



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Las Vegas Field Office  
4701 N. Torrey Pines Drive  
Las Vegas, Nevada 89130-2301  
<http://www.nv.blm.gov>



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DEC 19 2005

DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE DIRECTOR  
BUDGET AND PLANNING DIVISION

In Reply Refer To:  
4700  
(NV052)

DEC 15 2005

Dear Interested Public:

Enclosed is a copy of the Decision Record and Finding of No Significant Impact (DR/FONSI) for the Johnnie, Muddy Mountains and Wheeler Pass Herd Management Areas Final Environmental Assessment for Establishment of Appropriate Management Levels. The Proposed Action (Alternative A) is approved for implementation.

Minor changes were made to the Preliminary Environmental Assessment as a result of public comments. Refer to Attachment 1 for a summary of the changes made. A copy of the Final EA, with the changes incorporated, is available upon request.

This decision is subject to administrative review in accordance with 43 CFR Part 4. Should you wish to appeal this decision, please refer to the enclosed Decision Record/Finding of No Significant Impact and Form 1842-1, for procedures relative to filing an appeal and/or petition for stay.

### **Background Information**

An appropriate management level (AML) for wild horses has not previously been set for the Johnnie, Muddy Mountains and Wheeler Pass Herd Management Areas (HMAs). Establishing an AML for wild horses and burros for the three HMAs is needed to conform with the 1971 Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which requires that an AML for wild horses and burros be determined and that wild horses and burros be managed in a manner that is designed to achieve and maintain a thriving natural ecological balance.

The Code of Federal Regulations (43 CFR 4700.0-6(a)) further requires that wild horses and burros be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat. In determining an AML for the wild horses in designated HMAs, the regulations require the authorized officer to consider the animal's habitat requirements and their relationship with other uses of the public and adjacent private lands (43 CFR 4710.3-1). The regulations also require the animals' distribution to be limited to herd areas that existed in 1971 (43 CFR 4710.4 and 4710.2).

The attached Decision Record establishes the AML for the three HMAs based on in-depth analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors.

## **Summary of Public Involvement**

A scoping letter was sent to interested public requesting information and alternatives relative to establishing AML for the three HMAs on February 10, 2005. Six response letters were received with the respondents requesting to be kept informed or remain on the interested parties list. No recommendations, data, information or comments were received in response to BLM's scoping letter.

The Johnnie, Muddy Mountains, and Wheeler Pass Wild Horse and Burro Herd Management Areas (HMA) Evaluation, and Johnnie, Muddy Mountains, and Wheeler Pass Herd Management Areas Preliminary Environmental Assessment (EA) for Establishment of Appropriate Management Levels (AML) was sent to the interested public for review on September 22, 2005. The evaluation analyzed data collected within the Johnnie, Muddy Mountains, and Wheeler Pass HMAs, and was used to establish AML for each HMA. A thirty day comment period was provided for the interested public to submit and provide comments or alternatives.

One comment letter was received in response to the Preliminary EA and HMA Evaluation from the Nevada Department of Wildlife (NDOW) Southern Region. BLM's response to the Department's comments follows.

## **Bureau's Response to Public Comments**

1. We find the Bureau does not appropriately apply the Mojave-Southern Great Basin Resource Advisory Council's Standards and Guidelines (RAC Standards and Guidelines) regarding the management of wild horses and burros. *RAC 4.2: AMLs should be set to reflect the carrying capacity of the land in dry conditions, based upon the most limiting factor: living space, water or forage. RAC 4.4: Herd Management Plans should be made with the best predictive information available. When emergency actions occur, the Herd Management Plan should be re-evaluated.*

### **Response**

The Mojave-Southern Great Basin RAC Standard 4 states: *Wild horses and burros within Herd Management Areas should be managed for herd viability and sustainability. Herd Management Areas should be managed to maintain a healthy ecological balance among wild horse and/or burro populations, wildlife, livestock, and vegetation.* Implementation of the AML's as outlined in the Proposed Action is fully consistent with RAC Standard 4 and is expected to result in viable and sustainable wild horse and burro herds and to maintain a healthy ecological balance among wild horse and burro populations, wildlife and vegetation (no livestock grazing is currently authorized for any of the affected HMAs). Refer to Herd Management Areas Evaluation (page 37-41) and the PEA (page 13-27) for additional information.

