

**United States Department of Interior
Bureau of Land Management
Burns District**

DECISION RECORD

**Kiger and Riddle Mountain Herd Management Areas
Wild Horse Population Management Plan Environmental Assessment
DOI-BLM-ORWA-B050-2020-0004-EA**

BACKGROUND

The Kiger and Riddle Mountain Wild Horse Population Management Plan Environmental Assessment (EA) analyzed issues emerging from excess wild horses and the need to maintain the populations within appropriate management levels (AML) over a 10-year time frame in order to achieve and maintain a thriving natural ecological balance (TNEB). The five alternatives analyzed were:

- Alternative A. Remove Excess Wild Horses and Implement Intensive Fertility Control Management over a Ten-Year Period (*Proposed Action*).
- Alternative B. Gather and Removal Including a Non-reproducing Portion of the Population.
- Alternative C. Fertility Control Vaccines Only.
- Alternative D. Gather and Removal Only.
- Alternative E. No Action – Defer Gather and Removal.

COMPLIANCE

The proposed action, Alternative A in *the Kiger and Riddle Mountain Wild Horse Population Management Plan Environmental Assessment (EA)* (DOI-BLM-ORWA-B050-2020-0004 EA), complies with the following documents, which direct and/or provide the framework for management of Bureau of Land Management (BLM) lands and wild horses within BLM Burns District:

1. Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195), as amended.
2. Wild Free-Roaming Horse and Burro Management (43 Code of Federal Regulations (CFR) 4700).
3. *BLM Wild Horses and Burros Management Handbook* (H-4700-1) (June 2010).
4. National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347) (1970).
5. *BLM NEPA Handbook* (H-1790-1) (January 2008).
6. 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.”
7. *Steens Mountain Cooperative Management and Protection Area Resource*

Management Plan Record of Decision (Andrews/Steens RMP/ROD) (2005).

8. *Three Rivers Resource Management Plan and Final Environmental Impact Statement and Record of Decision* (Three Rivers RMP/FEIS and ROD, as amended) (1992).
9. Public Rangelands Improvement Act (43 U.S.C. 1901) (1978).
10. *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).
11. Greater Sage-Grouse and Sagebrush-Steppe Ecosystems Management Guidelines (BLM 2001).
12. *BLM National Sage-Grouse Habitat Conservation Strategy* (2004).
13. *Greater Sage-Grouse Conservation Assessment and Strategy for Oregon* (Hagen 2011).
14. *Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment and Record of Decision* (September 2015).
15. *Integrated Invasive Plant Management for the Burns District Revised EA* (DOI-BLM-OR-B000-2011-0041-EA) (2015).
16. Oregon Department of Environmental Quality (ODEQ) laws and regulations.
17. State, local, and Tribal laws, regulations, and land use plans.
18. All other Federal laws relevant to this document, even if not specifically identified.

DECISION

Having considered all alternatives and associated impacts in the EA, I have determined that there are excess wild horses present in the Kiger and Riddle Mountain Herd Management Areas (HMA), and it is my decision to implement Alternative A (proposed action) as analyzed in the EA. The proposed action removes excess wild horses and applies intensive available fertility treatments to maintain the wild horse population within AML over a 10-year period. Additionally, I have found and documented in a finding of no significant impact (FONSI) statement that the proposed action does not constitute a major Federal action that will adversely impact the quality of the human environment. Therefore, an environmental impact statement (EIS) is unnecessary and will not be prepared.

The proposed action, Alternative A, is designed to manage wild horse populations with intensive fertility control applications over a ten-year timeframe and will incorporate gathers and removals. Implementation of the proposed action is expected to begin with an initial gather and application of fertility control during summer/fall 2024.

During the 10-year timeframe of this plan, BLM will manage these HMAs to achieve and maintain AML through a combination of removals of excess wild horses and mare fertility control treatments to slow population growth. Following the initial removal of excess wild horses, future helicopter gathers would be scheduled only if BLM makes a new excess determination and monitoring data indicates excess horses are present. The number of wild horses to be gathered and excess wild horses to be removed would be adjusted based upon the estimated herd size and the number of excess horses determined to be present on the HMA at that time. It is assumed that the population will be managed within AML as a result of the initial gather in 2024. If needed, future gathers could be expected every 4-5 years. In the absence of an initial gather in 2024 or consecutive years the

proposed action includes gathering and removing excess horses to low AML regardless of population size. All other project design features would be the same irrespective of the number of animals gathered and removed.

