

U.S. Department of the Interior
Office of Hearings & Appeals
Interior Board of Land Appeals
801 N. Quincy St., MS 300-QC
Arlington, VA 22203

U.S. Department of the Interior
Bureau of Land Management
Mary Jo Rugwell, Field Manager
Las Vegas Field Office
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130-2301

U.S. Department of the Interior
Office of the Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-2753
Sacramento, CA 95825-1890

July 10, 2008

NOTICE OF APPEAL
PARTIAL APPEAL OF FINAL DECISION, FONSI/DR
WATER DEVELOPMENTS RECONSTRUCTION
NEVADA WILD HORSE RANGE HERD MANAGEMENT PLAN
ENVIRONMENTAL ASSESSMENT #NV-052-2008-223
DATED JUNE 23, 2008

PETITION FOR STAY OF FINAL DECISION, FONSI/DR
WATER DEVELOPMENTS RECONSTRUCTION
NEVADA WILD HORSE RANGE HERD MANAGEMENT PLAN
ENVIRONMENTAL ASSESSMENT #NV-052-2008-223
DATED JUNE 23, 2008

-APPELLANT-

Cindy MacDonald

I, Cindy MacDonald, have found the Final Decision, FONSI/DR issued for the Water Developments Reconstruction on June 23, 2008 by the Bureau of Land Management Las Vegas Field Office and Field Manager Mary Jo Rugwell, to be adverse and in error and as such, am petitioning a Requesting of Stay and Notice of Partial Appeal of the Finding of No Significant Impact (FONSI) and Decision Record (DR of the Water Development Reconstruction for the Nevada Wild Horse Range Herd Management Plan, Environmental Assessment #NV-052-2008-223 dated June 23, 2008.

The basis of my Request For Stay and Appeal stems from the Las Vegas Field Office refusing to reconstruct water developments or provide additional water developments unless it is tiered to their conjointly issued FONSI/DR for the Nevada Wild Horse Range Herd Management Plan #NV-052-2008-223.

A Request for Stay and Appeal of the Nevada Wild Horse Range Herd Management Plan is also being filed separately due to a variety of issues, which consequently may take the Interior Board of Land of Appeals several months to years to issue a decision on.

While the merits of the Appeal of the Nevada Wild Horse Range Herd Management Plan undergo the proper legal process to review, postponement and failure by BLM to reconstruct and provide the critical habitat requirement of water to the Nevada Wild Horse Range wild horses, as already stipulated and approved of in the July 2004 Record of Decision for the Nevada Test & Training Range Resource Management Plan and Final Environmental Impact Statement, will result in undue stress, suffering and possibly death to the Nevada Wild Horse Range wild horses.

Therefore, this Request of Stay and Appeal of the FONSI/DR for the Reconstruction of Water Developments in the Nevada Wild Horse Range is only a Partial Appeal of the decision, only so far as it's implementation is tiered and contingent on the approval of the newly developed Nevada Wild Horse Range Herd Management Area.

Statement of Reasons

1. The BLM Las Vegas Field Office was in error in their assertion and publication to the general public that the No Action Alternative, a continuation of the existing management, would deny reconstruction, and improvement of the water developments in the Nevada Wild Horse Range.

In the July 2004 Record of Decision for the Nevada Test & Training Range Resource Management Plan and Final Environmental Impact Statement, the BLM approved of management plans that included the design, development and maintenance of dependable water sources in the following sections.

Section 2.6.7 Fish & Wildlife Management, pg. 12

“Design water developments for wild horses and livestock to reduce potential conflicts with bighorn sheep and/or other wildlife.”

Section 2.6.11, Wild Horses and Burros, pg.14

“Maintain dependable water sources to allow better distribution of wild horses throughout the core area. Develop three to four wells in the area identified for determining AML (core area).

Therefore, BLM was in error in asserting the No Action Alternative consisted of “periodic maintenance” but no further water developments or improvement.

2. The BLM Las Vegas Field Office has postponed the reconstruction, design and development of water sources for at least four years since the approval of the 2004 ROD/RMP. As a result, their failure to insure adequate and dependable water sources for the Nevada Wild Horse Range Wild Horses is in violation of humane handling and accepted animal husbandry practices as cited in CFR 4700.0-5 (e) and has caused undue stress, suffering and possibly death of the Nevada Wild Horse Range Wild Horses.

Further delay in reconstruction, design and development of dependable water sources will continue to be in violation of both the 2004 RMP/ROD as well as constituting an intentional act and/or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community in violation of CFR 4700.0-5 (f).

3. The BLM Las Vegas Field Office has intentionally and deliberately tiered the approval of water reconstruction, design and developments to the authorization of the arbitrary and capricious designations of invalid artificial habitat boundaries and consequently the resulting invalid Appropriate Management Levels (AMLs) for wild horse use in the Nevada Wild Horse Range.