Although the NDOW has misquoted RAC Guideline 4.2, we agree the wording in the Final EA (page 5) should be corrected as follows: *AML's should be set to reflect the carrying capacity of the land in dry conditions based upon the most limiting factor: living space, water or forage. Management levels will not conflict with achieving or maintaining standards for soils, ecological components or diversity of habitat and biota.* Having made

this correction, however, we find we have carefully analyzed the four primary habitat components: space, water, forage and cover. Based on our analysis, we conclude the AMLs proposed for implementation on the Johnnie, Muddy and Wheeler Pass HMAs are reflective of the dry conditions inherent to the Mojave Desert environment and will not conflict with making significant progress toward achieving rangeland health standards for soils, ecological components, or diversity of habitat and biota. Further, we find RAC Guideline 4.2 provides the Bureau with discretion to evaluate the basic habitat components, to determine the most limiting factor(s), and to establish a management level of wild horses and burros, which on balance given available forage, cover, space and water, will result in making significant progress toward achievement of rangeland health standards. Refer to the Herd Management Area Evaluation (pages 22-41) and the PEA (pages 13-27).

Interim estimated AMLs for the two HMAs were set in the Las Vegas Resource Management Plan (RMP) in October 1998. These contrast with the proposed AMLs and estimated actual populations as follows:

HMA	Interim Estimated AMLs		Proposed AMLs		Estimated Current Populations	
	Horses	Burros	Horses	Burros	Horses	Burros
Johnnie	50	75	0	54-108	56	298
Muddy Mtn	0	50	0	0	5	7
Wheeler Pass	To be managed by FS		47-66	20-35	275	82

As can be seen from the above data, the Bureau is proposing to manage for significantly fewer wild horses and burros than presently exist on the three HMAs. Establishing an AML will allow the Bureau the opportunity to move forward with gather and removal of the excess wild horses and burros and to monitor and evaluate resource conditions over the next 5-10 year period to determine if any further adjustments to AML are needed/appropriate.

Relative to RAC Guideline 4.4: *Herd Management Plans should be made with the best predictive information available. When emergency actions occur, the Herd Management Plan should be re-evaluated.* We find preparation of Herd Management Plans is outside the scope of the Bureau's analysis to set AML for the three affected HMAs. The current analysis is confined to establishing appropriate management levels for the Johnnie, Muddy and Wheeler Pass HMAs (refer to PEA, page 5, Decision to be Made). Once AML is set, the Bureau will move forward with scheduling removals of any excess animals, and will monitor resource conditions over the next five to ten year period to determine if further adjustments in AMLs for the three HMAs are needed.

2. Since the water data and analysis is absent and the calculated AUMs are misleading averages and inconsistently applied, the summary and conclusions of the Bureau's PEA are not valid for the Johnnie and Wheeler Pass HMAs.

### Response

Relative to the water data and analysis, the Bureau's analysis is based on the most current information available. Based on the available data, water has been identified as a limiting factor for the three HMAs, and as insufficient to support wild horses and burros within the Johnnie and Muddy HMAs on the basis of public lands alone (refer to Herd Management Areas Evaluation, page 28-29 and PEA, 8-9). However, the Bureau (and the Forest Service by association) are charged with managing wild horses and burros as a population. In this instance, wild horses and burros utilize water and habitat on both National Forest Service lands and other public lands irrespective of administrative boundaries. As a result, water availability and habitat provided by both administrative jurisdictions are considered in establishing the appropriate management level for the Johnnie and Wheeler Pass HMAs. Moreover, once excess animals have been removed and populations are managed to within the proposed low and high point AMLs, significant progress toward achieving a thriving natural ecological balance and multiple use relationship as required by Section 3(b) of the Act is expected.

Relative to the forage analysis and the assertion that calculated AUMs provide misleading averages and are inconsistently applied, the Bureau has used the most current information available and has followed established procedures to determine a grazing capacity for the three HMAs. As discussed in the Herd Management Areas Evaluation (pages 23—34) and in the PEA (page 9), the Bureau's analysis supports forage sufficient to support the proposed AMLs.

