



United States Department of the Interior



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DECISION

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Wild Horse and Burro Program

Diamond Complex
Wild Horse Gather Plan and Environmental Assessment
DOI-BLM-NV-B010-2012-0045-EA

INTRODUCTION

The Bureau of Land Management (BLM) Battle Mountain District, Mount Lewis Field Office (MLFO), Elko District, Tuscarora Field Office (TFO) and Ely District, Egan Field Office (EFO) will conduct a phased wild horse gather operation over a 10-year period to remove excess wild horses from within and outside of the boundaries of the Diamond, Diamond Hills North and Diamond Hills South Herd Management Areas (HMAs), so as to achieve and maintain the established appropriate management levels for the HMAs, while adjusting sex ratios, and treating/retreating released mares with PZP-22 (Porcine Zona Pellucida) fertility control vaccine (or other current formulation) to bring down the overall population growth rate. The initial gather for the Proposed Action as described in the Diamond Complex Wild Horse Gather Plan Preliminary Environmental Assessment (EA) **DOI-BLM-NV-B010-2012-0045-EA** (Diamond Complex Gather EA) would begin in January 2013. Due to inherent movement patterns between these HMAs, the area is administered as a Complex.

The Preliminary Diamond Complex EA was made available to the interested public on October 19, 2012 for a 30 day comment period. All comments were reviewed and considered prior to completion of the Final Diamond Complex Gather EA. Several letters in support for and against the gather were received as well as numerous automatically generated form letters. These

comments are summarized and substantive comments addressed in Appendix F of the Final EA. As a result of the comments received, some additions were made to the Final EA for clarification purposes; including discussion in regarding safety and humane treatment of the wild horses, and information throughout the regarding the results of the wild horse inventory in November 2012. Additionally, photos were added throughout the document to further illustrate conditions of the range, wild horse condition, resource issues and inventory methods. Beyond these changes, no substantial modifications were made to the EA as a result of the comments received. The Final EA and associated documents can be viewed at www.blm.gov/nv/st/en/fo/battle_mountain_field.html.

The Diamond Complex is located in Eureka, White Pine and Elko Counties, encompassing the Diamond Mountain Range and Diamond Hills north of Eureka, Nevada. The MLFO is the lead office for preparation of the Diamond Complex Gather EA and planning for the gather itself.

The most recent helicopter population inventory flight for the Complex was conducted in November 2012. Table 1 displays the Appropriate Management Levels (AMLs) and the direct count of wild horses obtained during the helicopter inventory for each HMA within the Diamond Complex. Detailed tables and a map of the inventory are also available on the Diamond Complex website identified above.

Table 1. Summary of Wild Horse Population Information

HMA	AML	Current Population Estimate/Direct Count
Diamond	151	298
Diamond Hills North	37	174
Diamond Hills South	10-22	30
Outside HMA	0	311
Total	210	813

The AML is defined as the number of wild horses that can be sustained within a designated HMA which achieves and maintains a thriving natural ecological balance in keeping with the multiple-use management concept for the area. The AMLs for the Diamond Complex were established through Final Multiple Use Decisions (FMUDs), Resource Management Plans (RMPs), Livestock Use Agreements or Land Use Plan (LUP) Amendments following consultation with permittees and the interested public. AMLs were established following the collection, analysis, and interpretation of monitoring data, which included precipitation, use pattern mapping, trend, production, census/inventory, and carrying capacity analysis.

The upper levels of AML established for the HMAs represent the maximum population for which a thriving natural ecological balance and multiple use relationship on the public lands can be maintained. *“Proper range management dictates removal of horses before the herd size causes damage to the range land. Thus, the optimum number of horses is somewhere below the number that would cause resource damage”* (118 IBLA 75). The lower level represents the number of animals that should remain in the HMAs following a wild horse gather in order to facilitate a periodic gather cycle.

The AML for the Diamond Hills South HMA was established as a range which allows for the periodic removal of excess animals (to the low range) and subsequent population growth (to the high range) between removals. The BLM's current guidance is to establish AMLs as a range; however the AMLs for the Diamond and Diamond Hills North HMAs were established prior to this guidance and were set as a single number, which represents the upper limit of AML. Therefore, removal of excess wild horses from the range would involve removal of a number of animals below the AML so as to allow for population increase between gathers without exceeding the AML.

