



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
4170 (NVE0200)

DECISION RECORD

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

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

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

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

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

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

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

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

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

DECISION

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

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

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

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

RATIONALE

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

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

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

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

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

The gather will:

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

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

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

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

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

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

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

1. Necessity of Prompt Removal of Excess Wild Horses

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

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

2. Potential Damage to Rangeland and Riparian Resources

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

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

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

PUBLIC INVOLVEMENT

Consultation and Coordination in Development of Preliminary EA

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

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

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

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

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

Preliminary EA

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

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

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

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

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

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

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

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

Native American Consultation

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

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

Section 7 Consultation

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

AUTHORITY

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

§4700.0-6 Policy

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

§4710.4 Constraints on Management

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

§4720.1 Removal of excess animals from public lands

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

- (a) Old, sick, or lame animals shall be destroyed in accordance with subpart 4730 of this title;
- (b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely gathered and made available for private maintenance in accordance with subpart 4750 of this title; and
- (c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this part¹.

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

§4740.1 Use of Motor Vehicles or Air-Craft

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

§4770.3 Administrative Remedies

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

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

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

APPEAL PROVISIONS

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

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

A petition for a stay of decision pending appeal shall show sufficient justification based on the following standards:

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

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

APPROVAL

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

/s/ Richard E. Adams

Richard E. Adams

Field Manager

Tuscarora Field Office

10/18/2012

Date