **“a decrease in opportunities for solitude and primitive recreation in the Wilderness Areas”** (EA at 109). Solitude and primitive recreation are essential characteristics of the Wilderness experience. BLM addresses the adverse impacts of the potential stepwise increase in AUMs, but fails to directly discuss the adverse impacts of the immediate increases in livestock use across the South Use Area. BLM's analysis of FD impacts to Wilderness Areas focuses on the length of the time period that livestock will be present in the WA. BLM fails to assess impacts on naturalness and special features of the Wilderness Areas. The EA analysis drastically under-represents the prolonged period of time livestock will be present in the South Wilderness Area lands under the Final Decision. (Example: EA analysis maximum

time livestock present in Calico Mountains Wilderness in four-year period: 4 months with rest, vs. FD: 14 months with no rest). Thus, BLM has never assessed the full extent of the harm caused by its FD to Wilderness Areas.

The five Wilderness Areas of the SM allotment are unique and nationally important values identified in the NCA legislation. *“The two large wilderness mosaics that frame the conservation area offer exceptional opportunities for solitude and serve to protect the integrity of the viewshed of the historic emigrant trails”*. BLM’s decision will cause significant adverse impacts to the ecology and wilderness experience of Wilderness Areas, including solitude. BLM has violated the NCA requirement to **conserve, protect and enhance** Wilderness lands of the NCA.

Sadly, BLM’s FD significantly diminishes the solitude and other Wilderness attributes of Wilderness Areas. Increased numbers of livestock will pound in new trails, damage soils and unassessed riparian areas, cause erosion and weeds, and other adverse ecological impacts. These adverse effects will mar the ecological integrity and even the visual appearance of the lands and cultural or historic features in the NCA viewsheds, and interfere with wildlife or wild horses that are special features of Wilderness Areas. Livestock levels are not maintained at in the South Use Area at the same level as existing at the time the Areas entered the Wilderness system. BLM has not conclusively found that there will be no adverse impacts of its FD on each Wilderness Area. This violates the Congressional Grazing Guidelines for Wilderness.

BLM’s FD also adversely affects the Wilderness Study Area – and immediately opens 28% of the WSA to livestock grazing, plus constructs a new fence in it. BLMs EA analysis shows adverse impacts to solitude and primitive recreation (EA at 112), including in excess of any impacts analyzed in the EA as under the FD as under the FD, livestock use occurs over a much longer period of time in the WSA.

Wild and free roaming horses and the Herd Management Areas (HMAs) in which they are allowed to exist will be subject to immediate and increased livestock use across the South Use Area (Calico Mountains and Black Rock Range West HMA), and the Colman Use Area portion of the Black Rock Range West HMA will be opened to livestock use. See Appeal discussion of wild horses.

The 1994 FD allocated forage to wild horses and determined a carrying capacity on a **pasture by pasture** basis. BLM’s 2004 decision re-affirms its 1994 Decision related to wild horses. The 1994 allocation is based on 7,687 AUMs used by livestock in the grazing system in the several pastures under the 1994 FD. Under the 1994 decision, either 2598 or 1496 AUMs are grazed in the South Use Area that includes large areas of HMA lands (FD Table 1), and not the 4008 or 3580 AUMs of the FD with no rest (FD Tables 2 and 3). Livestock use over a four year cycle is almost doubled.

Under the 2004 FD, BLM would be free to erect numerous new fences including the long unassessed County road fence that will cut off movement between 2 HMAs where horses are compressed in winter and spring periods. Fences are known obstacles to wild horses

that may inhibit movement to snow-free areas, cut off movement to water, and lead to mortality, if gates get closed. As recreation use increases, greater gate problems will occur. BLM allocated forage to wild horses in its 1994 FD, based on the existing pasture structure at that time. Now, in 2004, it re-affirmed that allocation – yet it has dramatically increased livestock numbers and extended livestock use without any rest across the HMAs of the South Use Areas, which are located in the 1994 FD’s Calico and Black Rock Pastures. BLM’s forage allocation in 1994 for cattle was the 2598 or 1496 AUMs annually in that area, and not the 3580 or 4008 AUMs of the FD. BLM’s horse round-up here appears to have been purposefully undertaken to remove horses and replace them with cattle. Wild horses are unique and nationally significant values identified in the NCA legislation. BLM has violated the NCA requirement to manage to conserve, protect and enhance their HMA habitat, and has also violated the Wild and Free-Roaming Horse and Burro Act.

