

Charles A. Jones, Nevada Bar #6698  
 Jones Law Firm  
 9585 Prototype Ct. Suite B  
 Reno, NV 89521  
 (775) 853-6440  
 Fax (775) 853 6445  
 caj@cjoneslawfirm.com

Jordan Beckett OSB #120666 *Pro Hac Vice Application To Be Filed*  
 Beckett Law Office PC  
 2305 Ashland St. Suite C 311  
 Ashland, OR 97520  
[jordan@roguevalleylawyer.com](mailto:jordan@roguevalleylawyer.com)  
 (541) 510-0333  
 Fax: (541) 210-9294

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

CITIZENS AGAINST EQUINE SLAUGHTER,  
 and PROTECT MUSTANGS,

Plaintiffs,

vs.

The UNITED STATES FOREST SERVICE,  
 a department of the United States Department  
 of Agriculture; JEFF ULRICH, Santa Rosa District  
 Ranger; the UNITED STATES BUREAU OF  
 LAND MANAGEMENT, a department of the  
 United States Department of Interior,

Defendants.

Case No:

PLAINTIFFS' COMPLAINT  
 FOR DECLARATORY AND  
 INJUNCTIVE RELIEF

## INTRODUCTION

1. This is a civil action for declaratory and injunctive relief under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.* The claims arise from the defendant's violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and its implementing regulations, 40 C.F.R. §§ 1500-1508, the Wild and Free Roaming Horses and Burros Act (“WFRHBA”) §§ 1331 *et seq.*, and its implementing regulations, 36 C.F.R. §§ 222.20 - 222.36, as well as the APA, 5 U.S.C. §§ 551-553.

2. Defendants the United States Forest Service (“USFS”) and the Bureau of Land Management (“BLM”) violated federal law with the issuance of the Notice of Intent to impound unauthorized livestock (“Notice”) in conjunction with the Fort McDermitt Tribal Council on and in the vicinity of the Humboldt-Toiyabe National Forest.

3. Plaintiffs seek (1) an order declaring that the Defendant failed to comply with NEPA, the APA, and the WFRHBA, (2) an order enjoining defendant from undertaking activities authorized by the Notice unless and until Defendant complies with NEPA, the WFRHBA, and the APA, and (3) an award of Plaintiff’s reasonable attorney fees and costs associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and (4) any additional relief the Court deems just and equitable.

## JURISDICTION

4. This Court properly has jurisdiction over this action pursuant to 28 U.S.C. §§ 1346 (United States as a defendant), 1331 (federal question), 2201 (injunctive relief), and 2202 (declaratory relief). Defendant USFS is an agency within the United States Department of Agriculture; this cause of action arises under the laws of the United States, including the APA,

1 WFRHBA, and NEPA. Judicial Review is appropriate as Plaintiffs are suffering a legal wrong,  
2 an actual, live controversy exists between the parties, and Plaintiffs are challenging a final  
3 agency action under the APA, 5 U.S.C. §§ 702-706.  
4

5 5. Declaratory relief is appropriate under 5 U.S.C. §§ 703-706 and 28 U.S.C. § 2201.  
6 Injunctive relief is appropriate under 5 U.S.C. §§ 703-706 and 28 U.S.C. § 2202.

#### 7 **VENUE**

8 6. Venue is appropriate under 28 U.S.C. 1391(e) because the decision giving rise to this  
9 complaint was made by Jeff Ulrich, District Ranger, USFS Santa Rosa Ranger District, in Elko  
10 County, Nevada.  
11

#### 12 **PARTIES**

13  
14 7. Plaintiff Citizens Against Equine Slaughter ("CAES") is an Oregon non-profit  
15 corporation based in Ashland, Oregon, and is comprised of equine advocates and supporters  
16 across the United States. CAES is dedicated to stopping the practice of equine slaughter,  
17 protecting domestic and wild horses from cruel and harmful practices including illegal round-ups,  
18 and educating the public about the decisions and activities of the government that impact  
19 equines. Members of CAES regularly observe, study, aesthetically enjoy, and derive recreational  
20 value from wild and free-roaming horses, feral horses, and domestic horses. These activities  
21 include but are not limited to hiking, photography, personal, spiritual, and professional pursuits,  
22 as well as observing wild, free-roaming horses in their native habitat. Members of CAES enjoy  
23 observing, photographing, and appreciating wild and companion horses. The interests of CAES  
24 and its members in observing, studying, and enjoying horses, and otherwise protecting these  
25 animals from harassment, impoundment, and slaughter are injured by Defendants' decision to  
26 authorize the present round up in contravention of federal law.  
27  
28

1 8. Plaintiff Protect Mustangs is a conservation group based in Berkeley, California, with  
2 members dedicated to protecting native wild horses. The mission of Protect Mustangs is to  
3 educate the public about the indigenous wild horse, protect and research American wild horses  
4 on the range and help those who have lost their freedom. Members of Protect Mustangs regularly  
5 film, write about, photograph, observe, study, aesthetically enjoy, and derive recreational value  
6 from wild and free-roaming horses, feral horses and return-native horses. These activities include  
7 but are not limited to researching wild equine behavior patterns in the natural environment,  
8 researching wild horses in captivity, researching domestic horses' wild behaviors and core  
9 psychology resembling the wild horse, field research of natural wild horse habitat, study of the  
10 natural hoof maintenance, public outreach and education regarding return-native and indigenous  
11 wild horses, finding homes for captive wild horses after roundups, training captive wild horses,  
12 teaching children about wild horses, nature and the American West, hiking, photography,  
13 filmmaking, writing, personal, spiritual, and professional pursuits. Members of Protect Mustangs  
14 enjoy observing, photographing, filming, writing about and appreciating wild and companion  
15 horses. The interests of Protect Mustangs and its members in observing, studying, and enjoying  
16 horses, and otherwise protecting these animals from harassment, impoundment, unwarranted  
17 death, and slaughter are injured by Defendants' decision to authorize the present round up in  
18 contravention of federal law.

19 9. The aesthetic, recreational, scientific, educational, and other interests of Plaintiffs CAES,  
20 Protect Mustangs, and their members have been and will continue to be adversely affected and  
21 irreparably injured if Defendant continues to act out of compliance with federal laws, and  
22 affirmatively implements the action that Plaintiffs challenge with this litigation.  
23  
24  
25  
26  
27  
28

1 10. Absent legal compliance, the Fort McDermitt Horse Gather will irreparably harm the  
2 interests of Plaintiffs and its members by harming unbranded, federally protected wild horses,  
3 and by diminishing aesthetic, artistic, educational, historical and recreational value in and around  
4 the project area. These are actual, concrete, particularized injuries caused by Defendant's failure  
5 to comply with mandatory duties under the WFRHBA, NEPA, and the APA. These injuries  
6 would be redressed by the declaratory and injunctive relief sought by Plaintiffs.  
7

8 11. Upon learning of the final agency action taken by Defendant, Plaintiffs sent letters to the  
9 agency requesting the USFS and BLM immediately cease gather operations, determine the  
10 number of unbranded horses and those horses branded by federal agencies, horses that already  
11 been impounded, and conduct DNA testing to determine if the unbranded or federally branded  
12 horses or other horses in questions were wild and free-roaming within the meaning of the  
13 WFRHBA.  
14

15 12. The Plaintiffs requested Defendants ensure the alleged wild and free roaming horses  
16 would not be sold to anyone, transported to auction anywhere, used or held by anyone, nor  
17 claimed by anyone in connection with the USDA Forest Services' June 14, 2013 Notice of Intent  
18 to Impound Unauthorized Livestock in cooperation with the Fort McDermitt Paiute Tribal  
19 Council. Plaintiffs requested that no wild and free-roaming horses be removed from the range  
20 and that any wild and free roaming wild horses removed be returned to their Herd Management  
21 Area.  
22

23 13. Defendant BLM is a federal agency within the U.S. Department of Interior. Defendant  
24 USFS is a federal agency within the U.S. Department of Agriculture. The USFS and the BLM  
25 are legally responsible for implementing NEPA, the WFRHBA, complying with the APA, and  
26 following other land management laws and regulations on public lands administered by  
27  
28

defendants. The USFS and BLM are responsible for ensuring the impacts of the actions proposed in the Fort McDermitt Horse Gather comply with all applicable laws and regulations, including NEPA, the WFRHBA, and the APA.

