

**USDI, Bureau of Land Management
Andrews/Steens Resource Area, Burns District**

DECISION RECORD

**SOUTH STEENS
GATHER PLAN
FOR THE
SOUTH STEENS HERD MANAGEMENT AREA**

ENVIRONMENTAL ASSESSMENT

DOI-BLM-OR-B050-2010-0005-EA

BACKGROUND

The South Steens Herd Management Area (HMA) lies south of Burns 75 miles and adjacent to Catlow Valley on the west and Steens Mountain on the east. The topography varies from slightly rolling hills to steep mountainous country. Elevation varies from approximately 4,000 to 7,400 feet. Precipitation ranges upwards of 20 inches annually and comes mainly in the form of snow. Temperatures vary from -40 °F in winter to 95 °F in summer. The major vegetation types are low sagebrush/Idaho fescue, big sagebrush/Idaho fescue, and big sagebrush/bluebunch wheatgrass, all of which have portions of their sites encroached by western juniper.

South Steens HMA was last gathered in 2004. The August 2009 census determined South Steens HMA wild horse numbers to be 584 head. The wild horses are 280 head over the high end of Appropriate Management Level (AML) (159 to 304 head), and these excess horses limit the range's ability to achieve or maintain a thriving natural ecological balance for their habitat.

With passage of the Wild Horse and Burro Act of 1971, Congress found that "Wild horses are living symbols of the pioneer spirit of the West." In addition, the Secretary was ordered to "manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands." From the passage of the Act, through present day, the Bureau of Land Management (BLM) Burns District has endeavored to meet the requirements of this portion of the Act. The procedures and policies implemented to accomplish this mandate have been constantly evolving over the years.

Throughout this period, BLM experience has grown, and the knowledge of the effects of current and past management on wild horses has increased. For example, wild horses have been shown to be capable of 18 to 25 percent increases in numbers annually. This can result in a doubling of the wild horse population about every 4 years. At the same time, nationwide awareness and attention has grown. As these factors have come together, the emphasis of the wild horse and burro program has shifted.

Program goals have expanded beyond simply establishing "thriving natural ecological balance" (setting AML for individual herds), to include achieving and maintaining viable, vigorous, and stable populations. The AML for the South Steens HMA was previously established, based on monitoring data and following a thorough public review, as a range from 159 to 304 wild horses and maintained in the Steens Mountain Cooperative Management and Protection Area Resource Management Plan/Record of Decision (CMPA RMP/ROD) (August 2005).

COMPLIANCE

The attached Environmental Assessment (EA) Gather Plan for the South Steens HMA DOI-BLM-OR-B050-2010-0005-EA is tiered to the Andrews Management Unit/CMPA Proposed RMP and Final Environmental Impact Statement (CMPA PRMP/FEIS) and relevant information contained therein is incorporated by reference. The Proposed Action has been designed to conform to the following documents, which direct and provide the framework for management of BLM lands within Burns District:

- Steens Mountain CMPA RMP (August 2005), Pages 50-51.
- The Wild Free-Roaming Horse and Burro Act of 1971 (Public Law (PL) 92-195 as amended) and Title 43 Code of Federal Regulations (CFR) Part 4700.
- National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347)1970.
- Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701, 1976), Section 302(b) of FLPMA, states "all public lands are to be managed so as to prevent unnecessary or undue degradation of the lands."
- Public Rangelands Improvement Act (43 U.S.C. 1901. 1978).
- Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands Administered by the BLM in the States of Oregon and Washington (1997).
- Greater Sage-grouse and Sagebrush-steppe Ecosystems Management Guidelines (BLM - 2000).
- BLM National Sage-grouse Habitat Conservation Strategy (2004).
- Local Integrated Noxious Weed Control Plan (1998).
- Greater Sage-grouse Conservation Assessment and Strategy for Oregon (Hagen 2005).
- Steens Mountain Travel Management Plan (2007).
- The following are excerpts from the 43 CFR:
 - 1) 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."
 - 2) 4710.3-1 – "Herd Management Areas shall be established for maintenance of wild horse and burro herds."
 - 3) 4180.2(b) – "Standards and guidelines must provide for conformance with the fundamentals of 4180.1."
- Final Oregon Wilderness EIS (1991).
- Wilderness Act, BLM Wilderness Management Manuals 8560 and 8560-1.

