

# **Blue Wing Complex Emergency Drought Gather Plan Decision Effective Immediately**

## **INTRODUCTION**

The Kamma Mountains, Seven Troughs, Lava Beds, Bluewing Mountains, Shawave Mountains and Nightingale Mountains Herd Management Areas (HMAs), collectively referred to as the Blue Wing Complex (BWC), are located in Pershing County, Nevada, north and west of Lovelock. The gather area is within the administrative boundaries of the Bureau of Land Management (BLM) Winnemucca District (WD), Humboldt River Field Office (HRFO), and the Black Rock Field Office (BRFO). The BWC consists of approximately 639,300 total acres, of which approximately 110,637 acres comprise the emergency gather area.

The proposed emergency gather area includes three of the six HMAs in the BWC: most of the Kamma Mountains HMA, a small portion of the Seven Troughs and Lava Beds HMAs and areas immediately adjacent to these three HMAs that together encompass approximately 110,637 acres. The emergency gather area is approximately 24 miles long and 15 miles wide. A portion of the gather area is located within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area (NCA).

This area has been experiencing severe to exceptional drought for the past two years, as confirmed by BLM's monitoring and by the July 23, 2013 U.S. Drought Monitor report which indicates the Blue Wing Complex is currently experiencing extreme to exceptional drought conditions. Wild horses are concentrating near limited available water sources, resulting in competition for diminished water supplies, negative impacts to drought-impacted forage, degraded range conditions within and outside of the Kamma Mountains, Seven Troughs and Lava Beds HMAs and declining wild horse health.

BLM's monitoring (See BWC Emergency Gather Plan and Monitoring Report attached to DNA) shows a reduction in wild horse body condition (Henneke 2 and 3). Concentrations of excess numbers of wild horses at limited water sources has resulted in the over-utilization of vegetation around water sources and in large denuded areas that have placed the wild horses at risk of dust pneumonia and other health complications associated with excessive dust. Water sources located within the proposed emergency gather area have heavy trailing coming into them from the direction of each HMA, indicating that wild horses from the three HMAs may be exhausting their only shared water resource. As use of water by wild horses at impacted water sources increases due to less available water within respective HMAs, the observed trailing routes to the water sources in the BWC will become powder-like and the likelihood for animals to develop dust pneumonia rises. As the drought conditions continue and the accessible water declines, the body condition of the wild horses within the gather area will continue to further deteriorate and a high mortality rate is expected if no action is taken to remove excess wild horses from the most impacted areas.

BLM's field observations during March 2013, indicated that vegetative growth in the lower

elevations within the BWC and around the proposed gather area was fairly non-existent and the perennial grasses had 61-80% use, indicating over-utilization of available vegetation by cattle, wild horse and burros. No residual vegetation from past growing seasons was observed. The higher elevations produced less than average amounts of forage for their associated ecological sites and there was only approximately 1-1.5 inches of new growth on the perennial grasses. Utilization from cattle, wild horses and burros on March 20, 2013 in the higher elevations was observed to be 41-60% use but there was still some residual vegetation throughout the area.

Professional observations on June 17 through June 20 of 2013 indicates significant over-utilization of vegetation by cattle and wild horses has occurred within the areas of greatest concern and there is not likely enough forage to carry the number of wild horses present through to the next growing season (February 2014).

The wild horses in this population respond negatively to human presence; they are very flighty and take off quickly when human presence occurs. BLM has determined it would not be feasible to alleviate the water shortages even on a temporary basis through water hauling in the BWC gather area because of the negative response of the wild horses to human presence and because the current watering holes where the wild horses are located are inaccessible to vehicles for water hauling. Given the existing emergency conditions that are present as a result of extreme drought conditions and the declining body condition of wild horses documented within the BWC, BLM has determined that it is necessary to immediately implement an emergency gather before wild horse health is further compromised and widespread mortality occurs.

Due to drought conditions within the WD over the past two years, drought letters were issued February 1, 2012, May 31, 2012, July 30, 2012, December 26, 2012 and July 16, 2013 to all livestock permittees and interested publics within the WD and voluntary efforts were sought to adjust livestock operations based on drought. Grazing permittees within the HMAs have voluntarily taken non-use, reduced livestock numbers, and removed livestock earlier than normal from pastures/use areas because of a lack of forage and water and resource impacts from excess wild horses within and outside of the BWC HMAs. Livestock grazing in this area is limited; however there will be no sheep or cattle grazing within the proposed emergency gather area through June 14, 2014 as a result of BLM implementing Livestock Use Agreements with the permittees for voluntary non-use under their grazing permits.

