

Bureau of Land Management
National Wild Horse & Burro Program
Don Glenn, Division Chief
1849 C St. NW WO-260
Washington, DC 20240

July 29, 2008

RE: Nevada Wild Horse Range Wild Horse Removals
Circumvention of NEPA and BLM Policy

Dear Mr. Glenn:

I am writing in regards to the BLMs recent removals of wild horses from the Nevada Wild Horse Range in Nevada, an action that failed to follow legal requirements under NEPA guidelines as well as deviating from the Bureau's own established policy for required procedures of wild horse removals under the category of "Escalating" problems.

The BLM Las Vegas Field Office issued a FONSI/DR on June 23, 2008 for a Herd Management Area Plan for the Nevada Wild Horse Range. The HMAP sent to the Interested Public stated that wild horse removals from the Nevada Wild Horse Range were tentatively scheduled for December 2008.

In conjunction with the HMAP documents approved and mailed to the Interested Publics on June 23, 2008, the LVFO also provided a Question & Answer Sheet regarding the Nevada Wild Horse Range wild horses that included a brief announcement that wild horse removals would be initiated under an "emergency" declaration beginning on June 27, 2008 due to a shortage of food and water.

The referenced Q & A Sheet is the only documentation the LVFO published for this action and was confirmed by Nevada Wild Horse & Burro Lead, Susie Stokke via email on July 21, 2008. (See Attachment I).

When I asked Ms. Stokke under what authority BLM removed the Nevada Wild Horse Range wild horses, Ms. Stokke replied via email on July 21, 2008 with the following, (See Attachment II).

"Preparation of an environmental assessment document and issuance of a decision record/FONSI is not required when a gather is conducted on an emergency basis. Refer to attached for additional information: (See attached file: im2004-151 escalating and emergency issues.doc)"

As stated, this communication included the attachment of IM2004-151 Escalating and Emergency Issues.

Upon review of this memo, Ms. Stokke's assertions were in absolute error as the policy and criteria outlined from the National Program Office in IM2004-151 specifically states that NEPA documents, gather plans and FONSI's are required under Escalating Issues. (See Attachment III)

The IM defines an Escalating Issue as,

1. Escalating Problems

Escalating Problems are defined as deteriorating conditions resulting in a declining availability of forage/water that will negatively affect animal condition and rangeland health. Causal factors are normally drought and/or animal numbers in excess of AML. These situations are normally detectable four to six months or longer in advance of a situation becoming critical.

Numbers to be removed are to be managed within state removal targets and should be determined by careful assessment of rangeland conditions/monitoring data and through the National Environmental Policy Act (NEPA) review process for the gather plan/environmental assessment.

5. **NEPA and Gather Plans are required.**

BLMs Nevada State Office and the Las Vegas Field Office were well aware of the Escalating Issues of the Nevada Wild Horse Range wild horse population, which is publicly documented by BLM for at least a year with respect to deteriorating conditions as is evidenced by,

1. The emergency removals conducted on July 6-8, 2007 due to critical water shortages within the NWHR as a result of fencing off the majority of viable sources from wild horse access and older, dysfunctional water systems that BLM had failed to repair for at least 3 years prior to the emergency removals, and
2. The postponement of wild horse removals in December 2007 due to cited other, more urgent removals in Nevada, a fact that was included in the Q & A Sheet as well as in a letter to the Interested Public released by the LVFO on December 18, 2007. (See Attachment IV)

Due to this documented evidence, the LVFO was well aware that removals of wild horses in the Nevada Wild Horse Range were an "Escalating Issue" and fits the criteria as defined in IM2004-151, which require environmental assessments, gather plans and a FONSI/DR.

Furthermore, the BLM had sufficient time to follow the appropriate NEPA process as BLM was aware that removals were to be implemented as of September 2007 when they released the Preliminary Gather EA NV-052-2007-362, again in December 2007 with the gather postponement and throughout the spring of 2008 as the LVFO developed the HMAP with a preliminary EA released in April.

Additionally, wild horse populations were estimated by the LVFO to be well over the newly established AMLs for the NWHR for four years prior to the "emergency removals".

