

October 17, 2006

TO: IBLA
Cindy MacDonald

FROM: Erica Niebauer

SUBJECT: Addition to Exhibit 4, BLM Response to Appellant's Request for Stay

Please add the enclosed document to Exhibit 4 of the materials forwarded to you last week. The Finding of No Significant Impact (FONSI) was inadvertently omitted from the filing.

Thank you.

enclosure: FONSI

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Winnemucca Field Office
5100 East Winnemucca Boulevard
Winnemucca, Nevada 89445

CA-370-06-02

Finding of No Significant Impact Wildlife Water Developments in the High Rock Area

We have reviewed Environmental Assessment (EA) CA-370-06-02, *Wildlife Water Developments in the High Rock Area*, dated June 16, 2006. After consideration of the environmental effects as described in the EA, and incorporated herein, we have determined that fencing and development work at three springs associated with Alternative I of the assessment will not significantly affect the quality of the human environment and that preparation of an Environmental Impact Statement is not required.

We have determined that the selected alternative is in conformance with the approved Resource Management Plan for Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area and Associated Wilderness, and other Contiguous Lands in Nevada and is consistent with the plans and policies of neighboring local, county, state, tribal, and federal agencies and governments. This finding and conclusion is based on our consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and the intensity of impacts described in the EA.

Context:

The project area is located in northern Washoe County in Nevada and consists of high basalt plateaus dissected by deeply incised canyons. The uplands in the area consist mainly of extensive stands of sagebrush with some small mountain mahogany and aspen stands. The canyon bottoms support wet and dry meadow complexes. Much of this area is now within the East Fork High Rock Canyon Wilderness and the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area. The area is important wildlife habitat for many Great Basin species including sage-grouse, antelope, and bighorn sheep. Bighorn sheep were reintroduced into the area in 1989 and maintaining a viable population level of bighorn sheep is a high priority for the Nevada Department of Wildlife (NDOW) and BLM. The area is also within two separate wild horse & burro Herd Management Areas (HMAs).

Intensity:

1) Impacts that may be both beneficial and adverse.

Alternative I is anticipated to have beneficial impacts to wildlife, wilderness values, vegetation, and the springs and associated riparian areas. These beneficial impacts would occur because of the elimination of heavy grazing primarily from wild horses that occurs year round at the three meadows. Meadows would be expected to expand in size.

Vegetation cover, composition and structure would be expected to improve within the three exclosures. The exclosures would improve the naturalness of the areas and benefit many wildlife species.

Alternative I will have small scale adverse impacts on the undeveloped and untrammeled character of the wilderness, opportunities for solitude, and visual resources in the area. The exclosure that would be constructed within the Wilderness is in an area that currently contains no development or structures and would have an impact on the undeveloped character of the Wilderness. Short term (about one week) impacts to solitude would occur while constructing the exclosure within the Wilderness as materials are transported by helicopter and a small crew assembles the fence sections. The exclosures would also have an impact to the visual resources, but these impacts would be restricted to a very small area and would impact less than 1% of the area.

2) The degree to which the proposed action affects public health or safety.
Alternative I will have no effect on public health or safety.

3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

The project area is within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area and a portion of the project area is also within the East Fork High Rock Canyon Wilderness. The construction of one of the exclosures would impact the natural, undeveloped and untrammeled qualities of the Wilderness. However, this would be offset because the exclosure would reduce the existing impacts to these wilderness characteristics that wild horses may be causing to the spring and the project is considered to be the minimum necessary action for administration of the wilderness area.

It is also anticipated that the exclosures will assist in maintaining viable populations of Great Basin wildlife species, a value that the NCA and wilderness were designated to protect.

4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

During the scoping period and comment period a high level of public interest was expressed in the outcome of the original proposal to construct artificial water developments within the Wilderness both in support and in opposition of the proposal. The building of any installation or structure within a wilderness generally elicits an elevated level of scrutiny from groups and individuals concerned with maintaining the wilderness values of the area. There has also been a high degree of interest from NDOW and from sportsmen groups and individuals concerned with the wildlife in the area. Additionally, opinions supporting the State of Nevada's role to manage wildlife populations on public lands were received.

Any controversy surrounding the selection of Alternative I is likely to have more to do with the decision not to authorize the water developments proposed by NDOW at this time than with the construction of the exclosures.