The appropriate management level (AML) for wild horses and the June 2013 population estimates for wild horses in the BWC HMAs are:

Name of HMA	June 2013 Wild Horse Population Estimate	Appropriate Management Level for Wild Horses	
		High	Low
Kamma Mountains	333	77	46
Seven Troughs	287	156	94
Lava Beds	461	148	89
Blue Wing Mountain	0	36	22
Nightingale Mountains	193	63	38
Shawave Mountains	300	73	44
<b>Total</b>	<b>1574</b>	<b>553</b>	<b>333</b>

Based on BLM’s wild horse monitoring flights in June and July 2013, the HRFO has determined that there are a significant number of excess wild horses present within and outside the boundaries of the BWC, that these wild horses are competing for limited vegetation and water resources that are experiencing stress from extreme drought conditions and over-utilization. Within the proposed emergency gather area alone, there are approximately 300 wild horses, which is significantly in excess of what this area can sustain. It is recognized that not all animals are observed during population surveys and the June and July 2013 flights were not rigorous population inventories, therefore it is extremely likely that at least ten (10) to twenty (20) percent more wild horses are present that were not observed or counted during these flights.

The June 2013 population estimates exceed the total high range for the AML by 700 wild horses for the Kamma Mountains, Seven Troughs and Lava Beds HMAs. Of these excess wild horses, approximately one half are currently residing in the BWC emergency gather area and are competing for limited space and diminishing water and forage resources.

Even during non-drought years, available water is very limited throughout the BWC. There are five main springs being utilized by the wild horses in the emergency gather area. Observations from the July 2013 flight showed that at least two of the springs had dried since the June 2013 flights to the point of becoming mud holes.

Aerial and ground surveys confirm that water and forage resources are at risk of becoming depleted and are not sufficient to meet the needs of the current number of wild horses and of wildlife within the area. A rain event on July 4, 2013, filled some basins and reservoirs, but with the current extreme and exceptional drought and hot temperatures persisting within the BWC, these waters are drying and are likely to be fully dry within only a few weeks. The majority of spring sources within the proposed gather area have been pawed out by wild horses. What water that is still available from these springs is predicted to further decrease given the continuing 2013 drought outlook and large number of wild horses in the area concentrating at water sources.

BLM’s monitoring and professional observations show that water quantity and quality and forage availability have been impacted by extreme drought and are not sufficient to meet the needs of the numbers of excess wild horses present within the BWC. Given current range conditions, individual wild horses are likely to experience mortality or suffering if excess horses

are not removed and the wild horse population is not reduced in the most severely affected areas. For this reason, the HRFO proposes to conduct an emergency gather in order to remove approximately 200 excess wild horses, focusing on those areas where the health and well-being of the wild horses and rangeland health are at greatest risk and are a priority for removal of excess horses to prevent individual wild horse mortality and suffering.

The proposed emergency gather would begin as soon as feasible in early August 2013 and take approximately 10 days to complete.

A helicopter gather is planned for this emergency gather because there is limited access to the areas where the wild horses are watering and due to the flighty nature and high sensitivity of the wild horses within this area to human presence. Based on the wild horses' negative response to human presence and limited access to water sources due to inaccessible terrain, water trapping in this case would be ineffective and possibly detrimental to animal health.

BLM plans to initiate the emergency gather immediately, before wild horse health is further compromised, given the existing emergency conditions and body condition of wild horses documented within the BWC. Once the gather begins, approximately 200 excess wild horses will be removed from the emergency gather area to reduce excessive competition for severely limited resources and to prevent individual wild horse mortality and suffering due to drought and inadequate forage and water for the current wild horse population within the emergency gather area.