Based on the carrying capacity calculations from the Johnnie, Muddy Mountains, and Wheeler Pass Wild Horses and Burro Herd Management Areas Evaluation, the Johnnie HMA can support 649 AUMs. Movement from BLM-managed lands to Forest Service-managed lands is known to occur. A range of 54-108 burros can be supported because burros will move based on environmental factors. The proposed population range is based on the burros moving back and forth from BLM to Forest Service: carrying capacity determinations affirm that up to 54 burros can be supported on BLM land year-round and up to 108 burros can be supported for six months of the year. This range will allow for burros to be gathered to the low range AML and grow to the high point AML over a 4-5 year gather cycle.

The carrying capacity calculations for the Wheeler Pass HMA indicate 933 AUMs are available for use or up to an average of 78 animals a year. The Bureau's proposed AML of 47 wild horses and 20 burros is the minimum number that can be supported on the Wheeler Pass HMA, when the Forest Service's limit of 7% of the available forage and water in determining their AML for the Spring Mountains WHT is factored in. Given that wild horses and burros move between BLM and Forest Service administered lands based on various environmental factors, a population range of 47-66 wild horses and 20-35 burros is appropriate and is consistent with BLM's carrying capacity determinations. Once excess animals are removed (in approximately December 2007), wild horse numbers will be reduced by about 228 and burros by about 62 below the current estimated population number.

Page 29 of the Herd Management Areas Evaluation specifies that carrying capacity determinations for wild horses and burros are derived based on the utilization of 25% of the key species. This level of utilization is expected to provide ample flexibility during extreme dry conditions and makes the balance of annual forage growth (75%) available for use by applicable wildlife species and for maintenance/improvement of rangeland health. Also, refer to the PEA (pages 13-27).

As discussed previously, the Bureau is proposing to manage for significantly fewer animals than the interim AMLs set in the Las Vegas Resource Management Plan (RMP) in October 1998. Moreover, proposed AMLs are significantly less than existing populations (refer to table below).

HMA	Interim Estimated AMLs		Proposed AMLs		Estimated Current Populations	
	Horses	Burros	Horses	Burros	Horses	Burros
Johnnie	50	75	0	54-108	56	298
Muddy Mtn	0	50	0	0	5	7
Wheeler Pass	To be managed by FS		47-66	20-35	275	82

Again, establishing an AML will allow the Bureau the opportunity to move forward with gather and removal of the excess wild horses and burros and to monitor and evaluate resource conditions over the next 5-10 year period to determine if any further adjustments to AML are needed/appropriate.

The Interior Board of Land Appeals has found: *“We note the Secretary, in his June 1981 letter, indicates that an appropriate determination of the number of wild horses to be permitted on the public range, consistent with section 3(b) of the Act, requires relying on an intensive monitoring program involving studies of grazing utilization, trend in range condition, actual use and climatic factors.”* (109 IBLA 120); and *“The Board will affirm a decision establishing the appropriate management level suitable for a herd management area where the decision is predicated on analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors, which demonstrate that maintenance of the herd at the prescribed levels of horse [or burro] population will restore the range to a thriving natural ecological balance, in accordance with section 3(b) of Wild Free-Roaming Horses and Burros Act, as amended, 16 USC 1333(b)(1988).”* (122 IBLA 290).

We believe the Bureau’s analysis meets the test afforded by the rulings.

3. The Department finds the Bureau (and Forest Service by association) would be unable to manage wild horses and burros as viable populations in the northwestern portion of the Spring Mountains. The Bureau should not be adopting AMLs where implementation of intensive ranching practices such as relocating individuals to maintain a herd’s genetic viability or development of artificial waters becomes the norm.

### Response

The 1971 Wild Free-Roaming Horses and Burros Act, as amended, requires BLM and the Forest Service to manage wild horses and burros at the minimum feasible level. The regulations (43 CFR 4710.4) further define the agencies management responsibilities as follows: “...Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.”

The October 1998 Las Vegas Resource Management Plan (RMP) identifies the following objectives for wild horse and burro management: “*In Herd Management Areas not constrained by desert tortoise restrictions, manage for healthy, genetically viable herds of wild horses and/or burros in a natural, thriving ecological balance with other rangeland uses. Maintain the wild, free-roaming character of the wild horses and burros on the public lands.*” Furthermore it states: “*Develop and maintain dependable water sources, consistent with BLM policy for wilderness management, to allow more even distribution of horses and burros throughout the Herd Management Areas.*”

Decisions relative to introduction of animals to maintain genetic viability or the development of additional water sources are outside the scope of this analysis. Consistent with objectives in the October 1998 Las Vegas Resource Management Plan (RMP), the Bureau may propose practices such as these in the future, if needed/appropriate. Such proposals would be analyzed during development of site-specific herd management area plans (HMAPs). In this event, a NEPA document would be prepared to analyze the proposed practices and the document would be provided to the public for review and comment in accordance with law and regulation.

