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**NOTICE OF APPEAL
APPEAL OF NEVADA TEST & TRAINING RANGE
RESOURCE MANAGEMENT PLAN
FINAL ENVIRONMENTAL IMPACT STATEMENT (EIS)
AND RECORD OF DECISION (ROD) JULY 2004
NEVADA WILD HORSE RANGE HERD MANAGEMENT AREA**

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

-APPELLANT-
Cindy MacDonald

In the July 2004 approval for the Nevada Test & Training Range Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) through the Finding of No Significant Impact (FONSI) and Record of Decision (ROD), the BLM Director approved of both an unprecedented policy change in the management of wild horses and burros and their habitat.

This included the establishment of approximately 1.3 million acres deemed as a Herd Management Area suitable for wild horse use while simultaneously withdrawing most of this same land as well as critical habitat requirements for wild horse use through the establishment of artificial boundaries designated as a “key management area”, which became the arbitrary and capricious basis for establishing the appropriate levels of wild horse use

This “key or core management level” was then used to limit the productive capacity of the habitat, which in turn authorized and justified the reduction of 50% of the wild horse population through BLMs re-designation of their Appropriate Management Levels, a previous range of 600-1,000 now approved for 300-500, withdraw historical land use and wild horse populations from further protection and preservation documented by BLM themselves at the passage of the Wild Free-Roaming Horse & Burro Act since 1971 and still cited as occurring in the newly designated Herd Management Area boundaries but have now only been granted “incidental use”, and withdrew critical water sources from further use for no discernible reason.

Additionally, BLM further authorized in the Finding of No Significant Impact (FONSI) and Decision Record (DR) dated June 23, 2008, that the Nevada Wild Horse Range Herd Management Plan authorizes the removal of the entire functioning and self-sustaining wild horse herds and replacing them with an exclusive 100% gelding population.

Therefore, I find the decisions and implementations of the July 2004 approval for the Nevada Test & Training Range Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) through the Finding of No Significant Impact (FONSI) and Record of Decision (ROD) as well as the FONSI/DR for the Nevada Wild Horse Range Herd Management Plan dated June 23, 2008 adverse and in error for the following reasons:

1. While BLM is required to identify the appropriate Herd Area boundaries wild horses and burros were occupying at the passage of the Wild Free-Roaming Horse & Burro Act (PL 92-195) and it was appropriate to finally designate these boundaries, BLM also simultaneously approved of designating the entire Herd Area as suitable for wild horse use and granted status of 1.3 million acres as a Herd Management Area.

In accordance with 4710.3-1, the BLM is required to establish Herd Management Areas (HMA) for the maintenance of wild horse and burro herds. The current HMA boundaries fail to do this as the majority of its acreage has been designated by BLM as inappropriate for any management beside “incidental use”.

In the Nevada Test & Training Range Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) through the Finding of No Significant Impact (FONSI) and Record of Decision (ROD) BLM failed to document, report, analyze or explain why or why not the HMA boundaries were or were not suitable for wild horse use.

In the development of a HMA, the BLM is required to delineating each herd management area through the consideration of the appropriate management level for the herd, the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in §4710.4.

The designation of 1.3 million acres as a HMA failed to do this.

2. The BLM has arbitrarily created artificial habitat boundaries designated as a “key or core area” within the HMA boundaries, using habitat limitations of their own choosing to determine the productive capacity of the Nevada Wild Horse Range habitat and its resulting Appropriate Management Levels.
3. The BLM has maintained that the new CMA is to better reflect the original boundaries of the 1962 designation of the Nevada Wild Horse Range before BLM assumed management of the wild horse and burro herds. This is in violation of the WFRHBA as it requires BLM to manage wild horse and burro herds “where presently found” at the passage of the Act in 1971. Furthermore, previous agreements dissolved all prior management policies, laws and considerations for the Nevada Wild Horse Range. BLM cannot go back 30 years later and assert that agreement no longer stands.
4. The Appropriate Management Levels were established based solely on water availability yet BLM only included and examined available water sources within the artificial and arbitrarily designated “core management area”, (CMA), not within the entire area occupied by wild horses at the passage of the 1971 Act nor within the newly designated HMA boundaries. As a result, the new AMLs are invalid.
5. The Appropriate Management Levels were established without any information of carrying capacity of the range, forage availability, utilization levels, or forage monitoring data, either in the new HMA boundaries or in the CMA and are therefore, invalid.
6. The BLM has testified that wild burros have been found historically throughout much of the Nevada Wild Horse Range and the surrounding areas for decades yet has refused to explain or examine why wild burro use has been arbitrarily withdrawn from the Nevada Wild Horse Range, in violation of mandates established in PL 92-195, which require BLM to preserve and protect wild horses and wild burros in the areas they were “presently found” in 1971 or why BLM has authority to remove wild burros from their designated “protected” territories and range.
7. Through the newly approved Nevada Wild Horse Range HMAP, the BLM has authorized the complete elimination of the historic and culturally valuable wild horses in the Nevada Wild Horse Range, the first and oldest protected habitat for wild horses in the country, by replacing them with an exclusive non-functioning or self-sustaining herd comprised completely of castrated stallions.
8. The BLM has authorized the castration of stallions “in the field” and releasing them back in the range within 24-48 hours after surgery. Simultaneously, BLM has mandated that all castrated stallions will be monitored for 7-10 days after surgery. Therefore, this authorization is contradictory and impossible to implement.

