

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

**Environmental Assessment WY-020-EA08-86
October 15, 2009**

**Finding of No Significant Impact
& Decision Record**

*Location: McCullough Peaks Herd Management Area
Project Proponent: Bureau of Land Management, Cody Field Office*

U.S. Department of the Interior
Bureau of Land Management
Cody Field Office
1002 Blackburn Street
P.O. Box 518
Cody, Wyoming 82414
Phone: (307) 578-5900
FAX: (307) 578-5939



Cody Field Office

INTRODUCTION:

The Bureau of Land Management (BLM) Cody Field Office proposes to gather wild horses via helicopter and utilize fertility treatment on mares turned back to the range. The gather is expected to proceed during the fall of 2008 or thereafter and is subject to funding availability, weather, or other factors.

Alternatives analyzed in detail:

- Alternative I – Removal to the Lower Limit (70 animals) of the Management Range with Fertility Control.
- Alternative II (Proposed Action) – Removal to the Mid-point (100 animals) of the Management Range with Fertility Control.
- Alternative III – Removal to the Lower Limit (70 animals) of the Management Range without Fertility.
- Alternative IV – No Action

The EA is available at the Cody Field Office or at the following web address and is incorporated by reference for this Finding of No Significant Impact (FONSI).

<http://www.blm.gov/wy/st/en/info/NEPA/cyfodocs/mcculloughpeakshma.html>

PLAN CONFORMANCE AND CONSISTENCY:

Gathering wild horses is in compliance with Public Law 92-125, the Wild Free-Roaming Horses and Burros Act of 1971, as amended by Federal Land Policy and Management Act (FLPMA); and Public Law 95-514, the Public Rangelands Improvement Act of 1978 (PRIA). P.L. 92-125, as amended, requires the protection, management, and control of wild horses on public lands. The Migratory Bird Treaty Act 1918 and The Endangered Species Act 1973. In addition, the following Instruction Memoranda are incorporated by reference: IM 2006-023 Euthanasia of Wild Horses and Burros, IM 2005-206 Gather Policy and Selective Removal Criteria, and IM 2004-138, Gather Plan and Environmental Assessment Review for Content Requirements for Fertility Control

The proposed action is in conformance with all applicable regulations at 43 Code of Federal Regulations (CFR) 4700 and policies. And is also in conformance with the 1990, Cody Resource Area Record of Decision (ROD) and Environmental Impact Statement (EIS) as required by regulation (43 CFR 1610.5-3(a)).

FINDING OF NO SIGNIFICANT IMPACT DETERMINATION:

Based upon a review of the EA and the supporting documents, I have determined that the project is not a major federal action and will not significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. Environmental effects do not meet the definition of significance in context or intensity as defined in 40 CFR 1508.27 and do not exceed those effects described in the Cody RMP/FEIS. *Therefore, an environmental impact statement is not needed.* This finding is based on the context and intensity of the project as described:

Intensity: The following discussion is organized around the Ten Significance Criteria described in 40 CFR 1508.27, BLM NEPA Handbook (H-1790-1), and supplemental Instruction Memoranda, Acts, regulations and Executive Orders. The following have been considered in evaluating intensity for this proposal:

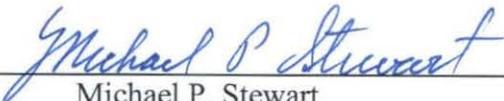
1. **Impacts may be both beneficial and adverse.** The proposed action would impact resources as described in the EA. Those resources analyzed are: wild horses, livestock grazing and vegetation, wildlife and BLM Sensitive Species (T&E), cultural resources, invasive non-native species, wilderness, and geology/minerals/soils, and recreation. Mitigating measures to reduce impacts have been incorporated into the proposed action in the form of the Standard BLM Operating Procedures for Wild Horse Removal.
2. **The degree to which the selected alternative will affect public health or safety.** The proposed action is designed to have minimum impact on public health. Transportation of equipment to the project location will be in conformance with state and federal laws.
3. **Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas.** Heritages resources program support for the wild horse capture would consist of file search (Class I) and or intensive field (Class III) inventories. Historic, cultural, and vertebrate and scientifically important paleontological resources in the project area will be inventoried and avoided if necessary.
4. **The degree to which the effects on the quality of the human environment are likely to be highly controversial.** Comments received from the public listed several concerns about wildlife, wild horses, and the quality of the environment in the McCullough Peaks area. Each one of these issues has been analyzed in the EA.

