



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Mount Lewis Field Office
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Battle Mountain, NV 89820
<http://www.blm.gov/nv/st/en.html>

FEB 09 2015

In Reply Refer To:
4700 (NVB0100)

DECISION

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Wild Horse and Burro Program
:
:
:

Fish Creek Herd Management Area
Wild Horse Gather Plan and Environmental Assessment
DOI-BLM-NV-B010-2015-0011-EA

INTRODUCTION

The Bureau of Land Management (BLM) Battle Mountain District, Mount Lewis Field Office (MLFO), will implement a phased Population Growth Suppression (PGS) program and wild horse gather operation over a 10-year period to remove excess wild horses from within and outside of the boundaries of the Fish Creek Herd Management Area (HMA), in order to achieve and maintain the established Appropriate Management Level (AML) for the HMAs, and complete initial and continued treatment of mares with PZP-22 (Porcine Zona Pellucida) fertility control vaccine (or other current formulation). The initial gather for the Proposed Action as described in the Fish Creek HMA Wild Horse Gather Plan Final Environmental Assessment (EA) **DOI-BLM-NV-B010-2015-0011-EA** (Fish Creek Gather EA) would be completed in February 2015.

The Preliminary Fish Creek Gather EA was made available to the interested public on December 22, 2014 for a 30 day comment period. All comments were reviewed and considered prior to completion of the Final Fish Creek Gather EA. Several letters in support for and opposed to the gather were received. These comments are summarized addressed in Appendix F of the Final EA. As a result of the comments received, some additions were made to the Final EA for clarification purposes; including information about the genetic analysis of the HMA, population

inventory and the existing AML. Beyond these changes, no substantial modifications were made to the EA as a result of the comments received. The Final EA and associated documents can be viewed at www.blm.gov/nv/st/en/fo/battle_mountain_field.html.

The Fish Creek HMA is located in Eureka County, Nevada encompassing the east side of Antelope Valley, the Mahogany Hills, Fish Creek Range and a portion of the Antelope Range. The Final EA and Decision are specific to activities that would be implemented within the portion of the Fish Creek HMA south of U.S. Highway 50. This portion of the HMA is 230,675 acres with an established AML range of 101-170 wild horses.

The most recent helicopter population inventory flight for the HMA was conducted in March 2014. Table 1 shows AML established for the Fish Creek HMA and the number of wild horses obtained during the direct count helicopter inventory as well as the current estimated population following foaling in 2014.

Table 1: Fish Creek HMA Population and AML

HMA	Acres	AML	2014 Inventory Direct Count	Estimated 2014 Population	% of AML
Fish Creek	230,675	101-170	478	549 ¹	323 ² %

The AML for the allotments within the Fish Creek HMA was established through the Final Multiple Use Decision (FMUD) issued by the MLFO September 27, 2004, following the analysis of monitoring data and completion of the Fish Creek Complex Evaluation and Rangeland Health Assessment and EA #NV062-EA04-69. The AML was determined to be the level of use by wild horses, which would provide for a thriving natural ecological balance and prevent deterioration of the range. The AML was also determined to be the level which would provide for healthy wild horse populations within the capacity of the habitat to provide forage and water. The AML was established following the collection, analysis, and interpretation of many years of monitoring data, which included precipitation, use pattern mapping, trend, production, census/inventory, and carrying capacity analysis, and through coordination with the interested public.

The upper levels of AML established for the HMA represent the maximum population for which a thriving natural ecological balance and multiple use relationship on the public lands can be maintained. *“Proper range management dictates removal of horses before the herd size causes damage to the range land. Thus, the optimum number of horses is somewhere below the number that would cause resource damage”* (118 IBLA 75). The lower level represents the number of animals that should remain in the HMAs following a wild horse gather in order to facilitate a periodic gather cycle.

¹ The estimated post foaling population in 2014 was based on the number of adults counted during the March 2014 inventory plus an estimated annual rate of increase of 19%.

² The % of AML includes estimated foals that would have been born during the spring 2014 beyond those observed during the inventory in March. The % of AML of only the adults is estimated to be 272%.

