

Dale Hall, Director  
U.S. Fish and Wildlife Services  
1849 C Street, NW  
Washington, D.C. 20240

March 26, 2007

**Subject: Petition for the Immediate Emergency Listing of the Genetically Distinct and Evolutionary Significant Clark Mountain Wild Burro As a Distinct Population Segment of Wild Burros Under the Endangered Species Act.**

Dear Mr. Hall:

The enclosed petition requests that you urgently and immediately list the genetically distinct Southern California Clark Mountain Wild Burro population for protection under the Endangered Species Act. Failure to grant this request will result in a violation of the Act, allowing management actions to go forward that will result in the immediate extinction of the only wild burro herd of it's kind in the world.

The extinction of this Distinct Population Segment of wild burros, the Clark Mountain Burro, is absolutely imminent if immediate and decisive action is not taken upon receipt of this petition for the authority granted under of SEC 4 (C) (7), Emergency Posing a Significant Risk of the Endangered Species Act as the threat of extinction would be classified at the highest rating possible.

Additionally, this petition recognizes the authority granted for listing under the Endangered Species Act (ESA), SEC 3 (8) which qualifies any member of the animal kingdom, including without limitation any mammal, SEC 4 (a) (D), the inadequacy of existing regulatory mechanisms, SEC 4 (a) (E), manmade factors affecting its continued existence, as well as the addition listing criteria supplied under SEC 2 (a) (1), SEC 2 (a) (2), SEC 2 (a) (3), SEC 2 (c) (1), SEC 2 (c) (2), SEC 3 (1), SEC 3 (5) (C), SEC 3 (6), SEC 3 (15), SEC 4 (a) (1), SEC 4 (a) (A), and SEC 4 (2) (b) (2).

The Bureau of Land Management estimated the entire population as of December 2006 for the Clark Mountain Burros did not exceed 150 individuals. Approximately 96 of these burros have since been captured and are being prepared for adoption or sale at the Bureau of Land Managements Ridgecrest holding and adoption facilities in California.

Once this processing is completed, the majority of this genetically distinct herd will be dispersed which will result in such significant impacts to the remaining population and gene pool that the chance for recovery of this species and their documented genetic uniqueness will be permanently lost forever.

Overall, both Nationally and within the State of California, the Bureau of Land Managements failure or inability to implement management actions that insure the preservation and protection of wild burros and their habitat has resulted in cumulative impacts that have decimated both habitat and wild burro populations across the West.

Though wild burros are considered a protected species under the Wild Free-Roaming Horse and Burro Act of 1971, this failure by the Bureau of Land Managements of implementing existing regulatory mechanisms in order to preserve the genetically distinct and evolutionary significant species of wild asses commonly referred to as the Clark Mountain wild burros, as well as their inability to coordinate with other agencies to preserve critical habitat requirements necessary to sustain their continued survival, has resulted in the imminent and immediate threat of extinction to this Distinct Population Segment and species of *equus asinus*.

In the State of California, at least three and a half million acres of habitat has been lost or seventy five percent of all wild burros historic range. The current population target deemed appropriate for all wild burro use within the entire state of California has been set at 345 burros or less.

In the Southern California area alone, there has been over a ninety percent reduction in both habitat and wild burro populations in the last twenty-five years.

At the time of passage of the California Desert Conservation Area Plan in 1980, there were 19 recognized Herd Management Areas that could be managed for burros and 14 were officially designated for that purpose within the Conservation Area alone. The combined appropriate management levels totaled 2,747 wild burros and their available habitat was 3,500,465 acres.

Today, this same area has less than 300,000 acres of habitat remaining, only two Herd Management Areas are authorized for wild burro use and a allowable management level established at a maximum number of 229 burros.

The Clark Mountain Burros have lived in complete isolation from any other wild burro herd for at least four hundred years. This isolation has produced the preservation of the one of the oldest and purest bloodlines from the original European asses.

Through countless generations, they have adapted and naturalized themselves within this harsh desert environment, finding a harmonious niche and balance with the other species of the region, long before they were deemed in need of “management” or population control by man.

