

**United States Department of the Interior
Bureau of Land Management**

Environmental Assessment MT-010-08-024

Finding of No Significant Impact and Decision Record

**Pryor Mountain Wild Horse Range Herd
Management Area Plan
and Environmental Assessment (EA)
MT- 010-08-24**

BUREAU OF LAND MANAGEMENT

**Billings Field Office
5001 Southgate Drive
Billings, Montana 59101
406-896-5013
406-89605281 (fax)
<http://www.blm.gov/mt>**

May 2009



Finding of No Significant Impact / Decision Record Billings Field Office

Pryor Mountain Wild Horse Range Herd Management Area Plan

INTRODUCTION

The Bureau of Land Management has conducted an Environmental Assessment for the Pryor Mountain Wild Horse Range Herd Management Area Plan (EA) MT-010-08-24 dated May 2009. The action is designed to manage wild horses and resources within the PMWHR in order to preserve and maintain a thriving natural ecological balance and multiple use relationships. This action would increase the appropriate management level from 85-105 wild horses to a population range of 90-120 wild horses (excluding the current years foal crop.) The population would be managed using a combination of population control techniques including gathers, fertility control, natural means or a combination of prescriptions. The wild horses on the PMWHR would also be managed for a phenotype animal reminiscent of a “Colonial Spanish Mustang” as described by “Sponenberg North American Colonial Spanish Horses” while balancing colors, sex ratios and age structures. The action would also involve development of several guzzlers, 2 additional live water developments, 4 pothole enhancements, riparian protection and development, fuels reductions, integrated noxious weed treatment, range improvement, wildlife habitat enhancement, specific protections of sensitive plants, enhanced livestock trailing management, and reconstruction and extension of the north boundary fence. The overall goal of this alternative is to manage for healthy wild horses within healthy productive habitats or rangelands.

Environmental Assessment (EA) MT-010-08-24 dated May 2009 is attached to this decision and is available from the Billings Field Office. The Environmental Assessment is incorporated by reference for this Finding of No Significant Impact (FONSI). Two additional alternatives were analyzed in detail, the No Action Alternative and Continuation of Existing Management.

PLAN CONFORMANCE AND CONSISTENCY:

The Billings Resource Management Plan (RMP) Final EIS (September 1984) and amendments and Record of Decision (ROD) has been reviewed. Based upon this review the Herd Management Area Plan is in conformance with objectives and decisions identified in RMP/ROD. On Page 23 Under Wild Horse Management the Billings ROD for the RMP/EIS states *“This action will balance population levels with the forage available for horses by herd area. The population of a herd area will be held at a level that provides opportunity for improvement of range condition, herd health and viability, wildlife habitat, and watershed condition, or maintains these in good condition”*. This action is designed to manage for a balance between a healthy population of wild horses while maintaining multiple-use relationships.

FINDING OF NO SIGNIFICANT IMPACT

Based on the analysis and consideration of potential environmental impacts detailed in Environmental Assessment (EA) MT-010-08-24, the context and intensity of effects, the RMP, applicable laws, regulations, policies and public comment, I have determined that the environmental impacts associated with the Proposed Action are not significant individually or cumulatively and will not significantly affect the quality of the human environment. After consideration of the environmental effects described in the EA and supporting documentation, I have determined that the Proposed Action identified in the EA is not a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. Therefore, preparation of an Environmental Impact Statement (EIS) is not required as per Section 102 (2)(c) of the National Environmental Policy Act (NEPA). This finding and conclusion is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and the intensity of impacts described in the EA.

RATIONALE

The Proposed Action identified in the accompanying Decision Record would: increase the number of wild horses that can be managed; provide additional water sources allowing wild horses and wildlife to better use areas that are less susceptible to grazing pressure; maximize genetic interchange and diversity within the wild horse population; retain Spanish characteristics unique to this herd; maintain multiple use relationships for the area while providing protection of archaeological resources, paleontological resources and sensitive species resources; and prevent unnecessary or undue degradation of public land resources. Resource review and analyses have been coordinated with other federal and state agencies. Resources determined to be potentially impacted were analyzed in the EA specific to the proposed action. Based on the analysis, the impacts, including cumulative impacts, to these resources are considered insignificant (see definition of significance in 40 CFR 1508.27).