4. The Department is concerned that the Bureau’s portrayal of wild horse and burro history is somewhat incorrect. There is no historical documentation that feral wild horses or burros were found in the Spring Mountains prior to the mid-1800’s and no evidence to support the animals are descendants of Spanish stock. We concur with the Forest Service’s account in its 1996 Plan Amendment. The PEA is also incorrect in its chronology of wild horse and burro herd management history: HMAs were defined and established in the 1978 MFP not in the late 1980’s as stated on page 25 of the PEA; also the current HMA boundaries were altered in the 1998 RMP.

### Response

The October 1998 Las Vegas Resource Management Plan (RMP) states: “*It is assumed that the wild horses and burros in the planning areas were influenced by the domestic animals that either escaped from, or were released by, their owners, possibly dating back to those animals brought by the Spanish.*” The 1998 RMP WHB-2-b states: “*Adopt Herd Management Area boundaries to existing 1971 locations; this will increase the size of some Herd Management Areas but will not decrease any in size.*” The language in the PEA is consistent with the wording in the Las Vegas RMP.

5. The plan contains little information relative to carrying capacity for applicable species of wildlife useful to the Department's population management mandates.

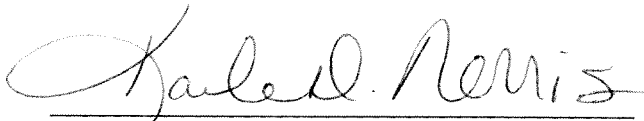
Response

Page 29 of the Herd Management Areas evaluation specifies that carrying capacity determinations for wild horses and burros are derived based on the utilization of 25% of the key species. This objective contrasts with 50% allowable utilization based on the most current range management recommendations for vegetation communities within the Mojave Desert environment. The remaining 25% is available for use by applicable wildlife species and the balance is available to maintain/improve rangeland health. Also, refer to the PEA (pages 13-27).

Further the Interior Board of Land Appeals (133 IBLA 103) finds: "*Although determination of grazing capacity for both livestock and wild horses in a single multiple-use decision has been upheld by the Board, we know of no legal requirement that the AML be set in this manner.*" We interpret this ruling to apply to the determination of grazing capacity for wildlife and wild horses (and burros) as well.

Additional Information

Contact Jerrie Bertola of my staff at (702) 515-5024 for additional information, or write the above address.



**Karla D. Norris, Assistant Field Manager  
Recreation and Renewable Resources**

12/15/05  
**Date**



## Attachment 1.

### ERRATA SHEET Changes to the Preliminary Environmental Assessment

Minor changes were made to the Johnnie, Muddy Mountains, and Wheeler Pass Herd Management Areas Preliminary Environmental Assessment as a result of public comments. The Preliminary EA, as modified per changes outlined below, is considered Final. A copy of the Final EA is available upon request.

1. Page 4 - Need for Action. Last sentence should read: "In addition, the AML must be established to allow BLM to gather excess wild horses and burros, to assure a thriving natural ecological balance, and to develop population management plans for each HMA."
2. Page 5 – Need for Action. Delete Third Sentence and replace with: *The Mojave/Southern Great Basin Guideline 4.2 also requires that: AML's should be set to reflect the carrying capacity of the land in dry conditions based upon the most limiting factor: living space, water or forage. Management levels will not conflict with achieving or maintaining standards for soils, ecological components or diversity of habitat and biota.*
3. Page 6 - Descriptions of Alternatives. Second Paragraph/Second Sentence should read: "Improper utilization of riparian vegetation, upland forage (native or seeded), or other vegetation is an indication that forage resources are not sufficient to support wild horses and burros in the numbers at which they presently occur."
4. Page 7 - Second Paragraph/First Sentence should read: "A recurring pattern of movement out of the HMA into an adjacent HMA or to non-HMA areas for required resources is an indication that an HMA is not capable of sustaining year-long wild horse and burro use. "
5. Page 7 - Third Paragraph/Second to Last Sentence. The term "gather" should be replaced with "removals".
6. Page 7 - Fourth Paragraph/Last Sentence should read: "If the AML exceeds the minimum viable population, the AML is established at the calculated value. "
7. Page 8 - Summary Paragraph should read: "To determine if the water component was sufficient the use of inventoried springs was used. It was determined that water was insufficient for all three HMAs if managed on BLM land alone. The majority of water sources on all three HMAs are located outside the BLM boundaries. It was further determined that by managing wild horses and burros in coordination and cooperation with the Forest Service, the Johnnie and Wheeler Pass HMAs would have sufficient water limited by the allocation of water on Forest Service lands. Two water sources for the Johnnie HMA are located on BLM land, one water source for the Muddy Mountains HMA is located on BLM land, and two water sources for the Wheeler Pass HMA are located on BLM land."