The Diamond Complex was last gathered in July 2004, with a post gather population estimated to be 161 wild horses based on the estimated population and gather and release numbers. A total of 603 were gathered and 483 removed. Fertility control (PZP) was administered to all mares released to the range (86 mares).

The BLM is implementing the Proposed Action as outlined in the Diamond Complex Gather EA:

Proposed Action: Use multiple gathers over a 10-year period for selective removal of excess wild horses to achieve the low range of AML (123 wild horses), adjust sex ratios and implement population growth control using fertility control treatments (PZP-22 or most current formulations). All wild horses residing in areas outside of the Diamond Complex HMA boundaries would be gathered and removed.

After the initial gather in 2013, the BLM would conduct follow-up gathers in the Diamond Complex during the period covered by the decision to continue the population growth control protocols and remove primarily younger, adoptable excess wild horses to reach low-range AML. Sex ratio adjustment to favor studs would be implemented during follow-up gathers over the 10-year period in which the low AML is not achieved. If gather efficiencies utilizing a helicopter do not achieve the desired goals of the gather, water/bait trapping may be utilized during the life of the plan to remove sufficient numbers of excess wild horses, achieve the management targets, to relieve resource concerns and/or remove concentrated groups of excess wild horses both inside and adjacent to the Diamond Complex. The initial gather would begin on or about January 10, 2013 and take about three weeks to complete. A special on-site wild horse adoption event is also planned with the date and location still to be determined.

The overall objective of the Proposed Action as described in the EA, over the 10-year period for the gather operations would be to gather and remove a sufficient number of excess wild horses within the project area to achieve a population of 123 wild horses, which is the combined low AML for the Diamond Complex and to be able to maintain population at AML for 3-4 years (or longer) through application of fertility controls. The post gather target was determined based on the low AML established for the Diamond Hills South HMA, and estimated population increase within the Diamond Hills North and Diamond HMA by the end of the 10-year operation period that would allow 3-4 years (or longer) before the AML was exceeded.

Due to national funding and holding space limitations, as well as gather efficiency limitations, BLM cannot achieve low-range AML or implement a sufficient level of population controls with a single gather in 2013. Under the Proposed Action as described in the EA, the 2013 gather

would be the first phase in a 10-year management strategy that would help reduce the need for large scale wild horse gathers while still achieving BLM’s management goals of attaining AML, reducing population growth rates, and obtaining a thriving natural ecological balance on the range. The BLM would gather and remove approximately 603 excess animals in the initial 2013 gather, resulting in an initial post gather population at approximately the high end of AML (210 wild horses). Wild horses would continue to be gathered in periodic follow-up gathers over the 10-year period in order to apply fertility control to all mares released back to the range. Since the first phase of the gather would not achieve the desired low AML, a follow-up gather would be planned in two to three years.

Table 2 displays the anticipated gather and removal figures. Because the Proposed Action involves a phased approach, Table 2 displays the estimated initial gather and removal numbers given current funding and holding space limitations. After the initial 2013 gather, excess horses would be removed in subsequent gather(s) only if necessary to achieve low-range AML.

Table 2, Estimated Populations and removals under Proposed Action (Phase I, 2013)

HMA	AML	EST. POPULATION	EST. GATHER NUMBER ¹	EST. UN-GATHERED	EST. TO REMOVE	EST. TO RELEASE	EST. POST-GATHER
Diamond	151	298	268	30	147	121	151
Diamond Hills North	37	174	157	17	137	20	37
Diamond Hills South	10-22	30	27	3	8	19	22
Outside Diamond Hills South	0	311	311 ²	0 ²	311 ²	0	0
Total	210	813	763	50	603	160	210

As described in the EA, the Proposed Action includes returning to the Diamond Complex every 2-3 years (starting in 2014 or 2015) for a period of ten years to gather a sufficient number of wild horses to continue the population growth control protocols of treating and/or re-treating mares with fertility control and to maintain or achieve low AML by using limited removals of excess horses during the follow-up gathers. Population inventories and routine resource/habitat monitoring would be completed between gather cycles to document current population levels, growth rates, habitat condition and wild horse use levels prior to any follow-up gather. All gather activities for the initial and follow-up gathers under the Proposed Action would be conducted in a manner consistent with those described in the Final Diamond Complex Wild Horse Gather EA DOI-BLM-NV-B010-2012-0045-EA.

