



United States Department of the Interior



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DECISION

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Wild Horse and Burro Program

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Hickison HMA

Nuisance Drought Burro Gather

INTRODUCTION

The Bureau of Land Management (BLM) Battle Mountain District, Mount Lewis Field Office (MLFO), plans to conduct a gather and removal of approximately 30 wild burros outside of the Hickison Herd Management Area (HMA). The purpose of this gather is to remove nuisance animals that, as a result of extreme drought conditions within the HMA and overpopulation of wild burros, have been causing property damage to private land outside of the Herd Management Area (HMA). The Hickison HMA is administered by the MLFO and associated with the Hickison Burro Territory (HBT) administered by the U.S. Forest Service (USFS), Humboldt-Toiyabe National Forest. The removal will be accomplished through bait and/or water trapping to include private land and public. The MLFO also plans to hold a special Hickison Wild Burro Adoption event once gather activities are concluded.

A Determination of National Environmental Policy Act (NEPA) Adequacy (DNA) to the Battle Mountain District Drought Management Environmental Assessment DOI-BLM-NV-B000-2012-0005-EA, dated June 22, 2012 (Drought EA), has been completed for this Decision (DOI-BLM-NV-B010-2013-0067-DNA). The gather and removal operation is also in accordance with the attached Hickison Burro Nuisance Drought Gather Plan (Hickison Gather Plan), and the BLM's Wild Horse and Burro Comprehensive Animal Welfare Policy Instruction Memorandum (IM).

The gather area is located approximately 3-5 miles west of the Hickison HMA in Lander County, Nevada, southeast of Austin, Nevada. It is possible that the gather area could also include the northern portion of Nye County. The Hickison HMA is administered by the MLFO in

conjunction with the associated Burro Territory administered by the Humboldt-Toiyabe National Forest. The gather area and HMA/HBT are shown on Map 1 located within the attached Hickison Gather Plan.

BACKGROUND

Gather and/or removal activities have not occurred within either the Hickison HMA or Burro Territory since passage of the Wild Free Roaming Horses and Burros Act of 1971. The current population for the combined area is 112 burros based on a helicopter inventory conducted November 2012. The Hickison HMA and Burro Territory Complex cover an area approximately 74,000 acres in size, with approximately 18,000 acres north of U.S. Highway 50 and inaccessible to burros due to highway right-of-way fences.

The Final Multiple Use Decision for the Kingston and Simpson Park Allotments issued in 2005 established the AML for the Hickison HMA as 16-45 for 5 months of the year on the portion administered by the BLM. The Humboldt-Toiyabe National Forest is planning to finalize the AML for the Burro Territory portion of the area (and the remaining 7 months of the year) within the next year; however no final AML has been established for that area at this time. The Hickison HMA AML was established for 5 months of the year to take into account that burros spent approximately 40% of their time on BLM and 60% of their time on USFS administered lands according to inventory records available at the time.

For several years, the burros have been documented expanding beyond the HMA and HBT boundaries to the east, south and west. This has been the result of a continuing increase in population size, loss of waters within the HMA/HBT, and drought conditions. For approximately three years, burros have been expanding several miles westward of the HMA to private land. The burros are trailing around the privately owned, fenced hay fields, taking advantage of irrigated grass and alfalfa accessible through the fence. In September 2012, burros began entering the private property on a regular basis by pushing over fences, or going through or under the fences. Considerable damage was done to fences and to the irrigated crops.

In April 2013, the burros again began encroaching into the irrigated hay fields. The BLM and land owner documented multiple occasions of burros entering the fields over the next four months, causing damage to fences each time they entered or exited. Trail cameras were mounted along the fence line to document burro presence along the fence and within the fields. A letter received by the BLM June 17, 2013 by the landowners formally requested the BLM and USFS to conduct gathers to resolve the problem.

Monitoring data:

According to the U.S. Drought Monitor, August 27, 2013 the Hickison HMA and HBT are experiencing Extreme drought conditions, and are near "Exceptional", the highest rating given. The Vegetation Drought Response Index (VegDri) also shows the Hickison HMA area as being in moderate to severe drought as of August 26, 2013.

Sustained drought conditions have resulted in severely reduced forage production and degraded conditions within the valley bottom and foothills. MLFO staff monitored the area for drought conditions on July 18, 2013. Drought conditions observed throughout the Kingston and Simpson Park Allotments and Hickison HMA are consistent with the extreme drought rating assigned by the U.S. Drought Monitor for this area. Two consecutive years of drought is impacting the health and productivity of forb, grass and shrub species. Monitoring reveals that Drought Response Triggers identified in the Drought EA have been met and/or exceeded. Indicators of drought stress are prevalent throughout the area. There is an extensive absence of vegetative understory, and the typically drought tolerant shrubs are losing vigor and some are becoming senescent due to drought stress. Of the vegetation that is present, production is substantially reduced or absent with growth of grasses or forbs practically non-existent. Existing vegetation reflects reduced shoot and leaf growth, reduced seed head development and vigor, and plant death.

