

**U.S. Department of the Interior
Bureau of Land Management**

**Decision Record
for
Three Fingers Herd Management Area Wild Horse
Gather Determination of Land Use Plan
Conformance and NEPA Adequacy**

**Determination of NEPA Adequacy
DOI-BLM-ORWA-V040-2016-0003-DNA**

**Malheur Resource Area
100 Oregon Street
Vale, Oregon 97918
June, 2016**



Decision Record
Three Fingers Herd Management Area Wild Horse Gather
DOI-BLM-ORWA-V040-2016-0003-DNA

Introduction:

The Bureau of Land Management (BLM) proposes to gather excess wild horses that are present within and outside the boundaries of the Three Fingers Herd Management Areas (HMA). A Determination of National Environmental Policy Act (NEPA) Adequacy (DNA), Three Fingers Wild Horse Gather (DOI-BLM-ORWA-V040-2016-0003-DNA), has been developed for this action. The DNA confirms that the proposed action has been adequately analyzed in the Three Fingers Herd Management Area Wild Horse Gather Plan Environmental Assessment (EA) DOI-BLM-OR-V040-2011-009-EA (2011 Gather EA) and conforms with the land use plans (LUP) cited below.

Conformance:

The attached Three Fingers Herd Management Area Wild Horse Gather DNA and the 2011 Gather EA are tiered to the Southeastern Oregon Resource Management Plan (SEORMP) and Record of Decision, September 2002, SEORMP Final Environmental Impact Statement, April 2001, Oregon Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, May 2015, and Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment and Record of Decision (ARMPA), September 2015, and relevant information contained therein is incorporated by reference.

The proposed action is designed to conform to the following documents, which direct and provide the framework for management of BLM lands with the Vale District:

- Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195) as amended.
- Wild Free-Roaming Horse and Burro Management (43 Code of Federal Regulations [CFR] 4700).
- BLM Wild Horses and Burros Management Handbook, H-4700-1 (June, 2010),
- National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347, 1970),
- BLM NEPA Handbook, H-1790-1 (January, 2008),
- Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701, 1976), Section 302(b) of FLPMA, states "all public lands are to be managed so as to prevent unnecessary or undue degradation of the lands."
- Public Rangelands Improvement Act (43 U.S.C. 1901. 1978),
- Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands Administered by the BLM in the States of Oregon and Washington (1997),
- Greater Sage-grouse and Sagebrush-steppe Ecosystems Management Guidelines BLM (2001),
- BLM National Sage-grouse Habitat Conservation Strategy (2004) ,
- Greater Sage-grouse Conservation Assessment and Strategy for Oregon (Hagen, 2011).

- Oregon Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement (June, 2015)
- Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment and Record of Decision (September, 2015)
- Vale District 5-Year Weed Control Plan (EA-OR-030-89-19), 1989.
- Vegetation Treatment Using Herbicides on Bureau of Land Management Lands in 17 Western States Programmatic Final Environmental Impact Statement (2010) and Record of Decision (2010).

Decision:

Having considered the proposed action, no action, and alternatives and associated impacts and based on analysis in the 2011 Gather EA and the proposed action in DOI-BLM-ORWA-V040-2016-0003-DNA, it is my decision to implement the proposed action described in the DNA and in this decision (DR). This includes gathering approximately 100 horses within and adjacent to the Three Fingers HMA, removing approximately 50 horses, the application of the 22-month time release Porcine Zona Pellucida (PZP-22) immunocontraceptive to approximately 25 mares, and returning the remaining 50 head (25 mares and 25 studs) to the HMA.

The proposed action described in the DNA is the same as the management actions common to all alternatives and Alternative #3 analyzed in the 2011 Gather EA (p. 11) with two exceptions: (1) the DNA proposed action would only remove 50 wild horses instead of removing all of the excess wild horses present in the HMA and (2) the population growth suppression action will be application of PZP-22 instead of skewing sex ratios. These differences are not substantial as discussed in the DNA, p. 5.

Additionally, the BLM prepared a Finding of No Significant Impact (FONSI) stating that the proposed action analyzed in the 2011 Gather EA did not constitute a major Federal action that would adversely impact the quality of the human environment. That conclusion is still valid today for the same reasons relied on at that time. Therefore, further NEPA is unnecessary and will not be prepared.

Rationale:

In accordance with 43 CFR 4720.1, upon examination of current information and a determination by the authorized officer when there is an excess of wild horses, the authorized officer shall remove the excess animals immediately. Implementation of the proposed action will move toward meeting the BLM's objective order to maintain wild horse AML that achieves a thriving natural ecological balance and prevents resource deterioration within and adjacent to the Three Fingers HMA.