Because the 2013 gather would not achieve low AML, in order to reduce resource impacts and promote recovery and improvement of rangeland health, the sex ratio of the 2013 post gather population would be adjusted to 60% studs to slow population growth until a follow-up gather could occur to achieve the low AML. If future budget and holding space limitations continue to preclude achievement of low AML, sex ratio adjustment and fertility control measures would continue to be implemented through the follow-up gathers. In follow-up gathers, when low

1. Estimated gather numbers based on ability to capture 90% of the population, which could vary depending on terrain, animal location, weather conditions, and animal movement experienced before and during the gather. Typically, gather efficiencies fall below 90%.
2. Removal of all wild horses from outside the HMA boundaries will require 100% gather efficiency or phased removal over multiple gathers if less than 100% gather efficiency is reached in 2013.

AML is achieved, only fertility control would be implemented as a population control, with sex ratio adjustment reserved for those gathers that do not allow for achievement of the low AML. By completing the gather in the identified fashion, the BLM would be able to reduce the population with each successive gather (over the 10-year life of the Proposed Action) to achieve low range AML and treat an increased number of mares with fertility control (PZP-22 or most current formulation). The Proposed Action as described in the EA is consistent with current BLM policy and direction to be able in the longer term to reduce gather frequencies and the number of animals that need to be removed from the range over time through application of fertility control.

After the initial gather operations are completed, future removals would be determined based on population inventory and resource monitoring data for the Diamond Complex, and new decision-making processes. Long term management goals for the Diamond Complex for this gather operation include retention of a breeding population of 123-210 wild horses and implementation of population control techniques. Monitoring data would continue to be collected, and if such data warrants, the AML(s) would be re-evaluated and adjusted through separate BLM planning level decisions that include public participation and input.

Based on the analysis of potential environmental impacts detailed in the Final Diamond Complex Gather EA, it was determined that the impacts associated with the Proposed Action were not significant. This was documented in the attached Finding of No Significant Impact (FONSI).

DECISION

It is my decision to implement the Proposed Action as described in the Final Diamond Complex EA (**DOI-BLM-NV-B010-2012-0045-EA**).

This Decision constitutes my final decision to gather and remove excess wild horses from within the Diamond, Diamond Hills North and Diamond Hills South HMAs (Diamond Complex) in order to achieve low AML, implement population growth control treatments, and to remove wild horses from non-HMA areas to which wild horses from the Diamond Complex have moved due to population pressures, and to manage the public lands within the gather area for a thriving natural ecological balance.

After an initial gather in January 2013, additional gathers to continue fertility control treatments and to remove primarily adoptable wild horses in order to achieve and maintain the wild horse population within the established AML would be conducted periodically over the 10 year gather operation period following the date of this decision based on available funding and National priorities. Prior to subsequent follow-up gathers the BLM would review resource and inventory monitoring data and identify the need for continued implementation of population controls and removal of excess wild horses. Following this review, the BLM would issue a notification to the public informing them of our legal justification for the continuation of the management action initiated in 2013 and the need for the follow-up gather as well as any opportunities for viewing during the gather. Pursuant to Title 43 of the Code of Federal Regulations (CFR) §4770.3(c), this decision is effective immediately.

RATIONALE:

As determined in the Final Diamond Complex EA, excess wild horses are present within the Diamond Complex and need to be removed to restore a thriving natural ecological balance. The current population of 813 wild horses is 387% of the AML established through prior BLM decisions. Additionally, analysis of ongoing monitoring data shows that wild horses are degrading rangeland health through heavy and severe utilization levels, trailing, trampling of riparian areas and increased erosion levels. Furthermore, the 2012 drought has substantially reduced forage and water availability to wild horses resulting in near emergency conditions particularly in the low elevation winter range. The perennial key forage species exhibited minimal growth in 2012 and perennial grasses did not grow in many locations. Heavy and severe utilization levels due to an overpopulation of wild horses have further compounded the issue.