8. Page 10 - Tier 3. Last Sentence should read: “It was also determined that the Muddy Mountains would not have a genetically viable population for burros, and that the wild horses within the Wheeler Pass HMA would not have a genetically viable population; however, the introduction of genetically similar mares to the herd would allow for a genetically viable population of wild horses over the long term.”
9. Page 10- Tier Summary should read: “In summary, through the three tier analysis, it was determined that the Johnnie and Wheeler Pass HMAs were missing one of the essential habitat requirements in Tier One. Water was missing from both the Johnnie, and Wheeler Pass HMAs; however, due to the ability to manage wild horses and burros in coordination and cooperation with the Forest Service it was determined that water would be sufficient provided use does not exceed the limiting factor of 7% allocation of water on Forest Service lands. It was further determined that for the burro populations within the Johnnie and Wheeler Pass HMAs the carrying capacity that could be supported would sustain a genetically viable burro population. This determination is based on the ability of movement between these two HMAs for burros. In order to support a genetically viable wild horse population, introduction of genetically similar mares may be necessary within the Wheeler Pass HMA.”
10. Page 15 – First Sentence. The term “codification” should be replaced with “modification”.
11. Page 16 - Alternative C- No Action/Second Sentence. The term “codification” should be replaced with “modification”.
12. Page 20 - Wheeler Pass/First Paragraph should read: “The current estimated wild horse population for the Wheeler Pass HMA is 275 wild horses this includes wild horses that are also found within the boundaries of Forest Service managed land. The average growth rate is approximately 13% per year, with year round foaling.”



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### **JOHNNIE, MUDDY MOUNTAINS AND WHEELER PASS HERD MANAGEMENT AREAS ESTABLISHMENT OF APPROPRIATE MANAGEMENT LEVELS EA# NV-052-05-399**

### **FINDING OF NO SIGNIFICANT IMPACT AND DECISION RECORD**

#### **INTRODUCTION**

The Las Vegas Field Office (LVFO) established Herd Areas (HAs) based on where wild horses and burros were found in 1971 in accordance with the provisions of the Wild and Free-Roaming Horses and Burros Act. Through public involvement and the land use planning process, the LVFO established nine Herd Management Areas (HMAs) within HA boundaries. HMAs provide for long term management of wild horses and burros as a designated land use. The LVFO has currently established AML for six of the nine HMAs it manages. The following Decision establishes the AML for the three remaining HMAs (Johnnie, Muddy Mountains and Wheeler Pass) based on in-depth analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors.

#### **BACKGROUND INFORMATION**

The Las Vegas Field Office has prepared an Environmental Assessment and a Herd Management Area Evaluation with the objective of establishing an appropriate management level of wild horses and burros for the Johnnie, Muddy Mountains and Wheeler Pass HMAs. As stated in the EA, the establishment of AML includes combining several concepts. The HMA must have all of the seasonal habitat needs of the herd within its boundaries. If wild horses and burros must leave the HMA to obtain resources for survival, then the wild horses and burros are either moving into non-HMA areas (i.e. areas where wild horses and burros are not a designated land use), or moving into other HMAs. The HMA must also be capable of providing for a viable population. In addition, the AML must be within the capacity of the rangeland to support wild horses and burros in a "thriving natural ecological balance on the public lands" with respect to other land uses.

