

APPENDIX D

LAWS AND REGULATIONS

- * APPLICABLE FEDERAL LAWS

- * THE WILD FREE-ROAMING HORSE AND BURRO ACT OF 1971

Applicable Federal Laws

A number of federal laws currently exist that exert implications and constraints to provide direction to the BLM and FS for the management of wild horses and burros on the public lands. These laws as shown below, are also the authority in which BLM and FS regulations known as 43 CFR Part 4700-Wild Free-Roaming Horse and Burro Management and 36 CFR 222 Subpart B-Management of Wild Free-Roaming Horses and Burros, respectively, are implemented relating to the protection, management, and control of wild horses and burros under the administrative control of these two federal agencies. Development of the PLAN is within the constraints of these federal laws, however, a list of “Alternative Recommendations” mentioned by the public which are outside the federal constraints, are provided in section 5.70.

National Environmental Policy Act of 1969 (Public Law 91-190)

This Act (NEPA) requires environmental analysis of management alternatives to support any federal record of decision affecting the rangeland health of public lands.

Wild Free-Roaming Horse and Burro Act of 1971 (Public Law 92-195)

The Wild Free-Roaming Horse and Burro Act (ACT) was signed into law on December 15, 1971. This Act of Congress states:

“Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of public lands.”

The ACT clearly defines the ecological role of wild horses and burros on federal lands. Wild horse and burro populations are to be managed in a manner that will, "achieve a thriving natural ecological balance."

Federal Land Policy and Management Act of 1976 (Public Law 94-579)

This Act (FLPMA) is considered the Organic Act for the BLM and FS. This Act requires multiple use and sustained yield of our public lands by the direction of specific land use plans and identifies wild horses and burros as one of the resources that the BLM and FS must balance as it manages the range. FLPMA also amended the ACT to permit managing agencies to use helicopters to manage and/or remove excess wild horses.

Public Rangelands Improvement Act of 1978 (Public Law 95-514)

This Act (PRIA) gives additional authority to BLM and FS for managing resources on public lands in a manner that maintains or improves them. PRIA also amended the ACT to require BLM and FS to maintain a current inventory of wild horses and authorizes them to remove wild horses deemed to be in excess of what the range can support as documented by (1) land use plans completed under FLPMA; (2) court-ordered environmental impact statements of grazing programs; (3) information from a research program also established in PRIA; or (4) absent the previous, on the basis of all information currently available that excess animals need to be removed. Under PRIA, removal actions are to be taken to “restore a thriving natural ecological balance to the range, and protect the range from deterioration associated with overpopulation.”

Forest and Rangeland Renewable Resources Planning of 1974 (Public Law 92-378)

National Forest Management Act of 1976 (Public Law 94-588)

Organic Administration Act of 1897 (16 U.S.C 473-475)

Multiple-Use Sustained-Yield Act of 1960 (P.L. 86-517)

These are additional public laws that the FS has to comply with in its Forest Planning process to develop rangeland health standards and guidelines, and in managing wild horses and burros as an integral component of the multiple use resources on FS lands and regulating their population and accompanying need for forage and habitat in correlation with other users of the land.

BLM Nevada Multiple Use Decisions

In Nevada, the BLM issues Multiple Use Decisions (MUD's) to establish rangeland carrying capacity and allocate forage for livestock, wild horses and burros. Wildlife are not included in this equation. This process of developing these decisions with public input implements the land use plan goals and objectives to protect and promote rangeland health. These are the decision documents combining monitoring and the evaluation and analysis of range data to determine the carrying capacity of the habitat. Allotment Evaluations (AE) are issued for public review and comment. From comments received and analyzed by the BLM, the Bureau then issues a Proposed Multiple Use Decision (PMUD) for public review. This document proposes what changes will be made in management strategies to meet goals and objectives of the land use plan. These must also meet the Resource Advisory Councils (RAC's), “Standards and Guidelines” for rangeland health. The public at this point may protest those recommendations if they have additional information that they feel would change that outcome of the management strategies. BLM reviews and comments on protests and then issues a “Final Multiple Use Decision” (FMUD). The affected and interested parties that have participated in process may then appeal that FMUD for a higher level of review.