## LEGAL BACKGROUND

### The National Environmental Policy Act

14. Congress enacted The National Environmental Policy Act (NEPA) in 1969, directing all federal agencies to assess the environmental impact of proposed actions that significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). NEPA's disclosure goals are: (1) to insure that the agency has carefully and fully contemplated the environmental effects of its action, and (2) to insure that the public has sufficient information to challenge the agency's action.

15. NEPA compliance requires the Secretary to assess the environmental impact and potential alternatives to the proposed action. 42 U.S.C. § 4332(2)(C), (E).

16. The Council on Environmental Quality (CEQ) promulgated uniform regulations to implement NEPA that are binding on all federal agencies. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500 *et seq.*

17. NEPA regulations are applicable to environmental assessments: "These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements)." 40 C.F.R. § 1500.3.

18. NEPA requires the agencies to prepare an Environmental Impact Statement (EIS) when a major federal action is proposed that *may* significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C), 40 C.F.R. § 1501.4(a)(1).

19. Under 40 C.F.R. § 1508.18, a major Federal action includes "actions with effects that

1 may be major and which are potentially subject to Federal control and responsibility. Major  
2 reinforces but does not have a meaning independent of significantly (§ 1508.27).” 40 C.F.R. §  
3 1508.18. Accordingly, actions are deemed “major” if they “significantly” affect the  
4 environment as defined in 40 C.F.R. § 1508.27.  
5

6 20. The term significantly “requires considerations of both context and intensity.” 40 C.F.R.  
7 § 1508.27. Context means “the significance of an action must be analyzed in several contexts  
8 such as society as a whole (human, national), the affected region, the affected interests, and the  
9 locality. . . . Both short- and long-term effects are relevant.” *Id.* § 1508.27(a). Intensity refers to  
10 the severity of impact, and agencies are to take into account factors at 40 C.F.R. §  
11 1508.27(b)(1)-(10) when determining significance. *Id.* § 1508.27(b).  
12

13 21. Pursuant to 40 C.F.R. § 1508.18, NEPA applies to actions which constitute “new and  
14 continuing activities, including projects and programs entirely or partly financed, assisted,  
15 conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations,  
16 plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17).” 40 C.F.R. §  
17 1508.18.  
18

19 22. NEPA regulations require environmental information to be made “available to public  
20 officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. §  
21 1500.1(b). Under NEPA, agencies shall to the fullest extent possible “[e]ncourage and facilitate  
22 public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. §  
23 1500.2(d). 1. The purpose of these requirements is to ensure that the public has information that  
24 allows it to question and understand the decision made by the agency.  
25

26 23. An adequate EA must analyze direct effects “which are caused by the action and occur at  
27 the same time and place,” as well as indirect effects, “which are caused by the action and are  
28

1 later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. §  
2 1508.8. “Indirect effects may include growth inducing effects and other effects related to induced  
3 changes in the pattern of land use, population density or growth rate, and related effects on air  
4 and water and other natural systems, including ecosystems.” 40 C.F.R. § 1508.8(b).

5  
6 24. An adequate EA must analyze the cumulative effects which are defined as the impact  
7 “which results from the incremental impact of the action when added to other past, present, and  
8 reasonably foreseeable future actions.” 40 C.F.R. § 1508.7. “Cumulative impacts can result from  
9 individually minor but collectively significant actions taking place over a period of time.” *Id.*

10  
11 25. The agency implementing the project, not the public, has the burden of demonstrating  
12 that significant adverse effects will *not* occur as a result of the proposed project. 40 C.F.R. §  
13 1508.13.

14 **The Wild and Free-Roaming Horses and Burros Act of 1971**

15  
16 26. Congress declared in 1971 that “wild free-roaming horses and burros shall be protected  
17 from capture, branding, harassment, or death; and to accomplish this they are to be considered in  
18 the area where presently found, as an integral part of the natural system of the public lands.” 16  
19 U.S.C. § 1331

20  
21 27. The BLM and the USFS have exclusive authority under the WFHBA for the protection  
22 of wild horses and burros on the public lands administered by those agencies. 16 U.S.C. §  
23 1332(a), (e).

24 28. Wild free-roaming horses and burros are defined as “all unbranded and unclaimed horses  
25 and burros on public lands of the United States” *Id.* § 1332(b), 43 C.F.R. § 4700.0-5(l).



29. The agencies have the ability to remove excess animals<sup>1</sup> under the WFRHBA, and must comply with WFRHBA procedures when conducting such an operation. For instance, the BLM and USFS are required to consult with the other agency or with the United States Fish and Wildlife Service to remove excess animals:

In making such determinations [regarding overpopulation or excess animals] the Secretary shall consult with the United States Fish and Wildlife Service, wildlife agencies of the State or States wherein wild free roaming horses and burros are located, such individuals independent of Federal and State government as have been recommended by the National Academy of Sciences, and such other individuals whom he determines have scientific expertise and special knowledge of wild horse and burro protection, wild-life management and animal husbandry as related to rangeland management.

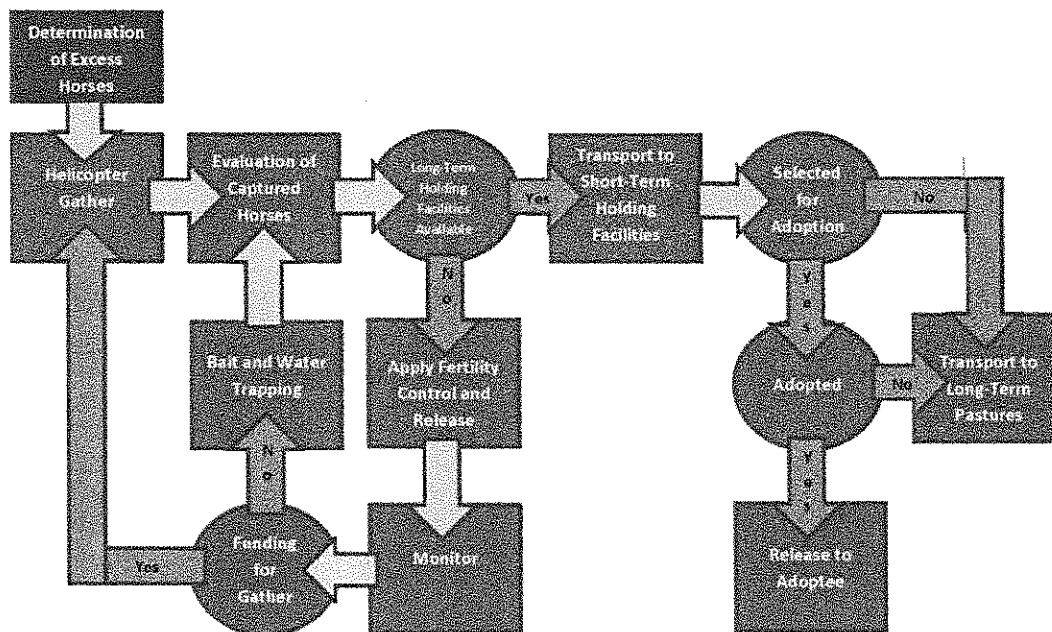
16 U.S.C. § 1333(b)(1); *see also id.* § 1340 (“[t]he Secretary of the Interior and the Secretary of Agriculture shall consult with respect to the implementation and enforcement of this Act and to the maximum feasible extent coordinate the activities of their respective departments and in the implementation and enforcement of this Act.”).

30. The BLM’s procedure<sup>2</sup> for such excess removal is illustrated in the chart below:

---

<sup>1</sup> Excess animals “means wild free-roaming horses or burros (1) which have been removed from an area by the Secretary pursuant to application law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area. 16 U.S.C. § 1332(f).

<sup>2</sup> BLM Farmington Field Office, Jicarilla Wild Horse Management Preliminary EA, Figure 4 at 12.  
[http://www.blm.gov/pgdata/etc/medialib/blm/nm/field\\_offices/farmington/farmington\\_planning/ffo\\_jicarilla\\_herd.Par.47126.File.dat/Jicarilla Wild Horse Management Preliminary EA.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/nm/field_offices/farmington/farmington_planning/ffo_jicarilla_herd.Par.47126.File.dat/Jicarilla_Wild_Horse_Management_Preliminary_EA.pdf)



31. The WFRHBA is very specific about excess determinations and prioritizes the exact order for wild horse removal. 16 U.S.C. § 1333(b)(2) (“Such action shall be taken, in the following order and priority, until all excess animals have been removed . . .”). The intention of Congress was for the agency to cull the herds at the site and remove only the excess horses. *Id*

32. First, the agency “shall order old, sick, or lame animals to be destroyed in the most humane manner possible[.]” *Id.* § 1333(b)(2)(A).