Monitoring data including vegetation trend, utilization, water availability, wild horse inventory and distribution, actual use and climate data has been collected through an ongoing monitoring program since the AML was established. Based on a review of monitoring, inventory, and all other information available at this time, the MLFO has determined that there are excess wild horses that need to be immediately removed and that 409 wild horses above the high range of AML are currently present within the Fish Creek HMA. Excess wild horses need to be removed in order to comply with the 1971 Wild Free Roaming Horses and Burros Act (WFRHBA), to achieve a population consistent with the established AML, meet Land Use Planning (LUP) objectives, and to restore a thriving natural ecological balance by preventing degradation of rangeland resources resulting from an overpopulation of wild horses. This was documented in Section 1.3 of the Final EA.

The BLM is implementing the Proposed Action as outlined in the Fish Creek Gather EA:

Proposed Action: Multiple Gather Methods with Fertility Control

The objective of the Proposed Action is to achieve the Purpose and Need through implementation of a ten year plan which includes the implementation of several gather methods, application of population growth suppression (PGS), and removal of excess wild horses.

The BLM would utilize helicopter drive trapping, and bait and water trapping to implement a PGS program and achieve and maintain the AML range (101-170 wild horses) through selective removal.

Due to National funding and holding space limitations, as well as anticipated gather efficiencies, the BLM cannot achieve the goals of the Proposed Action and attain the established AML through a single gather in 2015. The 2015 gather would therefore be the first phase in a long term population management strategy designed to address large scale wild horse gathers while still achieving BLM's management goals of attaining AML, reducing population growth rates, and obtaining a thriving natural ecological balance on the range as identified within the WFRHBA.

Under the Proposed Action, the BLM would gather approximately 500-549 wild horses in the initial 2015 gather event in order to treat mares with the 22-month time release pelleted PZP (PZP-22) or current formulation. The initial 2015 gather would be conducted via helicopter drive trapping. Younger, adoptable wild horses including weanlings, yearlings, and two and three year old horses would be the primary target for removal, although older aged horses could be removed if needed to achieve the removal objectives. The goal for removal would be limited to 200 horses, based on National holding space availability and National gather priorities. The remaining 300-349 wild horses would be released to the range. Of those released, it is estimated that 150-175 would be mares treated with fertility control PZP-22 or current formulation. The sex ratio objective under the Proposed Action is for a 50:50 mare to stud ratio, without any adjustment in the ratio to favor studs.

Long term management goals for the Fish Creek HMA include achievement and maintenance of the established AML (101-170 wild horses) and continued implementation of PGS. Under the Proposed Action, the BLM would continue to implement fertility control through bait and water

trapping, field darting and helicopter drive trapping. Darting could be utilized to booster mares previously treated with PZP-22. Bait and water trapping could be used to booster mares and initially treat mares with PZP-22, and provide for limited removals to achieve and/or maintain AML. Helicopter gathers would occur as needed to continue the population growth control protocols, remove excess wild horses and to achieve or maintain the established AML. Removals of wild horses could be implemented through the life of the plan to achieve the management targets, to relieve resource concerns and/or remove concentrated groups of excess wild horses both inside and outside the boundaries of the Fish Creek HMA.

Fertility control would be applied to all the released mares to decrease the future annual population growth and reduce the number of excess wild horses that would have to be removed during future gathers. The procedures to be followed for implementation of fertility control are fully described in the Final EA in Appendix C and Section 2.3.1.

A method to apply fertility control booster treatments through field darting is included under the Proposed Action. BLM staff and approved volunteers would be certified to administer PZP via darting by an approved instructor in order to continue treatment of mares and maintain reduced population growth rates without the need for physically gathering wild horses. Darting would be completed from the ground (as compared to aerially). Booster treatments could occur year round and would be timed to occur prior to when the existing PZP treatment is no longer effective.

Subsequent helicopter gather activities could be conducted during the period of July through February and in a manner consistent with those described in the Final EA.

By implementing a phased approach utilizing multiple gathering methods, the BLM would be able to reduce the population growth rate over time, and continue to treat an increasing number of mares with fertility control. The Proposed Action is consistent with current BLM policy and direction to reduce gather frequencies and the number of animals that need to be removed from the range over time through application of population growth suppression.

Table 2 displays the anticipated gather and removal figures. Because the Proposed Action involves a phased approach, Table 2 displays the estimated initial gather and removal numbers anticipated for the 2015 operation given current funding and holding space limitations.