9. The BLM has authorized the introduction of sterilized, castrated stallions to be introduced as a component of the Nevada Wild Horse Range wild horses as a “pilot project” with the management requirement to study gelding behavior and impacts to herd social structure. Simultaneously, when BLM issued the FONSI/DR for the Water Development Reconstruction, also dated June 23, 2008, and tiered to the HMAP, under Rationale, the BLM asserted as to why Alternative 3 was not chosen by citing, “However, this alternative would also result in an intensive level of monitoring which is probably not feasible given current and expected future funding and the military’s operations missions”.

Therefore, the BLM has admitted they cannot gain sufficient access to monitor water sources, much less post-surgery geldings and/or behavior of castrated stallions on herd social structures within the proposal area. This is an inappropriate area to initiate a “pilot project” with limited access and where little to no monitoring can be accomplished.

10. The BLM was in error in stating that the No Action Alternative as published in the Preliminary HMAP would not include the use of the fertility control drug PZP. The Nevada Wild Horse Range wild horses have been another “pilot project” in administering PZP since 1996. Therefore, the BLM mislead and inaccurately portrayed the conditions of the No Action Alternative in violation of the National Environmental Protection Act.
11. The BLM has asserted the Nevada Wild Horse Range wild horses have a preponderance of club footed wild horses. While they offered the explanation that this may have been a result of a recessive gene, these wild horses have also been undergoing experimental chemical injections of PZP for over 10 years. When information was requested as to the results of these studies, if these deformities could be a result of BLMs prior management of these wild horse herds, BLM has failed to respond or address these concerns.

As a result, the continuation of injecting wild mares with an experimental drug that may be having adverse impacts resulting in lameness and the resulting euthanasia without providing reasonable information as to whether these impacts are adverse or not, is incompatible with mandates and policies that require BLM to manage wild horse herds in healthy and self-sustaining ways as currently approved in the FONSI/DR Nevada Wild Horse Range HMAP.

Because the AMLs have been arbitrarily established, the removal of 300 additional wild horses and/or any wild burros or mules found within the Nevada Wild Horse Range from the newly designated AMLs is inconsistent with the WFRHBA and BLMs Code of Federal Regulations as BLM has failed to provide sufficient evidence that 600-1,000 wild horses within the HMA boundaries is “excessive” to the productive capacity of the habitat, poses risks to rangeland integrity, or initiates resource degradation without their removals.

Since BLM has no authority to remove wild horses unless they are excessive in relationship value to the productive capacity of the habitat or thriving ecological balance and they have failed to establish the productive capacity of the habitat, the newly established AMLs of 300-500 are invalid.

12. The removal of 300 additional wild horses from the Nevada Wild Horse Range poses risks to their free-roaming status while the merits of this appeal are being reviewed. Due to the amendment of the WFRHBA allowing BLM to unconditionally sell wild horses past 10 years of age or after three unsuccessful attempts at adoption, or even the newly proposed need to euthanize “excess” wild horses and burros to save BLM money, currently, there is no system in place to return the Nevada Wild Horse Range wild horses once they have entered BLMs “system” as they may be sold or dead by the time IBLA rules on this appeal. Therefore, the former AMLs of 600-1,000 wild horses must stand until this issue is decided.

Relative Harm

The BLM is attempting to circumvent proper channels, legal process, public involvement and NEPA requirements for re-establishing policies and regulations governing management of wild horse and burro herds and their habitat. There is no precedent for establishing HMA boundaries that are deemed suitable for wild horse and burro use while conversely denying this same area is suitable for wild horse and burro use. The areas that are inappropriate or unsuitable for wild horse or burro use needs to be withdrawn appropriately through an accurate designation of HMA boundaries, not through arbitrary designation of a CMA to cite limited habitat and/or the critical habitat components necessary to establish invalid AMLs.