Despite this well established evidence on multiple levels that a wild horse gather would be required by BLM in the NWHR based on federal law, the LVFO's assertions and last summers emergency removals, it was blatantly obvious that similar conditions would most likely develop in the summer of 2008. Yet the LVFO and Nevada State Program Office failed to follow NEPA requirements, national policy and criteria established and required through IM2004-151.

The evidence overwhelmingly indicates an intentional and willful act by the BLM LVFO to circumvent required legal mandates and public involvement for actions taken on public lands was implemented to covertly remove wild horses from the Nevada Wild Horse Range without proper legal authorization to do so.

While I am aware that BLM is required by to remove wild horse populations in areas they are deemed "excessive" by the Bureau in relation to the thriving ecological balance, this requirement does not excuse BLM from following federal law to implement actions under the specific conditions as outlined above.

The nature of the emergency was not "sudden" but was well known for many months prior to the removals and as such, by BLMs own policy, required legal adherence to other established laws and appropriate documentation available for public review was required.

This letter is to serve as an opportunity for BLM to respond to these apparent violations regarding the covert and unauthorized removals of the Nevada Wild Horse Range wild horses and to request that BLM address what actions will be taken to remedy this willful and intentional circumvention of federal laws the Bureau is required to abide by regarding public resource management and actions implemented on public lands.

For your additional consideration, while it was preferable to offer BLM an opportunity to respond to these violations first, due to time constraints of the appeal process through the Interior Board of Land of Appeal, an additional request for proper administrative review of this action was filed with IBLA on July 24, 2008.

Please reply to the address listed below.

Sincerely,

Cindy MacDonald

CC: BLM Director, Jim Caswell
BLM Deputy Director, Henri Bisson
BLM Nevada State Director, Ron Wenker
BLM Las Vegas Field Office Field Manager, Mary Jo Rugwell

Attachment I

Personal Communication via Email

Nevada Wild Horse & Burro Lead, Susie Stokke

Confirmation of Inadequate NEPA Review

July 21, 2008

----- Original Message -----

From: [Susie Stokke@blm.gov](mailto:Susie_Stokke@blm.gov)

To: cindy

Sent: Monday, July 21, 2008 11:16 AM

Subject: Re: Nellis Wild Horse Gather

The need to complete the emergency gather was referenced in the Q and A's which accompanied the HMAP EA and Decision(s) on June 23, 2008 (refer to information below). Additionally, the LVFO will be following up the gather with a letter to the interested parties (forthcoming over the next few weeks).

Q – What is the current number of wild horses in the Nevada Wild Horse Range?

A – The wild horse population is estimated at 1,400 animals (which includes the addition of the 2008 foal crop). The current population of wild horses was estimated based on the aerial census conducted in July 2007.

An emergency removal of about 1,100 wild horses is planned beginning June 27, 2008. The gather is expected to last about 20 days and will be completed through water trapping. An emergency removal is needed because the current overpopulation of wild horses has limited food and water. (A planned gather of this HMA was postponed in December 2007 due to drought and fire emergencies in other parts of Nevada). Wild horses are traveling 5-10 miles every day between forage and water. This is an emergency gather; the excess animals will be captured and removed. No additional population control methods will be implemented at this time (i.e. fertility control, adjustment of sex ratios, or gelding). Competition for the limited available forage and water is expected to decrease following removal of the excess wild horses; there should be adequate food and water to support the remaining wild horse population in a healthy condition until the next regularly scheduled gather.

Once they are gathered, animals will be transported to BLM corral facilities in Ridgecrest, California and Palomino Valley, Nevada where they will be fed and watered and receive inoculations against disease and a unique freezemark number. They will be available for adoption beginning approximately 45 days after they arrive at the two facilities.