These countless generations have produced adaptations and mutations that have revealed themselves in DNA tests and genetic analysis done at the request of the BLM by Doctor Gus Cothran, a leader in the field of equine genetics and currently residing at Texas A&M.

According to these reports, the DNA tests and genetic analysis done on the Clark Mountain burros revealed that their genetic markers and make up contained the most genetically unique qualities of all the remaining burro herds in the United States. The Bureau of Land Management acknowledges this on page thirty-one of the environmental assessment that proposed, and ultimately decided on their total elimination by stating:

*“There has been some genetic analysis work done by Dr. Gus Cothran from the University of Texas A&M who is continuing to study the genetics of burro populations across the west. Cumulative reductions in habitat available for burros and subsequent reductions in burro populations, resulting in reduced representation of this species has likely compromised their gene pool. The ability for populations to maintain genetically viable herds, with representation of their unique genetic characteristics would be lost”.*

By the Bureau’s own admissions, the Clark Mountain burros have become endangered through management activities that have dramatically affected both population and habitat.

There is also the admission that this historic herd has, through hundreds of years of naturalization, became so completely established within the region that significant, verifiable changes have transpired within their genetic make up, so much so that they were cited in BLM’s own assessment as *this species*, which clearly recognized the distinctness of this population segment commonly known as the Clark Mountain wild burros.

The BLM also acknowledges that the Clark Mountain Burros unique genetic characteristics are being lost, permanently, irreplaceably, and forever, the very definition of extinction.

While this petition may be unusual since wild burros already considered a federally protected species, the evidence and statistics are overwhelming; management is failing to protect these burros and they now warrant dramatic, immediate and swift emergency intervention under the authority of SEC 4 (C) (7) of the Endangered Species Act to halt all further proceedings being implemented by the Bureau of Land Management that will result in the historic Clark Mountain Burros irreparable harm and irrevocable permanent loss, as well as to the citizens of our Nation.

Additionally, the immediate declaration of their Endangered Status will result in options for preserving critical habitat requirements, the loss of which is based solely on manmade factors through an unwillingness by the Bureau of Land Management and other federal agencies to coordinate strategies, plans and resources to insure the Clark Mountain Burros continued preservation.

Never before has a species so desperately needed the emergency intervention and protection granted under the authority of the Endangered Species Act like the Clark Mountain Wild Burros do now to prevent their untimely demise.

Failure to consider and act immediately on this petition to prevent the dispersal of the captured herd would render all subsequent submissions, studies, reports or recovery plans meaningless, as there would no longer be any species of significant populations to protect.

One of the significant factors in management activities within the area is the Clark Mountain Burro habitat and their proximity to habitat of the Threatened Desert Tortoise (*Gopherus agassizii*).

The Desert Tortoise, while assigned a Threatened status under the Endangered Species Act, does not take precedence over the imminent and foreseeable immediate extinction of the Clark Mountain Wild Burros, whose wild population is estimated at less than one hundred and fifty burros worldwide.

The best and most current information available regarding these two species, when weighed and compared, indicate that the adverse impacts to desert tortoise populations over-all and within the site-specific area of the Clark Mountain Burro habitat would be slight, if management actions were implemented that prevented the extinction of this evolutionary significant species. This conclusion is based on the following evidence.

Nationwide, designation of reserved habitat for the desert tortoise population is cited as 6.4 million acres. Nationwide, designation for all wild burro habitat is reported at approximately 5.6 million acres, almost a million acres less for wild burro use than for desert tortoise.

The Clark Mountain Wild Burros historic range is reported at 233,370 acres. Management decisions through the land use planning process reduced their range to 75,349 acres, a loss of 158,021 acres of habitat. This was again reduced to zero acres in further land use planning decisions.

The desert tortoise population, both past and current, is a highly elusive figure. Neither the United States Fish and Wild Life Service (USFWS), California Department of Fish and Game (CADFG), Nevada Department of Wildlife (NDOW), as well as a multitude of articles and documents, report actual or estimated desert tortoise populations. The only exception and source found at the time of researching desert tortoise data and statistics that supplied relevant information regarding their projected population status was Nature Serve Website.

The desert tortoise individual population numbers was cited under Global Data as 10,000 to 1,000,000 and their status are listed as "Apparently Secure."