In determining the appropriate management levels for wild horses and burros within the Johnnie, Muddy, and Wheeler Pass HMAs, the LVFO conducted a tiered analysis. The first tier consisted of determining if the HMA has the four essential habitat components, forage, water, cover and

space, within the HMA boundary. The second tier established an AML based on forage availability within the HMA and an in-depth analysis of rangeland monitoring data. The third tier compared the calculated AML (determined in Tier 2) with the minimum number of wild horses and burros to maintain a viable population.

As a result of the tiered analysis, three alternatives were considered in detail in the environmental assessment:

- Alternative A (Proposed Action) used the tiered analysis approach to set AML for wild horses and burros as follows for the three HMAs: Johnnie – 0 wild horses and 54-108 burros; Muddy Mountains – 0 wild horses and burros; and Wheeler Pass – 47-66 wild horses and 20-35 burros to be managed as one herd with the United States Forest Service’s (USFS) Spring Mountain Wild Horse Territory (WHT).
- Alternative B used the tiered analysis approach to set AML with half the population being wild horses and half burros as follows: Johnnie – 27-54 wild horses and 27-54 burros; Muddy Mountains –1-11 burros and 0 wild horses (as identified in the Las Vegas Resource Management Plan).
- Alternative C – No Action Alternative – continue to manage the three HMAs using the interim AMLs established in the Las Vegas RMP as follows: Johnnie – 50 wild horses and 75 burros; Muddy Mountains – 0 wild horses and 50 burros; Wheeler Pass HMA to be managed by the USFS.

**DECISION**

Based on the analysis documented in Environmental Assessment NV-052-05-399, it is my decision to establish the appropriate management level (AML) for the Johnnie, Muddy Mountains and Wheeler Pass Herd Management Areas as follows:

HMA	Proposed AMLs	
	Horses	Burros
Johnnie	0	54-108
Muddy Mountains	0	0
Wheeler Pass	47-66	20-35

It is also my decision that:

- Herd Management Area Plans (HMAPs) may be developed for each of the HMAs to more specifically detail the future management of the HMAs;
- A contraceptive and fertility control plan may be completed with recommended uses of fertility control for wild horses within the Wheeler Pass HMA;
- Gather Plan(s) to provide for the removal of excess wild horses to achieve the lower range of the AMLs for each of the Herd Management will be done in the future;
- Continued monitoring of rangeland resources, water resources, and body condition of wild horses and burros within the areas will be continued;
- The introduction of genetically similar wild horses may be considered in the future, if needed, to maintain a genetically viable wild horse population within the Wheeler Pass HMA.
- Adjustment of the established AML for an HMA will be considered when monitoring data indicates wild horse numbers should be increased or decreased to achieve and maintain a thriving natural ecological balance on the public lands.

## **RATIONALE**

### **Johnnie HMA**

The desired carrying capacity calculation for the Johnnie HMA indicates that 649 AUMs is the number that can be supported by the forage available within the HMA. The current estimated population is 57 (342 AUMs for six months of the year) wild horses and 298 burros (1,788 AUMs for six months of the year). Carrying capacity calculations indicate that 649 AUMs can be supported by the available forage within the Johnnie HMA, this number indicates that not enough forage is available to support both wild horses and burros at a viable population level. Due to the vegetation type and the potential for movement within the Johnnie HMA and the BLM Wheeler Pass HMA and US Forest Service Wheeler Wash/Wallace Canyon areas supporting a burro herd has the greatest potential of a viable population. Based on the carrying capacity calculations the Johnnie HMA can support 54-108 burros with coordinated management with the US Forest Service.

### **Muddy Mountains HMA**

The desired carrying capacity calculation for the Muddy Mountains HMA indicates that 198 AUMs is the number that can be supported by the forage available within the HMA. The current population of 7 burros and 5 wild horses account for 144 AUMs over a twelve month period. Based on visual observation it has been determined that the burros are spending more time outside the HMA boundaries, within lands managed by the National Park Service, and that the wild horses are spending the majority of the time within the HMA boundaries. The current situation does not support a viable herd of wild horses or burros, and 198 AUMs only allows for 17 animals indicating that based on the desired carrying capacity calculations that would

establish a range of the AML at 1-11 wild horses or burros. The AML of 1-11 wild horses or burros does not meet the minimum requirement of animals necessary to maintain the genetic viability of the herd for either wild horses or burros.

