



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Fillmore Field Office
95 East 500 North
Fillmore, UT 84631

<http://www.blm.gov/ut/st/en/fo/fillmore.html>

In Reply Refer To:
4700 (UTW02000)

DECISION RECORD

Swasey Herd Management Area Wild Horse Gather Plan Environmental Assessment DOI-BLM-UT-W020-2012-0024-EA

The Bureau of Land Management (BLM) has determined that excess wild horses are present and is proposing to gather 262 wild horses and to remove approximately 162 of the horses gathered on or after about January 14, 2013. Approximately 100 wild horses would be released back to the Swasey Herd Management Area (HMA) following the gather. Of these, 50 studs would be released and 50 mares vaccinated with PZP-22 (Porcine Zona Pellucida) fertility control vaccine. The purpose of the gather would be to slow population growth, maintain population size near the appropriate management level (AML) and reduce the utilization impacts to the resources within the Swasey HMA.

The Swasey HMA comprises about 120,113 acres of public and other land. The HMA is located in Juab and Millard Counties, about 50 miles west from Delta, Utah.

The BLM has prepared an environmental assessment (EA) to analyze the environmental impacts associated with the proposed capture. Refer to **DOI-BLM-UT-W020-2012-0024-EA**.

DECISION

It is my decision to implement the Alternative 2 (the Proposed Action) described in the Final Environmental Assessment for the Swasey HMA (**DOI-BLM-UT-W020-2012-0024-EA**). This decision is effective immediately pursuant to 43 C.F.R. § 4770.3(c) and the Swasey HMA Wild Horse Gather is approved to begin on or about January 14, 2013.

RATIONALE

Upon analyzing the impacts of the Proposed Action (Alternative 2) and following the issuance of the environmental assessment for public review, I have determined that the implementing of the Proposed Action will not have a significant impact to the human environment and that an environmental impact statement is not required as set forth in the attached Finding of No Significant Impact.

The Proposed Action will implement the application of fertility control and adjustment of the sex ratios of 60% males and 40% females within the Swasey HMA as described in Alternative 2 of the environmental assessment and slow population growth, maintain population size near AML, and extend the time before another large gather to remove wild horse numbers in excess of the AML would be needed. Implementation of Alternative 2 would result in placing about 40% to 50% fewer excess wild horses in short or long-term holding, or the adoption or sale pipeline over the next 10 year period as compared to the No Action Alternative.

Leaving excess horses on the range under the No Action Alternative, as advocated by some, would lead to: severe degradation of the range; damage to riparian resources, potential catastrophic die-off of wild horses under severe conditions such as the regularly occurring droughts and movement of wild horses to areas outside the designated Herd Management Areas, potentially leading to severe resource degradation and competition with permitted livestock grazing and wildlife.

Under the No Action Alternative, a gather to remove excess wild horses to the lower limit of the AML range would be needed in about summer or fall 2013. At that time, approximately 360 excess animals would need to be removed and placed in short or long-term holding, or the adoption or sale pipeline (as compared to the 162 excess animals that would be removed under the Proposed Action). Subsequent gathers would be needed to remove excess animals about every 4 years over the next 10-15 years.

The gather is necessary to remove excess wild horses and to bring the wild horse population near the established AML in order to achieve and maintain a thriving natural ecological balance between wild horses and other multiple uses as required under Section 1333(a) of the 1971 Wild Free Roaming Horses and Burros Act (WFRHBA) and Section 302(b) of the Federal Land Policy and Management Act of 1976.

The BLM is required to manage multiple uses and avoid degradation of the public rangelands, and the removal of excess wild horses is necessary to protect rangeland resources from further deterioration or impacts associated with the current over population of wild horses within the Swasey HMA. This action will allow the population of wild horses remaining on the HMA to be near AML, reduce the number of wild horses that need to be removed, and extend the time between large gathers beyond this action.

The Proposed Action is in conformance with the BLM's *House Range Resource Area Resource Management Plan (RMP)* approved October 28, 1987. This alternative will allow the HMA to reach AML over the next 5 – 10 years by gradually removing excess animals, implementing fertility control, and adjusting sex ratios. The Proposed Action will also result in placing fewer animals in short or long-term holding or in the adoption or sale pipelines over the next 10 years as compared to the No Action Alternative.