33. Second, the agency “shall cause such number of additional excess wild free-roaming horses and burros to be humanely captured and removed for private maintenance and care for which [the BLM or USFS] determines an adoption demand exists by qualified individuals . . . .” *Id.* § 1333(b)(2)(B).

34. When the steps above are insufficient, the agency “shall cause additional excess wild free-roaming horses and burros for which an adoption demand by qualified individuals does not exist to be destroyed in the most humane and cost efficient manner possible.” *Id.* §

PAGE – 10 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 1333(b)(2)(C).

2 35. The only way in which wild free-roaming horses may lose their status is enumerated in  
3 the WFRHBA:  
4

5 (1) upon passage of title pursuant to subsection (c) except for the limitation of subsection  
6 (c)(1) of this section, or

7 (2) if they have been transferred for private maintenance or adoption pursuant to this Act  
8 and die of natural causes before passage of title; or

9 (3) upon destruction by the Secretary or his designee pursuant to subsection (b) of this  
10 section; or

11 (4) if they die of natural causes on the public lands or on private lands where maintained  
12 thereon pursuant to section 4 and disposal is authorized by the Secretary or his designee;  
13 or  
14

15 (5) upon destruction or death for purposes of or incident to the program authorized in this  
16 section.

17 16 U.S.C. § 1333(d).

18 36. The WFRHBA states: "In no event shall such wild free-roaming horses and burros be  
19 destroyed except by the agents of the Secretary. *Id.* § 1334. If a wild horse strays from public  
20 lands, "the owners of such land may inform the nearest Federal marshal or agent of the  
21 Secretary, who shall arrange to have the animals removed." *Id.*

22 37. Under section 1336, "[t]he Secretary is authorized to enter into cooperative agreements  
23 with other landowners and with the State and local governmental agencies and may issue such  
24 regulations as he deems necessary for the furtherance of the purposes of this Act." *Id.* § 1336.  
25

26 38. The only manner in which a wild free-roaming horse or burro may be sold is if it is first  
27 determined to be an excess animal, and if "(A) the excess animals is more than 10 years old; or  
28

1 (B) the excess animal has been offered unsuccessfully for adoption at least 3 times.” *Id.* §  
2 1333(e).

3 39. All funds generated from the sale of excess animals shall be “(A) credited as an offsetting  
4 collection to the Management of Lands and Resources appropriation for the Bureau of Land  
5 Management; and (B) used for the costs relating to the adoption of wild free-roaming horses and  
6 burros, including the costs of marketing such adoptions.” *Id.*

7  
8 **The Administrative Procedure Act**

9  
10 40. The APA confers a right of judicial review on any person that is adversely affected by  
11 agency action. 5 U.S.C. §702. Upon review, the court shall “hold unlawful and set aside agency  
12 actions...found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance  
13 with the law.” 5 U.S.C. §706(2).

14 41. Under the APA, a rule is defined as “the whole or a part of an agency statement of  
15 general or particular applicability and future effect designed to implement, interpret, or prescribe  
16 law or policy or describing the organization, procedure, or practice requirements of an agency  
17 and includes the approval or prescription for the future of rates, wages, corporate or financial  
18 structures or reorganization thereof, prices, facilities, appliances, services or allowances therefore  
19 or of valuations, costs, or accounting, or practices bearing on any of the foregoing.” 5 U.S.C. §  
20 551(4).  
21

22  
23 42. Rulemaking is defined as the “agency process for formulating, amending, or repealing a  
24 rule.” 5 U.S.C. § 551(5). Rulemaking must comply with notice and comment procedures of §  
25 553 of the APA, including publication of notice in the Federal Register which includes “(1) a  
26 statement of the time, place, and nature of public rule making proceedings; (2) reference to the  
27  
28

1 legal authority under which the rule is proposed; and (3) either the terms or substance of the  
2 proposed rule or a description of the subjects and issues involved.” 5 U.S.C. § 553(b)(1)-(3).

3 **USFS and BLM Management of Wild Horses**

4  
5 43. The USFS and the BLM are jointly tasked with managing wild free-roaming horses and  
6 burros. In the event ownership or horse origin is in question, the USFS and the BLM are required  
7 to jointly evaluate ownership claims when horses “are on or have been known to come from  
8 National Forest System lands or public lands where wild free-roaming horses and burros are  
9 known or suspected to exist.” Forest Service Manual § 2256. The USFS Manual clearly  
10 identifies in such a case the USFS and/or the BLM acquire jurisdiction of the wild and free  
11 roaming horse(s) *Id.* (“Where evidence is lacking for valid claims, the animals will come under  
12 the jurisdiction of the Forest Service and/or the Bureau.”).

13  
14 44. “Any person claiming ownership under State branding and estray laws of branded or  
15 unbranded horses or burros within a wild horse or burro territory or range on the National Forest  
16 System where such animals are not authorized must present evidence of ownership to justify a  
17 roundup before permission will be granted to gather such animals.” 36 C.F.R. § 222.22.

18  
19 45. Claiming such ownership within a wild horse range is no longer an option: “Claims of  
20 ownership with supporting evidence were required to be filed during a claiming period which  
21 expired November 15, 1973.” *Id.*

22  
23 46. Aside from the aforementioned process, the BLM and USFS have no procedure to make  
24 a distinction or determination between what is an unauthorized, unbranded livestock and what is  
25 a wild, free-roaming horse. Plaintiffs are therefore requesting the agencies determine by any  
26 means available including DNA testing how many wild, free-roaming horses have been and will  
27 be rounded up and ultimately removed from public lands, tribal lands, or the HMAs.  
28

## FACTUAL BACKGROUND

### The Humboldt-Toiyabe National Forest and the Owyhee HMAs

47. The Humboldt-Toiyabe National Forest is approximately 6.3 million acres—the largest national forest in the lower 48 states. Nearby, there are the Owyhee, Rock Creek, and Little Humboldt Herd Management Areas (HMAs) in the Elko District, and the Little Owyhee, and Snowstorm HMAs within the Winnemucca District. These HMAs are all contiguous, are composed of thousands of acres of public and private land, and the BLM estimates that as of 2012 there is a population of 2267 wild horses across these five HMAs. (Exhibit 2)

48. By definition, wild and free-roaming horses may roam from designated Herd Areas, Herd Management Areas, BLM lands, and National Forest lands. Wild horses have been observed by the BLM to be travelling freely through these five interconnected HMAs, as well as onto private and public lands outside these HMAs.

49. This fact does not change the duties of the agencies to protect wild and free-roaming horses: “Individual animals and herds of wild free-roaming horses and burros will be under the protection of the Chief, Forest Service, even though they may thereafter move to lands of other ownership or jurisdiction as a part of their annual territorial habitat pattern or for other reasons.” 36 C.F.R. § 222.25.

50. The BLM’s Owyhee Complex Gather Plan Decision Record for the Owyhee HMA authorized removal of 296 wild horses to meet agency-designed Appropriate Management Levels (AML). The action challenged by Plaintiffs—the removal of wild horses by the USFS in conjunction with the Fort McDermitt tribal council—removes *additional* wild horses to those already removed or being removed by the BLM as part of the agency’s Owyhee Complex Gather Plan.

### The Fort McDermitt Horse Gather

1 51. The Notice of Intent signed by District Ranger Jeff Ulrich on June 14<sup>th</sup>, 2013, authorizes  
2 up to 700 branded and unbranded horses, potentially hundreds of wild horses protected under the  
3 WFRHBA, to be forever removed from public lands, the HMAs, and tribal lands.

4  
5 52. The Fort McDermitt Horse Gather is carried about pursuant to the 2013 Horse Gather  
6 Agreement between the USFS and the Fort McDermitt tribal council.

7 53. The hundreds of potential wild horses to be removed via the Notice were not considered  
8 in the BLM's Owhyee Complex Gather Plan Environmental Assessment, Document DOI-BLM-  
9 NV-W010-2012-0055-EA.