Merits & Likelihood of Success

- 1 The BLM has failed to establish a Herd Management Area that is in conformance with existing law and policy regarding establishment and maintenance of wild horse and burro habitat.
- 2 The BLM has failed to provide reasonable information as to why the new HMA boundaries were deemed suitable for wild horse use through their exclusion of carrying capacity and forage or water availability in public documents.
- 3 The BLM has failed to establish the new AMLs are based on the productivity and capacity of the Nevada Wild Horse Range Herd Management Area habitat and are therefore, invalid.
- 4 The BLM has failed to comply with the mandates that wild horses and burros will be managed “where presently found” at the passage of the Act without providing reasonable information as to why wild horses and burros will be excluded from these areas.
- 5 The BLM has authorized the removal of documented historic herds for no discernible reason and they have no authorization to do so.
- 6 The BLM has authorized the entire elimination of the wild free-roaming herds and replacing them with an exclusive non-functioning, non-self sustaining herd, turning the Nevada Wild Horse Range into an exclusive domestic “holding area” for captured castrated wild stallions.
- 7 The BLM has failed to provide reasonable management plans that will monitor herd structure and social impacts through the addition of castrated stallions as a component of the wild free-roaming herds.
- 8 The BLM has failed to provide reasonable evidence that prior management of the Nevada Wild Horse Range wild horses has not had adverse effects and resulted in deformities that have affected the health of these wild horses and their resulting euthanasia’s.

- 9 The BLM is attempting to circumvent stipulations that required them in the 2004 RMP/ROD to provide, maintain, design and develop additional water sources in accordance with both the ROD and humane treatment of wild horses and burros placed in their care, which was established as a mitigation measure for the fencing and exclusion of wild horses from the majority of naturally occurring water sources within the proposal area.
- 10 The BLM has no assurances that wild horses will maintain their free-roaming status and will not be commercially exploited, sold or killed during the review of this appeal.
- 11 The BLM is required to give special consideration to Special Status Species, species that are protected under state law and BLM has failed to do so.
- 12 While the management of wild horse herds within the Nevada Test and Training Range is deemed secondary to the military missions, wild horses have been documented in areas since 1972 that were compatible with military mission but now have been arbitrarily excluded from use since 2004. There is no record of any accidents or wild horse herds posing safety issues to the military missions and the military has been hauling water to wild horse herds to supplement BLMs failure to properly act or manage the wild horse herds as they are required to. The establishment and maintenance of wild horse and burro herds has been compatible with military missions for 46 years.
- 13 The BLM continues to fail to examine the cumulative impacts to wild horse and burro herds on public lands, how their management and policies have impacted wild herds on a cumulative national scale, and how this refusal to examine these cumulative impacts has affected the preservation and protection of wild horse and burro herds and their habitat has resulted in endangered wild burro population levels and placing many of the remaining wild horse herds at dangerously unsustainable levels.

The failure of BLMs HMAP to conform and comply to a multitude of established laws, policies, regulations and mandates indicate the merits of the case are valid and the likelihood of success is high.

Favors the Public Interest

The removal of an additional 300 wild horses does not favor the public interest as BLM has claimed they have no money to hold them and are considering Instant Title, which is a guaranteed slaughterhouse end because the “limited sales” have been found to be “ineffective” or euthanizing these same wild horses due to budgetary constraints.

The majority of the public has been, and continues to be extremely opposed to these options and removing 300 additional wild horses through invalid AMLs places them at extreme risk to meet one of these ends.

The establishment of new policy, regulation and requirements for the management of wild free-roaming herds and their habitat through improper legal process and circumvention of public participation is not in the public interest. Proper legal processes are needed to allow BLM to declare a HMA is both suitable and simultaneously unsuitable for wild horse and burro use.

The removal of the entire function, self-sustaining wild horse herds in the Nevada Wild Horse Range does not favor the public interest as they were lawfully and legally protected as a cultural and historic resource with mandates to be protected and preserved for future generations. The BLM is allowed to “manage them”, they are not allowed to arbitrarily eliminate them for administrative convenience or through arbitrary and capricious decisions.

It also favors the public interest to require BLM to be reasonably accountable for their determinations, that their decisions be based on valid levels of resource availability, utilization levels, and a reasonable measure of scientific data to support their claims and consequent decisions. BLM has failed to do this and it is not in the interest of the public to allow them to implement decisions based on prejudice, opinions, contradictory data and information or unreasonable management plans that BLM themselves have stated they are unable to implement.

As a result, I have found all the FONSI/DR adverse and am submitting a Notice of Appeal and Request for Stay of the Nevada Wild Horse Range Herd Management Area Plan and the arbitrary establishment of the HMA boundaries, the CMA boundaries and the resulting AMLs tiered to these decisions.

The only portion of the Appeal and Request for Stay that is not being challenged, as cited in the conjointly submitted Petition for Stay and Partial Appeal of the FONSI/DR for the Reconstruction, Design, Development and Maintenance of Water Developments in the Nevada Wild Horse Range Herd Management Area Plan, is the implementation of this decision, unconnected with the HMAP, as it's implementation is in accordance with humane standards of animal husbandry and a necessary requirement and mitigation measure to former management actions and decisions that have caused, and continue to cause the Nevada Wild Horse Range wild horses undue stress, suffering and possibly death.

Cindy MacDonald

July 10, 2008