

NOTICE OF THE FIELD MANAGER'S PROPOSED DECISION HWY 299 Nuisance Wild Horse and Burro Removal

Project Name: HWY 299 Nuisance Wild Horse and Burro Removal
Project Number: DOI-BLM-CA-N020-2022-0001-CX

Description of Proposed Action

The purpose of the Proposed Action is to respond to the public safety risk posed to the motorized public and to Wild Horses congregating on and along California Highway 299 in Cedarville, California. The purpose of this action is also to respond to two private landowner's requests for removal from their private land. The Proposed Action would authorize the removal of up to 25 wild horses adjacent to Hwy 299 on BLM administered lands. Wild horses are migrating off of the Carter Reservoir Herd Management Area due to a lack of water and availability of forage within the HMA. A water trap at Laxague Well would be utilized to facilitate their removal. Traps with weighted swing gates would be installed at Laxague Well to facilitate passive gathering techniques. All trapped horses would be removed regardless of age, sex, type, conformation, size or color. No horses will be returned to the HMA, and no population controls will be implemented. Gathered wild horses would be prepared for the BLM Wild Horse and Burro Adoption Program.

Authority

Wild Horse and Burro Act of 1971 as Amended (Public Law 92-195), Section 4

"If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary, who shall arrange to have the animals removed."

Land Use Conformance

The proposed action is in conformance with the Surprise Field Office Resource Management Plan (RMP) and Record of Decision (ROD) approved in April 2008, because it is clearly consistent with the RMP objectives as follows:

- Manage wild horses and burros in accord with the Wild Free-Roaming Horses and Burros Act (1971, as amended) and with other laws and regulations that may apply.

NEPA Compliance

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with H-1790-1-National Environmental Policy Act Handbook, Appendix 4 – 150.

The removal of wild horses or burros from private lands are categorically excluded under the US Department of Interior, Bureau of Land Management, Department Manual, Series 31, part 516 chapter 11, subpart D. Rangeland Management:

- (4) Removal of wild horses or burros from private lands at the request of the landowner.
- (5) Processing of excess wild horses and burros.
- (6) Approval of the adoption of healthy, excess wild horses and burros.

Decision

Based on my review of this Categorical Exclusion (CX), it is my final decision to authorize the removal of up to 25 Wild Horses congregating on and along HWY 299 in Modoc County, California adjacent to the Carter Reservoir HMA as described in the attached CX.

In accordance with 43 United States Code 1701*et seq.*, it is my decision to approve the removal of wild horses from private lands, as reviewed in DOI-BLM-CA-N020-2022-0001-CX. I find that this action falls within one of the categories of actions which the BLM has determined do not have a significant effect on the quality of the human environment and for which, therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required (40 Code of Federal Regulations 1508.4). A CX review has been conducted in accordance with 516 Departmental Manual Chapters 1 through 6 and no exceptions to the categorical exclusions apply.

This decision is issued effective immediately, in accordance with Title 43 Code of Federal Regulations 4770.3(c). Pursuant to Title 43 Code of Federal Regulations 4720.2-1, the authorized officer shall remove stray wild horses and burros from private lands as soon as practical. This action will reduce property and resource damage on private lands.

Rationale

Wild horses congregating on and along a major California highway constitutes a risk to both Wild Horses and the public at large. The Bureau of Land Management is charged with the care of Wild Horses. It is in the best interest of both the Wild Horses and the motorized public to remove these horses that are congregating on and along Highway 299 in Modoc County, California.

As described in the Proposed Action, A water trap at Laxague Well would be utilized to facilitate the removal of Wild Horses congregating on and along Highway 299. Traps with weighted swing gates would be installed. All trapped horses would be removed regardless of age, sex, type, conformation, size or color. No horses will be returned to the Carter Reservoir HMA, and no population controls will be implemented. Gathered wild horses would be prepared for the BLM Wild Horse and Burro Adoption Program.

Administrative Remedies

Any applicant, permittee, lessee or other person whose interest is adversely affected by the livestock grazing portions of this Proposed Decision may file a protest under the provisions of 43 CFR §4160.1, in person or in writing to the Applegate Field Manager, 708 W. 12th Street, Alturas CA 96101 within 15 days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error.

In accordance with 43 CFR §4160.3 (b), in the absence of a protest, the Proposed Decision will become the Final Decision of the authorized officer without further notice unless otherwise provided in the Proposed Decision. In the event one or more protests are received, the authorized officer will consider the protest points and issue a final decision.

In accordance with 43 CFR §4.470, §4160.3(c) and §4160.4, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 CFR§ 4.470, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in Title 43 Code of Federal Regulations (CFR) Part 4 and BLM Form 1842-1. If an appeal is taken, a notice of appeal must be filed in the Applegate Field Office, Bureau of Land Management, U.S. Department of the Interior, 708 W. 12th Street, Alturas CA, 96101 within 30 days from receipt of this decision.

The appellant has the burden of showing the decision appealed from is in error. If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the board, pursuant to Title 43 of the Code of Federal Regulations, Part 4, Subpart E, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. Standards to Obtaining a Stay: Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- (4) Whether the public interest favors granting the stay.

Approved By:

Craig R. Drake,
Applegate Field Manager

Date

Contact Person:

Kevin Kunkel
Rangeland Management Specialist
(530) 279-2718

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL	A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that they wish to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
2. WHERE TO FILE	
NOTICE OF APPEAL.....	US Bureau of Land Management, Applegate Field Office 708 W. 12th Street Alturas CA 96101
WITH COPY TO SOLICITOR.....	Regional Solicitor, Pacific Southwest Region, U.S. Department of Interior, 2800 Cottage Way, E-1712 Sacramento, CA 95825
3. STATEMENT OF REASONS	Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).
WITH COPY TO SOLICITOR.....	Regional Solicitor, Pacific Southwest Region, U.S. Department of Interior, 2800 Cottage Way, E-1712 Sacramento, CA 95825
4. SERVICE OF DOCUMENTS	A party that files any document under 43 CFR Subpart 4, must serve a copy of it concurrently on the appropriate official of the Office of the Solicitor under 43 CFR 4.413(c) and 4.413(d). For a notice of appeal and statement of reasons, a copy must be served on each person named in the decision under appeal and for all other documents, a copy must be served on each party to the appeal (including intervenors). Service on a person or party known to be represented by counsel or other designated representative must be made on the representative. Service must be made at the last address of record of the person or party (if unrepresented) or the representative, unless the person, party or representative has notified the serving party of a subsequent change of address.
5. METHOD OF SERVICE	If the document being served is a notice of appeal, service may be made by (a) Personal delivery; (b) Registered or certified mail, return receipt requested; (c) Delivery service, delivery receipt requested, if the last address of record is not a post office box; or (d) Electronic means such as electronic mail or facsimile, if the person to be served has previously consented to that means in writing. All other documents may be served by (a) Personal delivery; (b) Mail; (c) Delivery service, if the last address of record is not a post office box; or (d) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means in writing.
6. REQUEST FOR STAY	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a Notice of Appeal (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your Notice of Appeal (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

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