COMMENTS RECEIVED

The EA was posted to BLM's ePlanning website, and a notice of availability of the EA was mailed to 86 interested individuals, groups, and agencies (and emailed to 5 more) on April 26, 2024, for a 30-day public comment period. This comment period was extended to May 28, 2024, to provide two additional days to submit comments based upon the federal holiday weekend. BLM Burns District received 414 comments in the form of an identical chain email, as well as 18 unique public comments from individuals and organizations. BLM responses to comments can be found in Appendix A, Response to Public Comments, of this decision record.

CHANGES MADE TO EA FOLLOWING THE APRIL 26, 2024 VERSION RELEASED FOR PUBLIC COMMENT

- Grammatical mistakes have been corrected throughout.
- Clarifications were made where needed; however, these did not change context. These changes are noted in the attached appendix.
- Estimated wild horse annual use AUMs (Table 5).
- Updated EA with Appendix I: May 2024 simultaneous double-observer aerial survey.
- Summary of Actual Use, Utilization, and Rangeland Analysis Platform monitoring data (Section 3.2.1).
- Sources cited have been updated.
- Section 3.3 is updated with wildfire analysis.
- Table 1 was updated with Greenhouse Gas Emissions.

RATIONALE

I have selected Alternative A, Remove Excess Wild Horses and Implement Intensive Fertility Control Management over a Ten-Year Period (proposed action), based on public comments, consultation with local governments and State agencies, discussions with members of the public, BLM requirements to manage wild free-roaming horses in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands, and conformance to applicable laws and regulations. It also meets the purpose and need for action: to make progress towards maintaining the wild horse population within the established AMLs in the Kiger and Riddle Mountain HMAs; to protect rangeland resources from deterioration associated with overpopulation; to restore a natural ecological balance and multiple use relationship on public lands in the area consistent with the provisions of Section 1333(b)(2) of the Wild Free-Roaming Horse and Burro Act (WFRHBA) of 1971; to achieve a thriving natural ecological balance on public lands; and to manage wild horses in a manner that assures significant progress is made

toward achieving land health standards for upland vegetation and riparian plant communities, watershed function, and habitat quality for animal populations, as well as other site-specific or landscape-level objectives including those necessary to protect and manage threatened, endangered, and sensitive species (H-4700-1, 4.1.5).

Selecting Alternative A allows BLM to respond to the issue of excess wild horses within the HMAs using various tools to reduce the population to within AMLs and maintain that level over a 10-year timeframe as identified in BLM Instruction Memorandum 2019-004, Issuance of Wild Horse and Burro Gather Decisions. Adaptive management that involves incorporating the use of the most promising methods of fertility control (as long as they are approved for use through separate NEPA documentation and available) will meet the BLM objective to extend the years between gather cycles. This will decrease the frequency of stressful events, such as gathers, and reduce the number of horses being sent to holding facilities. Reducing, and then maintaining, wild horse numbers within AMLs using available and approved fertility treatments will provide for a thriving natural ecological balance within the HMAs. Maintaining AMLs will also reduce the risk of horses experiencing periods of diminished available forage and/or water (e.g., during drought).

Alternative A was chosen over Alternative B (same as Alternative A and including a non-reproducing portion of the population) because it is anticipated that implementation of Alternative A will meet the purpose and need for action without the use of permanent sterilization as incorporated into Alternative B.

Alternative A was chosen over Alternative C (similar to Alternative A except *only* applying available fertility control treatments) because Alternative C does not meet the purpose and need to achieve and maintain AMLs over the 10-year timeframe of this plan. This alternative does not address the necessity to remove excess horses to prevent resource damage from occurring in the short and long terms.

Alternative A was chosen over Alternative D (gate cut removal) because Alternative D does not provide the opportunity to apply fertility control to reduce the population growth rate and extend the period of time between gather events.

Alternative A was chosen over Alternative E (No Action - Defer Gather and Removal) because Alternative E does not meet the purpose and need of this EA. In addition, BLM has observed impacts from horses on upland use areas within the HMAs with current horse numbers. Taking no action on reducing horse numbers or applying fertility control will only exacerbate the problem. Rangeland health, as well as forage and water resources for other animals that share the range, will be affected by resource limited (e.g., lack of water, forage, space, etc.) horse populations, which could be in conflict with the legislative mandate that BLM maintain a thriving natural ecological balance (NAS 2013, p. 56).

AUTHORITY

The effective date of this decision is immediately upon the date of the authorized officer's signature on this document. The authority to provide that all or part of a decision be effective upon issuance is found in 43 CFR 4770.3(c), "Notwithstanding the provisions of paragraph (a) of 43 CFR 4.21, 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 ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision."