DECISION

Having considered the Proposed Action, No Action and other alternatives and associated impacts and based on analysis in EA DOI-BLM-OR-B050-2010-0005-EA, it is my decision to implement the Proposed Action which allows the capture of 90 percent of wild horses in the HMA as well as immunocontraceptive use on 30 to 40 mares. Pursuant to Title 43 of the CFR at 4770.3(c), the South Steens HMA 2009 gather is approved for implementation upon the date of my signature below. Gather operations will begin on or about November 11, 2009, and last until management objectives are attained.

Additionally, a Finding of No Significant Impact (FONSI) found the Proposed Action analyzed in DOI-BLM-OR-B050-2010-0005-EA did not constitute a major Federal action that will adversely impact the quality of the human environment. Therefore, an EIS was unnecessary and will not be prepared.

The Proposed Action is to capture wild horses (90 percent of the population) in the HMA and all excess horses outside South Steens HMA (Location Map A and HMA Map B). Eighty mares and 79 studs will remain either ungathered or be returned to the HMA at completion of the gather, leaving a post-gather population of 159 horses. Approximately 30 to 40 mares will be treated with the Porcine Zona Pellucidae vaccine (an immunocontraceptive) following Standard Operation Procedures described in Appendix B of the EA prior to being released back to the range. This alternative will include determining sex, age and color, assessing herd health (pregnancy/parasite loading/physical condition/etc.), monitoring results as appropriate, sorting individuals as to age, size, sex, temperament and/or physical condition, and returning selected animals, primarily in the 6 to 10-year age group (Appendix D of the EA). This will ensure a vigorous and viable breeding population, reduce stress on vegetative communities and wildlife, and be in compliance with the Wild Free-Roaming Horse and Burro Act of 1971 and land use plan.

It is anticipated one to three capture sites (traps) will be used to capture wild horses from the HMA. Some capture sites will be placed inside Wilderness Study Areas (WSAs), using existing roads and previously disturbed sites. Traps site corrals will typically be approximately 800 square feet. With secondary disturbance areas such as trap wings, total surface disturbance will be approximately 2,400 square feet (0.05-acre) per trap site. Trap wing configuration will vary, depending on terrain and materials. A separate holding facility of approximately 2,000 square feet will be constructed on private lands to keep horses until they can be returned to the HMA or transported to adoption, sale or long-term holding facilities. Trap sites will be selected during the gather operations. Traps are built, if at all possible, as close to the horses the contractors are going to capture. This reduces stress and injury by eliminating long runs. Determining the site of the traps can be a complicated decision involving many factors such as determining: 1) where the horses are currently, 2) if past trap sites are useful (or not), 3) how many traps sites will need to be used, 4) if we move the trap sites or leave them up and go back to them at different times during the gather operation, and 5) safety of helicopter operations as determined by the contractor. Based on the census flight in August 2009 and past traps sites, potential location areas are shown on the attached map. All methods of gathering will be considered and the most efficient, but least impacting to horses, will be used.

Capture techniques are also described in Appendix A of the EA. Gather operations will use a helicopter to drive horses to a trap. All capture and handling activities, including capture site selections, will be conducted in accordance with Standard Operating Procedures (SOPs) described in Appendix A of the EA. Selection of capture techniques will be based on several factors such as herd health and environmental considerations.

Horses are typically herded across country into traps utilizing a helicopter, which reduces herding time, thereby reduces stress and potential injury for wild horses. A decoy horse is often placed at the trap's entrance to lure wild horses into the trap mouth. Mounted wranglers are utilized to retrieve abandoned foals and occasionally herd stragglers into the trap. Once captured, wild horses are loaded into gooseneck stock trailers and transported to a holding facility, where horses are sorted and selected for herd retention or transported for preparation for adoption. Determination of horses to be returned to the range is based on existing population characteristics.