The areas experiencing severe/extreme drought conditions will not likely be capable of recovering this growing season even with abundant late season precipitation due to the lack of plant available moisture which has forced plants into completing their life cycle prematurely. Plants observed have surpassed their permanent wilting point due to severe water stress which limits a plant's ability to resume growing.

Refer to Appendix B of the attached Hickison Gather Plan, Monitoring and Climate Summary for more information.

Based on review of the monitoring data and documentation of damage to private land fences and crops by burros, it has been determined that up to 30 burros need to be removed from the area to prevent further private property damage and potential injury to burros. The BLM considered other options such as relocating the burros back into the HMA. Due to the current overpopulation, lack of resources and existing impacts caused by burros in the HBT, it was eliminated as a viable option. The likelihood of burros leaving the overcrowded HMA/HBT and returning to the irrigated fields is too high to justify relocation, and the nuisance animals will be removed from the area.

PROPOSED ACTION: HICKISON NUISANCE BURRO REMOVAL

In accordance with the attached Hickison Gather Plan, up to 30 burros will be removed from the project area located 3-5 miles west of the Hickison HMA boundaries. The gather would be conducted through the BLM National Bait and Water Trapping Contract. The gather area would include the private lands that the burros have been encroaching into, and adjacent public lands in order to facilitate bait/water trapping. Gather operations would be ongoing beginning after September 6 through October 30, in accordance with the attached Hickison Gather Plan. As burros are trapped, they will be transported to Battle Mountain District Facilities where they will be prepared for adoption. The Hickison Burro Adoption event will be planned to take place once gather activities conclude, offering burros for adoption to the qualified public through a competitive bid or lottery system. Unadopted burros may be transported to the BLM's wild

horse and burro facility in Litchfield, California. Gather activities could be extended beyond October 30 if necessary to capture nuisance burros continuing to enter private land in the area. Monitoring of this area and the HMA/WBT will continue until conditions improve or additional management actions are needed. Hair samples will be collected from all adult burros (and young burros if possible) for genetic analysis.

Based on the relevance of the new proposed action to the analysis of potential environmental impacts detailed in the Drought EA, as documented in DOI-BLM-NV-B010-2013-0067-DNA, it was determined that the impacts associated with the gather would not be significant in accordance with the Finding of No Significant Impact that was issued with the Drought EA. The Drought EA and FONSI are available on the Battle Mountain District website at: http://www.blm.gov/pgdata/etc/medialib/blm/nv/field_offices/battle_mountain_field/blm_information/nepa/battle_mountain_district.Par.40278.File.dat/BMD_FINAL_Drought_EA.pdf

PUBLIC INVOLVEMENT

Due to the time-sensitive nature of this nuisance situation, the MLFO has not conducted scoping specific to these actions. However, similar actions were analyzed in the Drought EA and public comment was received during review of the Preliminary Battle Mountain District Drought Management EA DOI-BLM-NV-B000-2012-0005-EA.

The Preliminary Drought EA was made available to the public for 30 day comment on April 13, 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 and considered in preparation of the Final EA.

Because of the inherent nature of bait and water trapping gathers, the public would not be allowed to view actual gather activities. It is likely that the capture of the burros will be sporadic with some captured every few days/nights. However, the MLFO plans to hold public site visits by appointment and will make reasonable attempts to accommodate the public wishing to view the captured burros and observe loading for transport throughout the gather period.

DECISION

It is my decision to implement the Hickison Burro Nuisance Drought Gather and Removal as described in the attached Hickison Gather Plan and consistent with the Battle Mountain District Drought Management Environmental Assessment DOI-BLM-NV-B000-2012-0005-EA.

A Determination of Land Use Plan Conformance and NEPA Adequacy to the Drought EA (DOI-BLM-NV-B010-2013-0067-DNA) has been completed and it has been determined that no additional NEPA analysis is required.

This Decision constitutes my final decision to gather and remove excess wild burros from private lands and adjacent public lands outside of the Hickison HMA to eliminate further property damage and risk of injury to burros.

Pursuant to Title 43 of the Code of Federal Regulations (CFR) §4770.3(c), this decision is effective upon issuance.