APPEAL PROCEDURES

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, (IBLA), in accordance with the regulations contained in 43 CFR Part 4 and Form 1842-1. If an appeal is filed, your notice of appeal should be filed with Don Rotell, Andrews/Steens Field Manager, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738 within 30 days following receipt. The appellant has the burden of showing the decision appealed is in error.

Standards for obtaining a stay—except as otherwise provided by law or other pertinent regulation, a petition for a stay of decision pending appeal shall show sufficient justification based on the following standards (43 CFR 4.21(b)):

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.

As noted above, the petition for stay must be filed in the office of the authorized officer.

A notice of appeal and/or request for stay electronically transmitted (e.g., email, facsimile, or social media) will not be accepted. A notice of appeal and/or request for stay must be on paper and received in this office within the appeal period.

Persons named in the "Copies sent to:" section 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, 601 SW Second Avenue, Suite 1950, Portland, Oregon 97204-3172**, 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 "Copies sent to:" section of the decision, or who received a notification of internet availability, who receives a copy of a petition for a stay and/or an appeal and wishes to respond, please see 43 CFR 4.21(b) for procedures to follow.

Authorized Officers:



7/22/2024

Don Rotell
Andrews/Steens Field Manager
BLM Burns District



7/22/2024

Brian Christensen
Three Rivers Field Manager
BLM Burns District

Appendix A

Public Comments and Responses

On April 26, 2024, the Bureau of Land Management (BLM) mailed a letter announcing the availability of the environmental assessment (EA) and unsigned finding of no significant impact (FONSI) to 86 interested individuals, groups, tribes, and agencies (and emailed to 5 more) for a 30-day public comment period. In addition, the EA and unsigned FONSI were posted on BLM's ePlanning website. The BLM Burns District received a total of 414 identical chain letters and 18 unique public comments from individuals and organizations.

Responses to substantive comments have been addressed by updating text in the EA or are documented below.

Comment: The BLM does not provide all of the references cited in the EA to the public.

Similar Comment: The BLM did not provide the baseline information (monitoring, etc.) or HMAPs (Herd Management Area Plans) to the public.

Response: All citations, references, and baseline information were available at the BLM Burns District Office front desk upon request. The EA has been updated.

Comment: The plan does not meet the requirements for the gather and removal of horses. Specifically, the EA does not prove both that the herd exceeds AML, and that removal is necessary to achieve or maintain TNEB (Thriving Natural Ecological Balance).

Similar Comment: In order to prove that the removal of horses is necessary, the BLM needs to do a land health assessment, to show there is rangeland degradation.

Response: The EA does not "draw a single line between rangeland degradation and wild horse occupancy," rather the BLM identifies multiple causal factors for sites not meeting rangeland health standards. The EA documents the degradation to land resources resulting from the current overpopulation, and as resources continue to degrade subsequent with projected continued wild horse population growth, the future health and body condition of horses in the Kiger Herd Management Area (HMA) and Riddle Mountain HMA is threatened (Background, EA Section 1.2). The EA purpose and need is described in section 1.3 of the EA, and could be partly summarized as being to return and maintain the wild horse herd sizes to within AML, so as to be able to protect rangeland resources and achieve a thriving natural ecological balance.

Comment: The BLM needs to do new population census survey; the newest population survey was more than 7 years old.

Similar Comment: The 20% growth rate that BLM used with the population census numbers from 2017 is not proven to be factual and is inadequate.

Response: The draft EA underestimated the number of horses and foals before the survey flights completed in May 2024. Preliminary results from the May 2024 flights included 370 adults and 49 foals seen in the area associated with the Kiger HMA and 241 adults and 42 foals for the Riddle Mountain HMA. These numbers, however, are certainly an underestimate because aerial surveys for wild horses almost never detect all animals present in a given surveyed area (Griffin et al. 2020). Before any gather the BLM will develop an estimate of herd size based on observed data collected through simultaneous double-observer aerial surveys. (WO IM 2010-057, Wild Horse & Burro Population Inventory and Estimation BLM 2010b, EA p. 12.). The final population survey was added to the EA (see Appendix I).

Comment: The public needs a longer comment period due to the volume of information cited in the EA.