CONTEXT

The Bureau of Land Management (BLM) Billings Field Office has managed the Pryor Mountain Wild Horse Range since 1968. Since that time, the BLM's mandates have changed from simply protecting wild horses to protection, management, and control of wild horses. Part of the current mandate directs the BLM to manage wild horses "where presently found (in 1971) as an integral part of the natural system of the public lands" and "protect and manage wild free-roaming horses and burros as components of public lands" while managing "in a manner that is designed to achieve and maintain a thriving natural ecological balance on public lands".

Meeting mandates has proven to be challenging. At times the PMWHR attracts national and international attention. Proper wild horse management sometimes evokes

controversy, emotionalism, and public outcry. Balancing BLM's legal obligations with public sentiment continues to be a challenge in the management of the PMWHR.

The Pryor Mountain Wild Horse Range (PMWHR) Herd Management Area Plan (HMAP) was last revised in 1992 and has directed the management of the PMWHR until now. In 2004, the Natural Resource Conservation Service (NRCS) completed a survey and assessment of the PMWHR. The survey and assessment determined ecological conditions or difference between current vegetation communities and the historic climax plant communities (HCPC), apparent trend, and a potential stocking rate. Based upon the survey and assessment, it became apparent that management practices needed adjustment.

In November 2007, the Draft PMWHR Evaluation was issued to the public to solicit additional data, information, or analysis along with technical recommendations. In February 2008, the PMWHR Evaluation was finalized. The data was analyzed and evaluated to determine if law, regulation, policy, management objectives and rangeland health standards were being met. In addition, technical recommendations were made to meet these requirements where they weren't being met. As a result of the evaluation it was determined a revision of the current plan provided the best opportunity to ensure conformance with public land laws, regulations, policies, and land use plans.

Based upon the NRCS Survey and Assessment and the PMWHR Evaluation the PMWHR Draft HMAP and Preliminary Environmental Assessment (EA) were made available for public comment on June 6, 2008. The public was asked to participate by providing comments, alternatives to proposed projects and management actions, and providing additional data, information, or analysis. As stated in the EA, the revision is needed in order to manage wild horses in a thriving natural ecological balance within the productive capacity of their habitat and protect the range from deterioration associated with over-population.

Management proposed in the EA involves a shift from trying to improve the range condition to managing for a stabilization of the ecological conditions. This shift also includes focusing management on the best opportunities to correct deficiencies. The Proposed Action would result in maximizing the number of wild horses that can be managed. This action should result in limited recovery of rangeland vegetation communities, prevent further degradation to the range, and prevent deterioration in the health of the wild horse population.

43 Code of Federal Regulations 4710.4 states "the authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas. Appropriate management level (AML) is the number of wild horses (excluding the current years foal crop), determined through BLM's planning process, to be consistent with the objective of achieving and maintaining a thriving natural ecological balance (TNEB) and multiple-use relationship. The Pryor Mountain Herd Management Plan (HMAP, BLM-MT-PT-84-019-4321/June 1984) and the Billings Resource Area Management Plan (September 28, 1984) established an initial stocking rate (AML) for the range at 115-127 wild horses. The 1984 HMAP also identified managing for "Pryor

characteristics” younger herd, even sex ratio, and various projects. The HMAP was revised in July 1992 and re-established the AML at 85-105 adult horses (MT-025-2-18). BLM’s mandate is to manage for healthy, self-sustaining herds on healthy rangelands. Habitat objectives in the past have been to manage for a slight upward trend in range health (HMAP, BLM-MT-PT-84-019-4321/June 1984). Cumulative impacts, including weather, drought and grazing, have resulted in the current ecological conditions and management situation.

INTENSITY

1) *Impacts that may be both beneficial and adverse.* The Environmental Assessment (EA) considered both beneficial and adverse impacts of the Herd Management Area Plan. Implementation of the action will reduce the level of use of rangeland and riparian vegetation, and help alleviate competition for resources between wild horses and other multiple uses. Management of the PMWHR under this action will allow for the stabilization of natural resources, such as soils, vegetation, watersheds, wildlife, and wild horse habitat.

Site clearances for archaeological and species of concern will be conducted prior to the construction of guzzlers, fences, or other prescribed projects. The development of these projects will result in alleviating resource issues associated with wild horse management.

