

**Decision Record  
Bureau of Land Management  
Rock Springs Field Office**

**Great Divide Basin Herd Management Area Wild Horse Gather  
WY-040-EA11-154**

Based on the analysis in Environmental Assessment No. WY-040-EA11-154, it is my decision to implement a gather and fertility control program, as described in Alternative A of the Environmental Assessment (EA). This alternative implements the planning decision from the Green River Resource Management Plan (RMP) to maintain the Great Divide Basin HMA at, or near, the Appropriate Management Level (AML). The population would be monitored and the population would be maintained within the AML.

I have carefully considered all public comments received on the EA, and wish to thank all commenters for their interest in public lands management and their sincere concern for the preservation of wild horses on the public lands.

Wild horses above the AML specified in the applicable RMP and those in areas not designated for their long term management are considered “excess” and subject to gathering and removal. Based upon current inventories, information provided in the applicable land use plans, and other available information, I have concluded that an overpopulation of wild horses exists in the Great Divide Basin HMA. Therefore, gathering the excess wild horses is necessary to preserve and maintain a thriving natural ecological balance and multiple-use relationship within the HMA and surrounding areas and is necessary to comply with landowner requests to remove wild horses from private lands, as specified in the Green River RMP, and as directed in the Wild Free-Roaming Horse and Burro Act of 1971. All reasonable precautions will be taken to avoid injury to the wild horses, including adherence to the Standard Operating Procedures for Wild Horse Gathers (Appendix II of EA) and the Standard Operating Procedures for Fertility Control Treatment (Appendix III of EA), and to ensure the safety of personnel involved in the gather.

This decision is issued in accordance with 43 CFR 4770.3(c), which states in part, “decisions to remove . . . shall be effective on issuance or on a date established in the decision.” This decision will be in effect on October 15, 2011. The Great Divide Basin HMA gather is currently scheduled on the National Gather Schedule to begin on October 19, 2011. The BLM currently plans to commence with the gather on or about October 19, 2011.

**AUTHORITIES**

Gathering wild horses is in compliance with Public Law 92-125, the Wild Free-Roaming Horses and Burros Act of 1971, as amended by Federal Land Policy and Management Act (FLPMA); and Public Law 95-514, the Public Rangelands Improvement Act of 1978 (PRIA). Public Law 92-125, as amended, requires the protection, management, and control of wild horses on public lands.

## **USE AUTHORITY FOR THE PZP VACCINE**

The Humane Society of the United States (HSUS) has made the PZP vaccine available to us under the Investigational New Animal Drug exemption (INAD #8857) filed with the federal Food and Drug Administration (FDA). As a condition of using the PZP vaccine, the HSUS expects us to follow the Draft Criteria for Immuno-contraceptive Use in Wild Horse Herds recommended by the Wild Horse and Burro National Advisory Board in August 1999. The Rock Springs Field Office, in their management of the Great Divide Basin HMA, is in full compliance with all pertaining criteria. The proposed action will also adhere to all guidance and research protocol set by our National Wild Horse Fertility Control Field Trial program.

## **COMPLIANCE AND MONITORING**

The BLM will monitor gather operations for adherence to the Standard Operating Procedures for Wild Horse Gathers and Fertility Control Treatment as outlined in Appendices II and III of the EA and the design of the selected action.

## **PROJECT DESIGN FEATURES, TERMS, CONDITIONS, and STIPULATIONS**

Standard Operating Procedures for Wild Horse Removal can be viewed in Appendix II of the EA. In addition, the Selective Removal Criteria, Gather Operations, and Data Collection have been incorporated as part of the selected action.

## **PUBLIC INVOLVEMENT**

A public scoping letter was issued on December 20, 2010, requesting comments by January 21, 2011. In excess of 3,200 comments were received from individuals, organizations, and agencies during the scoping period. The Environmental Assessment (EA) WY-040-EA11-154 for gathering wild horses was available for public review on May 18, 2011. Over 400 comments were received from individuals, organizations, and agencies during the public review period. All of the comments received represented a range of views on opinion and interpretation of selected data. Appendix I of the EA provides a Summary of Scoping and Public Review Comments. Public comments have been incorporated into the EA and Decision Record/Finding of No Significant Impact as appropriate and are made part of this decision.

## **RATIONALE FOR ALTERNATIVE SELECTED**

This decision is based on the Finding of No Significant Impact and is in accordance with applicable law and policy, including FLPMA, PRIA, the Wild Horse and Burro Act of 1971 and its implementing regulations at 43 CFR 4700, and related policy.

In addition, the decision conforms to the Green River RMP (Record of Decision, 1997) which recognizes that wild horse numbers above the AML, as specified in the RMP, are considered “excess” and subject to gathering and removal.