### **Wheeler Pass HMA**

The desired carrying capacity for the Wheeler Pass HMA indicated that 933 AUM is the number of wild horses and burros that can be supported by the forage available within the HMA. The current estimated population is 275 wild horses and 82 burros. Based on the carrying capacity calculations the Wheeler Pass HMA can support 78-156 wild horses and burros with coordinated management with the US Forest Service as the Wheeler Pass HMA does not provide year round habitat for wild horses and burros. Since the BLM Wheeler Pass HMA does not contain year round habitat coordinated management is necessary with the US Forest Service and would include Cold Creek, Wheeler Pass, and Wheeler Wash/Wallace Canyon. The coordinated management considers the allocation identified in the Forest Plan of 7% of available forage and water as the limiting factor. Due to the limiting factor being forage and water allocation on Forest Service managed lands the range for wild horses will be 47-66 wild horses and 20-35 burros.

The burros within the Wheeler Pass HMA have the potential of moving between the Forest Service managed Wheeler Wash/Wallace Canyon, BLM managed Johnnie HMA and the Wheeler Pass HMA, therefore the AML of 20-35 burros would allow for a viable population within the Wheeler Pass HMA.

In order to allow for improved range health conditions and upward trend throughout the HMAs, AML will remain at the level established in this document until additional information and data is collected or reevaluated. Additional studies within the Johnnie, Muddy Mountains, and Wheeler Pass HMAs need to be completed to determine if Mojave/Southern Great Basin RAC Standards are being met. It was determined that Wild Horse and Burro Standard 4 is not currently being met for the HMAs but significant progress is being made. During the course of the evaluation period areas within the HMAs have had depleted forage, lack of water, animal traveling considerable distances and the general appearance of healthy animals has been lacking as indicated by poor body condition score (BCS). Over the evaluation period numerous emergency gathers have been completed affecting each of the HMAs. Establishment and achievement of AML will further ensure that Standard 4 for Wild Horse and Burros will be achieved. This information is utilized to determine if AML is at the appropriate level to maintain thriving natural ecological balance and a healthy wild horse and burro populations.

Periodic gathers will be required to maintain the wild horse population at the established AML. This will require either removing the annual increase in population each year or gathering less frequently and removing larger numbers. Removing only a few horses per year is far less desirable for the following reasons:

- 1). Gathering once a year to remove excess wild horses would be cost prohibitive and could not be accomplished with the numerous HMAs gathered annually in Nevada.
- 2). Annual gathers would have more severe impacts to herd stability and band integrity.

3). Frequent gathers make the animals far more difficult to capture and greatly increases the chances for more horses to be injured or killed.

4). The Wild Free-Roaming Horses and Burros Act requires that “all management actions shall be at the minimum feasible level”.

For these reasons, the AML for the Johnnie and Wheeler Pass HMAs will be established as a range, which will ensure maintenance of a thriving natural ecological balance, reduced frequency of gathers and minimal stress to the wild horse population as a result of gathers. Implementation of the AML ranges would allow 4-5 years to pass following each gather before the upper range of AML is exceeded. Additionally, AML for the Muddy Mountains HMA will be established at zero since it is missing key components to ensure a thriving natural ecological balance, and healthy herds.

Prior to implementation of the AML through a wild horse and burro gather, an Environmental Assessment (EA) and Gather Plan will be completed.

## **AUTHORITY**

The authority for this decision is contained in Sec. 3 (a) and (b) of the Wild Free-Roaming Horses and Burros Act (P.L. 92-195) as amended and in Title 43 of the Code of Federal Regulations, which states in pertinent parts:

4700-6(a): “Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and productive capacity of their habitat.”

4710.4: “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 obtain objectives identified in approved land use plans and herd management area plans.”

4720.1: “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 animals immediately...”

## **RIGHT OF APPEAL**

Within 30 days of receipt, you have the right of appeal to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with regulations in 43 CFR Part 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.” Within 30 days after your appeal, you are required to provide a copy to the Regional Solicitors Office listed on item 3 of said form. In addition provide the Las Vegas Field Office with a copy of your Statement of Reasons at the following address: Karla D. Norris, Assistant Field Manager Las Vegas Field Office, Bureau of Land Management, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130-2301. Copies of

your Appeal and Statement of Reasons must also be served upon any parties adversely affected by this decision. The appellant has the burden of showing that the decision being appealed is in error. The appeal shall state the reasons, clearly and concisely, why the appellant thinks this decision is in error and otherwise complies with the provisions of 43 CFR 4.470 which are available at the Las Vegas Field Office.

