



United States Department of the Interior



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In Reply Refer To:
4720/4710.4 (NVL01000)

AUG 18 2014

DECISION RECORD (DR)
for
Ely District Public Safety and Nuisance Gather Environmental Assessment (EA)
Ely District
DOI-BLM-NV-L000-2014-0004-EA

INTRODUCTION

The Bureau of Land Management (BLM) Ely District (EYDO) has prepared this Environmental Assessment (EA) to address potential environmental consequences associated with wild horse management in order to reduce and mitigate public safety concerns along major roadways within and outside herd management area/herd area (HMA/HA) boundaries, decrease nuisance animal complaints on private lands, and address management issues caused by wild horses that reside outside HMA/HA boundaries, consistent with its management responsibilities under the Wild Free-Roaming Horses and Burros Act of 1971, as amended (Public Law 92-195). The EYDO manages approximately 3.7 million acres comprised of HMAs and 1.8 million acres comprised of HAs out of approximately 11.5 million acres of public land within White Pine, Lincoln, and Nye Counties in Nevada. The BLM administers this area through three field offices; the Egan Field Office (EFO), the Schell Field Office (SFO), and the Caliente Field Office (CFO).

The Proposed Action would be implemented as necessary over the next 10 years to gather, relocate, and/or remove excess wild horses causing public safety issues and impacts to private lands as well as excess wild horses moving and residing outside HMA/HA boundaries. The Proposed Action would not be for gathering excess wild horses for the purpose of achieving Appropriate Management Levels (AML). However, some horses may be gathered and relocated and/or removed from within HMA/HA boundaries in order to resolve these safety concerns and nuisance animal management issues.

BLM has prepared an EA to analyze the environmental impacts associated with the proposed gathers, relocate, and/or remove excess wild horses causing public safety issues and impacts to private lands as well as horses moving and residing outside HMA/HA boundaries. Refer to **DOI-BLM-NV-L000-2014-0004-EA**.

DECISION

It is my decision to implement the Proposed Action as described in the Ely District Public Safety and Nuisance Gather Environmental Assessment. (**DOI-BLM-NV-L000-2014-0004 EA**). This decision is

effective immediately pursuant to 43 CFR 4770.3(c) 4710.4 Management of wild horses and burros shall be undertaken with the objective of limiting the animal's distribution to herd areas. According to 43 CFR 4720.2, upon written request from a private landowner, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable.

RATIONALE

Upon analyzing the impacts of the Proposed Action and following issuance of the EA for public review, I have determined that implementing 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.

In accordance with the Wild Free-Roaming Horses and Burros Act of 1971, as amended (Public Law 92-195), the gather is necessary to reduce and mitigate public safety concerns caused by wild horses residing along major roadways within and outside HMA/HA boundaries, decrease nuisance animal complaints on private lands, and address management issues caused by wild horses that reside outside HMA/HA boundaries..

The BLM is required to manage multiple uses to avoid degradation of public rangelands, and the removal of excess wild horses is necessary to protect rangeland resources from further deterioration or impacts associated with the presence of wild horses within the Ely District that pose safety and nuisance concerns or are located outside HMA/HA boundaries on lands that have insufficient resources to sustain them.

The Proposed Action is consistent with the wild horse management objectives identified in the Record of Decision (ROD) and Approved Ely District Resource Management Plan (August 2008). Gathering wild horses that fit under the proposed action will occur as necessary for the next 10 years following the date of the decision (approximately August 2014) or until the safety hazard is reduced or the private property impacts are eliminated.

Leaving these excess nuisance wild horses on the range under the No Action Alternative would not comply with the WFRHBA or applicable regulations and Bureau policy, nor would it comply with the Ely RMP, and Northeastern Great Basin Resource Advisory Council (RAC) Standards and Guidelines (February 12, 1997) and the Mojave-Southern Great Basin Resource Advisory Council (RAC) Standards and Guidelines (1997) for Rangeland Health and Healthy Wild Horse and Burro Populations. The No Action Alternative would allow no active management to mitigate/control horses causing safety concerns and vehicular accidents on the highway as well as private property damage and horse deterioration due to lack of resources outside HMA/HA boundaries. Wild horses residing outside the HMAs would remain in areas not designated for management of wild horses and their numbers would continue to increase, putting their health at risk where food and water resources are insufficient to sustain the wild horses. 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