These decisions are issued in lieu of resource activity plans and serve to adjust livestock, wild horse and burro numbers or grazing management systems to meet resource objectives. These decisions are subject to administrative appeals to resolve issues with affected interests at and beyond the local level of

decision making. The grazing decisions within BLM's MUDs are appealable to the Secretary of the Interior's, Office of Hearings and Appeals (OHA) 43 CFR 4160.4. All other decisions are appealable to the Interior Board of Land Appeals (IBLA) 43 CFR, Section 4.470, unless BLM requests IBLA to remand appeals on wild horse decisions and impacts to wildlife to OHA. It has become common for the Nevada BLM to request that appeals on decisions from the MUD process be remanded to OHA so that all issues are heard and ruled upon in the same forum. If the decisions on livestock management are not appealed, appeals on wild horse decisions remain with IBLA. After appeals to the IBLA, their rulings can be appealed directly to Federal Court.

The Interior Board of Land Appeals (IBLA) June 7, 1989

IBLA ruled in accordance with section 3(b) of the ACT, "that BLM could not authorize the removal of wild horses in order to achieve an AML which had been established for administrative reasons, rather than in terms of the optimum number which results in a thriving natural ecological balance and avoids a deterioration of the range", and that "BLM must establish that removal is warranted in order to restore the range to a thriving natural ecological balance and prevent a deterioration of the range threatened by an overpopulation of wild horses". As a result of this ruling, the BLM in Nevada chose to adopt the MUD process with public input to set AML for wild horses and burros and grazing management levels for livestock and wildlife.

Rangeland Health Standards

BLM's Standards and Guidelines for grazing administration aimed at promoting healthy public lands specifically in Nevada, have been recently approved by the Secretary of the Interior, Bruce Babbitt, to address the State's three distinctively different geographic areas, namely, The Mojave-Southern Great Basin, The Sierra Front-Northwestern Great Basin and The Northeastern Great Basin. Resource Advisory Councils (RAC) made up of ranchers, environmentalist, academics, various industry representatives and the general public are currently in place for each of these geographic areas and advise BLM on development of the standards and guidelines pertinent to rangeland health. The four fundamentals of rangeland health that these standards and guidelines are based on, includes:

- Watersheds are properly functioning;
- Ecological processes are in order;
- Water quality complies with state standards; and
- Habitats of protected species are in order.

Rangeland Health Objectives

BLM has regulations (43 CFR § 4100.0-2) pertinent to rangeland health objectives in place to guide their grazing administration on public lands to maintain them in healthy conditions under the multiple use concept. The objectives of these regulations are:

- To promote healthy sustainable rangeland ecosystems;
- To accelerate restoration and improvement of public rangelands to properly functioning conditions;
- To promote the orderly use, improvement and development of the public lands;
- To establish efficient and effective administration of grazing of public rangelands; and
- To provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands.

THE WILD FREE-ROAMING HORSE AND BURRO ACT OF 1971

(Public Law 92-195) as amended by The Federal Land Policy and Management Act of 1976 (Public Law 94-579) and the Public Rangelands Improvement Act of 1978 (Public Law 95-514)

To require the protection, management, and control of wild free-roaming horses and burros on public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.

Sec. 2. As used in this Act-

(a) "Secretary" means the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management and the Secretary of Agriculture in connection with public lands administered by him through the Forest Service;

(b) "wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros on public lands of the United States;

(c) "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;

(d) "herd" means one or more stallions and his mares; and

(e) "public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service.

(f) "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.

Sec.3. (a) All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 7 of this Act deems such action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 7 of this Act. All management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.

(b) (1) The Secretary shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to: make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of the public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels). In making such determinations 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.