The BLM is required to manage multiple uses to avoid degradation of public rangelands. The removal of excess wild horses is necessary to protect rangeland resources from further deterioration or impacts (listed below) associated with the current overpopulation of wild horses associated with the Three Fingers HMA:

- 1) Prevent wild horses from grazing fire rehabilitation/restoration projects outside the HMA;
- 2) Meet objectives set forth in land use plans for sage-grouse habitat protection within and adjacent to the HMA;
- 3) It is estimated that wild horse populations will continue to increase at a rate of 15-20%, leading to increased degradation of fire rehabilitation/restoration projects, sage-grouse habitat, riparian areas, and utilization of herbaceous resources;

Alternative #3 will allow BLM to move towards achieving the wild horse management objectives identified in the Southeast Oregon Resource Management Plan and Record of Decision (SEORMP/ROD, September 2002). The application of the PZP-22 as described in Alternative #3 would slow population growth, help to maintain population size within AMLs and extend the time before another gather to remove excess wild horses becomes necessary. Removal of excess wild horses, combined with the implementation of population control measures for wild horses gathered and released back into the HMA would also result in placing fewer excess wild horses in short or long-term holding or in the adoption or sale pipelines over the next 10 year period as compared to the No Action Alternative.

Information contained in the DNA, p. 5, describes how the proposed action is similar, with two differences that are not substantial and do not change the analysis of the proposed action. The alternatives analyzed in the 2011 Gather EA continue to be adequate given current environmental concerns, interests, and resource values. New information and circumstances do not substantially change the analysis of the proposed action in the DNA. Effects that would result from implementation of the new proposed action would be similar to those analyzed in the 2011 Gather EA.

The 2011 Gather EA, FONSI, and DR were mailed to 60 interested public and tribal representatives. The EA was available for public review beginning on March 7, 2011. A 30 day appeal period began on May 10, 2011 and ended on June 10, 2011. No appeals were received. Public involvement and interagency review associated with the 2011 Gather EA are adequate for the current proposed action as impacts are less than are analyzed in the 2011 Gather EA.

Alternative #4: Removal with Sex Ratio Adjustment was not chosen for two reasons. After the National Research Council released their findings on the BLM Wild Horse and Burro Program, BLM's policy is to use fertility control measures on all gathers. Even though analysis in the 2011 Gather EA discussed summer gathers are not optimum for application of PZP-22, there is still some level of fertility control gained from a summer application. In addition, a partial gather of the Three Fingers HMA as proposed in the DNA would not allow for proper adjustment of sex ratios as the entire herd would have to be gathered to make proper sex ratio adjustments.

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.
- (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.

Appeals:

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is filed, your notice must be filed in the **Vale District Office, 100 Oregon Street, Vale, Oregon, 97918** within 30 days of receipt. The appellant has the burden of showing that the decision appealed is in error.

Filing an appeal does not by itself stay the effectiveness of a final BLM decision. If you wish to file a petition for a stay of the effectiveness of this decision, pursuant to 43 CFR 4.21, the petition for stay must accompany your notice of appeal. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

A petition for stay is required to show sufficient justification based on the standards listed below.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, 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.
4. Whether or not the public interest favors granting the stay.

A notice of appeal electronically transmitted (e.g. email, facsimile, or social media) will not be accepted as an appeal. Also, a petition for stay that is electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as a petition for stay. Both of these documents must be received on paper at the office address above.

Persons named in the *Copies sent to:* sections of this decision are considered to be persons "named in the decision from which the appeal is taken." Thus, copies of the notice of appeal and petition for a stay must also be served on these parties, in addition to any party who is named elsewhere in this decision (see 43 CFR 4.413(a) & 43 CFR 4.21(b)(3)) and the appropriate Office of the Solicitor (see 43 CFR 4.413(a), (c)) **Office of the Solicitor, US Department of the Interior, Pacific Northwest Region, 805 SW Broadway, Suite 600, Portland, Oregon 97205**, at the same time the original documents are filed with this office. For privacy reasons, if the decision is posted on the internet, the *Copies sent to:* section will be attached to a notification of internet availability and persons named in that section are also considered to be persons "named in the decision from which the appeal is taken."

Any person named in the decision, *Copies sent to:* section of the decision, or who received a notification of internet availability that receives a copy of a petition for a stay and/or an appeal and wishes to respond, see 43 CFR 4.21(b) for procedures to follow.

If you have any questions regarding this project, please contact the Project Lead, Shaney Rockefeller at the Vale District Office at 541-473-3144.

Jonathan Westfall (Acting FM) 06/21/2016
Thomas Patrick "Pat" Ryan Date:
Field Manager
Malheur Field Office