Historically, private landowners in the BLM Rock Springs management area have been concerned that wild horse gathers are not completed in a timely fashion thereby allowing wild horse numbers to exceed the AMLs. The BLM has a statutory obligation under the Wild Horse

and Burro Act of 1971 to remove excess wild horses from the HMA in order to preserve and maintain a thriving natural ecological balance on the HMAs. In addition, the rationale for this decision includes recognition that if the BLM does not maintain the low AMLs in a timely fashion then we may jeopardize our ability to meet our agreements with private landowners concerning the management of wild horses on the checkerboard lands in southwestern Wyoming.

The gather actions described in Alternative A meet the need of removing excess wild horses to achieve a thriving natural ecological balance between wild horse populations, wildlife, livestock, vegetation and water resources and to protect the range from deterioration associated with overpopulation of wild horses as authorized under Section 1333 (b) (2) of the 1971 Wild Free-Roaming Horses & Burros Act (1971).

The gather is necessary in order to protect the range resources (forage and water availability) and to prevent the significant threat of degradation to the public lands. Delaying the gather may also unduly impact the private land holders' resources by reducing water and forage availability on their lands.

Additionally, under an August 2003 Consent Decree entered in *State of Wyoming v. U.S. Department of the Interior, BLM*, No. 03 CV 169D, (D. Wyo), the BLM is required to remove excess wild horses from the Great Divide Basin HMA and other Wyoming HMAs by December 15, 2011. In order to ensure that the BLM fulfills its obligations under the Consent Decree, the gather should begin no later than October 19, 2011 because of the current gather schedules and other logistical and weather-related obstacles.

The August 2003 Consent Decree states, "If BLM determines, based on the results of any inventory and on projected reproduction rates, that the wild horse population in any HMA or other area in Wyoming is likely to exceed AML in the following fiscal year, the BLM shall in its budget submission to the DOI for the next budget cycle include a request to reduce that HMA back to the AML. If the BLM fails to reduce the number of wild horses to AML by December 15 of the year of the next budget cycle, the State of Wyoming may petition the court to compel removal of horses over the AML in the HMA at that time based on the Wild Free-Roaming Horses and Burros Act and applicable law."

Two additional court orders in *Mountain States Legal Foundation v. Watt*, C79-275K (D. Wyo.) further direct the BLM to remove excess wild horses from the checkerboard grazing lands. On July 27, 2011, the Rock Springs Grazing Association (RSGA) filed a complaint in the U.S. District Court for Wyoming (11-CV-263-F) seeking enforcement of these court orders. RSGA seeks declaratory judgment that it is entitled to enforce the terms of the court orders and that the BLM has violated the Wild Free-Roaming Horses and Burros Act of 1971 and must remove animals from its lands. RSGA also seeks an order directing the BLM to remove all horses from its lands within one year of such order.

## **EFFECTIVE DATE**

For the following reasons, the BLM is exercising the authority provided at 43 CFR 4770.3(c) to make this decision effective upon October 15, 2011. The BLM currently plans to commence with the gather on October 19, 2011, to fulfill its obligations as stated above.

Washington Office Instruction Memorandum (IM) No. 2010-130 provides, subject to certain exceptions, that wild horse decisions should be issued 31 days prior to the gather implementation. The purpose of the 31-day period is to “ensure the public has an opportunity to participate in and request administrative review of WH&B gather decisions” (IM No. 2010-130).

## **ADMINISTRATIVE PROCEDURES**

This decision is issued in accordance with 43 CFR 4770.3(c) which states in part: “decisions . . . shall be effective upon issuance or on a date established in the decision.” Once the decision is final, it will be subject to appeal. If you wish to appeal this decision, as provided by 43 CFR 4770.3 and 43 CFR 4.4, you must file an appeal in writing within 30 days of receipt of this decision with the Field Manager, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

The appeal must state clearly and concisely why you think the decision is in error.

Should you wish to file a petition for stay, the appellant 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, and
- 4) Whether the public interest favors granting the stay.

If you decide to also submit a petition for stay of the decision, a copy of the notice of appeal and petition for stay must be served simultaneously upon the parties identified below.

Field Manager  
Rock Springs Field Office  
280 Highway 191 North  
Rock Springs, Wyoming 82901


Office of the Regional Solicitor  
Rocky Mountain Region  
755 Parfet Street, Suite 151  
Lakewood, Colorado 80215

Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 North Quincy Street, Suite 300  
Arlington, Virginia 22203

The Office of Hearings and Appeals regulations do not provide for electronic filing of appeals; therefore, they will not be accepted.

## APPROVAL

The 2011 Great Divide Basin HMA Horse Gather is approved for implementation beginning on October 15, 2011, and is scheduled to begin on or around October 19, 2011. This decision issued in accordance with Title 43 of the Code of Federal Regulations (CFR) at 4770.3(c) which states, in part, “. . . remove wild horses from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.”

  
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Lance C. Porter  
Rock Springs Field Manager

17 August 2011  
Date