The following Project Design Features will be followed (EA, Page 5):

- All vehicles and equipment used during gather operations will be cleaned before and following implementation to guard against spreading of noxious weeds.
- All efforts will be made to keep trap locations from areas with noxious weed infestations.
- Gather sites will be noted and reported to range and weed personnel for monitoring and/or treatment of new and existing infestations.
- Off-road vehicle use (turnaround locations) will be minimized in wilderness and WSAs.
- Appropriate rehabilitation in wilderness and WSAs, such as raking and seeding with native species, will be conducted after gathering operations are completed.
- All efforts will be made to keep horse traps and motorized vehicles out of Steens Mountain Wilderness.
- Helicopter landing in Steens Mountain Wilderness will only happen in emergency situations.

Additional protection measures include:

- Where possible, turnarounds will occur on regular (non-WSA/non-wilderness) BLM-managed lands.
- Where a choice needs to be made between turning around in a WSA or wilderness (e.g., Lauserica Road), the turnaround will occur on the wilderness side within the 30-foot from centerline buffer (BLM Handbook 8560).
- Gather sites and temporary holding facilities would not be constructed on wetlands or riparian zones (Appendix A of EA).
- Prior to setting up a trap or temporary holding facility, BLM will conduct all necessary clearances (archaeological, T&E, botanical, etc). Once archaeological clearance has been obtained, the trap or temporary holding facility may be set up (Appendix A of EA).

COMMENTS RECEIVED

A scoping letter was mailed to the interested public on September 30, 2009. A copy of the original EA and unsigned FONSI were mailed on October 19, 2009 to 75 people. In addition, a notice was posted in the *Burns Times-Herald* newspaper on October 20, 2009. The Burns District BLM received two comment letters.

RESPONSES TO COMMENTS

Comment 1: The EA does not disclose the locations of the traps and the gather sites, or the location of ORV turnaround sites.

Response: Prior to the gather, a preflight occurs to determine horse locations. Once the locations are known, trap sites are placed in close proximity to horses.

Choosing and building the trap site is one of the most important decisions made to assure wild horses are captured efficiently, safely and in a humane manner. Traps are built as close as possible to the horses to be captured. This reduces stress and injury by eliminating long runs. The condition and distance of the roads are both a big factor. To build the trap and wings it is preferred to be close to a road that will accommodate the stock trailers to make it easier to ship the animals once they are captured.

Determining the site of the traps can be a complicated decision involving many factors such as determining:

1. Where the horses are currently,
2. If past trap sites are useful (or not),
3. How many traps sites will need to be used,
4. If we move the trap sites or leave them up and go back to them at different times, during the gather operation, and
5. Safety of helicopter operations.

The wild horse holding facility will be located on private lands adjacent to the HMA. This area will see the majority of semi-truck traffic. The horses will be loaded into semi trucks to be transported to the Burns Corrals from this location and not the trap sites.

A map has been attached to show potential locations where traps may occur.

Comment 2: This could mean the contractor will be deciding these locations, rather than the BLM.

Response: Once the contractor arrives he or she looks at our inventory data, then flies the HMA to confirm horse locations, then flies the area where the majority of the horses are and selects a trap site. The site is then cleared by BLM archaeologists and botanists and then final locations are approved/authorized by BLM.

Most of the decision making is done during the pre-work conference with the contractors the day before operation begins. At times a change may need to be made to accommodate how the operation is proceeding and if a new location may be necessary.

Comment 3: BLM must prepare a more detailed project design plan, including presenting to the public, as part of the NEPA process before decisions are made, a detailed project design plan and the stipulations, maps and so forth with which BLM and the contractor will be working.

Response: See response to Comment 1 above. In addition, SOPs were included with the EA as Appendices, and Project Design Elements are also included in the EA.

Comment 4: Again, most of the quoted language is far too general to give the public confidence that key resource values will be protected and that certain types of impacts absolutely will not happen.

Response: The context of this comment implies the primary concern of this comment is protection of wilderness values. See response to comment 3 and also note that specific additional protection measures are identified in the decision record above. With regard to wilderness protection, the Burns District Wilderness Specialist will be onsite to ensure wilderness values are protected for the long term.