10  
11 54. The Fort McDermitt Horse Gather is located on/or adjacent to the Humboldt-Toiyabe  
12 National Forest. The Fort McDermitt Horse Gather will in all likelihood gather, and has already  
13 gathered and impounded, wild and free-roaming horses that roam between any of the five  
14 Owhyee Complex HMAs, the Humboldt- Toiyabe National Forest, and Fort McDermitt tribal  
15 lands.

16  
17 55. The USFS signed Notice authorized the gather and impoundment of: "All branded or  
18 unbranded horses which are not authorized to graze within the lands identified above and horses  
19 on reservation lands not under the direct control of the owner." (Exhibit 1).

20  
21 56. To date, the gather has already begun, and hundreds of unbranded or wild horses are at  
22 Fallon Livestock Auction yard of Fallon, Nevada, awaiting sale this Saturday August 17<sup>th</sup>.

23 **FIRST CLAIM FOR RELIEF**  
24 **(NEPA Violation)**

25 **The USFS Failed to Conduct NEPA and Issue an Environmental Assessment.**

26 57. Plaintiffs incorporate by reference all preceding paragraphs.

27 58. NEPA requires the agencies to prepare an Environmental Impact Statement (EIS) (or  
28 Environmental Assessment for lesser projects or to determine if an EIS is required) when a major



1 federal action is proposed that *may* significantly affect the quality of the environment. 42 U.S.C.  
2 § 4332(2)(C), 40 C.F.R. § 1501.4(a)(1).

3 59. Under 40 C.F.R. § 1508.18, a major Federal action includes actions with effects that  
4 may be major and which are potentially subject to Federal control and responsibility.  
5

6 60. The BLM routinely prepares Environmental Assessments for any proposed wild horse  
7 and burro gathers to assess the impacts of the project on the environment. For instance, the  
8 nearby Owyhee Complex Herd Management Areas Wild Horse Gather Plan Environmental  
9 Assessment<sup>3</sup> will remove approximately 296 wild horses from the HMAs. (Exhibit 3)  
10

11 61. The action at issue may remove 700 horses, and the USFS or BLM have made no  
12 determination regarding how many of those horses are wild free-roaming horses. The USFS  
13 decision is entirely nondescript as to the effects of the action and may allow several hundred wild  
14 free-roaming horses to be removed from public lands and sold at auction for commercial  
15 slaughter.  
16

17 62. The USFS 2013 Agreement with the Fort McDermitt tribe in conjunction with the Notice  
18 to remove up to 700 horses is a major federal action. The effects of the action taken by the  
19 agency—the USFS authorization for removal of unbranded, wild and free-roaming horses in the  
20 Notice—may significantly impact the environment and are an example of a Federal agency  
21 exercising control and responsibility.  
22

23 63. The USFS and the BLM failed to conduct NEPA review in the instant case, whereby the  
24 agencies 1) failed to disclose the direct, indirect, and cumulative impacts of the proposed action  
25 on the environment, and 2) failed to prepare an EA or EIS.  
26

---

27 <sup>3</sup> DOI-BLM-NV-W010-2012-0055-EA  
28 [https://www.blm.gov/epl-front-office/projects/nepa/33902/40771/42881/DOI-BLM-NV-W010-2012-0055-EA\\_FINAL.pdf](https://www.blm.gov/epl-front-office/projects/nepa/33902/40771/42881/DOI-BLM-NV-W010-2012-0055-EA_FINAL.pdf)



64. The USFS and the BLM acted arbitrarily and capriciously in failing to consider that the Fort McDermitt Horse Gather may significantly affect the quality of the environment, including but not limited to impacts to the Owyhee HMA and wild and free roaming horses and burros currently residing on public lands and under Federal control.

65. The USFS's actions are arbitrary, capricious, not in accordance with law, and without observance of procedures required by law, within the meaning of the APA, 5 U.S.C. § 706.

66. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

**SECOND CLAIM FOR RELIEF  
(WFRHBA Violation)**

**The USFS Failed to Follow the Removal Order, Failed to Make an Excess Determination,  
and Failed to Consult with Relevant Agencies.**

67. Plaintiffs incorporate by reference all preceding paragraphs.

68. The BLM and USFS are required to follow the procedures at 16 U.S.C. § 1333(b)(2) when the agency removes *any* excess wild horses to reach designated Appropriate Management Level (AML). The agency needs to determine the wild horses are in excess, and only then is removal of wild horses authorized. 16 U.S.C. § 1333(b)(2). ("Such action shall be taken, in the following order and priority, until all excess animals have been removed . . .").

69. The agency first shall order old, sick, or lame horses to be destroyed humanely, followed by humane capture and removal for adoption, and finally if the previous steps are insufficient and no adoption demand exists, additional excess wild horses may be destroyed humanely. *Id.* § 1333(b)(2)(A)-(B). Excess animals shall be sold if the animal is over ten years old or has been unsuccessfully offered for adoption at least three times. *Id.* § 1333(e)(1)(A)-(C).

70. The USFS failed to follow the aforementioned priority removal order and failed to offer

1 the wild, unbranded horses being held at the Fallon Auction Yard for adoption before authorizing  
 2 their sale in violation of the 16 U.S.C. § 1333(b)(2).

3 71. The USFS did not rely on the Owyhee Complex Gather EA in the Notice. In violation of  
 4 16 U.S.C. § 1333(b) the USFS failed to make a determination that the unbranded, wild horses at  
 5 issue in the Notice were in excess.

6 72. The USFS failed to consult with the BLM, the United States Fish and Wildlife, and other  
 7 relevant agencies when issuing the Notice in violation of 16 U.S.C §§ 1333, 1340.

8 73. The USFS's actions violating the WFRHBA as described above are arbitrary, capricious,  
 9 not in accordance with law, and without observance of procedures required by law, within the  
 10 meaning of the APA, 5 U.S.C. § 706.

11 74. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this  
 12 litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

### 13 **THIRD CLAIM FOR RELIEF** 14 **(APA Violation)**

#### 15 **Failure to Comply with Notice and Comment Rulemaking Procedures**

16 75. Plaintiffs incorporate by reference all preceding paragraphs.

17 76. Under the A.P.A., a rule is defined as “the whole or a part of an agency statement of  
 18 general or particular applicability and future effect designed to implement, interpret, or prescribe  
 19 law or policy or describing the organization, procedure, or practice requirements of an agency  
 20 and includes the approval or prescription for the future of rates, wages, corporate or financial  
 21 structures or reorganization thereof, prices, facilities, appliances, services or allowances therefore  
 22 or of valuations, costs, or accounting, or practices bearing on any of the foregoing.” 5 U.S.C. §  
 23 551(4).

24 77. Rulemaking is defined as the “agency process for formulating, amending, or repealing a  
 25

1 rule.” 5 U.S.C. § 551(5).

2 78. Rulemaking must comply with notice and comment procedures of § 553 of the A.P.A.

3 79. The USFS created a rule within the meaning of 5 U.S.C. § 551(4), and conducted  
4 informal rulemaking within the meaning of 5 U.S.C. § 551(5) in violation of notice and  
5 comment procedures when the agency promulgated the Horse Gather 2013 Participating  
6 Agreement between the United States Forest Service and the Fort McDermitt Tribal Council.  
7

8 80. Because the USFS, BLM, and the WFRHBA define wild, free-roaming horses as  
9 unbranded and unclaimed, the agreement authorizing the Fort McDermitt Tribal Council to  
10 round up and sell at auction any unbranded, wild and free-roaming horses that may travel  
11 between the Owyhee HMAs, the Humboldt-Toiyabe National Forest, and Fort McDermitt tribal  
12 lands modifies the agencies practices and procedures when carrying out and complying with the  
13 WFRHBA.  
14

15 81. The 2013 Agreement is a rule; it is a statement and policy and procedure describing the  
16 requirements and duties of the USFS with regard to any round-up of unbranded, wild and free-  
17 roaming horses that occur and travel in the vicinity of the Humboldt-Toiyabe National Forest,  
18 the Owyhee HMAs, and Fort McDermitt tribal lands.  
19

20 82. The 2013 Agreement changes the duties and obligations of the USFS and BLM with  
21 regard to wild horse management under the WFRHBA, including but not limited to authorizing  
22 another landowner to sell wild and free-roaming horses and burros to be slaughtered for  
23 commercial profit at auction.  
24

