

United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Elko District Office

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Elko, Nevada 89801-4211

http://www.blm.gov/nv/st/en/fo/elko_field_office.html



In Reply Refer To:

4700(NVE0200)

DECISION RECORD

Owyhee, Rock Creek and Little Humboldt Herd Management Areas Wild Horse Gather Plan Environmental Assessment DOI-BLM-NV-N020-2010-0014-EA

The Bureau of Land Management (BLM) has determined that excess wild horses are present and is proposing to gather up to 1,548 wild horses and to remove approximately 1,137-1,197 of the gathered horses (approximately 686 excess wild horses in the Owyhee HMA; 425 excess wild horses located outside of the Rock Creek HMA; 26 to 86 weanlings to 4-year old mares from the Rock Creek and Little Humboldt HMAs) beginning on or after July 9, 2010. Approximately 399 wild horses would be released back to the range following the gather. Of these, about 195 mares would be vaccinated with PZP-22 (Porcine Zona Pellucida) fertility control vaccine. The gather, removal and fertility control are intended to slow population grow, maintain population size within the appropriate management levels (AMLs) and extend the time before another gather to remove excess wild horses would be needed.

The Owyhee, Rock Creek and Little Humboldt HMAs are located in Elko County, about 90 air miles northwest of Elko, Nevada. The HMAs comprise 482,191 acres of public and private land.

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-N020-2010-0014-EA**.

DECISION

It is my decision to implement Alternative A (the Proposed Action) for the Owyhee HMA and a combination of Alternatives A and B for the Rock Creek and Little Humboldt HMAs as described in the Final Environmental Assessment for the Owyhee, Rock Creek, and Little Humboldt HMAs (**DOI-BLM-NV-N020-2010-0014-EA**).

RATIONALE

Upon analyzing the impacts of Alternatives A and B and following issuance of the EA for public review, I have determined that implementing a combination of these alternatives 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.

The gather is necessary to remove excess wild horses and bring wild horse numbers on the three HMAs back to within the established AML ranges, in order to maintain a thriving natural ecological balance between wild horses, wildlife, livestock, vegetation and the available water as authorized under Section 3(b)(2) of the 1971 WFRHBA and section 302(b) of the Federal Land Policy and Management Act of 1976.

The BLM is required to manage multiple uses to avoid continued degradation of the rangelands, and removal of excess wild horses from the HMAs is necessary to reduce the potential for catastrophic loss of animals should drought conditions occur.

The application of fertility control and/or adjustment of the sex ratios to 60% males and 40% females within the Owyhee HMA as described in Alternative A in the Owyhee HMA would slow population growth, maintain population size within AMLs and extend the time before another gather to remove excess wild horses is necessary. Implementation of Alternative A would result in placing about 40% to 50% fewer excess wild horses in short or long-term holding or in the adoption or sale pipeline over the next 10 year period as compared to the No Action Alternative.

The application of fertility control as described in Alternative A in the Rock Creek and Little Humboldt HMAs, sex ratio adjustment as described in Alternative B to wild horses that will be released back into the HMAs, would slow population growth, maintain population size within AMLs and extend the time before another gather to remove excess wild horses is necessary. Implementation of Alternatives A and B for the Rock Creek and Little Humboldt HMAs would result in placing about 40% to 50% fewer excess wild horses in short or long-term holding or in the adoption and/or sale pipeline over the next 10 year period as compared to the No Action Alternative.

Leaving excess 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 Lahontan cutthroat trout; 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 Herd Management Areas, potentially leading to severe resource degradation and competition with grazing and wildlife.

Under the No Action Alternative, a gather to remove excess wild horses to the lower limit of the AML ranges and to remove wild horses outside of the Rock Creek HMA would be delayed to an undetermined date in the future. If the delayed gather occurred in 2011, approximately 1,459 excess animals would need to be removed and placed in short or long-term holding, or in the adoption or sale pipeline (as compared with up an estimated 1,137 to 1,223 of excess animals that would be removed under the Proposed Action). Subsequent gathers would also be needed to remove excess animals about every 4 years over the next 10-15 years.