Leaving excess wild horses on the range under the No Action Alternative would not comply with the WFRHBA or applicable regulations and Bureau policy, nor will it comply with the House Range RMP. The No Action Alternative will allow continued deterioration of rangeland resources, including vegetative, soil and riparian resources, and could potentially result in

irreversible loss of native vegetative communities. Wild horses will continue to relocate in increasing numbers outside the HMA boundaries due to competition for limited water and forage within the HMA, adversely impacting public land resources not designated for wild horse management. The No Action Alternative also increases the likelihood of emergency conditions arising, leading to the death or suffering of individual animals or to an emergency gather in order to prevent suffering or death due to insufficient forage or water.

PUBLIC INVOLVEMENT

On November 5, 2013, the Fillmore Field Office issued the Swasey Herd Management Area Wild Horse Gather Plan and Environmental Assessment DOI-BLM-UT-W020-2012-0024-EA along with a notification of its availability for a 30 day review and comment period. The preliminary EA was posted on the BLM's website at:

http://www.blm.gov/ut/st/en/prog/wild_horse_and_burro.html.

Additionally, notification of the proposed action was listed on the Environmental Notification Bulletin Board (ENBB) website at <https://www.blm.gov/ut/enbb> on June 18, 2012 for public notification. Hard copies were available from the Fillmore Field Office along with the above websites for the 30 day review period. Written comments were received from 3 individuals by mail or fax. E-mail comments and form letters were received from 2,651 individuals. Comments received after December 4, 2012 were not accepted. Many of these comments contained overlapping issues/concerns which were consolidated into 118 comments, 16 distinct topics. In Appendix 10 of the Swasey Herd Management Area Wild Horse Gather Plan is a detailed summary of the comments received and how the BLM used these comments in preparing the EA. The Final Swasey Herd Management Area Wild Horse Gather Plan (EA) DOI-BLM-UT-W020-2012-0024-EA is available on the BLM's website at:

http://www.blm.gov/ut/st/en/prog/wild_horse_and_burro.html

or by contacting the Fillmore Field Office.

Native American Consultation

Consultation letters were sent to the Paiute Tribe of Utah, Kanosh Band, Confederated Tribes of the Goshute Reservation, Skull Valley Goshute Tribe, and the Uintah Ouray Tribe. Responses from the tribes stated that they had either no comments or concerns.

The State Historic Preservation Office (SHPO) was contacted and concurrence was received on BLM's decision that no effect to Historic Properties would occur from implementation of the proposed action.

Consultation and Coordination in Development of EA

The BLM consulted with the Utah Division of Wildlife Resources (UDWR), US Fish & Wildlife Service (USFWS), SHPO, Native American Indian tribes, livestock operators and others.

Public hearings are held annually on a state-wide basis regarding the use of helicopters and motorized vehicles to gather and transport 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 these methods to gather and transport wild horses (or burros). Utah BLM held this meeting July 13, 2012 at the Fillmore Field Office, Fillmore, Utah. This specific gather was addressed at the public meeting as well as other gathers that may occur within the state of Utah over approximately the next 12 months. This meeting was advertised in papers and radio stations statewide. The meeting was attended by one member of the public who submitted hers and another person's comments at the meeting. In addition, the Utah State Office received one comment via email on the "Use of Helicopters, Motorized Vehicles" approximately a week after the public hearing. BLM reviewed its Standard Operating Procedures (SOPs) in response to the views and issues expressed at the hearing and determined that no changes to the SOPs were warranted. However, as most of the comments received are directed toward the policies and regulations that are used to manage wild horses and burros, the comments were shared with the National Program Office for Wild Horses and Burros.

AUTHORITY

The authority for this Decision is contained in Section 3(b)(2) of the 1971 Free-Roaming Wild Horses and Burros Act, Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700.

§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 the 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 the management of wild horses and burros on the public lands.

§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.

§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 gathered 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 title¹.

¹ 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.