25 83. The USFS’s actions are not in accordance with law, without observance of procedures  
26 required by law, and are arbitrary and capricious within the meaning of the APA, 5 U.S.C. §  
27 706.  
28

**PLAINTIFFS' PRAYER FOR RELIEF**

Plaintiffs respectfully request that this Court:

1. Declare that the USFS and the BLM violated the National Environmental Policy Act, the Wild and Free Roaming Horses and Burros Act, the Administrative Procedure Act, and their implementing regulation in implementing the Fort McDermitt Horse Gather;

2. Order the USFS and the BLM to withdraw the Notice and 2013 Horse Gather Agreement until such time as the agency demonstrates to this Court that it has adequately complied with the law, including but not limited to putting the 2013 Agreement through notice and comment procedures, ordering DNA testing to determine the origin of captured wild horses, ordering the BLM and USFS to comply with the law to determine ownership of the wild horses, ordering the USFS and BLM to issue a stop order, ordering the BLM, the USFS to return to public lands and the HMAs all seized or removed wild, free-roaming, and unbranded horses currently being held at Fallon Livestock Auction in violation of federal laws;

3. Enjoin the USFS, the BLM, and any agents from proceeding with the Fort McDermitt Horse Gather, or any portion thereof, unless and until the violations of federal law set forth herein have been corrected to the satisfaction of this court;

4. Award Plaintiffs their costs of suit and attorneys fees; and

5. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted August 16, 2013.

/s/ Jordan Beckett

Jordan Beckett, OSB# 120666  
Beckett Law Office PC  
2305 Ashland St. Suite C 311  
Ashland, OR 97520  
jordan@roguevalleylawyer.com

(541) 510-0333  
Fax: (541) 210-9294

/s/ Charles A. Jones

Charles A. Jones, Nevada Bar #6698  
Jones Law Firm  
9585 Prototype Ct. Suite B  
Reno, NV 89521  
(775) 853-6440  
Fax (775) 853 6445  
caj@cjoneslawfirm.com

*Attorneys for Plaintiffs*

Pursuant to local rules regarding multiple signatures, I attest to the consent of the other parties signing this document.

Respectfully submitted this August 16, 2013.

/s/ Charles A. Jones

Charles A. Jones, Nevada Bar #6698  
Jones Law Firm  
9585 Prototype Ct. Suite B  
Reno, NV 89521  
(775) 853-6440  
Fax (775) 853 6445  
caj@cjoneslawfirm.com

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to FRCP 7.1, Plaintiffs state that they have not issued shares to the public and have no affiliates, parent companies, or subsidiaries issuing shares to the public.

Respectfully submitted August 16, 2012.

/s/ Jordan Beckett

Jordan Beckett, OSB 120666  
Beckett Law Office PC  
2305 Ashland St. Suite C 311  
Ashland, OR 97520  
[jordan@roguevalleylawyer.com](mailto:jordan@roguevalleylawyer.com)  
(541) 510-0333  
Fax: (541) 210-9294

*Attorney for Plaintiffs*

**Exhibit 1**

**Notice****OF INTENT TO IMPOUND UNAUTHORIZED LIVESTOCK**  
(Ref: FSM 2256.03, 36 CFR 222.8, 36 CFR 262.2)

Notice is hereby given that all unauthorized livestock found upon National Forest System Lands or other lands within the area identified below will be impounded by the United States Forest Service on or after August 1, 2013 in cooperation with the Fort McDermitt Tribal Council. All livestock gathered will be transported to the Fort McDermitt Paiute & Shoshone reservation for disposition consistent with Fort McDermitt Tribal law and order code and the Fort McDermitt Horse Gather 2013 Participating Agreement between the United States Forest Service and the Fort McDermitt Tribal Council. **All persons not wanting their unauthorized livestock gathered must remove them from the impoundment area before the gather occurs.**

TOPOGRAPHIC UNIT, LEGAL SUBDIVISION OR ALLOTMENT	RANGER DISTRICT
Fort McDermitt Paiute & Shoshone Reservation; USFS Indian C&H Allotment, Quinn River C&H Allotment & Eight Mile Closed Allotment.	Santa Rosa Ranger District
<b>Townships of Intended Gather</b> Oregon – T41S R44E & T40S R44E Nevada – T47N R38, 39, 40, 41E; T 46N R39, 40, 41E; & T45 N R39,41E See attached map.	
NATIONAL FOREST OR GRASSLAND	STATE
Humboldt-Toiyabe National Forest	Nevada

Livestock to be gathered and transported to a Fort McDermitt Paiute & Shoshone Reservation holding facility are described as follows:

All branded or unbranded horses which are not authorized to graze within the lands identified above and horses on reservation lands not under the direct control of the owner.

Horse owners will be given the opportunity to identify, take possession of, and remove their horses on the day they are gathered without charge. Horse owners can elect to enter into an agreement to sell their horses with the Fort McDermitt Tribal Council and will receive the proceeds of the sale of their horses. Agreement-to-Sell forms are available at the Tribal Office in the Fort McDermitt Community Center. For further information contact Maxine Smart – Chair – Fort McDermitt Tribal Council or Duane Masters Sr. - Environmental Director – Fort McDermitt Paiute-Shoshone Tribe of Nevada & Oregon, (775) 532-8259. Unclaimed horses and horses without established ownership will be claimed by the Fort McDermitt Tribal Council consistent with tribal law and order code. All horses claimed by the Fort McDermitt Tribal Council and those with a completed "Agreement-to-Sell" form will be sold at auction in accordance with the Fort McDermitt Horse Gather 2013 Participating Agreement.

Signed at Winnemucca, Nevada on this 14th Day of June, 2013

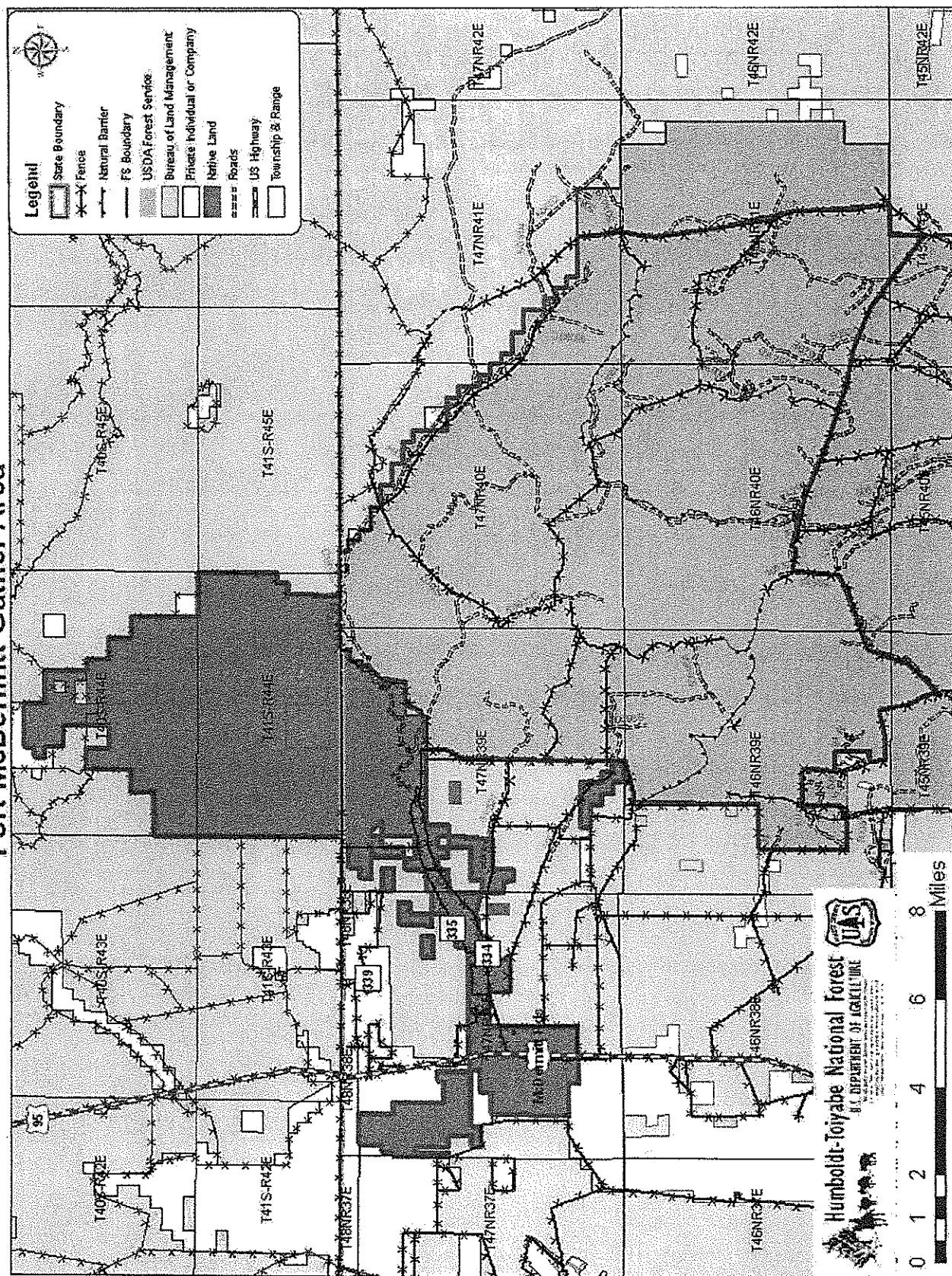
NAME AND SIGNATURE Jeff Ulrich	TITLE District Ranger
-----------------------------------	--------------------------



