

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

**White Mountain – Little Colorado Herd Management Areas Wild Horse Gather
WY-040-EA11-124**

This Second Modified Decision Record rescinds and replaces the Modified Decision Record issued on June 22, 2011 (“June 22 Modified Decision Record”). This Second Modified Decision implements Alternative A and carries forward the previous modifications identified in the June 22, 2011 Modified Decision for Environmental Assessment WY-040-EA11-124 (EA) on the following pages: 9, 19, 26, 43, and 77.

Based on the analysis in Environmental Assessment No. WY-040-EA11-124, it is my decision to implement a gather and fertility control program as described in Alternative A (Proposed Action) of the EA. This alternative implements the planning decisions from the Green River Resource Management Plan (RMP) to maintain the White Mountain and Little Colorado Herd Management Areas (HMAs) at, or near, the Appropriate Management Level (AML). The population would be monitored and the population would be maintained within the AMLs.

Wild horses above the AML specified in the applicable RMPs 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 White Mountain and Little Colorado HMAs. Therefore, gathering the excess wild horses is necessary to preserve and maintain a thriving natural ecological balance and multiple-use relationship within the HMAs 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 upon issuance. The White Mountain & Little Colorado HMAs gathers are currently scheduled on the National Gather Schedule to begin on August 17, 2011. BLM currently plans to commence with the gather on September 1, 2011.

AUTHORITIES

Gathering excess 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 White Mountain and Little Colorado HMAs, 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

We 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 Proposed Action.

PROJECT DESIGN FEATURES, TERMS, CONDITIONS, and STIPULATIONS

Standard Operating Procedures for Wild Horse Removal can be viewed in Appendix II of the EA. 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 April 9, 2010, requesting comments by May 7, 2010. Over 2,000 comments were received from individuals, organizations, and agencies during the scoping period. Environmental Assessment (EA) WY-040-EA11-124 for gathering wild horses was available for public review on April 7, 2011. Over 7,000 comments were received from individuals, organizations, and agencies during the public review period. All of the comments received represented a range of views of opinion and interpretation of selected pieces of data. The majority of the approximately 7,000 letters or emails were form letters. 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/FONSI as appropriate and are made part of this decision.

RATIONALE FOR ALTERNATIVE SELECTED

This decision is based on the Finding of No Significant Impact dated June 13, 2011 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. 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 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.

On July 25 and 29, 2011, American Wild Horse Preservation Campaign, *et al.*, filed a complaint and motion for temporary restraining order and preliminary injunction in U.S. District Court for the District of Columbia (No. 11-CV-01352-ABJ) seeking to enjoin BLM from implementing the June 22 Modified Decision Record. The focus of that complaint and motion was over the proposed gelding of stallions as outlined in the June 22 Modified Decision Record.

Due to current gather schedules and the need to maintain wild horse populations at low AML, BLM is issuing a Second Modified Decision Record to replace the June 22 Modified Decision Record. BLM hopes that by addressing some of the concerns raised by American Wild Horse Preservation Campaign and others regarding the June 22 Modified Decision Record, we may proceed with the gather of the White Mountain and Little Colorado HMAs. 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), BLM is required to remove excess wild horses from the White Mountain and Little Colorado HMAs and other Wyoming HMAs by December 15, 2011. In order to ensure that BLM fulfills its obligations under the Consent Decree, the gather should begin no later than September 1, 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. Andrus*, C79-275K (D. Wyo.) further direct 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 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 BLM to remove all horses from its lands within one year of such order.

EFFECTIVE DATE

For the following reasons, BLM is exercising the authority provided at 43 CFR 4770.3(c) to make this decision effective upon issuance. BLM currently plans to commence with the gather on September 1, 2011 to fulfill its obligations as stated above.

Washington Office Instruction Memorandum (IM) No. 2010-130 requires that wild horse decisions be issued 31 days prior to the gather implementation. The purpose of the 31-day requirement is to “ensure the public has an opportunity to participate in and request administrative review of WH&B gather decisions” (IM No. 2010-130). The IM is silent with respect to modified decisions. However, the issuance of the Second Modified Decision Record fulfills the intent of IM No. 2010-130.

BLM’s first decision record and the June 22 Modified Decision Record were issued over 31 days prior to the gather implementation. Prior to issuance of these decision records, and in accordance with IM No. 2010-130, the public had an opportunity to comment on the EA and Alternative A, the proposed action selected in this Second Modified Decision Record. Thus, this Second Modified Decision Record is being issued, in part, based on the feedback received on the EA, the first decision record, and the June 22 Modified Decision Record. Accordingly, as an extension of the first decision record and the June 22 Modified Decision Record, this Second Modified Decision complies with the intent of IM No. 2010-130.

Moreover, the IM states: “In accordance with 43 CFR 4770.3(c): The authorized officer will issue gather decisions effective upon a date established in the decision in situations where the removal is required by applicable law, or is necessary to preserve or maintain a thriving natural ecological balance and multiple-use relationship.” As explained, I have concluded that this Second Modified Decision Record is necessary to maintain a thriving natural ecological balance and multiple-use relationship in the White Mountain and Little Colorado HMAs and surrounding areas. Due to the limitations and time constraints of the current national gather schedule, delaying the effective date of this gather past 31 days after issuance of this decision may preclude BLM from implementing a fully successful gather, or any gather at all, in the HMAs in 2011. Such a result may prevent BLM from fulfilling its obligations to maintain a thriving natural ecological balance and multiple-use relationship in the HMAs and surrounding areas, meeting landowner requests to remove wild horses from private lands, and meeting obligations in the aforementioned court orders.

Further, based upon the following applicable law, which includes compliance with the August 2003 Consent Decree entered in *State of Wyoming v. U.S. Department of the Interior, BLM*, No. 03 CV 169D, (D. Wyo.) and the orders in *Mountain States Legal Foundation v. Andrus*, No. C79-275K (D. Wyo.), the BLM is exercising the authority provided at 43 CFR 4770.3(c) to make this decision effective upon issuance with plans to commence gathering on September 1, 2011. In order to ensure that BLM fulfills its obligations under the Consent Decree, the gather should begin no later than September 1, 2011 because of the current gather schedules and other logistical and weather-related obstacles.

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 White Mountain and Little Colorado HMAs gather (Alternative A) is approved for implementation upon issuance with current plans to commence gathering on September 1, 2011. This decision is effective upon issuance 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.”



Lance C. Porter
Rock Springs Field Manager

4 August 2011
Date