Table 2: Estimated Populations and Proposed removals under Proposed Action (Phase I)

HMA	AML	Est. Population	Est. Gather Number ³	Est. Un-gathered	Est. treated mares	Est. to Remove	Est. Release	Est. Post-gather
Fish Creek	101-170	549	500-549	0-49	150-175	200	300-349	300-349

Population inventories and routine resource/habitat monitoring would continue in order to document wild horse population levels and growth rates, habitat condition and wild horse forage use levels. Additionally, the initial 2015 gather includes the plan to collect samples for genetic

3. Estimated gather numbers based on ability to capture in excess of 90% of the population, which estimate could vary depending on terrain, animal location, weather conditions, and animal movement experienced before and during the gather.

analysis. Other monitoring and tracking may include freezemarking mares released to the range with an individual freezemark, and applying an HMA specific freezemark to studs. All gather activities for the initial and follow-up gathers under the Proposed Action would be conducted in a manner consistent with those described in the Final Fish Creek Gather EA DOI-BLM-NV-B010-2015-0011-EA.

The Proposed Action as analyzed in the Final EA is consistent with current BLM policy and direction to be able in the longer term to reduce gather frequencies and the number of animals that need to be removed from the range over time through application of fertility control.

After the initial gather operations are completed, future PGS treatment and removals under this Decision would be determined based on population inventory and resource monitoring data for the Fish Creek HMA. Long term management goals for the Fish Creek HMA include retention of a breeding population of 101-170 wild horses and implementation of PGS. Monitoring data would continue to be collected, and if such data warrants, the AML would be re-evaluated and adjusted through separate BLM planning level decisions that include public participation and input.

Based on the analysis of potential environmental impacts detailed in the Final Fish Creek Gather EA, it was determined that the impacts associated with the Proposed Action were not significant. This is documented in the attached Finding of No Significant Impact (FONSI).

DECISION

It is my Decision to implement the Proposed Action as described in the Final Fish Creek Gather EA (DOI-BLM-NV-B010-2015-0011-EA).

This Decision constitutes my final Decision to implement a 10-year plan to gather and remove excess wild horses from within and outside of the Fish Creek HMA in order to achieve the established AML, implement population growth suppression treatments, and to manage the public lands within the gather area for a thriving natural ecological balance.

Following the initial gather in February 2015, the BLM would continue to implement fertility control through bait and water trapping, field darting and helicopter drive trapping. Helicopter gathers and bait and water trapping would occur as needed to continue the population growth control protocols, remove excess wild horses and to achieve or maintain the established AML. Removals of wild horses could be implemented through the life of the plan to achieve the management targets, to relieve resource concerns and/or remove concentrated groups of excess wild horses both inside and outside the boundaries of the Fish Creek HMA based on available funding and National priorities.

Prior to subsequent management actions or PGS operations after February 2015, the BLM would review resource and inventory monitoring data and identify the need for continued implementation of population controls and removal of excess wild horses. Following this review, the BLM would issue a notification to the public informing them of the continuation of the management action initiated in 2015 as well as any opportunities for viewing gather

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

RATIONALE:

As determined in the Final Fish Creek Gather EA, excess wild horses are present within and outside of the Fish Creek HMA and need to be removed to restore a thriving natural ecological balance. The current population of 549 wild horses is 323% of the high end of the AML range established through prior BLM decisions. The current overpopulation of wild horses is aggravated by severe and extreme drought conditions experienced in the Fish Creek HMA since 2012 as documented by the U.S. Drought Monitor <http://droughtmonitor.unl.edu/>. Field monitoring has documented the impacts of drought and the effects to the health of water sources and upland vegetation, and availability of forage and water to wild horses. Due to reduced water availability, coupled with the overpopulation of wild horses exceeding AML, water hauling has been necessary since 2012 to ensure adequate water for wild horses, to ward off emergency conditions and maintain wild horse health. The current population of wild horses in the Fish Creek HMA is contributing to impacts to rangeland health including heavy utilization of key perennial forage species, heavy trailing and erosion.

The current population of wild horses is beyond the level that will allow for a thriving natural ecological balance within the HMA and a large portion of the population is present outside of HMA boundaries on public lands that are not managed for wild horses. In order to allow for drought recovery and upward trends in rangeland health, protect important wildlife habitat, ensure long term health and success of wild horses and prevent widespread starvation and death of individual animals due to lack of forage or water, a gather is necessary to remove excess wild horses and reduce wild horse population pressures.