The following population information was also provided:

*“The total population estimates range from 93,000 individuals (NDOW 1985) to several hundred thousand. However, the lower figure is too conservative. For example, on the 76,800-ha Ironwood Forest National Monument in Arizona, distance sampling methods produced an estimate of 17,997 tortoises (150 mm carapace length or larger) on the monument (Averill-Murray and Averill-Murray 2005).”*

*“Major protection units (critical habitat blocks or Desert Wildlife Management Areas, DWMAs) should be capable of supporting metapopulations of 50,000 adults, according to some Minimum Viable Population (MVP) models (USFWS 1994). A population viability analysis by Brussard (1992) concluded that preserves or management areas should be large enough to support 20,000 adults. By genetic criteria alone a minimal adult population would require 5,000 adults (assuming an effective population size of 0.1 or 500) for continued viability (see Gilpin's model in USFWS 1994).”*

These population units, also called “recovery units”, were outlined in this excerpt by Kristin H. Berry for the Bureau of Land Management and the Desert Tortoise Recovery Plan.

*“Drawing from concepts outlined in the federal Endangered Species Act, the recovery team used a strategy of protecting evolutionarily significant population units and their associated ecosystems. The six population units, called “recovery units,” were identified using published and unpublished data on genetic variability, morphology, and behavior patterns of populations as well as ecosystem types. Boundaries of the six units closely approximate major ecosystem boundaries in the Mojave and Colorado deserts. The goal is to reach a target (where possible) of 50,000 breeding adult tortoises for each recovery unit.”*

This population management strategy is targeted to ensure population and genetic viability for continued future survival of desert tortoise with the stated goal as at least 300,000 adult desert tortoise within the six recovery units.

By way of comparison, nationwide the allowable management level issued for all wild burro use is under 2,700 individuals with any wild burros that exceed both population targets and ranging outside their designated territories being removed. The Clark Mountain Burros have one hundred fifty or less individuals remaining that still fully wild.

As for site-specific populations, in the November 2006 Environmental Assessment (CA-690-EA04027) released by the Bureau of Land Management under Wildlife, BLM reports that:

*“Thirty-eight percent of the Clark Mountain Herd Area is within the Ivanpah Critical Habitat Unit and the Shadow Valley DWMA. Data on desert tortoise on a permanent study plot in the Shadow Valley DWMA were collected in 1988, and 1992; the densities of desert tortoises of all sizes per square mile were 50, and 58 respectively (Berry 1996). Desert tortoises occur in the California desert from below sea level to an elevation of 7,300 feet, but the most favorable habitat occurs at elevations of approximately 1,000 to 3,000 feet (Schamberger and Turner 1986).”*

Thirty-eight percent of the Clark Mountain Herd Area is roughly equivalent to 90,000 acres or 140 miles. If the Threatened desert tortoise has been surveyed at 58 per square mile, then the estimated desert tortoise population for the Clark Herd Area alone would be approximately 8,156 tortoises of all sizes, just in the 90,000 acres of DWMA and Critical Habitat within the Clark herd area.

According to the most recent available data, in just three square miles, the desert tortoise population exceeds the Clark Mountain Burros entire known population and outnumbering them by over 50-1, just within this one isolated area of desert tortoise habitat.

Available data supports the highly imperiled status and inevitable extinction of the Clark Mountain Burros supercedes the Threatened Status of desert tortoise, both locally and nationally.

The significant critical factor in determining the removals of the genetically distinct Clark Mountain wild burros from their historic range is the refusal by National Park Service to allow the burros' access to the only year-round spring in the area. National Park Service stated that if a final removal program was not initiated for the Clark Mountain wild burros, the spring source would be fenced to refuse access to them but access would still be allowed to bighorn sheep and other wildlife in the area.

Bighorn sheep were transplanted to the Clark Mountain Range between 1982-84, well after the establishment of the Wild Free-Roaming Horse and Burro Act, whose intent was to establish and preserve critical habitat for wild horse and burro use across the west.

Now, the most critical habitat component that has been utilized for centuries by the Clark Mountain wild burros has been allocated for exclusive use for the bighorn sheep that are just recently re-established in the area.