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5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

There are no known effects of Alternative I identified in the EA, which are considered uncertain or involve unique or unknown risks.

6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

Selecting Alternative I will not establish a precedent for future actions with significant effects and does not represent a decision in principle about a future consideration. All future proposed management actions in the NCA and Wilderness, if they occur, would be subject to the same environmental assessment standards and independent decision making.

7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

Based on the environmental assessment, no significant cumulative impacts are expected. The proposed action when evaluated together with other past, present, or reasonably foreseeable activities in the area would not result in cumulatively significant impacts at the local or watershed scale.

8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources.

One of the exclosures (HRSP#20) is located within the High Rock Canyon Agricultural Historic District that is eligible for listing in the National Register of Historic Places (NRHP). The exclosure would not have an adverse affect on the historic district. The other two exclosures are not within any district.

Alternative I will not cause the loss or destruction of significant scientific, cultural or historical resources.

9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA of 1973.

No endangered or threatened species or their habitats are within the project area.

10) Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.

The proposed action will not violate or threaten to violate any federal, state, or local law or requirement imposed for the protection of the environment.

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Authorized Officers Signature

Owen Billingsley

Owen Billingsley, Field Manager, Surprise Field Office

June 16, 2006

Date

Rodger T. Bryan

for Gail G. Givens, Field Manager, Winnemucca Field Office

June 16, 2006

Date

Attachments:

EA # CA-370-06-02

Deleted: 6/16/2006

1
2
3 **CERTIFICATE OF SERVICE**

4 RE: Cindy MacDonald v. BLM; IBLA NO. _____ (appeal of EA CA 370-06-16)

5 I, the undersigned, declare that:

6 I am a citizen of the United States, over the age of eighteen, and am not a part to this
7 litigation. On October 17, 2006, I served the

8 **“FINDING OF NO SIGNIFICANT IMPACT CA-370-06-02”**

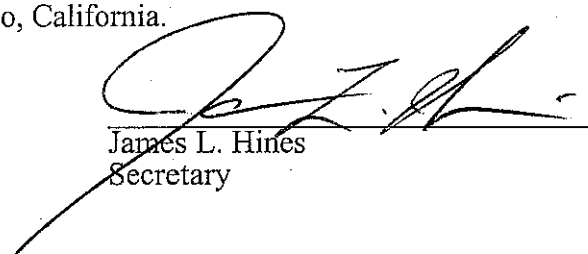
9 by placing a true copy enclosed in a sealed envelope via regular mail at Sacramento, California,
10 addressed as follows:

11 US. Department of the Interior
12 Office of Hearings & Appeals
13 Office of Land Appeals
801 N. Quincy Street, MS-300-QC
Arlington, Virginia 22203

14 by placing a true copy enclosed in a sealed envelope via certified mail at Sacramento, California,
15 addressed as follows:

16 Cindy MacDonald
17 3605 Silver Sand Ct.
N. Las Vegas, Nevada 89032

18
19 I declare under penalty of perjury that the foregoing is true and correct. Executed on the
20 17th of October, 2006, at Sacramento, California.

21
22 
23 James L. Hines
24 Secretary
25
26
27
28

1 CERTIFICATE OF SERVICE

2 RE: Cindy MacDonald v. BLM; IBLA NO. _____ (appeal of EA CA 370-06-16)

3 I, the undersigned, declare that:

4 I am a citizen of the United States, over the age of eighteen, and am not a part to this
5 litigation. On October 11, 2006, I served the

6 **"BLM RESPONSE TO STAY REQUEST WITH SUPPORTING DOCUMENTATION"**

7 by placing a true copy enclosed in a sealed envelope via facsimile WITHOUT supporting
8 documentation at Sacramento, California, addressed as follows:

9 US. Department of the Interior
10 Office of Hearings & Appeals
11 Office of Land Appeals
12 801 N. Quincy Street, MS-300-QC
Arlington, Virginia 22203
703-235-8349 (fax)

13 On October 12, 2006, I served the

14 **"BLM RESPONSE TO STAY REQUEST WITH SUPPORTING DOCUMENTATION"**

15 by placing a true copy enclosed in a sealed envelope via certified mail at Sacramento, California,
16 addressed as follows:

17 Cindy MacDonald
3605 Silver Sand Ct.
18 N. Las Vegas, Nevada 89032

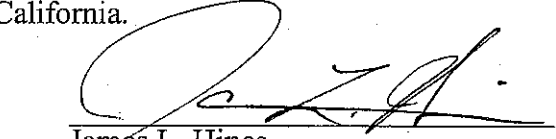
19 On October 13, 2006, I served the

20 **"BLM RESPONSE TO STAY REQUEST WITH SUPPORTING DOCUMENTATION"**

21 by placing a true copy enclosed in a sealed envelope via Federal Express WITH supporting
22 documentation at Sacramento, California, addressed as follows:

23 US. Department of the Interior
24 Office of Hearings & Appeals
25 Office of Land Appeals
801 N. Quincy Street, MS-300-QC
Arlington, Virginia 22203
703-235-3750

26 I declare under penalty of perjury that the foregoing is true and correct. Executed on the
27 12th of October, 2006, at Sacramento, California.

28 
James L. Hines
Secretary



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

IN REPLY REFER TO:
CA-370, ~~HM~~MACA-264

Certified Mail Receipt Requested

Memorandum

To: Board of Land Appeals, Office of the Secretary

From: State Director, CA

Subject: Transmitting Appeal of: **Cindy MacDonald,**

Kind of Application Appeal and request for stay of EA CA-370-I6 Decision
Record for the Gather and Removal of Wild Horses from
the High Rock Herd Management Area.

Referring to the above-cited case, I am transmitting a notice of an appeal from the decision of the

Surprise Field Manager, Owen Billingsley dated August 30, 20 06

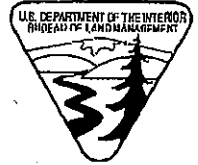
- There are no conflicting cases of record.
- The conflicting cases shown on the status sheet have been properly noted as to the appeal and favorable action thereon suspended pending final action on the appeal.
- The records of the conflicting or reference cases identified below are transmitted herewith for use in connection with the appeal.

Enclosure (copy of decision)

cc: BLM; W.O. _____



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Surprise Field Office
PO Box 460
Codarville, CA 96104
www.ca.blm.gov/surprise

In Reply Refer To:
(CA-370) CA-264

October 10, 2006

Board of Land Appeals, Office of Hearing and Appeals
Department of the Interior
801 N, Quincy Street
Arlington, VA 22203

Enclosed is a Statement of Reasons, and associated documents in response to a Request for Stay from Cindy MacDonald. Cindy MacDonald filed a Notice of Appeal and Request for Stay of the Final Decision - EA CA-370-06-16, The Gather and Removal of Wild Horses from the High Rock Herd Management Area, located in Washoe County, Nevada. The decision record for the EA's proposed action was issued on August 30, 2006 by this office, and the Notice of Appeal and Request for Stay was received on September 26, 2006.

Please contact us at (530) 279-2712 if you have any questions concerning this action.

Sincerely,

Owen Billingsley
Surprise Field Manager

Enclosures

Cc: Regional Solicitor, Pacific Southwestern Region, USDO/I
2800 Cottage Way, Room E-2753
Sacramento, CA 95825-1890

Tom Pogacnik, CSO-BLM



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Surprise Field Office
PO Box 460
Cedarville, CA 96104
www.ca.blm.gov/surprise

In Reply Refer To:
(CA-370) CA-264

Appeal No. CA-370-06-02
Appeal and Request for Stay of Final Decision of EA CA-370-06-16,
Dated September 26, 2006

Cindy MacDonald
3605 Silver Sand Ct.
N. Las Vegas, NV 89032

vs.

Bureau of Land Management, Surprise Field Office
PO Box 460
Cedarville, CA 96104

Standing

Appellant provided comments in response to the preliminary EA which was made available for a 30-day public review and comment period on July 24, 2006 (refer to EA CA-370-06-16, page 24). Appellant has standing.