Response: Public involvement in the process included a 30-day public comment period of the draft EA. A notice of availability of the EA and request for comment was mailed to 86 interested individuals, groups, and agencies (and emailed to 5 more) for a 30-day public comment period on April 26, 2024. This comment period was extended to May 28, 2024, to provide two additional days to submit comments based upon the federal holiday weekend. Four hundred and fourteen public comment form letters were received along with 18 unique public comments including one from Oregon Department of Fish and Wildlife, which stated that it was in favor of keeping wild horses within AML.

Pursuant to 40 CFR 1501.5(f) (CEQ NEPA regulations) and 43 CFR 46.305(a) (DOI NEPA regulations), the authorized officer has substantial discretion in determining the type and degree of public involvement for an environmental assessment. The gather implementation did not allow for additional time for comment. Here, the BLM provided a thirty-day review and comment period, consistent with guidance in BLM's *Wild Horses and Burros Management Handbook*, H-4700-1, Section 7.2. Nothing in the regulations or BLM's handbooks specifically requires the agency to provide for an extension of a review and comment period beyond the 30 days that BLM provided here.

Comment: There needs to be a unique HMAP for each of the HMAs (Kiger and Riddle HMAs) to comply with Handbook 4700-1.

Response: Section 2.5.2 of Handbook 4700-1 states "*HMAPs may be prepared for a single HMA or a complex of adjacent HMAs where animal interchange occurs.*" As both of the HMAs (Kiger and Riddle Mountain) are part of the same area of critical environmental concern (ACEC) (Kiger Mustang) that protects and perpetuates the dun factor color and conformation characteristics of the wild horses present in the Kiger and Riddle Mountain HMAs, and there is animal interchange that occurs between the two HMAs, the BLM has determined it is reasonable to treat them as a complex of HMAs.

Comment: The EA determined that there would be no impacts to Lands with Wilderness Characteristics ("LWCs") because "[t]here are no designated lands with wilderness characteristics within the Kiger or Riddle Mountain HMAs. In addition, there have been no changes in land condition or road status since the previous determination that would require the determination to be

updated” (EA at 92). However, ONDA’s Steens Mountain Cooperative Management and Protection Area Wilderness Inventory Report and Recommendations (ONDA 2022) and Three Rivers Wilderness Inventory Report and Recommendations (ONDA 2023) found the Quail Creek Wilderness Character Unit (“WCU”)—which overlaps the Riddle Mountain HMA—and the Riddle Creek WCU—which overlaps the Kiger HMA—contain statutorily defined wilderness characteristics.

Similar Comment: ONDA requests that the Bureau revise the EA to recognize and assess the documented wilderness values present in the project area, include greater specificity on road maintenance, trap site locations, and uses associated with the proposed action, and provide for additional public comment on those critical aspects of the proposal.

Response: The BLM Burns District considered lands with wilderness characteristics (LWC) and determined there would be no impacts. Current (2006) inventoried LWCs were considered when making this determination. A BLM Burns District Interdisciplinary Team found that conditions within the Quail Creek and Riddle Mountain units are similar to those described in the 2006 wilderness character inventory that determined no wilderness character present.

In future land use planning efforts, the BLM Burns District will consider Oregon Natural Desert Association proposed wilderness character units (WCU) during the wilderness character update process. The current LWC inventories determined that none are present. The BLM Burns District determined that the proposed gather would have no effect on Stonehouse Wilderness Study Area (WSA) because of the temporary nature of the proposed action and absence of permanent ground disturbance. Therefore, it is not expected that any activities associated with the gathers will exclude any of the proposed WCUs from consideration during the next LWC inventory update.

Comment: Sex ratio skewing which fails to protect wild horses and negatively impacts them by increasing stallion aggression, endangering females, and the safety of foals.

Response: The proposed action (EA section 2.2) describes the selective removal priorities for the HMA, based on a selective removal strategy set forth in BLM Manual Section 4720.33 (BLM 2010a). The goal is to have the sex ratio of horses returned to the range cause an approximately equal number of males and females to be in each herd. The age class of animals to preferentially be treated with fertility control, as well as the age class of animals prioritized to be returned to the range will also be based on the BLM Manual Section 4720.33 (BLM 2010a). The BLM cannot identify exact ages, phenotypes, or sex ratio of animals to be returned to the range until after the age and sex of horses gathered is determined.

Comment: The BLM does not reveal when or how the original AML was determined for these HMAs.

Similar Comment: AMLs should be adjusted or reconfigured to increase the number of horses left on the range.

Similar Comment: AML does not provide a large enough number of animals to maintain genetic diversity in the HMA.