A preliminary environmental assessment was posted on BLM's National NEPA Registrar web page, <http://on.doi.gov/1lx856K>, for a 30 day public review and comment period on July 1, 2014. Written or mailed-in comments were received from two individuals and agencies. E-mail comments were received from eight individuals and/or organizations. Many of these comments contained overlapping issues/concerns which were consolidated into 18 distinct topics. Refer to EA, Appendix VI for a detailed summary of the comments considered and reviewed by BLM, in its preparation of the final environmental

assessment, along with BLM's responses to comments. The final Environmental Assessment / Gather Plan for Ely District Public Safety and Nuisance Gather is available on the National NEPA Registrar web page at <http://on.doi.gov/1lx856K>, or by contacting the Ely District Office.

AUTHORITY

The authority for this Decision is contained in Section 1333(a) 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 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.

§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 ...

§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 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.

§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.

APPROVAL

The Ely District Public Safety and Nuisance Gather is approved to begin in the September 2014. This decision is effective upon issuance in accordance with 43 C.F.R. § 4770.3 (c) because removal of excess wild horses is necessary to protect animal health, mitigate public safety, decrease nuisance animals complaints on private lands and prevent further deterioration of rangeland resources. This decision may be appealed to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with provisions found at 43 CFR Part 4 (see attachment).

Rosemary Thomas

Rosemary Thomas
District Manager
Ely District Office

8/18/14

Date

FINDING OF NO SIGNIFICANT IMPACT (FONSI)
for
Ely District Public Safety and Nuisance Gather Environmental Assessment (EA)
Ely District
DOI-BLM-NV-L000-2014-0004-EA

Based on the analysis of potential environmental impacts in the Environmental Assessment for the Ely District Public Safety and Nuisance Gather (DOI-BLM-NV-L000-2014-0004-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 (EIS) 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 portions of White Pine, Lincoln and Nye Counties (Nevada), where the project area is located. The gather has been planned with input from the interested public and users of public lands.

Intensity: Based on my review of the EA against CEQ's factors for intensity, there is no evidence that the impacts are significant:

1. *Impacts that may be both beneficial and adverse.* The Proposed Action would allow the Ely District to capture and relocate or remove nuisance and public safety animals from areas within the district in a timely manner. This is in conformance with Wild Free-Roaming Horse and Burros Act of 1971 (WFRHBA). Although the gather and removal of excess wild horses is expected to have short-term impacts on individual animals, over the long-term, it is expected to benefit wild horse health, public safety concerns will be improved, and private property issues will be resolved.
2. *The degree to which the proposed action affects public health or safety.* The Standard Gather Operating Procedures (EA, Appendix I and Appendix III) would be used to conduct the gather and are designed to ensure protection of human health and safety, as well as the health and safety of the wild horses and burros. The proposed action would improve public health or safety for motorists traveling on major highways within the Ely District.
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 or properties of concern to Native Americans. 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.* Effects of the gather are well known and understood. No unresolved issues were raised through consultation or public comments.
5. *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.* Possible effects on the human environment are not highly uncertain and do not involve unique or unknown risks. The Proposed Action has no known effects on the human environment

which are considered highly uncertain or involve unique or unknown risks. This is demonstrated through the effects analysis in the EA.

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. The Proposed Action does not set a precedent for future actions. Future actions would be subject to evaluation through the appropriate level of NEPA documentation

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 gather has no potential to adversely affect 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 is not likely to adversely affect any listed species, and the action area does not include any 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 2008 Ely District Record of Decision and the Approved Resource Management Plan dated August 2008, and is consistent with other Federal, State, local and tribal requirements for protection of the environment to the maximum extent possible.

Rosemary Thomas

Rosemary Thomas
District Manager
Ely District Office

8/18/14

Date

Attachment
Ely District Public Safety and Nuisance Gather Environmental Assessment (EA)
for the Ely District
DOI-BLM-NV-L000-2014-0004-EA
Decision Record

Appeal Procedures

If you wish to appeal this decision, it may be appealed 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:

Rosemary Thomas, Ely District Manager
BLM, Ely Field Office
HC 33 Box 33500
702 N. Industrial Way
Ely, NV 89301

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:

Board of Land Appeals
Dockets Attorney
801 N. Quincy Street, Suite 300
Arlington, VA 22203

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

US Department of the Interior
Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, California 95825

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.