Though the Clark Mountain Burros have used it for generations without destroying it, the logic behind excluding the wild burros from this area is the concern of undue and irreparable habitat degradation of the riparian area and that only burros, not bighorn sheep will induce this undesired result.

However, in a recent Rangeland Health Assessment for Fish Lake Valley, released by the Tonopah Field Station in Tonopah, Nevada in 2005, the bighorn sheep population was cited as the casual factor of the degraded riparian area of Ice House Spring #3, located in the Icehouse Grazing Allotment.

In other words, the spring is being removed from wild burro use to ensure riparian health while bighorn will be allowed to use it, even though there is evidence that bighorn sheep, or any overly abundant species, will also cause degradation.

Bighorn sheep are considered a “sensitive species” within California and require special attention and management coordination. Conservation and protection measures are often strictly enforced and have resulted in significant progress being achieved in the expansion of bighorn populations.

In the 2003 Desert Bighorn Council Transactions: Volume 47: Status of Bighorn Sheep in California, a population survey completed in 2004, cited the estimated Clark bighorn sheep population at a range of 25-50, with the Kingston-Mesquite range estimated at 51-100, and the total population range for the Central North Mojave at 178 to 350.

According to the population estimates provided in 2004, the total State of California adult bighorn sheep population ranged from 3,383 to 5,500 at the time of the surveys.(14)

This estimate means that bighorn populations, just within the state of California now exceed the entire nationwide population target for all wild burro use on all public land. Additionally, the estimated California bighorn population indicate that this “sensitive species” now outnumbers the statewide allowable management levels of 345 wild burros or less by at least 10-1 while bighorn outnumber the genetically unique Clark Mountain wild burros, the only one of their kind, by at least 20-1.

Since the most critical factor in preserving the Clark Mountain wild burros can be attributed to National Park Services refusal to cooperate or coordinate public resources for species preservation, despite their mandate within the Organic Act of 1916 "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner as will leave them unimpaired for the enjoyment of future generations," they have issued statements that justify this refusal by stating it is their POLICY to not manage for wild horses and burros on public lands. Yet this fact can be disputed considerably.

First, they *use* to manage them and considered them a part of the natural and historic resources they have been mandated to protect. The wild burros within the Grand Canyon who were considered so significant to the area and the American people that a statue of “Brighty” the burro, was once prominently displayed within the Park evidence this. NPS is also *currently* managing wild horses in a variety of places throughout our nation as evidenced by the herds located on Assateague Island in Maryland or Shackleford, North Carolina.

National Park Services refusal to cooperate to preserve this centuries old historic wild burro herd, a herd that had naturalized so completely that genetic adaptations and distinctions had already transpired before the National Park Service was ever created, is a clear sign that their vacillating “policy” about the management of the Clark Mountain wild burros is not in alignment with their objectives or their mission; the preservation of the natural resources of this nation.

The American people aren’t interested in “new” directors, visions or policies that rape our natural heritage and resources that result in failing to preserve them for future generations. Nor are they interested in interagency politics that refuse to mitigate differences to the detriment of those resources they are sworn to protect or weak excuses that attempt to justify the breaking of promises and mandates given to institute protections for the biological and historical diversity of our Nation.

This evolutionary significant distinct population segment, the Clark Mountain wild burros, recovery would be relatively simple, if the respective public servants involved would merely focus on the preservation of all our resources and species instead of the recovery or “special requirements” of just one or two.

There is sufficient data, evidence, genetic testing, and expert analysis of the various factors involved such as Threatened desert tortoise populations that warrant further review and studies of this petition.

Therefore, it is requested that the United States Fish and Wildlife intercede and prevent the processing, branding and dispersal of this one-of-a-kind captured herd by the Bureau of Land Management, now being held at the BLM California Ridgcrest facility until a review has been completed.

The Clark Mountain Burros “processing” and dispersal of this irreplaceable and unique herd must be stopped **NOW** to prevent irreparable harm to this distinct genetic population and gene pool that will cause the inevitable extinction this species their one-of-a-kind bloodline and its corresponding centuries of adaptations.

Your immediate and prompt intervention is required if the future of this species is to continue.

Sincerely,

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