RATIONALE

Burros have been documented moving outside of the HMA and HBT boundaries for several years as the population continues to increase, and drought conditions continue. Widespread drought conditions in 2012 and 2013 have reduced the already limited forage and water resources in the HMA and HBT, and burros are substantially expanding outside the areas designated for their use. Since September 2012, burros have been encroaching onto private property located outside of the HMA to access irrigated grass and alfalfa. Extensive damage to fences and crops has occurred due to repeated intrusions by up to 30 burros. The damage resumed in April 2013 when burros again began entering the private land to access forage. The land owner has requested that the BLM remove the burros that habitually encroach onto their private land as soon as possible. Removal of the burros is necessary to obviate further property damage and financial loss to the land owners and potential injury to burros as they continue to crawl over, under and through fences entering the fields, or run through fences when spooked and exit the fields.

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

a). Potential Impacts to Wild Burro Health

Burros are going through, under and over the fences to gain access to the privately owned, irrigated fields. Once humans approach, they generally scatter and run out of the private property through the fences, causing further damage to the fences. In doing so, the burros are at risk of serious injury each time they go through the fences. Injury could include minor scratches or serious injury and death. Barbed wire could tangle around burro legs or other parts of the body, potentially causing serious injury that could lead to eventual suffering or death. Running burros could become impaled on steel fence posts and suffer terribly.

b). Documented, Ongoing Damage to Private Property

Damage to private fences and crops has been documented since September 2012, with burros documented in the area of the private lands outside of the HMA boundary for three years. The fences have been broken in literally hundreds of locations, with some areas broken and fixed multiple times. The fence, once fixed, is sound and not lacking in structural integrity. The burros continue to push on, through and under the fence to access grass and alfalfa that can be reached at the edges of the irrigated pivots. Through the constant pressure, eventually areas in the fence become compromised enough that the burros are able to go over, through or under the fence to enter the irrigated fields and graze on the crops. The continual repairs to the fence have been costly to the landowner

in both time and materials, and the damage to and consumption of crops cannot be quantified. Due to drought conditions, burro encroachment onto private land is highly likely to continue and increase. Delay of the gather would allow continued damage to private property and financial loss to the landowner.

c). Necessity of Prompt Removal of Excess Wild Burros

The WFRHBA, and CFRs, require the BLM to remove wild horses and burros from private land at the request of the landowner. Per 43 CFR 4720.2-1 Removal of strayed animals from private lands, upon written request from the private landowner the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable. Burro entry onto private land and damage to fences and crops in this area has been documented since September 2012, and the private landowner has requested removal of the burros causing property damage. To delay a gather would not be consistent with existing law or policy.

d). Widespread Drought Conditions

The U.S. Drought Monitor shows the Hickison HMA area experiencing Extreme Drought conditions at this time. Ongoing drought in Nevada through 2012 and 2013 has reduced forage and water sources used by wild horses and burros. Monitoring by MLFO staff in the Hickison area confirm that extreme drought conditions have substantially reduced forage productivity and that shrubs and grasses are drought stressed. Water available to burros is also limited to only a few sources, primarily located outside of the HMA or HBT boundaries. Due to the current overpopulation of burros in the Hickison area, ongoing extreme drought and limited forage and water resources, burros have been expanding out of the HMA and HBT, using and impacting areas not designated for their use. As long as drought and overpopulation persist, burros will be using areas outside of the HMA and invading private land agricultural fields to access forage. Removal of the nuisance burros will alleviate the use by burros outside of HMA/HBT boundaries in this area.

Delay of this gather would result in continued impacts through increased use levels of rangeland outside the HMA and HBT boundaries, trailing and entry onto private land along with resulting damage to fences, crops and injury to burros.

In accordance with 43 CFR § 4720.2-1 and upon examination of current information, I have determined that excess wild burros exist, that wild burros are straying onto private lands causing damage and financial loss to the land owner, and that the animals should be removed as soon as practicable. I have also determined that immediate action is necessary to protect wild burro health, reduce rangeland degradation in the area and curtail further property damage and financial loss to private landowners.

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 § 4720.2-1 Removal of strayed animals from private lands.

Upon written request from the private landowner to any representative of the Bureau of Land Management, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable. The private landowner may also submit the written request to a Federal marshal, who shall notify the authorized officer. The request shall indicate the numbers of wild horses or burros, the date(s) the animals were on the land, legal description of the private land, and any special conditions that should be considered in the gathering plan.

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.

(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 burro 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 form 1842-1, "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 Hickison Nuisance Drought Gather is approved for implementation immediately, and is approved to begin on or around September 6, 2013. This decision is effective upon issuance in accordance with 43 CFR § 4720.2-1 because removal of wild burros from private lands has been requested by the land owner, and is necessary to protect animal health and prevent further damage to private property and irrigated crops. 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
Christopher J. Cook
Field Manager,
Mount Lewis Field Office

09/05/13
Date

Attachments (1)