2) *The degree to which the proposed action affects public health or safety.* The HMAP will have minimal affects to public health or safety. The prescribed actions within the HMAP are divided between implementable decisions and decisions that will require additional Environmental Analysis prior to implementation. As the degree to which public health and safety is affected by this action is minimal, there is no mitigation that should be applied as a result of the implementation of the proposed action.

3) *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.* There are no park lands, prime farmlands, wetlands, or wild and scenic rivers, within the PMWHR. The East Pryor Area of Critical Environmental Concern (ACEC) along with the Burnt Timber Canyon Wilderness Study Area (WSA), Pryor Mountain WSA, Big Horn Tack-On WSA, and Bighorn Canyon National Recreation Area WSA are within the project area.

Implementation of the HMAP is designed to be minimally intrusive and would have no permanent surface disturbance or impact on these values. A cultural resources inventory and species of concern survey will be completed prior to project construction. If cultural resources or a species of concern is found in an area, a new location would be determined or the specific project will not be developed.

4) *The degree to which the effects on the quality of the human environment are likely to be highly controversial.* Effects of managing wild horses are well known and

understood. The effects of the projects are also well known and understood. No unresolved issues were raised following public notification of the proposed HMAP.

5) *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.* The Proposed Action has no known effects on the human environment which are considered highly uncertain or involve unique or unknown risks. This is demonstrated through the effects analysis in the EA.

6) *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.* The Proposed Action does not set a precedent for future actions. Future projects occurring within the project area will be evaluated through the appropriate NEPA process and analyzed under a site-specific NEPA document.

7) *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.* The Proposed Action is not related to other actions within the project area that will result in cumulatively significant impacts. The EA includes an analysis of cumulative effects which considers past, present and reasonably foreseeable future actions in the project area that supports the conclusion that the proposed action is not related to other actions with individually insignificant but cumulatively significant impacts. NEPA analysis will be completed for all proposed actions in the future that relate to management actions within the PMWHR.

8) *The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources.* The Crow tribe considers the Pryor Mountain wild horses as descendents of the original Crow War ponies. The tribe knows of no instance where wild horses have destroyed any sacred sites, rather it is humans who disturb and desecrate sacred sites (George Reed, Crow Tribe Executive Branch 2008) The Proposed Action will not affect significant scientific, cultural, or historical resources. A cultural resources and species of concern inventory will be completed prior to project construction. At the time of cultural inventory, if any sites are located, they will be evaluated for eligibility to the National Register of Historic Places. Archaeological inventories and avoidance measures will ensure that loss or destruction of significant scientific, cultural, or historical resources does not occur. An inventory for plant species of concern will also occur prior to project construction. Avoidance measures will ensure that loss or destruction of plant species of concern does not occur

9) *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical in the ESA of 1973.* There are no known threatened and endangered species known to occur in the project area; however, unoccupied Canadian lynx habitat exists in the area.

10) *Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.* The Proposed Action will

not violate or threaten to violate any Federal, State, or local law or requirement imposed for the protection of the environment. The Proposed Action is in conformance with all applicable 43 CFR (Code of Federal Regulations). The Proposed Action will not violate the Migratory Bird Treaty Act or Endangered Species Act.

The Proposed Action detailed in the EA and FONSI has led to my decision that all practical means to avoid or minimize environmental harm and unnecessary or undue degradation of the public land have been adopted.

DECISION:

Based on the analysis of Environmental Assessment MT-010-08-24, it is my decision to accept Alternative B-Proposed Action with mitigating measures and appendices as the Pryor Mountain Wild Horse Range Herd Management Areas Plan (HMAP). This decision constitutes wild horse population management objectives, objectives brought forward from previous HMAP, range/forest/habitat management objectives, multiple use objectives for other resources; projects identified for development on BLM administered lands and other objectives for the protection of wild horses and management of other resources affecting wild horses or affected by wild horses management.

Actions to be implemented directly from this decision include:

- Development of Guzzler projects identified in the EA MT-010-08-24
- Development of Riparian Restoration, Protections and Exlosures and spring developments
- Other water developments and reconstruction of existing water projects
- Livestock Drift Fence at the Sykes entrance to the PMWHR
- Aerial seeding

This decision specifically changes the Appropriate Management Level

From: 95 plus or minus 10% or 85 to 105 wild horses

To: 90 to 120 wild horses excluding current years foal crop.