Authority

Surprise Field Manager Owen Billingsley made the Final Decision of EA CA-370-06-16 effective upon issuance (August 30, 2006) in accordance with the authority provided in 43 CFR 4770.3 (a) and (c) and 43 CFR, Part 4. Removal of excess wild horses was needed in order to protect the range from the deterioration associated with overpopulation of wild horses and to restore numbers to levels within the established AML (refer to FONSI/Decision Record, page 2, and EA, pages 2-4). During the period of September 11 to September 19, 2006, 368 wild horses were removed from the High Rock HMA and are currently being held in BLM's preparation and holding facility in Litchfield, California.

Timeliness

Appellant's appeal and request for stay was received by the Surprise Field Office on September 26, 2006. The appeal and request for stay were timely.

Request for Stay/Rationale for Motion to Dismiss

In requesting a stay, the burden of proof is on the appellant to demonstrate that a stay should be granted. The Bureau of Land Management believes that a Stay of action is not justified and should not be granted. A petition for stay of decision pending appeals shall show sufficient justification based on the following standards (43 CFR Part 4.21 (b) (1), and are addressed below:

1. The relative harm to the parties if the stay is granted or denied.

A. Appellant argues that the removal of the animals as proposed is permanent and would cause direct and indirect harm to the animals and their current status as wild free-roaming horses, including significant and immediate impacts to current and future herd health and genetic viability (Appeal, Cover Page).

The removal of excess animals from the range will remain as wild horses under the protection of the 1971 Wild Free-Roaming Horses and Burros Act (Act) in BLM managed facilities until such time they are adopted and titled or sold under the December 2004 amendment to the Act. The post-gather population of wild horses in the High Rock HMA is 114 head. These horses and any additional horses returned to the HMA will serve as a baseline population for future genetic variation. Based on a genetic analysis conducted on wild horses gathered from the High Rock HMA in 2001, there is an adequate genetic pool for a self-sustainable herd, and there was no evidence of inbreeding (Genetic Analysis of the Little High Rock Canyon, CA Feral Horse Herd, E. Gus Cothran, March 21, 2002; Department of Veterinary Science, University of Kentucky). Additionally, there are no physical deficiencies encountered in any of the previous gathers. It must be noted that High Rock herd represents a fraction of the meta-population of wild horses which exist in the area, i.e. wild horses from the High Rock herd mix with wild horses from adjoining HMAs including the Fox-Hog and Warm Springs Canyon HMAs (EA, page 5).

The Interior Board of Land Appeals ruled (109 IBLA 126) as follows: "*...section 3(b) (2) of the Act provides explicit direction under which removal of wild horses from the public range is permitted, viz., where there is an overpopulation of wild horses in a given area and removal is necessary in order to restore a thriving ecological balance and prevent a deterioration of the range threatened by that overpopulation. We conclude that this statute provides the sole and exclusive authority for BLM to remove wild horses from the public range.*" Field Manager Billingsley's final decision is consistent with this authority (FONSI/Decision Record, Page 3 and EA, page 4).

B. The relative harm to the public lands administered by the BLM is that continued growth of the herd would cause immediate harm and irreparable impacts to the resources. The BLM has correctly determined that an overpopulation of wild horses exists and that the overpopulation is resulting in deterioration of the range (EA, page 2-4). Consistent with Section 3 (b) (2) of the 1971 Act, the Field Manager's decision to immediately remove excess wild horses is correct, and necessary to prevent continued damage to public lands, and is needed at this time to implement a natural thriving ecological balance.

The public lands managed under the Federal Land Policy and Management Act of 1976 (FLPMA). The FLPMA emphasizes that the public lands are to be managed to protect the quality of scenic, ecological, environmental, and archeological values; to preserve and protect public lands in their natural condition; to provide feed and habitat for wildlife and

livestock; and to provide for outdoor recreation. The FLPMA also stresses harmonious and coordinated management of the resources without permanent impairment of the environment. Under the FLPMA it is not a matter of selecting one use over another use but of balancing the various uses within the land's productive capability. BLM Policy and regulations state that wild horses and burros shall be managed as viable, self-sustaining populations of healthy animals in balance with other multiple uses and the productive capacity of their habitat (CFR 4700.0-6).