### **Land Use Plan Conformance**

The BWC Emergency Drought Gather is in conformance with the Sonoma-Gerlach Management Framework Plan (MFP) Date Approved: July 9, 1982

**WHB-1:** Maintain a viable population of wild horses and burros on public lands where there was wild horse and burro use as of December 15, 1971, and achieve and maintain a thriving natural ecological balance on the forage resource

**WHB-1.1:** Establish wild horse and burro numbers by herd use area using the following criteria.

Existing /current WH&B numbers (as of July 1, 1982) will be used as a starting point for monitoring purposes except where one of the following conditions exists.

- a. Numbers are established by adequate and supportable resource data.
- b. Numbers are established through the CRMP process as documented in CRMP recommendations and agreed to by the District Manager.
- c. Numbers are established by formal signed agreement between affected interests.
- d. Numbers are established through previously developed interim capture/management

plans. Plans are still supportable by parties consulted in the original plan. EAs (EARs) were prepared and are still valid.

e. Numbers are established by court order.

The BWC Emergency Drought Gather Plan is also in conformance with the July 2004 ROD for the *Black Rock Desert High Rock Canyon Emigrant Trails NCA Resource Management Plan (RMP)*. Applicable decisions are:

- **WHB-1:** Retain referenced HMAs (Kamma Mountains and Lava Beds) and manage wild horse and burro populations consistent with plan objectives.
- **WHB-3:** Contiguous HMAs with documented reproductive interaction will be managed as complexes to enable better management of genetic traits for the population and to improve coordination of monitoring and gathering.
- **WHB-5:** Horses and burros will be gathered from HMAs to maintain horses and burros within the AML as funding permits. Aircraft will continue to be used for the management and, when necessary, removal of wild horses and burros. Gather activities will be scheduled to avoid high visitor use periods whenever possible.

The BWC Emergency Drought Gather Plan is consistent with the plans and policies of neighboring local, county, state, tribal and federal governments to the greatest extent practical under federal law. Under the BWC Emergency Drought Gather Plan, no federal, state, or local law, or requirement imposed for the protection of the environment will be threatened or violated.

The BWC Emergency Drought Gather Plan is in conformance with the Standards and Guidelines for Management of Wild Horses and Burros of the Sierra Front-Northwest Great Basin Area.

### **Coordination and Consultation**

Drought response actions are to be implemented through the issuance of full force and effect decisions pursuant to 43 CFR §§ 4110.3-3(b), 4770.3(c) and in accordance with 43 CFR §§ 4120.3 after consultation with or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the state having lands or responsible for managing resources within the area.

Due to the urgent need to implement the wild horse gather under the existing emergency conditions, coordination and consultation has been conducted to the degree possible given the short time frame in which to take action.

### **Native American Consultation**

BLM staff consulted with the Summit Lake Paiute Tribe and the Fort McDermitt Paiute-Shoshone Tribe in person on the proposed action on July 20 and July 22, 2013, respectively. A consultation meeting with the Pyramid Lake Paiute Tribe is scheduled to occur on August 1,

2013 and with the Fallon Paiute-Shoshone Tribe on August 9, 2013.

## **DECISION**

Based on the Winnemucca District Drought Response Plan Environmental Assessment and its Finding of No Significant Impact, dated May 30, 2013, as well as the Blue Wing Complex Emergency Drought Gather Plan Determination of National Environmental Policy Act Adequacy, #DOI-BLM-NV-W010-2013-0060-DNA,(DNA), professional observations and monitoring information indicating that emergency conditions exist; it is my Decision to implement the BWC Emergency Drought Gather Plan to remove approximately 200 excess wild horses from the emergency gather area beginning in early August 2013. This is a drought response action specifically provided for in the proposed action alternative of the Winnemucca District Drought Response Plan Environmental Assessment.

This gather will be by helicopter and will not include the use of water/bait trapping due to the wild horses' negative response to human presence in this particular gather area which indicates water trapping would be ineffective and possibly detrimental to animal health. This Decision is subject to implementation of the design measures included in both the proposed action analyzed in the EA and the description of this specific gather plan drought response action in the DNA.

This Decision constitutes my Final Decision to conduct an emergency gather and remove excess wild horses from within the emergency gather area which includes portions of the BWC HMAs and certain adjacent non-HMA areas to which wild horses from the BWC have moved due to population pressures.

In order to ensure the safe and humane handling of all gathered wild horses, the gather will comply with the measures set forth in the National Instruction Memorandum, WO-IM-2013-059: "Wild Horse and Burro Gathers: Comprehensive Animal Welfare Policy dated January 23, 2013.