Comment 5: The EA does not disclose the location of the holding facility:

Response: The facility will be located on private land at Bald Headed Camp (T.33S., R.32E., Section 36). This information has been added to the EA, Page 6.

Comment 6: BLM uses a 30-foot from centerline baseline for its analysis in this EA, the route's actual width prior to this summer's road construction actions is 20 to 30 feet total. As you know, for NEPA purposes the proper environmental baseline BLM must base its study upon is the pre-construction condition of the route.

Response: The 30-foot from centerline reference in the EA was intended to describe the location of the wilderness boundary which is defined as starting 30 feet from the centerline of the road. *See* 16 U.S.C. § 460nnn-62 and BLM Handbook H-8560-1 at Chapter II.C.5 (30 foot setback off of low standard roads). Even if a road is widened, the center of the road remains the same. Therefore the 30-foot from centerline baseline remains accurate.

Comment 7: Why would the project design not require that all turning around must occur outside of Wilderness? Or existing turnaround locations along the routes at issue?

Response: Turning motorized vehicles around or driving in the wilderness will be avoided when possible (see Project Design Element). However, the potential exists depending on trap site locations. Spur roads may be used for turnaround locations if appropriate. There are no constructed turnaround spots along existing roads within the project area, so there may be instances where use of a turnaround in a wilderness area may have less environmental impact

than making long runs to the nearest road junction. A Minimum Requirement Decision Guide was completed on October 14, 2009, and sent with the EA.

Comment 8: The EA states "Any surface disturbance associated with traps sites and activities would not require reclamation, other than some reseeding with native seed." Isn't reseeding a "surface disturbing" action that does require reclamation under the IMP?

Response: In this context, re-seeding is a reclamation action that would help to recover surface disturbance associated with the trap sites. The reseeding will be done using hand seeders. No drills or motorized equipment will be used. The EA was reworded (Page 24) to state "Any surface disturbance associated with trap sites and activities may require reclamation such as raking and reseeding with native seed."

Comment 9: Are these [road rehabilitation and the horse gather] not directly connected actions? We question how BLM can make a final decision based on this horse gather EA before the agency has made a decision on the road rehabilitation project.

Response: Map 13 of the Steens Mountain CMPA RMP/ROD (2005) and the Steens Mountain Travel Management Plan (2007) show roads that are available for use. Rehabilitation of the roads at issue is not part of the Proposed Action and as such was not considered a connected action. Connected actions are connected if they automatically trigger other actions, cannot or will not proceed unless other actions are taken or the actions are interdependent parts of a larger action. Connected actions are limited to actions that are currently proposed and ripe for a decision (BLM NEPA Handbook, Page 45). An EA is being prepared to analyze rehabilitation of the roads at issue. This action is a Reasonably Foreseeable Future Action (RFFA) and was added to the list in South Steens Gather Plan EA, Pages 39 and 40.

Comment 10: There is no analysis of this summer's road construction activities or of the rehabilitation EA.

Response: The Burnt Car Road Rehabilitation EA will address resource and public concerns associated with recent road work activities within the Steens Mountain area, specifically Burnt Car, Burnt Car-Tombstone Connector, Tombstone Canyon, and Lauserica Roads. The EA, although an RFFA, is still in process and subject to change based on public comments in future NEPA analysis. See Response to Comment 9 above.

Comment 11: The failure to disclose trap locations highlight the problems with the EA.

Response: See response to Comments 1, 2, and 3 above.

Comment 12: BLM states that these sites would be located on or near existing roads. How does this square with the fact that many of these existing roads are subject to possible rehabilitation or closure? That some of these roads either did not exist at all prior to this summer's road construction activities, or did not exist in anything like their current, constructed state.

Response: Please see responses to Comments 9 and 10 above. There are some roads that have been temporarily closed, but the closure allows administrative access such as for the horse gather. As noted in the response to Comments 9 and 10, rehabilitation of certain roads will be considered in a subsequent EA. Use of the roads for the horse gather will not preclude rehabilitation actions that will be considered in that subsequent decision.