2. The likelihood of appellant's success on the merits.

~~The Appellant's focus is outside of the scope of the decision record, and opportunity for challenging the Black Rock –High Rock RMP and the documents that established the AMLs has passed.~~

The decision issued by the Surprise Field Manager implements a maintenance gather, and is consistent with the Appropriate Management Levels established in 1993 and 2001 for the High Rock Herd Management Area. These decisions determined Appropriate Management Levels in accordance with BLM policy and regulations. The decision is also consistent with the objectives, and management decisions of the Resource Management Plan for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area and Associated Wilderness, and other Contiguous Lands in Nevada, July, 2004 (Black Rock-High Rock RMP). Management decisions relevant to the decision record for the EA are specifically: "Horses and burros will be gathered from the HMAs to maintain horses and burros within the AML as funding permits." Any challenge to the AML or the High Rock HMA and the Black Rock – High Rock RMP of is untimely and not appropriately before this court.

The Field Manager Billingsley's final decision is supported by the authority provided in Section 3 (b) (2) of the 1971 Wild Horse and Burro Act, which requires immediate removal of excess wild horses when a determination has been made that excess horses exist. His decision was also made effective upon issuance (August 30, 2006) consistent with the authority provided in 43 CFR 4770.3 (a) and (c) (refer to FONSI/Decision Record, Page 3 and EA, page 4).

3. The likelihood of immediate and irreparable harm if the stay is not granted, and,

Appellant argues BLM failed to address or respond in any significant manner to public concerns and questions regarding the need for the proposed action, significant and immediate impacts to future herd health and genetic diversity, excessive financial impacts, and lack of compliance with law, regulations, and policy (Appeal, Cover Page).

BLM's response to the comments received to the EA was provided for in the decision record. As discussed above, blood was drawn to assess the current degree of genetic diversity for the High Rock herd during the September 2006 gather operation (EA, page 5). Additionally, wild horses from the High Rock herd mix with wild horses from the Fox-Hog and Warm Springs HMAs, resulting in low potential for inbreeding, and provide for adequate genetic resources (EA, page 5 and page 14 – 17). The High Rock herd is self-sustaining, and there is no indication of any significant or immediate impact to genetic diversity expected as a result of the gather and removals (refer to EA, page 21). While census and gather information indicates a productive wild horse population, there are visual observations from the recent

gather that several bands of wild horses were in poor physical condition due to a lack of adequate forage and water conditions.

Any consideration of financial impacts is outside the scope of the proposed action (FONSI/Decision Record, page 5 and EA, page 2). The purpose of EA # CA-370-06-16 was to analyze the impacts associated with potential methods to achieve and maintain the Appropriate Management Level (AML) of wild horses and to assess whether or not fertility control should be applied to mares released back to the range following the gather.

Public involvement of the proposed action consists of a scoping letter for that was mailed to ~~74 interested individuals, groups, and agencies on June 7, 2006.~~ During the 30-day comment period, several comments were received from Wilderness and Sportsman interests in support of the proposed gather and removal of excess wild horses. The preliminary EA #CA-370-06-16 was issued with a 30 day comment period of July 24-August 23, 2006. Over 60 comments were received in response to the Proposed Action evaluated in detail in the EA. The Surprise Field Office addressed these comments in the FONSI/Decision Record, page 4-6.

4. Whether the public interest favors granting the stay.

Under BLM regulations and policy BLM can periodically remove wild horses to achieve and maintain the population within a thriving ecological balance with other associated public land uses. The established appropriate management level provides for a healthy, viable wild horse population while reducing impacts detrimental to riparian and other wildlife habitat. The decision record is supported by BLM laws and regulations and consistent with existing land use plan objectives.

At current wild horse population levels, riparian resources would not improve and would continue to be impacted by excessive utilization and trampling. Riparian functional assessments conducted in 2000 indicate spring sites are at-risk or in non-functional condition due to impacts associated with wild horse populations exceeding the appropriate management level. Left unchecked, further deterioration in riparian health can be expected (EA, page 3 and page 10-11).

Based on the above, public interest would not support granting a stay because: (1) a determination that excess wild horses has been made; (2) immediate removal is needed to prevent further deterioration to the range, and further delays in gathering would increase wild horses impacts on the rangeland resources; (3) Field Manager's final decision was issued effective immediately under authority provided in 43 CFR 4770.3 (a) and (c); (4) the removal is needed to achieve AMLs set under previous decisions (CA-370-01-07 and CA-028-93-03) and to achieve land use plan objectives (EA, pages 2-3).