In recent years, many members of the public have expressed opposition to the focus on removal of wild horses from the range in order to meet land management and herd objectives, and has instead encouraged increased use of fertility control or other population controls to reduce herd growth rates, decreased gather frequency and ultimately reduction of the number of excess animals that must be removed from the range through gathers.

Since 1992, the BLM has been applying various formulations of the fertility control vaccine PZP to wild horse herds in the Western States. BLM's current policy direction is to increase use of fertility control and to repeat such applications as necessary to reduce the rate of wild horse population growth and to ultimately minimize the number of excess wild horses that need to be removed from the public lands.

To further implement this strategy of increasing population controls as a management tool, the BLM is emphasizing the increased use and re-treatment of fertility control in order to reduce population growth rates. The Proposed Action as described in the Fish Creek Gather EA is consistent with this direction. The goal is to continue to treat and re-treat mares with PZP or other current fertility control formulation through a combination of approaches, including on-the-range field darting, bait and water trapping and helicopter gathers. Continued fertility control and removal of excess horses would continue over the 10-year plan period as authorized by this Decision.

In the long term, this strategy would result in lower wild horse population growth rates, fewer excess wild horses that must be removed from the range to maintain a thriving natural ecological balance, and fewer wild horses needing to be placed in short or long-term holding or in the adoption and sale programs over the next 10-20 years. By maintaining a wild horse population within AML, rangeland resources would be protected from the deterioration associated with wild horse overpopulation, and a thriving natural ecological balance and multiple use relationship on public lands would be maintained consistent with the provisions of Section 1333(a) of the Wild Free-Roaming Horses and Burros Act of 1971.

Nationwide, short and long term holding space for excess wild horses that are removed from the public range is limited. In order to facilitate gathers and make progress towards land-use planning objectives and given the difficulty of reaching AML in a single gather due to limits on gather efficiencies, limited holding space availability, and national funding priorities, numerous BLM Districts have implemented phased gather operations in which a portion of the excess wild horses are removed during an initial gather along with implementation of population controls, with additional excess wild horses to be removed during a follow-up gather(s) to achieve the AML goals.

In summary, implementation of this Decision will:

- Achieve the established AML over a 10-year period by removing excess wild horses and applying fertility controls to mares released back into the HMA;
- In the long term, maintain the wild horse population within the Fish Creek HMA at a level that is consistent with the established AML;
- Reduce wild horse population growth rates, resulting in the need to gather less frequently and remove fewer animals in the future;
- Reduce or eliminate the number of excess wild horses that must be sent to long-term pastures or be placed in the adoption or sales program over the long term;
- Promote the improvement of wildlife and wild horse habitat within the Fish Creek HMA by allowing rangeland health to improve and avoiding impacts from an overpopulation of wild horses, which will allow for significant progress towards attainment of Standards for Rangeland Health and ensure healthy populations of wild horses for generations to come.

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

a) Potential impacts to wild horse health and emergency conditions

The wild horse population within and outside of the Fish Creek HMA is 323% of the established AML or the number of wild horses which achieves and maintains a thriving natural ecological balance consistent with other multiple-uses. The Great Basin of Nevada is arid with precipitation levels in the valleys of 6-8", reaching 12-16" in the high elevations. Drought occurs an average of 4 of every 10 years which substantially reduces forage and water sources important for wild horses, wildlife and domestic livestock. Serious drought conditions have been experienced throughout Nevada since 2012. In

central Nevada, precipitation data reflects growing season precipitation that is 32-72% of the historic period of record average.

The Fish Creek HMA has been experiencing severe and extreme drought since 2012, with reduced production of perennial grasses and winterfat communities in the lower elevations, and drying water sources. Due to limited water availability and overpopulation of wild horses in relation to the AML, temporary water hauls were established at two locations within the HMA to prevent potential wild horse morbidity and mortality resulting from current conditions. Additionally, a well in the northern portion of the HMA has been operated by BLM, and a five-trough pipeline maintained and operated in the southern portion of the HMA to optimize wild horse distribution and avert emergency conditions. Forage in the low and mid elevations is limited and has been subject to heavy and severe utilization levels by wild horses, jeopardizing vegetative health.

Resource monitoring flights were conducted in August 2012, March 2013, and January 2014 to monitor and document wild horse body conditions and forage and water availability. A comprehensive aerial inventory conducted in March 2014 was also completed to document the population size. Trail cameras have been used since 2012 to document wild horse use of water sources and animal body conditions. Wild horse body condition scores (BCS) have averaged 4.0 (moderately thin) since 2012, with some horses declining to very thin (BCS 2), and others in moderate condition (BCS 5).