RATIONALE

Implementation of the Proposed Action will meet the BLM's objective to achieve and maintain a wild horse AML that reflects the normal thriving ecological balance that will prevent resource deterioration within the South Steens HMA. There must be a balance in wild horse numbers with vegetation, livestock grazing, and wildlife management. Management actions will also allow research in immunocontraception as well as collection data on herd characteristics, health and viability.

The alternatives considered all have the ability to reduce populations of wild horses except for the No Action Alternative. The alternatives differ only in the method and effectiveness of reducing the population and conform with the RMP objectives as follows.

Land Use Plan Objectives and Management Actions (CMPA RMP, Pages RMP 50 and 51) include:

1. Maintain herd viability, genetic diversity, and the genetic and physical characteristics that distinguish individual herds.
2. Wild horse numbers are managed through gathering, removal and other approved methods of population control.
3. Wild horse numbers are normally reduced to the low end of the AML range when gatherings are conducted.
4. Wild horses that stray outside the HMA will be removed or returned to the HMA.
5. A diverse age structure and sex ratios ranging from 40 to 50 percent female and 50 to 60 percent male will be maintained.
6. Wild horses returned to the HMA after a gather will possess representative characteristics of the herd's conformation, size, color and unique markings.

Additional Objectives:

1. Reduce reproductive rates to levels that would accommodate a minimum 4-year gather schedule allowing for the maintenance of AML.
2. Maintain herd characteristics which are typical of South Steens HMA at the time of passage of the Act.

The No Action Alternative was not selected as it would not meet the Purpose and Need for Action or established Land Use Plan objectives and management actions of the CMPA RMP.

WSAs are within the gather area. Gather activities are designed to be minimally intrusive and will have no permanent surface disturbance or impact on these values. The proposed gather is in conformance with the IMP for Lands under Wilderness review.

Based on these conclusions, it is my decision to proceed with the actions described above and further defined in the EA.

Decision Factors

Decision factors are additional questions or statements used by the decision maker to choose between alternatives that best meet project goals and resource objectives. These factors generally do not include satisfying legal mandates, such as requirements under the NEPA, which must occur under all alternatives. Rather, decision factors assess, for example, the comparative cost, applicability, or adaptability of the alternatives considered. The following decision factors will be relied upon by the Authorized Officer in selecting a course of action from the range of alternatives fully analyzed that best achieves the goals and objectives of the project:

Would the alternative:

- promote cost effectiveness?

Yes, the Proposed Action will be the most efficient manner in which to meet the objectives of the project while minimizing disturbance to wild horses.

- cause the least amount of disturbance to wild horses?

Yes, trapping methods and trap locations optimize efficient gather of wild horses and minimize potentially negative factors.

In accordance with 43 CFR 4720.1, upon examination of current information and a determination by the authorized officer there is an excess of wild horses, the authorized officer shall remove the excess animals immediately.

Authority for this decision is found in the Wild and Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195) as amended and Title 43 CFR, Part 4700 including 43 CFR 4720.1, 43 CFR 4710.3-1, and 4710.4. The authority to provide that all or part of a decision be effective upon issuance is found in 43 CFR 4770.3 (c).

APPEAL PROCEDURES

The South Steens HMA wild horse gather is approved for implementation beginning November 11, 2009. This decision is effective upon issuance in accordance with Title 43 of the CFR at 4770.3(c) because removal of excess animals is necessary to protect animal health and prevent further deterioration of rangeland resources. It may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days of receipt of this decision. The appellant has the burden of showing that the decision is in error.

The appellant may wish to file a petition for a stay (suspension) of this decision during the time that the appeal is being reviewed by the Board pursuant to Part 4, Subpart B, Section 4.21 of Title 43, CFR, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for obtaining a stay except as otherwise provided by law or other pertinent regulation, 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 on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether or not the public interest favors granting the stay.

/signature on file/

Joan M. Suther
Andrews/Steens Resource Area Field Manager

November 10, 2009

Date