The BLM Las Vegas Field Office has attempted to blackmail and extort the general public to prevent challenge of the validity of their prior and current decisions through the binding their invalid proposals, authorizations and decisions established through the 2004 RMP/ROD as well as the recently approved Herd Management Area Plan by withholding of critical habitat requirements necessary for the survival and health of the Nevada Wild Horse Range wild horses if their decisions are challenged.

This is an intentional act designed to cause suffering to the Nevada Wild Horse Range wild horses and as such is in violation of both the WFRHBA as well as their own CFRs, which demand humane treatment.

4. The BLM Las Vegas Field Office has tiered the development, design and maintenance of water sources to the authorization to eliminate the entire functioning and self-sustaining wild horse herds currently inhabiting the Nevada Wild Horse Range and replacing them with an exclusive non-functioning, non-self sustaining population of castrated stallions.

In other words, if the water developments are to be provided as the proposal is written, it will authorize the permanent eradication of the Nevada Wild Horse Range wild horse herds. If this proposal is challenged, it will authorize undue stress, suffering and possibly death to the Nevada Wild Horse Range herds through denial and withdrawal of water.

Over the last several years, the riparian areas and water sources have been fenced in the proposal area, with many stated areas NOT providing alternate access for wild horse use. Therefore, through the approval of manipulating and withdrawing natural water sources without providing sufficient

mitigation measures to insure water for wild horse use, the BLMs intentional acts and/or failure to act have placed the lives of Nevada Wild Horse Range wild horses at risk.

Relative Harm

The BLM Las Vegas Field Office has authorized a completely lose/lose situation for the Nevada Wild Horse Range wild horses and as such, the court is asked to grant the Request for Stay in part, to allow BLM to continue with the reconstruction, design and maintenance of dependable water sources in the Nevada Wild Horse Range without making it contingent on the entire currently issued FONSI/DR for the Nevada Wild Horse Range Herd Management Plan that includes the authorization of eliminating the entire wild free-roaming self-sustaining wild horse population.

If the water developments aren't maintained, it will cause irreparable harm for the Nevada Wild Horse Range wild horses through undue stress, suffering and up to and possibly including death. If the water developments are reconstructed as the current Herd Management Area Plan is written and issued, it will cause the irreparable harm of authorizing the elimination of the entire wild free-roaming population.

Merits & Likelihood of Success

1. The BLM Las Vegas Field Office failed to accurately portray the No Action Alternative and as such, deliberately mislead the public as to the alternatives available. This is in violation of the National Environmental Protection Act as BLM failed to disclose the truth in their proposed actions and analysis.
2. The BLM Las Vegas Field Office already has the authorization to implement the reconstruction, design and maintenance of dependable water sources as per the 2004 RMP/ROD and it is not necessary to tier that implementation to the newly issued Nevada Wild Horse Range Herd Management Area Plan to carry forward either the 2004 RMP/ROD or the reconstruction, design, development and maintenance of the water sources in the Nevada Wild Horse Range.

The Request for Stay in Part would be in conformance with existing land use plans, compatible with accepted animal husbandry practices, humane treatment, veterinary standards and the Wild Free-Roaming Horse and Burro Act.

To deny the Request for Stay in Part would not be in conformance with existing land use plans, incompatible with accepted animal husbandry practices, veterinary standards, the Wild Free-Roaming Horse and Burro Act and be defined as inhumane treatment of the Nevada Wild Horse Range wild horses.

Public Interest Favors Granting Requested Stay In Part

The humane treatment of wild horses by providing the critical habitat requirement of water for the Nevada Wild Horse Range wild horses is in conformance with accepted standards, laws, policies and the preservation and protection of these animals as outlined in the Wild Free-Roaming Horse & Burro Act.

Granting a Partial Stay of the FONSI/DR allows the bulk of BLMs decision to be carried forward with the only exception being refusing to grant its implementation be tiered to the authorization to eliminate the entire self-sustaining wild free-roaming horse herds.

As such, it favors the public interest to allow BLM to move forward on management plans in accordance with the 2004 RMP/DR to provide dependable water sources that have sat dormant through their failure to act for four years, which in turn has caused the military to haul water at the public expense of \$12k dollars a month for three years, has resulted in necessitating emergency removals of wild horses, has resulted in undue stress, suffering and possible death of a legally affirmed national cultural and historic resource place in BLMs care and has caused undue and unnecessary stress to habitat, rangeland values, wildlife and the remaining existing water sources.

For all these reasons, the Request for Stay in Part serves the public interest, serves BLM in relation to their mandates, policies and laws, protects the Nevada Wild Horse Range wild horses from complete elimination, and encourages the timely implementation of management actions that are LONG overdue.

To grant a Request for Stay in Part is a reasonable alternative and the only alternative that is in conformance with existing land use plans, with the WHFRHBA, and with CFR 4700.0-5(e).

Cindy MacDonald

July 10, 2008