Such increased use may have profound effects – rippling into other allotments as horses and wildlife are displaced due to loss of forage, habitat competition and behavioral displacement by cattle and cattle management activities.

BLM opens the Colman Area to cattle use and will harm Lahontan cutthroat trout habitat that has been degraded by trespass (2003 FAE at 50 describes FAR condition of reach), and dramatically increases stocking rates on Donnelly Creek in the South Use Area (2003 FAE at 50 describes FAR condition of reaches).

Elements of the allotment that will be significantly harmed include fragile native big sagebrush plant communities, mule deer, pronghorn antelope, sage grouse and bighorn sheep, threatened species, other native wildlife species like golden eagle that are dependent on this habitat (see species Maps in PRMP/EIS). A wealth of historic and prehistoric cultural sites, visual values, opportunities for recreational enjoyment, and many other important features of lands across the South Use Area will face immediate increased disturbance and degradation.

BLM’s analysis relies on extremely limited, old, stale, and out-dated information collected in 1994-2000 as a basis for its 2004 Decision. Reliance on old, stale data, as well as limited data violates NEPA and the Data Quality Act. As early as 2001, NDOW and USFWS commented on the profound data gaps and deficiencies in BLM’s Assessment. See 2001 FAE at 120-132, **“the document suggests that monitoring obligations and studies were abandoned since 1993 and 1995”; “the document’s determination that current management is achieving allotment objectives and standards for rangeland health may be premature ... the data used to justify changing the grazing system and increasing animal unit months (AUMs’s) are inconclusive, missing, or misleading”; “no trend data have been gathered”;** etc. Also 2003 Det/MASR at 25 “no trend data”; ESI data from 1991, and at 24 “key areas related to the development of Desired Plant Community Objectives were never established ...”. Instead of acting to correct the deficiencies profound data deficiencies and shortcomings of the AE, and actually gather current site-specific data, BLM in 2003 issued yet other repetitive document, the Det/MASR and another bulky evaluation document using the

same shreds of limited data. BLM then based its EA analysis and thus the 2004 FD on shreds of data - much of which is now 5-10 years old, or even older (ESI data is from 1991). For example, the last time BLM collected any upland utilization data at all in the South Use Area where it proposes dramatic increases in livestock use was 1996 – eight years ago! 2003 Det/MASR at 21-24.

BLM conducted a flawed Standards and Guides assessment that ignores significant collection and study of site-specific data and information on the health of these vast lands. BLM did not undertake the detailed study necessary to describe the full range of ecological harms occurring here. BLM conjures up determinations of “met” and “partially met” based on little, contradictory or no data. This violates the FRH, as well as the Data Quality Act.

Plus, BLM clearly has no intention of requiring the permittee to even meet the excessive levels of livestock use on which it predicates the Decision. Even the excessive upland utilization levels (50-60%), which BLM described in the EA as necessary to protect these lands and move towards compliance with the FRH, are not enforceable terms and conditions of the grazing permit. See FD at 4-16. They are merely “short term objectives” (FD at 4). Lastly, BLM does not even state that its meager efforts to control livestock damage here will bring about the required significant progress towards attaining the FRH.

Livestock grazing under the Decision will result in significant irreparable harm, as described above, to the unique and nationally significant public lands of the NCA and its

Construction of fences, including the six mile or more County Road fence never considered or assessed in the EA. This fence will block horse movement between HMAs in critical winter periods and bisect mule deer, pronghorn antelope and other winter ranges.

BLM’s FD actions will cause irreparable harm to soils, vegetation, watersheds, wildlife habitats, wildlife populations and wild horse HMAs shared between allotments in the area, as well as Wilderness Areas, the WSA, cultural sites and recreational attributes of these important and significant wild lands as livestock uses is newly shifted and concentrated.

The direct result of the issuance of a Stay on this Decision will be the prevention of direct harm to Appellants if the decisions are permitted to take effect because of the violation of legal statutes of the United States on which the Appellants rely.

Relative Harm to the Parties - Harm to BLM.