It is also my decision that:

- The population will not be taken to the low range of AML when fertility control is utilized.
- Removal of excess wild horses, the use of fertility control in order to achieve and maintain the established AML, adjustments to sex ratios, age structure and phenotypes will be made primarily during wild horse gathers and may require subsequent Environmental Analysis.
- Any natural controls such as predation will be allowed and encouraged as long as the AML is maintained by this action.
- Adjustment of the established AML will be considered when monitoring data indicates the AML should be increased or decreased to achieve and maintain a thriving natural ecological balance on the public lands.

- Monitoring data will continue to be collected and the AML will be re-calculated within five years or after the revision to the Billings RMP whichever comes first.
- Prescribed Fire will be allowed to occur after subsequent Environmental Analysis and burn plans are developed.

Compliance and Monitoring: The HMAP identifies what is being monitored, how it is measured and the objective. Additionally, appendices I, VI, VIII, and X from the EA incorporate the type of monitoring that will occur and track when monitoring is occurring. Appendix I Standards for Rangeland Health for Public Lands Administered by the Bureau of Land Management for Montana and the Dakotas allows the BLM and the public to know what the habitat is being managed for. The monitoring log appendix VI is incorporated in order to track habitat monitoring, population monitoring, and project implementation. This log will allow the BLM and the public to track the implementation of the HMAP and help determine when management adjustments are needed. Appendix VIII Henneke Body Scoring System and Appendix X Spanish phenotype matrix score sheet allows the BLM and the public to know what wild horse characteristics are being monitored in addition to genetics, bloodlines, age classes, and band structure. Implementation of the HMAP for projects on BLM lands and monitoring and compliance will be the responsibility of the BLM.

Mitigating Measures: Mitigating measures identified in the EA and incorporated as part of the proposed action are designed to reduce the impacts of management actions and protect resources.

Alternatives Considered:

Alternative A – No Action

The no action alternative would maintain the current management direction. The **current Herd Management Area Plan dated 1984 and subsequent revision of 1992 would be fully implemented. The action would manage for an appropriate management level of 95 plus or minus 10% or from 85 to 105 wild horses.** The herd would be managed for “improvement of size and conformation”. No new water developments would be constructed. Fuels treatments would not be proposed.

This alternative was not selected because it did not allow for the maximization of wild horses or for the development of projects that would alleviate multiple use conflicts.

Alternative C – Continuation of Existing Management

The existing management alternative consists of managing the Pryor Mountain Wild Horse Range and areas adjacent to the PMWHR in their current state. Under this alternative wild horse numbers wouldn't necessarily be tied to the appropriate management level or the wild horse range. Remote darting of wild horses with Porca Zona Pellucida would remain the primary means of population management for an

undetermined population objective. No new range improvement projects would be implemented. Without water improvements, opportunities for improved distribution would not be realized. Without fencing improvements, non-conformance with public land laws, regulations, policy, and land use plans would continue. Range conditions would continue to deteriorate and the forage base and ecological condition would continue to be reduced. The carrying capacity of the range would continue to decline. The PMWHR would continue to be at risk for catastrophic wildland fire placing the herd and lands at risk.

This alternative was not selected (with the exception of fertility control) because it is not in conformance with public land laws, regulations, policy, and land use plans.

Additional Alternatives Considered but Eliminated from Further Analysis:

Natural Management Alternative

An additional alternative considered was to have purely “natural management” of the population. This alternative was eliminated from detailed analysis because it would not achieve the purpose or need for the action. Although the Wild and Free Roaming Horse and Burro Act does allow for “natural means” for population control it does not allow for range deterioration. An ecological balance between grazing animals and resources would eventually be met once the range deteriorated beyond the point that forage species are eliminated or are such a small component of the plant community that wild horses would eventually start to die of starvation.

Also, although mountain lions have been documented as preying upon foals, there is no evidence that enough animals are killed to maintain the appropriate management level. In 2001 one foal was documented as being killed by a mountain lion. In 2004, much of the foal crop loss was attributed to mountain lion kills but there is no actual documentation of the absolute cause. Mountain lions are not currently controlling the population nor have they historically controlled the population on the PMWHR.