(2) Where the Secretary determines on the basis of (i) the current inventory of lands within his jurisdiction; (ii) information contained in any land use planning completed pursuant to section 202 of the Federal Land Policy and Management Act of 1976; (iii) information contained in court ordered environmental impact statements as defined in section 2 of the Public Rangelands Improvement Act of 1978; and (iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (i-iv) above on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation:

(A) The Secretary shall order old, sick, or lame animals to be destroyed in the most humane manner possible;

(B) The Secretary 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 he determines an adoption demand exists by qualified individuals, and for which he determines he can assure humane treatment and care (including proper transportation, feeding, and handling): Provided, That, not more than four animals may be adopted per year by any individual unless the Secretary determines in writing that such individual is capable of humanely caring for more than four animals, including the transportation of such animals by the adopting party; and

(C) The Secretary 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.

(3) For the purpose of furthering knowledge of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assisting him in making his determination as to what constitutes excess animals, the Secretary shall contract for a research study of such animals with such individuals independent of Federal and State government as may be recommended by the National Academy of Sciences for having scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management. The terms and outline of such research study shall be determined by a redesign panel to be appointed by the President of the National Academy of Sciences. Such study shall be completed and submitted by the Secretary to the Senate and House of Representatives on or before January 1, 1983.

(c) Where excess animals have been transferred to a qualified individual for adoption and private maintenance pursuant to this Act and the Secretary determines that such individual has provided humane conditions, treatment and care for such animal or animals for a period of one year, the Secretary is authorized upon application by the transferee to grant title to not more than four animals to the transferee at the end of the one-year period.

(d) Wild free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros and shall no longer be considered as falling within the purview of this Act-

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

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

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

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

(5) upon destruction or death for purposes of or incident to the program authorized in section 3 of

this Act; Provided, That no wild free-roaming horse or burro or its remains may be sold or transferred for consideration for processing into commercial products.

Sec. 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. In no event shall such wild free-roaming horses and burros be destroyed except by the agents of the Secretary. Nothing in this section shall be construed to prohibit a private landowner from maintaining wild free-roaming horses or burros on his private lands, or lands leased from the Government, if he does so in a manner that protects them from harassment, and if the animals were not willfully removed or enticed from the public lands. Any individuals who maintain such wild free-roaming horses and burros on their private lands or lands leased from the Government shall notify the appropriate agent of the Secretary and supply him with a reasonable approximation of the number of animals so maintained.

Sec. 5. A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

Sec. 6. The Secretary is authorized to enter into cooperative agreements with other landowners and with the State and local governmental agencies and may issue such regulations as he deems necessary for the furtherance of the purposes of this Act.

Sec. 7. The Secretary of the Interior and the Secretary of Agriculture are authorized and directed to appoint a joint advisory board of not more than nine members to advise them on any matter relating to wild free-roaming horses and burros and their management and protection. They shall select as advisers persons who are not employees of the Federal or State Governments and whom they deem to have special knowledge about protection of horses and burros, management of wildlife, animal husbandry, or natural resources management. Members of this board shall not receive reimbursement except for travel and other expenditures necessary in connection with their services.

Sec. 8. Any person who-

(1) willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the Secretary, or

(2) converts a wild free-roaming horse or burro to private use, without authority from the Secretary, or

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(4) processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

(5) sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to section 4 of this Act, or the remains thereof, or

(6) willfully violates a regulation issued pursuant to this Act, shall be subject to a fine of not more than \$2,000, or imprisonment for not more than one year, or both. Any person so charged with such violation by the Secretary may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401, title 18, United States Code.

(b) Any employee designated by the Secretary of the Interior or the Secretary of Agriculture shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this Act or any regulation made pursuant thereto, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction, and shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations made pursuant thereto. Any judge of a court established under the laws of the United States, or any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

Sec. 9. In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47(a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary.

Sec. 10. Nothing in this Act shall be construed to authorize the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they do not presently exist.

Sec. 11. After the expiration of thirty calendar months following the date of enactment of this Act, and every twenty-four calendar months thereafter, the Secretaries of the Interior and Agriculture will submit to Congress a joint report on the administration of this Act, including a summary of enforcement and/or other actions taken thereunder, costs, and such recommendations for legislative or other actions he might deem appropriate.

The 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. The Secretaries are authorized and directed to undertake those studies of the habits of wild free-roaming horses and burros that they may deem necessary in order to carry out the provisions of this Act.