The relative harm to the BLM of the issuance of a Stay as requested is unclear. The BLM has not indicated that there are no other possible actions that could be taken. In fact, this decision violates many of BLM’s own stated policies and FLPMA, Wilderness requirements and the National Conservation Area legislation. If a Stay were not granted, the BLM would violate its own policies and laws and would irreparably harm the affected

lands. Therefore, it is not reasonable to suggest that the relative harm weighs in favor of the BLM.

BLM has previously issued a FMUD in 1994. This 1994 MUD contains protective standards of use and monitoring commitments (nearly all ignored by BLM since 1994) for the vast SM lands, and is covered by a BO. See 1994 FD at 7-9, 27, 28, and 1994 BO. Other agencies believe it is premature for BLM to alter management applied by the 1994 FD in SM, as BLM has failed to collect a broad array of data that it promised would be collected. See 2003 Det/MASR at 13 (NDOW) and 15 (USFWS). In fact, in issuing an FD that institutes sweeping changes, immediate and drastic increases in livestock use with no rest across the South Use Area, opens the closed portion of the Colman area to grazing as well as the northern portion of the WSA in the Idaho Canyon Area, and opens the door to a stepwise increase in AUMs across the allotment, BLM violates its own policy stated in the 2003 Det/MASR "Changing the grazing system or increasing livestock use will be based only upon meeting all management objectives and standards" management objective and standards". BLM is violating its own promises in its 2004 FD. Even BLM's deeply flawed and data-deficient assessment and FRH determination found standards were not being met.

Plus, BLM could readily attach necessary protective standards of livestock use or take other actions as interim terms and conditions for these lands on those areas where BLM has looked and found problems. BLM has embarked on a separate course of action for the desert dace protective fence – and issued a draft and Final EA in April 2004. Appellants have not appealed this EA, as it we believe it is a reasonable and necessary measure to protect desert dace habitat.

The interests of the permittee are best served in grazing under a prudent and sound management scheme based on scientifically valid site-specific data on the health and ecological conditions of the land. Otherwise, as range degradation increases and accelerates under ill-conceived grazing schemes and excessive stocking rates, significant ecological damage will occur, and grazing may be sharply reduced or curtailed.

In summary, BLM has a solid 1994 Decision with protective measures. It has failed to establish monitoring and study sites and collect the data that is required to allow sweeping changes of the FD. BLM must abide by the 1994 decision, bolster it where needed to protect resources from harm, and collect site-specific data necessary to ensure compliance with the FRH, FLPMA, the NCA legislation, the Wilderness Act and Congressional Grazing guidelines, and the Wild Horse and Burro Act. BLM plans for its 2004 FD to determine management until 2015. It is utter folly to make a land management decision in 2004 that dictates management for the next decade or more, and that ignores NCA mandates. See BLM FD at 3, stating the NCA was "outside the scope" of the FD, and FONSI failing to even mention the existence of the NCA . Instead of making large-scale changes with no analysis of impacts to the NCA and, essentially, no current monitoring data, BLM must act to collect and assess site-specific data that will ensure its actions comply with all legal requirements are in the public interest, and that will best protect, conserve and enhance NCA values.

Appellants Likelihood of Success on the Merits.

Appellant has established that it will likely succeed on the merits of this case based upon BLM's: Reliance on old, out-dated, stale and woefully deficient data; Failure to take a "hard look" at the environmental consequences of the decision including cumulative impacts; Blindly ignoring its duty to ensure its management acts to **conserve, protect and enhance** the myriad values of the Black Rock-High Rock NCA; Degradation of Wilderness values; Violations of the Wild Horse and Burro Act; Violations of its own policies for management of special status species; Failure to conduct an adequate inventory and assessment of endangered, threatened and "BLM sensitive" species including sage grouse; Failure to provide site-specific information on all vegetation characteristics, livestock grazing impacts and weed infestation areas; Failure to provide meaningful monitoring and mitigation for harmful actions; Failure to ensure compliance with the FRH; Failure to provide a current study examining carrying capacity, stocking rate, sustainability, productivity or other information needed to determine suitability of lands for grazing and to enable necessary actions based on such study; Failure to ensure that lands are protected from **irreparable** harm by upland soil and streambank erosion, exposure and alteration or destruction of cultural sites, degradation of winter ranges and wild horse HMAs; adverse impacts to Wilderness and WSA values; Loss of native plant communities; Cheatgrass and other weed invasions; New or continued harm to threatened species and their habitats; and Failure to assess direct, indirect and cumulative impacts of its actions.