In addition to degradation of rangeland and lack of forage, the wild horses are also competing heavily with native wildlife including pronghorn and mule deer, which will also depend on these areas for forage this winter and beyond. The current population of wild horses is beyond that level which is authorized within the HMAs and approximately 311 wild horses are present outside of HMA boundaries where use by wild horses is not authorized at all. In order to allow for drought recovery and upward trends in rangeland health, protect important wildlife habitat, ensure long term health and success of wild horses and prevent widespread starvation and death of individual animals due to lack of forage during the 2012-2013 winter, a gather must be conducted to remove excess wild horses.

In recent years, the public has expressed opposition to the removal of wild horses from the range in order to meet land management and herd objectives, and has instead encouraged increased use of fertility control or other population controls to reduce herd growth rates, decreased gather frequency and ultimately reduction of the number of excess animals that must be removed from the range through gathers.

Since 1992, the BLM has been applying various formulations of the fertility control vaccine PZP to Nevada wild horse herds. BLM's current policy direction is to increase use of fertility control and to repeat such applications as necessary to reduce the rate of wild horse population growth and to minimize the necessity of removing excess wild horses from the public lands.

To further implement this strategy of increasing population controls as a management tool, the BLM is emphasizing the increased use and re-treatment of fertility control and other population controls, such as sex ratio adjustment, in order to reduce population growth rates. The Proposed Action as described in the Diamond Complex Gather EA is consistent with this direction. The goal is to re-visit the Diamond Complex in 2-3 years after the initial gather before the population is substantially in excess of AML (thus reducing the number of excess animals that have to be removed), re-treat gathered mares with fertility control and release most horses back to the range. Further fertility control and removal of excess horses would continue over the 10-year period of the gather operations authorized by this decision. In the long term, this strategy would result in the removal of only limited numbers of excess wild horses consisting mainly of weanlings, for which there is the greatest adoption demand.

The gather is needed to not only remove excess wild horses, but also to implement population controls to slow population growth, maintain population size within AML, and to reduce the number of excess wild horses that need to be removed from these HMAs over the long run. The action would result in fewer wild horses needing to be placed in short or long-term holding or in the adoption and sale programs over the next 10-20 years. By maintaining population size within AML, rangeland resources would be protected from the deterioration associated with wild horse overpopulation, and a thriving natural ecological balance and multiple use relationship on public lands would be maintained consistent with the provisions of Section 1333(a) of the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA).

Nationwide, short and long term holding space for excess wild horses removed from the range is limited. In order to facilitate gathers and make progress towards objectives, numerous BLM Districts have implemented phased gather operations in which a portion of the excess wild horses are removed during the initial gather along with implementation of population controls, with additional excess wild horses to be removed during a follow-up gather(s) to achieve the AML goals. The Diamond Complex gather also implements a phased approach in which the target is to achieve the high range of AML during the initial gather, with the low range of AML being achieved in follow-up gathers which would occur at 2-3 year intervals over a 10-year period. Because the low range of AML would not be achieved during the initial gather, and the AML of 210 wild horses would be exceeded the spring after the initial gather, sex ratio adjustment is also being implemented for the first gather phase (and any follow-up gathers in which low AML cannot be attained) with a goal of a post gather population consisting of 60% studs and 40% mares.

In summary, implementation of this Decision will:

- Achieve the high range of AML during the 2013 wild horse gather with follow-up gathers used over the 10-year gather operation period to achieve the low range of AML or a level in between the low and high AML by removing excess wild horses and applying fertility controls to released horses,
- In the long term, maintain the populations within the Diamond Complex at a level that is consistent with the established AML,
- Reduce population growth rates, resulting in the need to gather less frequently and remove fewer animals in the future,
- Reduce or eliminate the number of excess wild horses that must be sent to long-term pastures over the long term,
- Promote the improvement of wild horse habitat within the Diamond Complex by allowing rangeland health to improve and avoiding impacts from an overpopulation of wild horses, which will result in significant progress towards attainment of Standards for Rangeland Health and ensure healthy populations of wild horses for generations to come.