Attachment II

Personal Communication via Email

Nevada Wild Horse & Burro Lead, Susie Stokke

Authorization for Wild Horse Removals

July 21, 2008

----- Original Message -----

From: [Susie Stokke@blm.gov](mailto:Susie_Stokke@blm.gov)

To: cindy

Sent: Monday, July 21, 2008 10:57 AM

Subject: Re: Nellis Wild Horse Gather

Preparation of an environmental assessment document and issuance of a decision record/FONSI is not required when a gather is conducted on an emergency basis. Refer to attached for additional information:

(See attached file: im2004-151 escalating and emergency issues.doc)

Attachment III

National Program Office

National Policy Wild Horse and Burro Management

IM2004-151 Escalating and Emergency Issues

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

March 16, 2004

In Reply Refer To:
4710/4100 (WO260) P

EMS TRANSMISSION 03/30/2004
Instruction Memorandum No. 2004-151
Expires: 09/30/2005

To: All Field Officials (except Alaska & Eastern States)

From: Assistant Director, Renewable Resources and Planning

Subject: Establishment/Adjustment of Appropriate Management Levels, and Managing
Planned Escalating Problem and Emergency Gathers
DD: AML Establishment Schedule 04/15/2004

Program Area: Wild Horse and Burro Program

Purpose: This Instruction Memorandum (IM) communicates guidance and policy to Bureau of Land Management (BLM) Field Offices for completion of Appropriate Management Level (AML) establishment, and procedures to identify, prioritize, and mitigate potential and actual emergencies involving wild horse and burro (WH&B) gathers.

Policy/Action:

A. Establishment/Adjustment of Appropriate Management Levels

Effective management of rangelands and WH&B herds requires the establishment of AMLs for all Herd Management Areas (HMA) and on WH&B ranges. Establishment of AML is necessary to achieve the goals of the *2001 Strategy to Achieve Healthy Lands and Viable Herds-The Restoration of Threatened Watersheds Initiative*. Fifty-one HMAs do not have established AMLs. Each state is required to submit a schedule for completion of initial AML establishment to WO-260 by 04/15/04. All AMLs are to be established by the end of FY05, and should be set in a manner that accommodates a four year gather cycle.

Consideration should be given to either modifying the existing AML, or converting of the HMA to Herd Area status (inactive), where serious habitat deficiencies exist and result in repeated problems.

To make these types of changes, monitoring data and a rangeland health assessment/evaluation must indicate that wild horses and/or burros cannot be managed as a self-sustaining population of healthy animals in balance with other uses and the productive capacity of their habitat.

B. Management of Unplanned and Emergency Gathers

Rangeland and animal health are the top resource priorities in the WH&B Program. Due to changing conditions, unplanned gathers are necessary every year and result in the re-direction of limited resources to critical areas. These deviations from planned work disrupt the national effort to achieve AML in all HMAs by 2005. Situations that may require adjustments in the National Gather Schedule are identified as: 1. Escalating Problems, and 2. Emergencies.

1. Escalating Problems

Escalating Problems are defined as deteriorating conditions resulting in a declining availability of forage/water that will negatively affect animal condition and rangeland health. Causal factors are normally drought and/or animal numbers in excess of AML. These situations are normally detectable four to six months or longer in advance of a situation becoming critical. If the present situation is a result of drought, refer to WO IM No. 2003-074 (FY 2003 General Drought Management Direction), dated 01/28/03, and use the four-phased approach for detection and management of drought impacts as it relates to wild horses and burros. Adjustments in WH&B numbers due to Escalating Problems will be managed within existing state removal targets. Gathers within a state are to be prioritized according to rangeland conditions/monitoring data, water availability, animal condition, and other unique resource needs.

If AML has not been established or if litigation has resulted in a delay of AML establishment, action to gather should be initiated before animal and rangeland health become emergencies.

Determining the number of animals to be removed is complex and controversial. Numbers to be removed are to be managed within state removal targets and should be determined by careful assessment of rangeland conditions/monitoring data and through the National Environmental Policy Act (NEPA) review process for the gather plan/environmental assessment.

Court ordered gathers and removals of nuisance animals and/or those that stray outside of HMAs are also to be managed within individual state gather targets.

The following process will be used when state gather targets are inadequate to meet Escalating Problem gather needs, and individual State Offices have followed the policy of prioritization of gather/removals.

1. State Offices should provide early notification (4/6-month minimum) to the National Program Office (NPO) of inadequate removal targets and funding shortages. WO will work with the affected state to attempt resolution of the problem.

