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**UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF LAND APPEALS**

Citizens Against Equine Slaughter, et al., Appellants	IBLA No. 2016-243  DOI-BLM-OR-B000-2015-0055-EA Wild Horses/Burros  <b>MOTION TO VACATE AND REMAND</b>
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**FACUTAL BACKGROUND**

On June 24, 2016, the Bureau of Land Management (BLM) issued a Decision Record (DR) approving the initiation of sterilization research to be performed by Oregon State University on wild mares that (1) have been previously determined by BLM to be “excess,” (2) have previously been removed from the range with no chance of returning to BLM public lands, and (3) are or will be temporarily housed at the BLM’s Wild Horse Corral Facility in Hines, Oregon. The DR was based on an Environmental Assessment (DOI-BLM-OR-B000-2015-0055-EA, April 25, 2016) (“EA”) and Finding of No Significant Impact (June 24, 2016) (“FONSI”), which were prepared pursuant to the National Environmental Policy Act (“NEPA”).

On July 29, 2016, BLM received a Notice of Appeal, Statement of Reasons, and Petition for Emergency Stay (NOA/SOR/PFS) from four entities (collectively referred to as “Appellants”): Citizens Against Equine Slaughter (“CAES”), Oregon wild Horse & Burro Association (“OWHBA”), Central Oregon Wild Horse Coalition (“COWHC”), and Wild Equid League of Colorado (“WELC”). On August 4, 2016, BLM filed a motion to dismiss all of the appeals due to improper representation and lack of standing. On August 19, 2016, BLM filed a response to the stay petition. According to BLM, the appeal period—based on the latest receipt of the certified mail copy of the DR that BLM sent out—ended on August 22,<sup>1</sup> which would mean that the Board should issue its decision on the stay petition by October 6, 2016. 43 C.F.R. §§ 4.21(a)(3), (b)(4).<sup>2</sup>

In addition, three complaints have been filed in federal court challenging the DR, though none of the plaintiffs in those cases filed an appeal of the DR with the Board before filing in federal court. Two of the challenges are to the BLM DR: *Front Range Equine Rescue v. Jewell*, Civ. No. 1:16-cv-1521-CKK (D.D.C.) and *Friends of Animals v. Jewell*, Civ. No. 1:16-cv-1570-CKK (D.D.C.). Those cases were put on an extremely truncated briefing schedule to avoid the filing of preliminary injunctions. A third case challenged BLM’s refusal to let groups observe the research procedures while they are being performed in BLM’s Oregon Wild Horse Corrals Facility, *Kathrens v. Jewell*, Civ. No. 2:16-cv-16550-SU (D. Or.), and the plaintiffs filed a motion for preliminary injunction.

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<sup>1</sup> This is based on the fact that the last mailed appeal was picked up by the recipient on July 21, 2016.

<sup>2</sup> Two other appeals (with accompanying petitions for stay) challenging the DR were filed with the Board: *Janet Lynch*, IBLA No. 2016-238 and *Susan Carter*, IBLA No. 2016-242. BLM filed motions to dismiss both those appeals for lack of standing and the Board granted those motions and dismissed both appeals in separate orders on September 7, 2016. Thus, this appeal is the only pending appeal of the DR before the Board.

The BLM no longer wishes to implement the DR at this time. As the Board has stated, BLM loses jurisdiction over a decision once it has been appealed to the Board. *See, e.g., Benton C. Cavin*, 166 IBLA 78, 81-82 (2005) (after appeal to the Board, “BLM has no jurisdiction unilaterally to reverse a decision under appeal and grant relief”); *American Petroleum Energy Co.*, 160 IBLA 59, 72 (2003) (“if a timely notice of appeal is properly filed, the office issuing the decision loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal”) (and cases cited therein). Therefore, BLM respectfully requests that the Board immediately vacate and remand the DR to BLM. Such action will have the effect of vacating and rescinding the DR and BLM will not be able to implement the research authorized in the DR until such time as it issues another DR.

Respectfully submitted this 9<sup>th</sup> day of September, 2016.

Respectfully Submitted,  
For the Regional Solicitor

  
Michael A. Schoessler

## CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of September, 2016, I sent a copy of the foregoing **MOTION TO VACATE AND REMAND** to the following:

Via Federal Express Overnight Mail

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