In addition within 30 days of receipt of this decision you have the right to file a petition for stay of this decision. Should a party wish to file a petition for a stay, you must file with in the 30 day appeal period along with an appeal. The appellant has the burden of proof to demonstrate that a stay should be granted. In accordance with 43 CFR 4.21(b) (1), a petition for a stay must show sufficient justification based on the following standards:

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

As noted above the petition for stay must be filed in the office of the authorized officer.

#### **FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

After consideration of the environmental consequences described in EA NV-052-05-399, I have determined that the action of establishing the AML for Johnnie, Muddy Mountains, and Wheeler Pass HMAs for wild horses and burros will not significantly affect the quality of the human environment and that an environmental impact statement (EIS) is not required.

#### **RATIONALE**

##### **Context:**

There are nine HMAs within the Las Vegas District, encompassing over 2.3 million acres, where wild horses and burros are managed as one of the accepted multiple uses. The three HMAs addressed in EA NV-052-05-399 cover approximately 530,000 acres, or 23 percent of the acreage managed for wild horses and burros within the Las Vegas District. The AML for these three HMAs of 66 wild horses and 143 burros comprise 11 percent and 49 percent respectively of the wild horses and burros within the Las Vegas District. The other six HMAs within the Las Vegas District where the AML has already been established encompass 77 percent of the acreage managed for wild horses and account for 87 percent of the wild horses and 51 percent of the burros.

##### **Intensity:**

1) *Impacts that may be both beneficial and adverse.* The three HMAs cover only 23 percent of the acreage managed for wild horses; therefore, the beneficial and adverse impacts identified in the EA are not significant.

2) *The degree to which the proposed action affects public health or safety.* My decision to establish an AML for Johnnie, Muddy Mountains, and Wheeler Pass HMAs will have no effect on public health or safety.

3) *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.* None of these unique characteristics occur within the Johnnie, Muddy Mountains, and Wheeler Pass HMAs.

4) *The degree to which the effects on the quality of the human environment are likely to be highly controversial.* Establishing an AML of zero for the Muddy Mountains HMA as analyzed within Proposed Action would is not likely to be controversial based upon public input. Establishing an AML with a range for the Johnnie and Wheeler Pass HMAs is not likely to be controversial based on public input. However, not establishing an AML and managing wild horses and burros on an emergency basis only would likely be controversial. Therefore, my decision to establish an AML for each HMA will not be highly controversial.

5) *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.* The AML has already been established for six HMAs that comprises 23 percent of the acreage managed for wild horses and burros and account for 11 percent and 49 percent respectively of the wild horses and burros within the Las Vegas District; therefore, the effects of my decision are not highly uncertain or do not involve any unique or unknown risks.

6) *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.* My decision does not establish any precedence for future actions with significant effects and does not represent a decision in principle about future considerations since the AML has already been established for six HMA within the Las Vegas District. Further, any future wild horse and burro actions would be subject to the same environmental assessment standards, as well as an independent decision-making process.

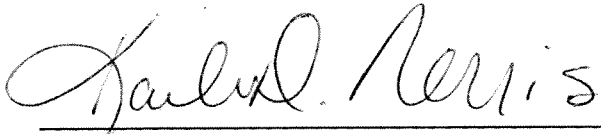
7) *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.* No cumulatively significant impacts from past, present, or reasonably foreseeable future actions were identified in the EA.

8) *The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources.* Establishing the AML for Johnnie, Muddy Mountains, and Wheeler Pass HMAs will not adversely affect any NRHP sites, or cause the loss or destruction of any significant scientific, cultural or historical resources.

9) *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA of 1973.* The threatened desert tortoise occurs within the Johnnie, Muddy Mountains, and Wheeler Pass HMAs. My decision to establish an AML at the proposed levels for the Johnnie, Muddy Mountain, and Wheeler Pass

HMA's will have no adverse affect this species or their habitat. My decision will actually reduce the potential for conflicts between wild horses and burros and threatened and endangered species.

10) *Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.* This action will not violate or threaten to violate any federal, state, or local law or requirements imposed for the protection of the environment.



**Karla D. Norris, Assistant Field Manager  
Recreation and Renewable Resources**

12/15/05

**Date**