Range Expansion Alternative

Another alternative considered was expansion of the wild horse range on BLM or National Forest System lands. This alternative is dismissed from detailed analysis since the BLM and Forest Service are prohibited by law from managing wild horses on public lands outside of areas where wild horses were documented as being “presently found” at the time of the passage of the Act in 1971. Horses were in the Pryor Mountains historically, but by 1968 they were largely limited to the 1968 designated range due to the Forest Service south boundary fence. Though there is much supposition as to the extent of wild horses in 1971, comprehensive agency inventories and assessments, and public involvement provided the basis for Herd Area and Territory boundaries per the 1971 Act. Subsequent land use planning efforts in 1984 (BLM) and 1987 (USFS) validated the same areas as being wild horse herd management area and territory, respectively. These planning efforts included public involvement and opportunities for appeal. Herd

management area or territory designation is determined during land use planning process in BLM resource management plans and forest plans.

Authorities:

The authority for this decision is contained in the 1971 Wild Free-Roaming Wild Horses and Burros Act (as amended), Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700 and 4100 which states in pertinent parts:

4700.0-6(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."

4700.0-6(c): "Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior."

4710.3-1 "The authorized officer shall prepare a herd management area plan which may cover one or more herd management areas."

4710.4: "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."

4710.7: "Individuals controlling lands within areas occupied by wild horses and burros may allow wild horses or burros to use these lands."

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..."

4120.3-1(a): "Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple use management."

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.

Rationale for Decision:

The evaluation of monitoring data and the analysis in the EA indicate that Alternative B the Proposed Action will ensure the best opportunity to meet legal obligations and current mandates. The management prescriptions identified under Alternative B are consistent with the most current information that was provided from the NRCS Survey and Assessment and PMWHR Evaluation. All known data, information and analysis were incorporated from these documents and allows for the best available information in order to make this decision. The HMAP from 1984 and the 1992 revision, even if fully implemented, would not entirely meet management objectives. Therefore, the replacement of these documents with the Proposed Action should more fully ensure legal mandates are attained by the BLM.

Implementation of this plan is needed to achieve a thriving natural ecological balance between wild horse populations, wildlife, vegetation, water and other multiple uses as authorized under the 1971 Wild Free Roaming Horse and Burro Act and section 302(b) of the Federal Land Policy and Management Act of 1976.

Implementation of the HMAP is necessary to work towards the established AML, ensure wild horse health, and limit wild horses to the wild horse range boundaries and to protect the range from deterioration associated with overpopulation. Conditions of the rangeland and wild horse habitat are detailed in the EA MT- 010-08-24, as well as the PMWHR Evaluation of February 2008 and NRCS Survey and Assessment Report of 2004.

Within the PMWHR past management direction limited BLM from managing all resources (except wild horses) in order to achieve a thriving natural ecological balance. Implementing the action and working towards the established AML through implementation of the Proposed Action would ensure that objectives are met and progress made towards achieving the Standards for Rangeland Health.

APPEAL PROVISIONS

Within 30 days of receipt of this decision, you have the right to appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR 4.4. If an appeal is taken, 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. The appellant has the burden of showing that the decision appealed from 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. (58 FR 4942, January 19, 1993) The petition must be served upon the same parties identified below. The appellant has the burden of proof to demonstrate that a stay should be granted. Copies of the notice of appeal and petition for a stay must also be submitted to the Bureau of Land Management at the following address:

Jim Sparks Field Manager
BLM, Billings Field Office
5001 Southgate Drive
Billings, MT 59101

Copies of the notice of appeal and petition for a stay must also be submitted to:

U.S. Department of the Interior
Board of Land Appeals
Dockets Attorney
801 N. Quincy Street, Suite 300
Arlington, VA 22203

A copy must also be sent to the appropriate office of the Solicitor at the same time the original documents are filed with the above office.

Office of the Regional Solicitor
U.S. Dept. of the Interior,
Pacific Northwest Region,
PO Box 31394, Billings, MT, 59107-1394

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay is required to 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 the public interest favors granting the stay.

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

Sincerely,


James M. Sparks
Field Manager,
Billings Field Office

5.22.09
Date