The following constitutes the rationale for issuing this decision effective upon issuance:

a) Potential impacts to wild horse health and emergency conditions

The population within the Diamond Complex is 387% of the established AMLs which represent the number of wild horses which achieves and maintains a thriving natural

ecological balance consistent with other multiple-uses. The Great Basin of Nevada is arid with precipitation levels in the valleys of 6-8", reaching 12-16" in the high elevations. Drought occurs an average of 4 of every 10 years which substantially reduces forage and water sources important for wild horses, wildlife and domestic livestock. Serious drought conditions were experienced throughout the United States in 2012. In central Nevada, precipitation data reflects growing season precipitation that is 56-63% of the historic period of record average.

The Diamond Complex has been experiencing severe and extreme drought with little to no growth of perennial grasses in the mid and lower elevations, and many drying water sources. Particularly within portions of the Diamond HMA, water sources are inherently limited. An overpopulation of wild horses compounded by severe drought that dried many important springs and streams has resulted in high concentrations of wild horses on the remaining waters. Wild horses are travelling long distances over steep terrain to access remaining waters. In some locations, large numbers of wild horses stay at water sources waiting for the small source to recharge so that they can continue drinking, hesitant to leave even when approached by humans.

Forage in the low and mid elevations is extremely limited and has endured heavy and severe utilization levels by wild horses. As a result, there is very little forage left in these areas to support the current over- population of wild horses through the winter. During spring and summer, most wild horses subsisted on residual forage in the higher elevations left from the 2011 growing year. As snow falls on the higher elevations and the wild horses are pushed lower, they will have very little nutritious forage to survive on.

A comprehensive inventory conducted November 6-7, 2012 documented wild horse movement from the Diamond HMA to the east side of the Diamond Range outside of the HMA, and movement of Diamond and Diamond Hills South HMA wild horses north onto the Diamond Hills North HMA seeking better forage and water conditions. Body condition decline was also documented for horses in the Diamond HMA since the August 2012 over flight and 2012 monitoring, with numerous mares that are nursing foals showing accentuated backbone, ribs and hips.

Failure to conduct a wild horse gather to remove excess wild horses would result in further decline in wild horse body condition, suffering and death due to starvation and lack of adequate nutritious forage for the existing population. Foals and mares would be most affected. Failure to proactively gather the wild horses would result in the need to either allow large numbers of animals to suffer and die, or to conduct an emergency wild horse gather of thin, weakened animals. Experience has shown that gathers involving animals in depleted health (thin, weak) can result in higher death loss of the wild horses during the gather as well as in short term holding facilities as their bodies are so badly malnourished that they are less able to acclimate to feed.

Additionally, emergency gathers reduce the flexibility to select for health, conformation, age or other factors and reduces options for fertility control or other population controls. If serious enough, emergency gathers can result in the need to remove all wild horses due

to their poor condition to save them from further suffering and death because no forage exists to support them. When conditions degrade this far, wildlife suffer as well, as forage needed for their winter survival has been consumed. Pronghorn, mule deer and other wildlife would likely experience death and poor reproduction. Impacts to the range take many years to be reversed, and many areas may be damaged irreversibly. Allowing conditions to degrade to the point that there is a need for an emergency wild horse gather does not promote long term animal health or rangeland health and is not consistent with the WFRHBA, regulations or humane treatment mandates.

b) Necessity of Prompt Removal of Excess Wild Horses

As previously indicated, the current population of approximately 813 wild horses is 387% of the total AML established through prior planning level and Land Use Plan Decisions. During the November 2012 inventory, 311 or 38% of the total wild horses observed in the Diamond Complex are located outside of areas designated as Herd Areas or HMAs in areas where no forage has been allocated for wild horses. Through analysis of monitoring and inventory data and other factors documented in the Final Diamond Complex EA, it has been determined that excess wild horses exist within the Diamond Complex and need to be removed in order to restore a thriving natural ecological balance, protect animal health and allow recovery from severe/extreme drought and improvements to rangeland health. The WFRHBA, CFRs, and other policy require the BLM to remove excess wild horses from the range. To delay a gather would not be consistent with existing law or policy.