The Likelihood of Irreparable Harm.

The harm created by the implementation of BLM's Final Decision is irreparable in that it will permit new and purposeful degradation of nationally significant and unique public resources. Environmental loss such as harm to sage grouse or other populations of native wildlife and their further or accelerated decline, or invasions of exotic species such as cheatgrass, bur buttercup and white top infestations into Wilderness Areas, is irreparable. Soil erosion and loss of native vegetation and wildlife populations is irreparable.

Appellants will be deprived of the opportunity to enjoy thriving wildlife populations, and healthy and thriving populations of special status or important species such as sage grouse, bighorn sheep and golden eagle. Instead, Appellants will be faced with additional acreages of flourishing exotic species invasions in zones of ongoing and new and increased livestock disturbance and livestock facility disturbance; declining wildlife populations as their habitat becomes even more fragmented by increased weeds and harmful use levels and new projects; increased intrusion of livestock on recreationalists and resultant conflicts with experiences of solitude and primitive recreation; conflicts with wintering big game and other wildlife as livestock use is extended, and a broad array of other ecological problems.

These impacts, if permitted, will never be fully recoverable and therefore represent, through the loss or damage of existing soils, native vegetation, wildlife and special

special status species habitats and populations, threatened species habitats and populations, NCA values, prehistoric and historic cultural sites – irreparable harm. These actions will harm the environment and the ability of Appellants to carry forward a legal contest of this action, once it is in place. The implementation of this Decision pending review by the Office of Hearings and Appeals on the merits of Appellants appeal is irreparable and irretrievable.

Public Interest Favors the Granting of the Stay.

The public interest clearly favors granting the Stay. The unique large wilderness mosaics; the nationally important, significant and unique historical, cultural, paleontological, scenic, scientific, biological, educational, wildlife, riparian, wilderness, endangered species, and recreational values and resources associated with the Applegate-Lassen and Nobles Trails corridors and surrounding areas; and the Black Rock Desert and the High Rock Canyon Areas that are unique segments of the northern Great Basin and contain broad representations of the Great Basin's land forms and plant and animal species, including golden eagles and other birds of prey, sage grouse, mule deer, pronghorn antelope, bighorn sheep, free roaming horses and burros, threatened fish and sensitive plants and other resources will be degraded environmentally by the implementation of the Final Decision, as described in the Appeal. This clearly violates the public interest, and does not serve to **conserve, protect and enhance** these values and resources. Recovering the health of these public domain lands and compliance with FLPMA, NCA and Wilderness legislation is in the best interest of the public. In addition, the public interest as expressed by Congress through NEPA will be violated because laws and regulations will be broken if a Stay is not granted pending resolution of this appeal at the Office of Hearings of Appeals.

Appellant WWP believes the granting of a Stay in this matter clearly serves the interest of the health of ecosystems, native biota and humans in the Soldier Meadows allotment, the NCA and other intertwined Nevada public wild lands.

Sincerely,

Jon Marvel
Executive Director
Western Watersheds Project
PO Box 1770
Hailey, Idaho 83333
208-788-2290

Katie Fite
Biodiversity Director
Western Watersheds Project
PO Box 2863
Boise, ID 83701
208-429-1679

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CERTIFICATE OF SERVICE

I, Katie Fite, Hereby certify that on the _____ day of June 2004, the foregoing document will be served, via certified mail return receipt requested to:

Office of the Solicitor
Regional Solicitor
Pacific Southwest Region, USDI
2800 Cottage Way, Room E-12
Sacramento, CA

Les Boni
Assistant Field Manager
Winnemucca Field Office
5100 East Winnemucca Blvd.
Winnemucca, NV 89445-2921

I further certify that on June _____, 2004 the foregoing document was sent, via e-mail or FAX, to the BLM Field Office Manager. A copy will be mailed as required to other required parties within the specified time frame by Western Watersheds Project.

Katie Fite

Date