FS-2200-28 (1/18)

USDA Forest Service

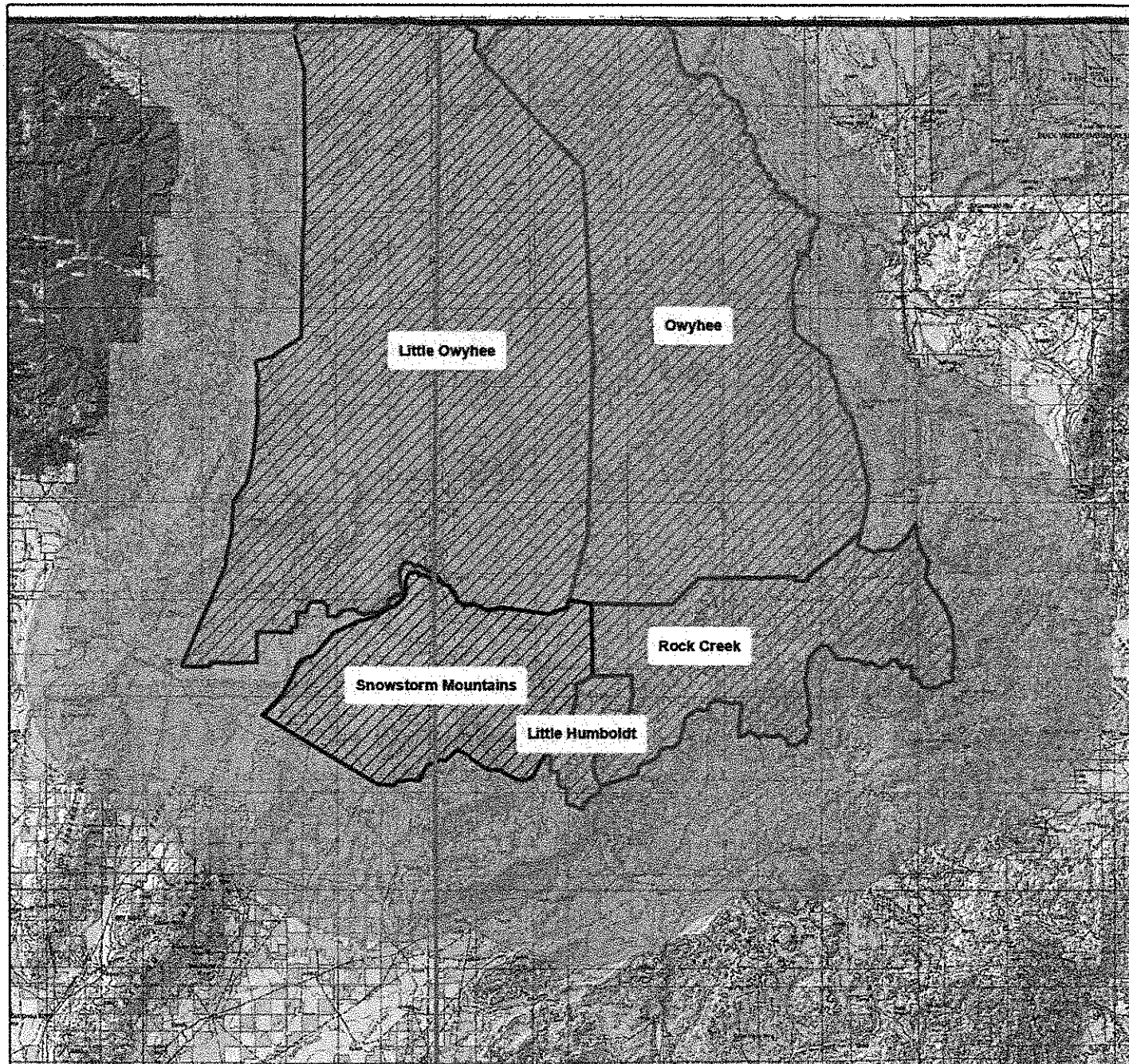
# Fort McDermitt Gather Area



**Exhibit 2**



## Owyhee Complex HMAs and Gather Area



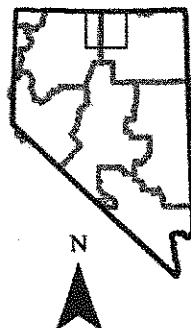
### Legend

	State Boundary		BIA
	District Boundary		BLM
	Gather Area		USFS
			Private

McDermitt, NV  
USGS 250K  
Quadrangles

0 2.5 5 10  
Miles  
1:625,000

Map created on:  
8/28/2012



**Winnemucca District Office**  
Bureau of Land Management  
5100 E. Winnemucca Blvd  
Winnemucca, NV. 89445



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

**Exhibit 3**





## United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Elko District Office  
3900 East Idaho Street  
Elko, Nevada 89801  
[http://www.blm.gov/nv/st/en/fo/elko\\_field\\_office.html](http://www.blm.gov/nv/st/en/fo/elko_field_office.html)

In Reply Refer To:  
4170 (NVE0200)

### DECISION RECORD

#### **Owyhee Complex Herd Management Areas Wild Horse Gather Plan Environmental Assessment DOI-BLM-NV-W010-2012-0055-EA**

The Little Humboldt, Little Owyhee, Owyhee, Rock Creek, and Snowstorm Mountains Herd Management Areas (HMAs), collectively referred to as the Owyhee Complex, are located 50 miles north east of Winnemucca, in the northeast corner of Humboldt County and the northwest corner of Elko County, Nevada. The gather area is within the administrative boundaries of the Bureau of Land Management (BLM) Winnemucca District, Humboldt River Field Office (HRFO), and Elko District, Tuscarora Field Office (TFO).

The Owyhee Complex consists of approximately 1,055,023 total acres, but the gather area consists of approximately 2,047,281 acres, which encompasses additional lands where wild horses are residing outside of the Owyhee Complex. Wild horses have moved outside of the HMAs in search of forage, water, and space due to the current over-population of wild horses in this area as well as the current drought conditions.

This Decision is applicable only to the Little Humboldt, Owyhee and Rock Creek HMAs managed by the TFO. The HRFO will issue a separate decision for the Little Owyhee and Snowstorm Mountains HMAs.

The population of wild horses within the Little Humboldt, Owyhee and Rock Creek HMAs is approximately 633 wild horses based on population inventories conducted in September 2012.

The Tuscarora Field Office (TFO) Bureau of Land Management (BLM) is proposing to implement Alternative B for the Owyhee, Little Humboldt and Rock Creek HMAs of the Owyhee Complex; by gathering 538 wild horses and removing approximately 296. Approximately 242 wild horses would be released back to the range following the gather. Of these, about 97 mares would be vaccinated with PZP-22 (Porcine Zona Pellucida or most current formulation) fertility control vaccine. The gather, removal and fertility control are intended to slow population growth, maintain population size within the appropriate management levels (AMLs), and extend the time before another gather to remove excess wild horses would be needed. If there are funding and holding space limitations, it may take multiple gathers over a 10 year period to achieve desired population goals and to fully implement the proposed action.