c) Need for Phased Operations to Achieve Gather Objectives

Due to national funding and holding space limitations, as well as gather efficiency limitations, BLM cannot achieve low-range AML or implement a sufficient level of population controls with a single gather in 2013, given the current overpopulation levels. By implementing the gather operations through a phased approach over 10 years, BLM can achieve low range AML over more than one gather and implement fertility treatment controls for a sufficient portion of the Diamond Complex wild horse population to reduce the population growth rate. This phased approach allows for a lower number of excess wild horses to be removed in the initial 2013 gather, begins fertility treatments immediately, allows for a smaller number of excess wild horses to be removed in a follow-up gather(s) – ideally at a level consistent with adoption demand thereby eliminating the need to finding long-term holding space, and allows for additional fertility treatments for horses that will not be removed from the Complex so as to achieve population control objectives.

d) Potential Damage to Rangeland and Riparian Resources.

The rangeland and riparian resources within the Diamond Complex are detailed in the Final Diamond Complex Gather EA. Due to the inherent low precipitation levels, poorly developed soils and frequency of drought, native plant communities are easily degraded by overuse by grazing animals, especially during drought years.

Much of the habitat within the Diamond Complex is characterized by a lack of key perennial grass species and in many cases key grass species that are important forage for

wild horses are missing completely due to historical overuse. In many areas, cheatgrass dominates but is not a native species and is not a nutritious deep rooted perennial that would be consistent with proper rangeland health, or healthy wild horse habitat. Riparian areas and springs within the Diamond Complex have been heavily and severely utilized by wild horses, especially during the 2012 drought when waters were extremely limited in some areas, increasing the use levels of remaining waters. Heavy and concentrated use by wild horses has degraded many of the riparian areas within the Diamond Complex. Resource Advisory Council (RAC) Standards for Rangeland Health are not being met and wild horses have been identified as causal factors. Monitoring has documented heavy and severe use of forage by wild horses, trampling of riparian areas, and severe trailing to waters. Monitoring has indicated that as the population of wild horses has increased, so has the frequency and severity of documented impacts. Though slight improvement in frequency and vigor of perennial grasses at some key areas was documented following the 2004 gather, that upward trend has reversed and downward trends are now occurring.

Substantial improvement will require many years to attain and will require maintaining proper management of grazing animals in these areas so that rangeland health continues to improve and improvements are not reversed. Changes to livestock management have been and will continue to be made following Rangeland Health Assessments and separate grazing decisions. Maintaining wild horse populations within the AML and preventing an overpopulation of wild horses is essential in order to foster improvement of the rangeland health within the Diamond Complex.

Completing the gather and implementing population controls will help eliminate further degradation and reverse negative trends by eliminating heavy and severe use levels, reducing the severity of trailing, soil disturbance and hoof action. Delaying this gather would result in continued severe impacts to the upland and riparian resources through excessive utilization, trailing, and trampling, irreparably deteriorating the health of these sensitive desert ecosystems and precluding rangeland health improvements that could otherwise occur.

In accordance with 43 CFR § 4720.1, upon examination of current information, I have determined that an excess of wild horses or burros exists, and that the excess animals should be immediately removed. I have also determined that immediate action is necessary to protect wild horse health, cease rangeland degradation by an overpopulation of wild horses and to promote a thriving natural ecological balance as delaying a gather could result in current conditions becoming an emergency situation that could lead to the death of individual animals.

PUBLIC INVOLVEMENT

The MLFO mailed a scoping letter dated June 4, 2012 to 165 individuals, agencies and organizations on the interested public list for the Diamond Complex, posted these documents on the Diamond Complex web page and issued a news release informing the public of the opportunity to submit comments, recommendations and alternatives for the completion of the Diamond Complex EA. Letters were also sent to Native American Tribal Representatives

throughout Central Nevada on June 12, 2012, informing them of the proposed gather. Comments received were considered in completion of the Preliminary Diamond Complex Gather EA and summarized in Appendix F of the Preliminary EA.