2. NPO field visits for verification/support of state determinations may be conducted if interstate adjustments in gather targets are necessary.
3. Interstate adjustments in allocated gather targets will require Steering Committee review.
4. Removals will be structured to mitigate the existing problem.
5. **NEPA and Gather Plans are required.**

Factors that will be considered in determining adjustments in gather targets are:

- a. Rangeland and animal health.
- b. Effective use of the prioritization process.
- c. Actions taken to mitigate or alleviate the impacts.
- d. Commensurate and/or appropriate actions taken to adjust livestock use when livestock contribute to unacceptable rangeland impacts and the impacts are not solely related to excess numbers of WH&Bs.

The key concept is that escalating problems should be detected early and managed within the individual state gather priorities on a “most critical first” basis so they do not become “emergencies.”

2. Emergencies

An Emergency is defined as a situation that develops unexpectedly and threatens the immediate health and welfare of a WH&B population and/or their habitat. Examples of emergencies include fire, insect infestation, disease or other events of a catastrophic and unanticipated nature.

When an emergency is identified, the following steps will be taken in priority order:

1. State lead notifies NPO.
2. NPO will work with the affected State to mitigate the emergency and schedule the gather.

3. Intrastate adjustments in gather priorities will be made to accomplish the gather within the state's removal target.
4. If the emergency results in a shortage of public land forage and/or water, commensurate and/or appropriate action to adjust livestock grazing or close livestock allotments in whole or part are required for emergency gather approval.
5. If the required adjustment in numbers results in a reduction of a population below the low point of AML, rationale will be included with the gather request.
6. Some emergency actions are excluded from NEPA requirements (H-1790-1 I-B2), but require consultation with CEQ. If timeframes permit, NEPA and gather plans are required prior to animal removal. It is standard procedure for decisions to be issued Full Force and Effect. If immediate action is required, emergency actions should be documented and a report prepared after resolution of the problem. Public notification may be in the form of press releases as soon as feasible.

If fiscal resources are inadequate to manage the emergency at the State level and an adjustment in national priorities is required, NPO will immediately initiate a field review. Factors to be considered in gather approval are as follows:

1. The nature and extent of the problem.
2. Rangeland and animal health.
3. Appropriate actions taken concerning livestock use (described above).
4. Actions taken to mitigate or alleviate the impacts.
5. WH&B Steering Committee review if an adjustment in interstate gather targets is required.

The key concept is that emergencies occur suddenly, unexpectedly and require immediate action. An emergency poses an imminent threat to the health and survival of a population of WH&Bs and/or their habitat.

Time frame: Effective immediately.

Budget Impact: FY02 Management Information System data indicate an average cost of \$20,000 per unit to establish the initial AML in a HMA. Adjustments in existing AMLs result in a similar level of work and commitment of fiscal resources.

Management of Escalating Problem and Emergency gathers would result in monitoring, data interpretation, report preparation and prioritization work that is routine to the program and will not result in additional costs. When these gathers are managed routinely as part of the annual program, costs should not increase significantly. NPO review of problem areas will result in additional travel costs estimated at \$10,000 per year.

Background: Establishment of AMLs began in the late 1970s and is critical to the effective management of rangelands and WH&B herds. Accomplishing the establishment of AMLs has been an increasingly high priority work item and is critical to accomplishing the goals of the *2001 Strategy to Achieve Healthy Lands and Viable Herds-The Restoration of Threatened Watershed Initiative*.

Escalating Problem and Emergency gathers often are a necessary part of the WH&B Program. In FY02, BLM removed 2,330 additional wild horses due to fire/drought. The program has enough history to enable each state to predict their gather needs relatively accurately. These fiscal needs should be planned and built into each budget request. Based on past experience the WO can project “on the average” emergency removal numbers on a national basis and plan accordingly.

Manual/Handbook Sections Affected: None

Coordination: This policy was coordinated with State Offices, Field Offices, the Wild Horse and Burro Advisory Board and the Solicitor’s Office.

Contact: The primary contact person is Ron Hall, National Program Office, at (775) 861-6623.

Signed by:
Thomas H. Dyer
Acting Assistant Director
Renewable Resources and Planning

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

Attachment IV
BLM Las Vegas Field Office
Interested Party Letter
Nevada Wild Horse Range Gather Postponement
December 18, 2007