5. **The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.** The project is not unique or unusual. The BLM has experience implementing this same type of action (wild horse gather) in McCullough Peaks HMA many times in the past.

The environmental effects to the human environment are fully analyzed in the EA. There are no predicted effects on the human environment that are considered to be highly uncertain or 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 actions considered in the selected alternative were considered by the interdisciplinary team within the context of past, present, and reasonably foreseeable future actions. Significant cumulative effects are not predicted. A complete analysis of the direct, indirect, and cumulative effects of the selected alternative and all other alternatives are described in Chapter 4 of the EA.
7. **Whether the action is related to other actions with individually insignificant but cumulatively significant impacts – which include connected actions regardless of land ownership.** The interdisciplinary team evaluated the possible actions in context of past, present and reasonably foreseeable actions. Significant cumulative effects are not predicted. A complete disclosure of the effects of the project is contained in Chapter 4 of the EA.
8. **The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.** The project will not affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause loss or destruction of significant scientific, cultural, or historical resources. A cultural inventory has been completed for the proposed action, and resources are being avoided. Consultation with SHPO has been completed in accordance with Section 106 of the NHPA and the Programmatic Agreement between the Wyoming BLM and SHPO.
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, or the degree to which the action may adversely affect: 1) a proposed to be listed endangered or threatened species or its habitat, or 2) a species on BLM's sensitive species list.** Mitigating measures to reduce impacts to wildlife have been incorporated into the design of the proposed action. Although sage grouse, golden eagles, burrowing owls, grey wolf, long billed curlew, mountain plover, and white-tailed prairie dog species may occupy habitat within the project boundary, it has been determined that they will not be affected because of measures that have been incorporated in the project design. No other threatened or endangered plants or animals are known to occur in the area.

10. **Whether the action threatens a violation of a federal, state, local, or tribal law, regulation or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements.** The project does not violate any known federal, state, local or tribal law or requirement imposed for the protection of the environment.



Michael P. Stewart
Cody Field Manager



Date

Decision:

Based on the analysis in Environmental Assessment No. WY-020-E08-086, it is my decision to implement a gather and fertility control program as described in Alternative II (Proposed Action) of the EA. I find this alternative best implements the planning decision to maintain the McCullough Peaks herd at or near the Appropriate Management Level (AML) while ensuring the continued viability of the herd.

I have carefully considered all public comments received on the EA. I wish to thank all commenter's for their interest in public lands management and their sincere concern for the preservation of wild horses on the public lands.

Wild horses above the AML specified in the RMP are considered "excess" and subject to gathering and removal. I have concluded that gathering the excess horses is necessary to avoid unacceptable damage to rangeland health in the HMA, to preserve and maintain a thriving natural ecological balance and multiple-use relationship within the HMA as specified in the Cody Resource Management Plan (RMP) and as directed in the Wild Free-roaming Horse and Burro Act of 1971. Further, this action is needed in order to comply with the 2003 Consent Decree between the BLM the State of Wyoming. All reasonable precautions will be taken to avoid injury to the horses, and to ensure the safety of personnel involved in the gather. The gather and fertility control program will not compromise the long-term viability of the McCullough Peaks Herd.

This decision is issued in full force and effect in accordance with 43 CFR 4770.3(a), which states in part: "decisions to remove...shall be effective on issuance or on a date established in the decision."