The Preliminary Diamond Complex Gather EA was made available to the public for 30 day comment on October 19, 2012. The Preliminary EA was also made available to the Nevada State Clearinghouse which made the notification letter and EA available for review by over 50 different local, county, state, and federal agencies from around the state. The Preliminary EA was posted on the Battle Mountain District website and NEPA Register.

All comments were reviewed in preparation of the Final Diamond Complex Gather EA. These comments are summarized within Appendix F of the Final EA. The overwhelming majority of these comments were fashioned from a mass form letter from an animal welfare organization. These “form letters” were reviewed and considered, however, only yielded 14 distinct comments. Unique comments or letters were received from approximately 20 individuals or agencies or organizations. Comments ranged from questions seeking additional information or clarification to comments for or against the gather. Many comments were not specific to this Proposed Action but generally addressed the BLM’s wild horse and burro program. Some additions were made to the EA for clarification purposes; however, no substantial modifications were made to the EA as a result of the comments received. Most comments reviewed fell among but were not limited to the following themes:

- Support the action/importance of maintaining AMLs*
- Inventory/animal numbers incorrect*
- Genetic health*
- AMLs should be increased*
- Effectiveness/reversibility/undesirable effects of PZP and or sex ratio adjustment*
- Insufficient Alternatives*
- Outside of scope of analysis*
- Viewpoint/matter of opinion*
- Concerns/effects of use of helicopters*
- Public viewing opportunities during gathers*
- Manage primarily for wild horses/remove or reduce livestock*

Public hearings are held annually on a state-wide basis regarding the use of motorized vehicles for the purposes of inventory, gather operations, and transport in the management of 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 motorized vehicles in the management of wild horses and burros. The Carson City District Office held the 2012 Nevada state-wide hearing on May 29, 2012.

AUTHORITY

The authority for this decision is contained in Section 1333(a) of the WFRHBA, Section 302 (a) and (b) of the Federal Land Policy and Management Act (FLPMA) of 1976, the Public Rangelands Improvement Act (PRIA) of 1978 (Pub. L. 95-514, Sec. 4) and at 43 CFR § 4700.

43 CFR § 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.

43 CFR § 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.

43 CFR § 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 captured 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 part.³

43 CFR § 4740.1 Use of motor vehicles or aircraft

- (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 and 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 and burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

43 CFR § 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.

3. 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. Healthy wild horses that are not adopted are transported to long term holding pastures or are sold (with limitations) to private individuals, but are not sold to slaughter nor euthanized.

(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.

43 USC Sec. 1901(4): Continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and disposal of excess wild free-roaming horses and burros which pose a threat to themselves and their habitat and to other rangeland values.

42 USC Sec. 1732(b): In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

APPEAL PROVISIONS

Within 30 days of receipt of this wild horse 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 Part 4. If an appeal is taken, you must follow the procedures outlined in the enclosed, "Information on Taking Appeals to the Interior 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 titled "Information on Taking Appeals to the Interior Board of Land Appeals." The appellant has the burden of proof to demonstrate that a stay should be granted.

A petition for a stay of the 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; 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 Diamond Complex wild horse gather is approved for implementation immediately, and is approved to begin on or around January 10, 2013. This decision is effective upon issuance in accordance with 43 CFR § 4770.3 (c) because removal of excess wild horses is necessary to protect animal health and prevent further deterioration of rangeland resources. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR part 4 (see attachment).

Sincerely,

/s/ Christopher J. Cook 12/11/12
Christopher J. Cook Date
Field Manager,
Mount Lewis Field Office

/s/ Richard E. Adams 12/11/12
Richard E. Adams Date
Field Manager,
Tuscarora Field Office

/s/ Timothy R. Shannon 12/11/12
Timothy R. Shannon Date
Field Manager,
Egan Field Office

Attachments (2)