Failure to conduct a wild horse gather to remove excess wild horses and control population growth would result in continued need to provide supplemental water to the growing population, continued decline in wild horse body condition, and increased mortality rates of horses due to starvation or dehydration and lack of adequate nutritious forage for the existing population. Foals and mares would be most severely affected. Failure to proactively gather excess wild horses and implement fertility controls could result in the need to either allow large numbers of animals to suffer and die, or to conduct an emergency wild horse gather of thin, weakened animals. Experience has shown that gathers involving animals in depleted health (thin, weak) can result in higher death loss of the wild horses during the gather as well as in short term holding facilities as their bodies are so badly malnourished that they are less able to acclimate to feed.

Additionally, emergency gathers reduce the flexibility to select for health, conformation, age or other factors and reduces options for fertility control or other population controls. If serious enough, emergency gathers can result in the need to remove all wild horses due to their poor condition to save them from further suffering and death because they have depleted the forage necessary to support them. When conditions degrade this far, wildlife suffer as well, as forage needed for their winter survival has been consumed due to the overpopulation of wild horses. Pronghorn, mule deer and other wildlife would likely experience death and poor reproduction. Impacts to the vegetation take many years to be reversed and many areas may be beyond recovery and damaged irreversibly. Allowing conditions to degrade to the point that there is a need for an emergency wild horse gather does not promote long term animal health or rangeland health and is not consistent with

the BLM's land management responsibilities, the WFRHBA, implementing regulations or humane treatment mandates.

b) Necessity of Prompt Removal of Excess Wild Horses

The current population of approximately 549 wild horses is 323% of the high end of AML established through the 2004 Fish Creek Complex FMUD. During the March 2014 inventory, 161 or 34% of the total wild horses observed in the Fish Creek HMA vicinity were located outside of areas designated as an HMA in areas that are not managed for wild horses, in their search for forage and water as a result of the overpopulation in the HMA. Through analysis of monitoring and inventory data and other factors documented in the Final Fish Creek Gather EA, it has been determined that excess wild horses are present and need to be removed or treated with fertility control in order to restore a thriving natural ecological balance, protect animal health and allow recovery from severe/extreme drought and improvements to rangeland health. The WFRHBA, regulations, and other policy require the BLM to remove excess wild horses from the range and to manage wild horses for a thriving natural ecological balance. To delay a gather would not be consistent with existing law or policy.

c) Need for Phased Operations to Achieve Gather Objectives

Due to national funding and holding space limitations, as well as gather efficiency limitations, BLM cannot achieve the AML or implement a sufficient level of population controls with a single gather in 2015, given the current overpopulation levels. By implementing the gather and PGS operations through a phased approach over 10 years, BLM can achieve the AML over more than one gather and implement fertility treatment controls for a sufficient portion of the Fish Creek HMA wild horse population to reduce the population growth rate. This phased approach allows for a lower number of excess wild horses to be removed in the initial 2015 gather, initiates fertility treatments immediately, allows for a smaller number of excess wild horses to be removed in a follow-up gather(s) – ideally at a level consistent with adoption demand thereby eliminating the need to finding long-term holding space, and allows for additional fertility treatments for horses that will not be removed from the HMA so as to achieve population control objectives.

d) Potential Damage to Rangeland and Riparian Resources.

The rangeland and riparian resources within the Fish Creek HMA are detailed in the Final EA. Due to the inherent low precipitation levels, poorly developed soils and frequency of drought, native plant communities are easily degraded by overuse by grazing animals, especially during drought years.

Much of the habitat within the Fish Creek HMA is characterized by limited key perennial grass species and in many cases key grass species that are important forage for wild horses are missing completely due to historical overuse. Winterfat communities are prone to invasion by halogeton and Russian thistle. Monitoring has documented the wild horse population contributing to heavy and severe use of winterfat and perennial grasses trampling of riparian areas, and heavy trailing to waters. Monitoring has indicated that as the population of wild horses has increased, so has the frequency and severity of

documented impacts, and increase of numbers of wild horses moving outside of the HMA boundary.