§4740.1 Use of Motor Vehicles or Air-Craft

(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 or burros for capture or destruction. All such use shall be conducted in a humane manner.

(b) Before using helicopters or motor vehicles in management of wild horses or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

§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 day 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.

APPEAL PROVISIONS

If you wish to appeal this decision, it may be appealed within 30 days of receipt of this wild horse decision to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR part 4. If you appeal, your appeal must **also** be filed with the Bureau of Land Management at the following address: Michael Gates, Field Manager, BLM, Fillmore Field Office, 95 East 500 North, Fillmore, Utah 84631.

Your appeal must be filed within thirty (30) days from receipt or issuance of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4942, January 19, 1993) for a stay (suspension) of the decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to:

Interior Board of Land Appeals
Office of Hearing and Appeals
801 N. Quincy Street, Suite 300
Arlington, VA 22203

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

Office of the Regional Solicitor
6201 Federal Building
125 South State Street
Salt Lake City, UT 84138-1180

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 appellants 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.

APPROVAL

The gather is approved for implementation 30 days from the date of my signature below. This decision is effective immediately pursuant to 43 C.F.R. § 4770.3(c), because the action is necessary to preserve and maintain a thriving natural ecological balance and multiple use relationship. This decision also is issued in accordance with Title 43 of the Code of Federal Regulations (CFR) Part 4. It may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR Part 4, Subpart B (enclosed Form 1842-1).

/s/ Michael D. Gates
Michael D. Gates
Fillmore Field Manager

December 14, 2012
DATE



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FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Swasey Herd Management Area Wild Horse Gather Plan Environmental Assessment DOI-BLM-UT-W020-2012-0024-EA

Based on the analysis of potential environmental impacts in the EA, I have determined that the Proposed Action will not have a significant effect on the human environment. Therefore, the preparation of an environmental impact statement is not required for compliance with the National Environmental Policy Act of 1969.

Reasons for this finding are based on my consideration of the Council on Environmental Quality (CEQ) criteria for significance (40 CFR 1508.27) with regard to the context and intensity of impacts.

Context: The affected region is limited to the Swasey HMA. The environmental analysis was prepared with input from the interested parties.

Intensity: There is no evidence that the severity of impacts is significant:

1. *Impacts that may be both beneficial and adverse.* The action is expected to meet BLM's objective for wild horse management of maintaining a thriving natural ecological balance and multiple use relationship consistent with other resource needs.
2. *The degree to which the proposed action affects public health or safety.* The proposed action has no effect on public health or safety.
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.* The proposed action has no potential to affect unique characteristics such as historic or cultural resources. No adverse impacts to the Swasey HMA are anticipated. There are no wild and scenic rivers, or ecologically critical areas present in the areas.
4. *The degree to which the effects on the quality of the human environment are likely to be highly controversial.* The effects of the proposed action on the quality of the human environment

are not considered to be highly controversial, and effects of the gather are well known and understood.

5. *The degree to which the effects on the quality of the human environment are likely to be highly controversial.* Possible effects on the human environment are not highly uncertain, and do not involve unique or unknown risks.
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 action is compatible with future consideration of actions required to improve wild horse management in conjunction with meeting objectives for wildlife habitat and the military's operations mission within the herd management area.
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 with individually insignificant, but cumulatively significant impacts.
8. *The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing on the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.* The proposed action has no potential to adversely affect properties listed or eligible for listing in the National Register of Historic Places, and would not cause loss or destruction of significant scientific, cultural, or historical resources.
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 under the Endangered Species Act of 1973.* The proposed action would have no effect on any other threatened or endangered species or habitat determined to be critical under the Endangered Species Act.
10. *Whether the action threatens a violation of Federal, State, local or tribal law or requirements imposed for the protection of the environment.* The Proposed Action is in compliance with the Warm Springs Resource Management Plan (RMP, 1987). The proposed action does not threaten to violate any Federal, State, or local laws or requirements imposed for the protection of the environment.

/s/ Michael D. Gates
Michael D. Gates
Fillmore Field Manager

December 14, 2012
DATE

(1) Enclosure:
Form 1842-1