The initial proposed gather would begin on or about November 18, 2012 and take approximately 30 days to complete. During the November gather it is anticipated that the Owyhee HMA will be the only area gathered within the TFO based on funding and holding space limitations. Approximately 186 wild horses would be gathered, 47 removed, and 139 returned of which 46 mares would be treated with PZP or the most current formulation for fertility control. Once the gather begins, the area would be gathered so as to minimize movement of wild horses and to reduce stress from competition for severely limited resources and multiple gather attempts.

Under Alternative B, the BLM would also attempt to gather a sufficient number of wild horses in addition to the excess wild horses to be removed, to apply fertility control treatments (PZP or most current formulation) and allow for adjusting the sex ratio of animals on the range following the gather to favor males (60% stallions). The sex ratio of potential released animals would be dependent on the sex ratio of gathered wild horses. Approximately 65% or more of all released wild horses would likely be stallions to achieve a 60% male sex ratio on the range (including animals not gathered).

The BLM has prepared an environmental assessment (EA) to analyze the environmental impacts associated with the proposed gather, removal, and fertility control. Refer to **DOI-BLM-NV-W010-2012-0055-EA**.

## **DECISION**

It is my decision to implement Alternative B as described in the Final Environmental Assessment for the Owyhee Complex HMAs (**DOI-BLM-NV-W010-2012-0055-EA**).

This Decision constitutes my final decision to gather and remove excess wild horses from within the Little Humboldt, Owyhee, and Rock Creek HMAs that are managed by the TFO and to remove wild horses from non-HMA areas to which wild horses from the HMA have moved due to population pressures, and to manage the public lands within the gather area for a thriving natural ecological balance (TNEB).

Maintenance gathers to reapply fertility control and to remove adoptable wild horses so to keep the wild horse population within AML would be conducted for the next 10 years following the date of this decision. A Notice of Proposed Action (NOPA) will be issued 30 days in advance for subsequent gathers occurring within Wilderness Study Areas.

Pursuant to 43 CFR 4770.3(c), this decision is effective immediately.

## **RATIONALE**

Upon analyzing the impacts of Alternative B, and following issuance of the EA for public review, I have determined that Alternative B will not have a significant impact to the human environment, and that an Environmental Impact Statement is not required. Refer to attached Finding of No Significant Impact.

Removal of excess wild horses from the gather area is necessary to achieve a TNEB between wild horse populations, wildlife, livestock, vegetation, and the available water as mandated under Section 3(b) (2) of the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA) and consistent with section 302(b) of the Federal Land Policy and Management Act (FLPMA) of

1976. A gather of wild horses from the area is also necessary to prevent unnecessary death of individual wild horses that are being currently impacted by a lack of water and forage due to drought conditions. The BLM is required to manage multiple uses to avoid continued degradation of the rangelands, and reduce the potential for catastrophic loss of animals should drought conditions reoccur.

The application of fertility control as described in Alternative B would slow population growth, maintain population size within AMLs, and extend the time before another gather to remove wild horse numbers in excess of the AML would be needed.

Leaving excess wild horses on the range under the No Action Alternative, as advocated by some, would lead to severe degradation of the range, damage to riparian resources including the habitat for the recovery of Lahontan cutthroat trout and their habitat, potential catastrophic die-off of wild horses under severe conditions such as the regularly occurring droughts, and movement of wild horses to areas outside the designated HMAs, potentially leading to severe resource degradation and competition with grazing and wildlife.

The gather will:

- Promote vegetative health by preventing over utilization and/or use by wild horses during critical growth periods for perennial grasses in the upland, wetland and stream bank riparian habitats associated with the Owyhee Complex;
- Decrease resource competition for space, forage and water among wild horses, wildlife, and livestock;
- Although impacts would still occur through wild horse and livestock grazing, removal of excess wild horses will contribute to improved vegetation density, increased plant vigor, seed production, seedling establishment, and forage production over current conditions by reducing grazing pressures caused by excess wild horse numbers; and
- Slow wild horse population growth rates through implementation of the phased-in gather and fertility control treatment and sex ratio modification which could extend the amount of time between gathers needed to remove excess horses as required under the WFRHBA.
- Preserve the health and wellbeing of those animals removed from the range as well as the wild horses that will remain within the Owyhee Complex.

Through the maintenance approach, fertility control treatments and modification of sex ratios of released wild horses will slow population growth, reduce the number of wild horses needing to be removed through future gathers, decrease the number of excess wild horses placed in short or long term holding or offered for adoption or sale over the next ten years, and potentially increase the time period before another gather is necessary when the proposed action is fully implemented. The removal and maintenance removal of adoptable wild horses from the gather area to maintain wild horse numbers at AML will ease pressure on short-term and long-term holding facilities that may have insufficient capacity to handle all of the excess wild horses if removed in a single gather, and will also provide a greater likelihood that a sufficient gather

efficiency can be achieved to apply fertility controls to a larger segment of the wild horse population that remains post-gather.

Managing wild horses at the established AML will also maintain genetic health and long-term viability of the herds. Reduced growth rates and lower population sizes will also allow for improvements to range condition, with long-term benefits to wild horse habitat quality, and will allow BLM to manage wild horses at a level that will ensure a TNEB.

The action is in compliance with the WFRHBA by achieving the established AML, restoring a TNEB and preventing degradation of rangeland resources resulting from an overpopulation of wild horses. This assessment is based on factors including, but not limited to the following rationale:

- Based on the population inventory completed September 2012, the population of wild horses in the three TFO managed HMAs is approximately 633 animals.
- Once wild horse populations are at low AML and are being managed within the AML range, BLM will be able to collect the resource monitoring data necessary to determine if wild horses are causing impacts that lead to non-attainment of Resource Advisory Committee Standards for Rangeland Health in the allotments within the HMAs. Adjustments could be made upward or downward based on monitoring data collected once AML is being achieved and maintained. Additionally, through Standards and Guidelines Assessments for grazing allotments livestock carrying capacity could be adjusted as well. Consideration would be given to AML and livestock carrying capacity that would maintain or improve rangeland;
- Wild horses have moved onto private and public lands that fall outside of designated HMA boundaries, indicating the presence of excess wild horses as they search for additional habitat outside the HMA. Under regulations at 43 CFR §4710.4, BLM is required to manage wild horses within their HMAs and to remove wild horses that take up residence outside of HMA boundaries.
- Water is a limited resource within the Owyhee HMA and becomes a limiting factor when wild horse populations exceed high range AML.

The following constitutes the rationale for making this decision effective upon issuance:

1. Necessity of Prompt Removal of Excess Wild Horses

With the collaborative effort to uniformly gather the entire Owyhee area, BLM seeks to increase the gather efficiency and more effectively bring the wild horse populations in that landscape down to low range AML. A delay of the gather in the Little Humboldt, Owyhee, and Rock Creek HMAs and inability to coordinate the gather with that of the Winnemucca District (Little Owyhee and Snowstorm Mountains) will create a situation similar to the last gather where gather efficiencies were reduced due to seasonal movements within and outside the HMAs and winter storm conditions.



There is a need to immediately remove excess wild horses prior to January 1 due to conditions that have developed in certain portions of the gather areas, to prevent suffering and death of individual animals that are showing declining body condition due to a lack of water and forage. Additionally there is a need to remove excess wild horses from areas where Lahontan cutthroat trout (LCT) were impacted by the 2012 Willow Fire which is located adjacent to the Rock Creek HMA and primarily on private lands.

## 2. Potential Damage to Rangeland and Riparian Resources

Wild horse population and resource monitoring data shows that current wild horse populations are exceeding the range's ability to sustain them over the long-term. Wild horses are now residing outside the HMA as more wild horses compete for limited forage, space and water resources. Resource damage is occurring and will continue without immediate action. Riparian areas are receiving heavy utilization and trampling impacts.

Alternative B is in conformance with the Standards and Guidelines for Management of Wild Horses and Burros of the Northeastern Great Basin Area.

In accordance with 43 CFR §4720.1, upon examination of current information, I have determined that an excess of wild horses also exists outside the HMA boundaries, and that the excess animals should be removed.