Response: The BLM typically establishes and/or adjusts appropriate management level (AML) for an HMA as part of the land use planning process, given the in-depth and complex nature of the analysis that must be conducted as well as the implications for multiple uses of BLM-managed public lands. The 1992 *Three Rivers Resource Management Plan* (RMP) did not specify an AML range per HMA, but the reaffirmed animal unit months (AUM) are the equivalent to the high end of AML previously established. Because these HMAs lie partially (Kiger) and entirely (Riddle Mountain) in the Steens Mountain Cooperative Management and Protection Area, the *Steens Mountain Cooperative Management and Protection Area RMP/Record of Decision* (ROD) (August 2005) reaffirmed 672 AUMs or an AML of 33-56 for Riddle Mountain HMA and 984 AUMs or an AML of 51-82 for Kiger HMA. These AMLs were established with public participation following an in-depth analysis of resource monitoring studies. *The Wild Horses and Burros Management Handbook*, H-4700-1, describes the required analytical process for establishing and adjusting AML in detail at pp. 18-19 and Appendix 3. In this instance, the review of AML does not meet the purpose and need of the EA (Decision to be Made, EA Section 1.4). The authorized officer has not elected to formally review AML but is, instead, proposing gathers, removals, and fertility control application to return and maintain the wild horse population to within appropriate management level and achieve TNEB.

While genetic data would be collected to monitor genetic diversity, as stated above, there is currently no evidence to indicate that the Kiger/Riddle wild horses would suffer reduced genetic diversity if managed at the established AML range. Furthermore, a given herd should not be considered as a truly isolated population, given that there can be additional introductions of wild horses from other herds to augment genetic diversity and reduce risks of inbreeding. A 2013 report from the National Academies of Sciences' National Research Council, commissioned by BLM, recommended that BLM consider genetic management of wild horses from the perspective of metapopulations. Under this framework, herds from individual HMAs should not be considered to be genetically isolated populations. Rather, the BLM was encouraged to consider the historical and present connections between HMAs. The Kiger and Riddle Mountain HMAs, although separate, consist of wild horse populations that are virtually indistinguishable genetically (Cothran 2012a and b; EA Appendix G: Genetic Analysis), and wild horses are known to move between HMAs on their own. Both HMAs are part of the Kiger Mustang ACEC and managed in conjunction with one another. This allows some genetic mixing to occur between the HMAs without human intervention.

Comment: Some of the mares treated with fertility control methods may make some of the mares sterile permanently.

Response: Appendix F reviews the potential effects of fertility control vaccines including GonaCon-Equine. Duration of effects for multiple doses is analyzed. Booster doses of GonaCon-Equine are known to potentially cause longer lasting immune responses (Baker et al. 2018); the same can be true for the PZP vaccine ZonaStat-H (Nuñez et al. 2017). Over time, there is a pattern that among mares treated repeatedly with GonaCon-Equine vaccine, an increasing number lose the strength of immune response needed to prevent contraception – that is, over time, mares tend to return to fertility (Baker et al. 2023). The duration of effect appears to vary across individuals.

Comment: By making this a 10 year gather plan the BLM is in violation of the National Environmental Policy Act (NEPA).

Similar Comment: Implementing a 10-year plan for the EA eliminates the public's ability to participate in the government's actions and management of these wild horses for an unacceptably long period.

Response: The *BLM's NEPA Handbook*, H-1790-1, supports the use of existing NEPA analysis for subsequent project implementation. Chapter 5 states, "You may use existing environmental analyses to analyze effects associated with a proposed action, when doing so would build on work that has already been done, avoid redundancy, and provide a coherent and logical record of the analytical and decision-making process." H-1790-1 does not offer a timeframe during which existing analysis may be relied upon, but ten years is generally accepted to be a reliable document life, barring significant environmental changes. This EA follows the guidance provided in BLM IM No. 2019-004. This memorandum guides BLM offices to analyze various wild horse management actions to meet the purpose of and need for action and to analyze management actions over multiple years where such actions must be implemented using a phased approach or over a multi-year period to be effective. The 10-year timeframe of this EA enables BLM to determine the effectiveness of the combination of management actions comprising the proposed action at successfully achieving and maintaining the population level within AML. If new information or circumstances arise during this 10-year period, BLM will use the determination of NEPA adequacy (DNA) process to identify if the analysis in this EA is still valid, or if supplemental or new NEPA analysis is required. At the discretion of the authorized officer, BLM may provide for additional public involvement as part of any future DNA process, consistent with guidance in *BLM's NEPA Handbook*. The proposed actions are consistent with management at the minimum feasible level under the Wild Free-Roaming Horses and Burros Act of 1971 (WHA). It is standard practice for BLM to develop a ten-year plan for managing a wild horse population using a phased approach that combines gather and removal operations together with the application of fertility controls, and to use an environmental assessment to analyze the environmental effects of such a ten-year plan under NEPA. (See, e.g., *Friends of Animals vs. Silvey*, 353 F. Supp. 3d 991 (D. Nev. 2018), *aff'd*, No. 18-17415 (9th Cir. July 2, 2020)).