Substantial improvement in rangeland and riparian resources will require many years to attain and will require maintaining proper management of grazing animals in these areas so that rangeland health continues to improve and improvements are not reversed. Changes to livestock management have been and will continue to be made following Rangeland Health Assessments and separate grazing decisions. Maintaining wild horse populations within the established AML range and preventing an overpopulation of wild horses is essential in order to foster improvement of the rangeland health within the Fish Creek HMA.

Completing the gather operations and implementing population controls will help eliminate further degradation and reverse negative trends by eliminating heavy and severe use levels by wild horses, reducing the severity of trailing, soil disturbance and hoof action. Delaying this gather would result in continued severe impacts to the upland and riparian resources through excessive utilization, trailing, and trampling, irreparably deteriorating the health of these sensitive desert ecosystems and precluding rangeland health improvements that could otherwise occur.

In accordance with 43 CFR § 4720.1, upon examination of current information, I have determined that an excess of wild horses or burros exists, and that the excess animals should be immediately removed or treated with fertility control and that the AML be achieved and maintained through a phased approach over a 10-year period. I have also determined that immediate action is necessary to protect wild horse health, reverse rangeland degradation caused by an overpopulation of wild horses and to promote a thriving natural ecological balance, as delaying a gather could result in an emergency situation that could lead to the death and suffering of individual animals.

PUBLIC INVOLVEMENT

The Preliminary EA was posted on the Nevada NEPA Register and made available on the Battle Mountain District website on December 22, 2014. A letter was mailed to the interested public mailing list informing 56 individuals, organizations and State and Federal Agencies of the availability of the document for public review. 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. Letters were also sent to Native American Tribal Representatives throughout Central Nevada informing them of the proposed gather. Comments received were considered in completion of the Final Fish Creek Gather EA and summarized in Appendix F of the EA.

Comments ranged from questions seeking additional information or clarification to comments for or against the gather. Many comments were not specific to this Proposed Action but generally addressed the BLM's wild horse and burro program. As a result of the comments received, some additional information was added to specific portions of the EA, and minor edits were made to the document. No substantial modifications were made to the EA as a result of the

comments received. Most comments reviewed fell among but were not limited to the following themes:

Support the action/importance of maintaining AMLs
Inventory/animal numbers
Genetic health
AMLs should be increased
Effectiveness/reversibility/undesirable effects of PZP
Outside of scope of analysis
Viewpoint/matter of opinion
Concerns/effects of use of helicopters
Manage primarily for wild horses/remove or reduce livestock

Public hearings are held annually on a state-wide basis regarding the use of motorized vehicles, including helicopters and fixed-wing aircraft, in the management of wild horses and burros.

During these meetings, the public is given the opportunity to present new information and to voice any concerns regarding the use of the motorized vehicles. The Winnemucca District Office hosted the Nevada state-wide meeting on June 18, 2014; no changes to the current gather operation SOPs were identified based on the concerns expressed.

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 Part 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 § 4720.1 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 captured 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 part⁴

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 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 Part 4.

4. 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. Healthy wild horses that are not adopted are transported to long term holding pastures or are sold (with limitations) to private individuals, but are not sold to slaughter nor euthanized.

If an appeal is taken, you must follow the procedures outlined in the enclosed, "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 Fish Creek HMA wild horse gather and Population Growth Suppression program is approved for implementation immediately, and is approved to begin on or around February 10, 2015. This Decision is effective upon issuance in accordance with 43 CFR § 4770.3 (c) because removal of excess wild horses and fertility control treatment is necessary to protect animal health and prevent further deterioration of rangeland resources. 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).

Attachments (2)

Sincerely,



2/9/15

Michael Vermeys
Acting Field Manager,
Mount Lewis Field Office

Date

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL.....	A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
2. WHERE TO FILE	US Dept of the Interior Bureau of Land Management
NOTICE OF APPEAL.....	Mount Lewis Field Office 50 Bastian Road Battle Mountain, NV 89820
WITH COPY TO SOLICITOR...	US Dept of the Interior Office of the Solicitor Pacific Southwest Region 2800 Cottage Way Rm E-2753, Sacramento CA 95825-1890
3. STATEMENT OF REASONS	Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).
WITH COPY TO SOLICITOR.....	US Dept of the Interior Office of the Solicitor Pacific Southwest Region 2800 Cottage Way Rm E-2753 Sacramento CA 95825-1890
4. ADVERSE PARTIES.....	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
5. PROOF OF SERVICE.....	Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
6. REQUEST FOR STAY.....	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a 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.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821—GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)