Authorities: Gathering wild horses is in compliance with Public Law 92-125, the Wild Free-Roaming Horses and Burros Act of 1971, as amended by Federal Land Policy and Management Act (FLPMA); and Public Law 95-514, the Public Rangelands Improvement Act of 1978 (PRIA). P.L. 92-125, as amended, requires the protection, management, and control of wild horses on public lands.

Use Authority for the PZP Vaccine: The Humane Society of the United States (HSUS) has made the PZP vaccine available to the BLM under the Investigational New Animal Drug exemption (INAD #8857) filed with the federal Food and Drug Administration (FDA). As a condition of using the PZP vaccine, the HSUS expects the BLM to follow the Draft Criteria for Immunocontraceptive Use in Wild Horse Herds recommended by the Wild Horse and Burro National Advisory Board in August 1999. Cody Field Office, in its management of the McCullough Peaks HMA, is in full compliance with all pertaining criteria. The Proposed Action would also- adhere to all guidance and research protocol set by the BLM National Wild Horse Fertility Control Field Trial program.

Compliance and Monitoring: BLM will monitor gather operations for adherence to the Selective Removal Criteria, Gather Operations, Data Collection as outlined in the EA on pages 14 – 16.

Project Design Features / Terms / Conditions / Stipulations: Standard Operating Procedures for Wild Horse Removal can be viewed in Appendix B of the EA. Standard Operating Procedures for Fertility Control Treatment Specific to the McCullough Peaks HMA can be viewed in Appendix C of the EA. In addition, the Selective Removal Criteria, Gather Operations, Data Collection have been incorporated as part of the proposed action.

Rationale for Decision: This decision is based on the FONSI and that it is in accordance with policy and 43 CFR § 4700 and the Wild Horse and Burro Act of 1971.

In addition, the decision conforms with the Cody Resource Management Plan, (Record of Decision (ROD), 1990), which allows wild horses above the AML specified in the RMP are considered "excess" and subject to gathering and removal. Further, this action is needed in order to comply with the Consent Decree 2003, between BLM the State of Wyoming.

On June 3, 2008, the BLM mailed a Scoping Notice to the public. The scoping notice was also available on the BLM Wyoming and Cody external websites. The last day for scoping comments was July 3, 2008, but comments were accepted after that date. Approximately 257 letters, emails, and postcards were received in the Cody Field Office.

On September 18, 2008, the BLM mailed an EA Notice to the public. The EA was also available on the BLM Wyoming and Cody external websites. The last day for EA comments was October 20, 2008, but comments were accepted after that date. In total, 285 letters, emails, and postcards were received in the Cody Field Office.

Comments received by the Cody Field Office did not identify any new issues with relation to alternatives or impacts considered for analysis. The comments are part of the administrative record.

Appeals Language:

Under the regulations found at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c), this decision may be appealed by any adversely affected party to the Interior Board of Land Appeals (IBLA). Procedures and timeframes for submitting an appeal of this decision is described at 43 CFR 4770.3(a) and (c). If an appeal is filed, the notice of appeal must be filed with or delivered to the Cody Field Office, 1002 Blackburn. Avenue, Cody, Wyoming, 82414 within 30 days of receipt of the decision in accordance with 43 CFR Part 4. In filing a Notice of Appeal, you are required to provide a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay of the effectiveness of this decision while your appeal is under review by the Board, the petition for a stay must accompany your notice of appeal as required by the procedures and timeframes codified at 43 CFR part 4 (58 FR 4939, January 19, 1993). Copies of the Notice of Appeal and Petition for a Stay must also be submitted to the Interior Board of Land Appeals and the appropriate Office of the Solicitor at the same time the original documents are filed with the Cody Field Office, 1002 Blackburn Avenue, Cody, Wyoming, 82414. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.



Michael P. Stewart
Cody Field Manager

10/15/2009
Date