## PUBLIC INVOLVEMENT

### ***Consultation and Coordination in Development of Preliminary EA***

On-going consultation with Resource Advisory Councils (RACs), the Nevada Department of Wildlife, U.S. Fish and Wildlife Service, livestock operators and others, underscores the need for BLM to maintain wild horse populations within AML.

Issues identified in the EA at Chapter 1.4 were identified during internal scoping on August 21, 2012.

Public hearings are held annually on a state-wide basis regarding the use of motorized vehicles in the management of wild horses (or burros) (inventory, gather operations, and transport). During these meetings, the public is given the opportunity to present new information and to voice any concerns or opinions regarding the use of motorized vehicles in the management of wild horses and burros. The Carson City District Office held the 2012 Nevada state-wide hearing on May 29, 2012.

The BLM has been gathering excess wild horses and burros from public lands since 1975, and has been using helicopters for such gathers since the late 1970's. Refer to Appendix A of the Owyhee Complex Wild Horse Gather Environmental Assessment for information about methods that are utilized to reduce injury or stress to wild horses and burros during gathers. Since 2004, BLM Nevada has gathered over 40,000 excess animals. Of these, gather related mortality has averaged 0.5%, which is very low when handling wild animals. Another 0.6% of the animals captured were humanely euthanized due to pre-existing conditions and in accordance with BLM policy. This data confirms that appropriate use of helicopters and motorized vehicles are a safe,

humane, effective and practical means for gathering and removing excess wild horses and burros from the range. BLM policy prohibits the gathering of wild horses with a helicopter (unless under emergency conditions) during the period of March 1 to June 30 which includes and covers the six weeks that precede and follow the peak of foaling (mid-April to mid-May).

#### ***Preliminary EA***

The Preliminary Owyhee Complex Herd Management Area Gather Plan EA #DOI-BLM-NV-W010-2012-0055-EA was made available to interested individuals, agencies and groups for a public review and comment period that opened on September 7, 2012, and closed October 9, 2012. This interested party list included approximately 156 individuals, organizations, county officials, and state and federal agencies. Among these was the Nevada State Clearinghouse which made the interested party letter available for review by 50 different local, county, state, and federal agencies from around the state. The EA and associated documents were also available from the BLM's NEPA Register, and a link to the NEPA Register was provided from the Winnemucca and Elko District's NEPA website.

The Elko District issued a news release on September 7, 2012, notifying the general public of the availability of the document for review, how to access the document, and where to submit comments. The news release was issued to a list of over 56 media sources in Nevada and California, 19 contacts with Nevada Congressional representatives, and 12 other interested parties. Among these was the Nevada State Clearinghouse which made the preliminary EA available for review by 50 different local, county, state, and federal agencies from around the state.

A NOPA letter was sent to 67 interested parties for activities within Wilderness Study Areas. Like the letter referred to in the preceding paragraph, the NOPA notified these individuals of how to access the EA and where to submit comments.

The BLM received over 5,184 comment submissions during the public comment period; more than 5,100 of those submissions were form letters. Form letters are generated from a singular website from a non-governmental organization, such as an animal advocacy group. Comments identified on the form letters were considered along with the rest of the comments received, but as one collective comment letter. Form letters are not counted as separate comments due to their duplicative nature. However, where individuals added their own comments to the form, the personalized comments were considered as separately submitted comments. All comments received prior to the end of the public comment period were reviewed and considered. Substantive comments were utilized to finalize the EA as appropriate. Letters and e-mails were received both in support of and in opposition to the gather.

Although the BLM's review of public comments did not indicate that substantive changes to the conclusions presented in the preliminary EA were warranted, they did lead to changes throughout the document to better explain and clarify BLM's analysis in response to comments, which resulted in a more comprehensive and complete document. In finalizing the EA, the following information was updated:

- The September 2012 population inventory results were incorporated into the final EA. These results furthered the BLM's understanding of the current population conditions

within the Complex. With the updated survey numbers, wild horse AUM calculations were also updated to reflect the current wild horse population numbers. This data was incorporated into Table 1. Owyhee Complex Information and Chapter 1.1 Background, Chapter 3.3.3 Affected Environment – Rangeland Management, and Chapter 3.3.8 Affected Environment – Wild Horses. Given the only slight increase in the population estimate (only 15 wild horses) no other changes based on the survey results were made.

- Chapter 1.1.1 October 2012 Site Assessment was added to describe worsening conditions on the ground observed during an October site visit with the BLM National Gather Priority Team.
- Native American Religious Concerns (Chapter 4.4.1) is updated to reflect information derived from the meeting held with Fort McDermitt on September 17, 2012.
- Clarification in Chapter 2.1 Actions Common to Alternatives A-C of the BLM gather timing requirements, avoiding the six weeks that precede and follow the peak of foaling (mid-April to mid-May).
- This Public Involvement information (Chapter 8) was added.

#### ***Native American Consultation***

The table below outlines the outreach and/or consultation activities which were conducted in conjunction with this project. In an informational meeting held on September 17, 2012, with part of the Fort McDermitt tribal council, they voiced that the BLM should bring the horse population down to AML since the excess horses impacted their grazing allotments. They also felt that the BLM worries too much about the horse advocates and not enough about ranchers.

Tribe	Date initial consultation letter was Mailed	Date Preliminary EA was Mailed	Date of Consultation Meeting
Battle Mountain Band Tribal Council	August 24, 2012	September 7, 2012	none
Fort McDermitt Paiute-Shoshone Tribe	August 24, 2012	September 7, 2012	September 17, 2012
Shoshone-Bannocks Tribe	August 24, 2012	September 7, 2012	none
Shoshone-Paiute Tribes of the Duck Valley Indian Reservation	August 24, 2012	September 7, 2012	none
Te-Moak Tribal Council	August 24, 2012	September 7, 2012	none

#### ***Section 7 Consultation***

Section 7 consultation was completed with the U.S. Fish and Wildlife Service. A species list was requested on August 27, 2012, and received September 4, 2012 from the U.S. Fish and Wildlife Service (USFWS) in Reno, Nevada. A request for consultation and a Biological Assessment were submitted on September 17, 2012. A Letter of Concurrence was received via e-mail October 17, 2012, from the USFWS in Reno, Nevada.

#### ***AUTHORITY***

The authority for this decision is contained in Section 3(b)(2) of the 1971 Free-Roaming Wild Horses and Burros Act, Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700.

#### §4700.0-6 Policy

- (a) Wild horse and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat;
- (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans;
- (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior;
- (d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

#### §4710.4 Constraints on Management

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

#### §4720.1 Removal of excess animals from public lands

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animal immediately in the following order.

- (a) Old, sick, or lame animals shall be destroyed in accordance with subpart 4730 of this title;
- (b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely gathered and made available for private maintenance in accordance with subpart 4750 of this title; and
- (c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this part<sup>1</sup>.

<sup>1</sup> The Bureau of Land Management is currently not implementing this portion of the CFRs. Future decisions regarding this option would not occur before public involvement and comment.

#### §4740.1 Use of Motor Vehicles or Air-Craft

- (a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses or burros for capture or destruction. All such use shall be conducted in a humane manner.
- (b) Before using helicopters or motor vehicles in the management of wild horses or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

#### §4770.3 Administrative Remedies

- (a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a

decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR, part 4.

(c) Notwithstanding the provisions of paragraph (a) of §4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving natural ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

#### **APPEAL PROVISIONS**

Within 30 days of receipt of this wild horse decision, you have the right to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR 4.4. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842-1, "Information on Taking Appeals to the Board of Land Appeals." Please also provide this office with a copy of your Statement of Reasons. An appeal should be in writing and specify the reasons, clearly and concisely, as to why you think the decision is in error.

In addition, within 30 days of receipt of this decision you have a right to file a petition for a stay (suspension) of the decision together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties identified in items 2, 3, and 4 of the enclosed Form 1842-1. The appellant has the burden of proof to demonstrate that a stay should be granted.

A petition for a stay of 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 of 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.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.401 (c) (2)).

**APPROVAL**

The gather is approved for implementation on or about November 18, 2012. This decision is issued in accordance with Title 43 of the Code of Federal Regulations (CFR) Part 4. It may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR Part 4, Subpart B (Attachment 1 and enclosed Form 1842-1).

/s/ Richard E. Adams  
Richard E. Adams  
Field Manager  
Tuscarora Field Office

10/18/2012  
Date