Pursuant to Title 43 of the Code of Federal Regulations at § 4770.3(c), this Decision is effective immediately.

## **Rationale**

The BWC is experiencing extreme and exceptional drought conditions. BLM's monitoring and professional observations show that the wild horse population is significantly in excess of AML, that there is insufficient water and forage for the wild horses in the BWC, and that emergency conditions exist in portions of the BWC such that the immediate removal of excess wild horses from those areas is necessary to prevent individual wild horse mortality and suffering, and to protect rangeland resources from further degradation and deterioration.

Due to the extreme drought conditions that have led to a lack of sufficient water and forage in portions of the BWC, BLM has been closely monitoring the affected areas and has determined that an immediate emergency removal of wild horses from the proposed emergency gather area is necessary to prevent individual wild horse mortality and suffering, to prevent further degradation of rangeland resources stressed by extreme drought, and that such gather needs to be

initiated as quickly as possible beginning in early August 2013.

Based on the Winnemucca District Drought Response Plan EA, BLM has determined that this Decision will not result in any undue or unnecessary environmental degradation of the public lands and is consistent with federal, state, and local laws, regulations and plans.

This decision is in conformance with the appropriate land use plans as identified in the Conformance section of this Decision.

For the portion of the complex that is within the NCA, this decision is in compliance with the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act of 2000. The gather plan, subject to the design measures identified in the Winnemucca District Drought Response Plan EA proposed action, meets the purpose and need for the federal action.

The Winnemucca District Drought Response Plan FONSI, dated May 30, 2013, supports this decision.

The Blue Wing Complex Emergency Drought Gather Plan Determination of National Environmental Policy Act Adequacy, #DOI-BLM-NV-W010-2013-0060-DNA, supports this decision. Based on the DNA there are no additional impacts beyond those analyzed in the supporting EA.

The gather operations are scheduled to take place as quickly as possible because of the lack of spring vegetation growth, minimal residual vegetation from the previous year's forage crop and reduced water at springs and other natural water sources, leaving the wild horses in the gather area with inadequate forage and water.

Wild horses from three over-populated HMAs and wildlife are competing for diminishing forage and water resources. Immediate removal of excess wild horses is necessary to protect wild horse health, wildlife health, and the ability of vegetative and water resources to recover from severe drought impacts

An emergency gather of wild horses from portions of the BWC is necessary to prevent unnecessary death of individual wild horses that are being currently impacted by a lack of forage and water due to drought conditions, and to protect vegetative and water sources from further degradation resulting from excess numbers of wild horses competing for limited available forage and water.

The gather will:

- Relieve pressure on rangeland resources due to excessive competition for limited forage and water in areas impacted by extreme drought;
- Prevent the suffering and death of individual wild horses as a result of extreme drought conditions;
- Prevent irreparable harm to rangeland resources resulting from extreme drought and over-utilization by excess wild horses in the emergency gather area

- Decrease resource competition within the emergency gather area for space, forage and water among wild horses and wildlife;
- Removal of approximately 200 wild horses will lessen impacts to vegetation density, plant vigor, seed production, seedling establishment, and forage production relative to current conditions by reducing grazing pressures on drought-impacted rangeland resources; and
- Preserve the health and well-being of those animals removed from the range as well as the wild horse that remain within the BWC.

The action is in compliance with the WFRHBA by removing excess wild horses from the public range that are at immediate risk of death or suffering due to an over-population of wild horses within the BWC. This action is based on factors including, but not limited to the following rationale:

- Due to two years of severe to extreme drought and excess wild horse numbers, there is little vegetation left in the emergency gather area that is available to maintain approximately 300 wild horses and wildlife without further degradation to the range and to the health of the wild horses;
- Based on the distribution flight completed June 2013, the population of wild horses in the BWC is approximately 1575 wild horses which is 1344 wild horses in excess of the low range AML of 231 or 1203 wild horses in excess of the high range AML of 372;
- Wild horses have moved onto public lands that fall outside of designated HMAs boundaries, indicating the presence of excess wild horses as they search for additional habitat outside the HMAs. Under regulations at 43 CFR § 4710.4, BLM is required to manage wild horses within their HMAs and to remove wild horses that take up residence outside of HMAs boundaries; and
- Water is a limited resource within the BWC and becomes a limiting factor when wild horse populations exceed high range AML. There are several very small springs and seeps in the BWC that are ephemeral and dependent on yearly precipitation, available water is unreliable or unavailable as springs/seeps seek to recharge from successive years of drought. Range improvements are present in the BWC but most are dependent on variable spring flows. Drought conditions have resulted in water resources becoming scarcer leaving wild horses to compete for limited water.