PUBLIC INVOLVEMENT

A scoping letter for the Owyhee HMA was sent to 78 interested individuals, groups, and agencies on May 1, 2008, regarding the proposed removal of excess horses from the Owyhee HMA. Letters or e-mails were received from 11 individuals during the 30 day comment period.

A scoping letter for the Rock Creek HMA was sent to 87 interested individuals, groups and agencies on April 23, 2009, regarding the proposed removal of excess horses from the Rock Creek HMA. Letters or emails were received from 15 individuals during the 30 day comment period.

On April 20, 2010, the Tuscarora Field Office issued the Owyhee, Rock Creek and Little Humboldt Herd Management Areas Gather Plan and Environmental Assessment DOI -BLM-NV-N020-2010-0014 along with a notification of its availability for a 30 day review and comment period. The preliminary EA was posted on BLM's website at:

http://www.blm.gov/nv/st/en/fo/elko_field_office.html.

Additionally, the Nevada State Office issued a news release notifying the general public of the availability of the document for review on April 26, 2010 as well as posting the news release on BLM's external website.

Native American Consultation

Consultation letters were sent to the Western Shoshone Tribes and Duck Valley Sho-Pai Tribes in January 2010. A notification of the availability for a 28 day review and comment period for the EA was sent to the Western Shoshone Tribes and Duck Valley Sho-Pai Tribes on April 20, 2010. No response was received from the tribes.

Consultation and Coordination in Development of EA

The BLM consulted with the North Eastern Great Basin Advisory Council (RAC), the Nevada Department of Wildlife, the U.S. Fish and Wildlife Service (Reno, NV), livestock operators and others.

Public hearings are held annually on a state-wide basis regarding the use of helicopters and motorized vehicles to gather and transport wild horses (or burros). During these meetings, the public is given the opportunity to present new information and to voice any concerns or opinions regarding the use of these methods to gather and transport wild horses (or burros). Nevada BLM will hold the 2010 meeting in mid to late June 2010. The location and time of this meeting will be determined at a later date.

In the May 2009 hearing the comments, specific opinions expressed or issues identified included the following: (1) the use of helicopters and motorized vehicles is inhumane and results in injury or death to significant numbers of wild horses and burros; (2) inventory methods using helicopters and fixed wing aircraft; (3) reported reproduction and mortality rates; (4) providing the public with pertinent information regarding gather plans at site-specific locations; (5)

statistics or statements relating to impacts of helicopter driving, distances, terrain, etc. on wild horse and burro herds; (6) studies on impacts to wild horses and burros on the use of helicopters and helicopter driving during gathers. BLM reviewed its Standard Operating Procedures (SOPs) in response to the views and issues raised at the May 2009 public meeting and determined that no changes to the SOPs were warranted.

Comments

In excess of 2,500 comment letters/emails were received from individuals, organizations and agencies. The vast majority of these comments were one of two form letters. The form letters were reviewed and considered, and yielded 5 distinct substantive comments. Several other comment letters/emails were reviewed and considered, resulting in 141 unique, substantive comments. Substantive comments were utilized to revise the EA as appropriate.

Although BLM's review of public comments did not indicate that changes to the conclusions presented in the original EA were warranted, the comments did lead to changes in the document to better explain and clarify BLM's analysis. As a result, the reader should be better informed regarding the proposed gather plan and its expected impacts. The Response to Comments table is attached to this EA.

Comments received were organized into the following general categories:

- Herd growth/animal numbers incorrect
- Appropriate management levels are too low
- Affected environment/monitoring data
- Concerns/effects/results of fertility control
- Outside of scope of analysis
- Viewpoint/matter of opinion
- Concerns/effects of use of helicopters
- Concerns/effects of Long Term Pastures
- Concern on modeling program
- Public perception regarding other uses in the Owyhee, Rock Creek and Little Humboldt HMAs

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 horses 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 animals 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 title¹.

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 after July 7, 2010. 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/

June 7, 2010

Kenneth E. Miller
Elko District Manager

Date