Based on the President's National Energy Policy and Executive Order 13212, the Gather Plan will not generate any adverse energy impacts or limit energy production and distribution. Therefore, no "Statement of Adverse Energy Impact" is required per WO IM No 2002-053 and NV IM 2002-049.

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

- a) Necessity of Prompt Emergency Removal of Excess Wild Horses

Due to a scarcity of forage and water within portions of the BWC and adjacent areas due to severe drought conditions, BLM has determined that an immediate (emergency) removal of approximately 200 wild horses from the emergency gather area is necessary to avoid individual wild horse death and suffering and irreparable damage to rangeland resources. Based on the monitoring report, there is not enough forage and water present within the BWC gather area to maintain 300 wild horses for the remainder of the grazing year (through February 2014). Based on observed declines in wild horse body condition, individual horses are likely to be at imminent risk at this time. Immediate removal of wild horses from the gather area will prevent harm to the wild horse populations within the BWC and protect at-risk wild horses from potential suffering or death. The lack of current year's spring vegetation growth, minimal residual vegetation from the previous year's forage crop and reduced spring flows at natural water sources have resulted in declining body condition and overall health for wild horses within the BWC emergency gather area as documented by current monitoring data and professional observations. Dust pneumonia and other health complications associated with excessive dust due to the over-utilization of vegetation around watering sources is also becoming a growing concern. Water sources located within the proposed gather area have heavy trailing coming into them from the direction of each HMA, indicating that wild horses from the three HMAs may be exhausting their only shared water resource. As use at impacted water sources increases due to less available water within respective HMAs, the observed trailing routes to the water sources in the BWC will become powder-like and the likelihood for animals to develop dust pneumonia will continue to increase.

b) Potential Damage to Rangeland and Riparian Resources

Due to continuing severe and extreme drought conditions, there has been little to no new growth on vegetation in the emergency gather area during the 2013 growing season. Wild horse population and resource monitoring data shows that current wild horse populations are exceeding the range's ability to sustain them. Wild horses are moving outside the HMAs as more wild horses compete for limited and declining drought-affected forage and water resources. Resource damage is occurring and will continue without immediate action. Riparian areas are receiving heavy utilization and trampling impacts. Professional observations, from June 17 through June 20 of 2013, indicated that there is not enough forage to sustain the number of wild horses currently present in the emergency gather area through to the next growing season. Two springs within the Kamma Mountains HMA and two springs outside the boundaries of the HMA were also observed to be experiencing heavy use from wild horses, with signs of digging by wild horses in order to obtain water. Continued competition and over-utilization of these impacted water sources by wild horses will result in further decreased water quality, quantity, and possible permanent loss of these areas for wildlife habitat.

In accordance with 43 CFR §4720.1, upon examination of available information, I have determined that an emergency situation exists that requires the prompt removal of excess wild horses from a portion of the BWC HMAs and areas outside of those HMAs to alleviate the emergency conditions, prevent individual wild horse death and suffering, and to lessen pressure on critical rangeland resources for the remaining wild horses and wildlife.

## **AUTHORITY**

The authority for this decision is contained in Section 3(b)(2) of the 1971 WFRHBA, Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700.

### 43 C.F.R. §4700.0-6 Policy

- (a) Wild horse 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 C.F.R. §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 C.F.R. §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 animal 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 part.

#### 43 C.F.R. §4740.1 Use of Motor Vehicles or Air-Craft

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.

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

#### 43 C.F.R. §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.

(b) 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**

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 4.4. If an appeal is taken, you must follow the procedures outlined in the enclosed, "Information on Taking Appeals to the 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 titled "Information on Taking Appeals to the 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 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 of 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.

43 CFR §4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

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)).

/S/ Derek Messmer  
Derek Messmer  
Field Manager  
Humboldt River Field Office

July 30, 2013  
Date

Attachments