Comment: FLPMA does not apply to wild horse and burro areas protected under the WHBA.

Similar Comment: FLPMA requires that BLM "balance" wild horse and burro use with other uses which equates at minimum to a 50-50 allocation of available forage between horses and livestock in the HMA. The EA fails to address this. Based solely on FLPMA, wild horses should be allocated 50% of the total AUMs allocated to livestock and wild horses in the HMA.

Similar Comment: Livestock numbers should be reduced before horse numbers in HMAs.

Response: The Federal Land Policy and Management Act of 1976 (FLPMA) provides that public lands be managed "under the principles of multiple use and sustained yield, in accordance with the land use plans developed by [BLM] . . ." (43 U.S.C. § 1732(a)). FLPMA's multiple use and sustained yield mandate applies to *all* BLM-managed public lands. (43 U.S.C. §§ 1702(e), 1732(a)). In enacting FLPMA, Congress included a declaration of policy that "the public lands be

managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.” (43 U.S.C. § 1701(a)(8)).

As discussed in the EA (2.2), FLPMA requires that an action under consideration be in conformance with the applicable BLM land use plan(s) (43 U.S.C. § 1732(a)) and be consistent with other Federal, State, and local laws and policies to the maximum extent possible (43 U.S.C. § 1712(c)(9)). The 1992 *Three Rivers RMP/ROD*, 2005 *Andrews ROD/RMP*, and 2005 *Steens Mountain Cooperative Management and Protection Area ROD/RMP* set the appropriate management levels for wild horses within Kiger and Riddle Mountain HMAs. The purpose and need of this action conform to the relevant land use plans.

The 43 CFR 4700.06(b) language pertaining to considering wild horse and burros comparably with other resource values, does not require 50/50 allocations of forage between livestock and wild horses and burros be made in land use plans. This regulation requires wild horses and burros to be considered in the same manner as other resource values in the development of land use plans, FLPMA does not mandate a percentage of use for particular resources. This regulation promotes the multiple-use principles directed by the FLPMA. The proposed action is consistent with the applicable regulations at 43 CFR 4700, as well as FLPMA.

Monitoring data indicates there is an overpopulation of wild horses in the Kiger/Riddle HMAs and that removal of excess animals is needed to protect range resources. An additional review of feral horse impacts on rangeland ecosystems is in Chambers and others (2017. Science Framework for conservation and restoration of the sagebrush biome. USDA Forest Service RMRS-GTR-360.), which notes that wild horse and burro populations pose long-term challenges to habitat conservation and restoration efforts that differ in several key ways from the challenges posed by managed livestock grazing. Wild horses and burros live on the range the entire year and roam freely, and the locations and timing of wild horse and burro grazing are not regulated like livestock grazing. In general, wild horse presence is associated with lower overall plant cover, but greater relative abundance and cover of grazing-tolerant, unpalatable, and invasive plant species, including cheatgrass. Also, there are measurable differences in soil structure, soil penetration resistance, and erosion as well as in invertebrate, small mammal, and reptile communities. Many studies corroborate the general conclusion that high densities of wild horses can lead to biologically significant changes in sagebrush ecosystems. Wild horses are potential agents for the spread of nonnative plant species and may limit the effectiveness of restoration projects. Grazing by wild horses can also have severe impacts on aquatic ecosystems and riparian communities. Wild horses can degrade the quality of limited water sources and behaviorally exclude ungulates and other native wildlife (e.g., pronghorn) from these water sources. Even in areas with long histories of livestock grazing, once domestic livestock are removed, continued wild horse grazing may cause ongoing detrimental ecosystem effects. In the sagebrush-steppe ecosystem, plant communities can take several decades to recover from such impacts.

Comment: BLM fails to show if the damage to Biological Soil Crusts (BSCs) is caused by horses, wildlife, or livestock.

Response: Soils and biological soil crusts (BSC) are discussed in Section 3.8 in the EA where it is mentioned that there are multiple causes of damages. Wild horses can impact soils by reducing soil cover temporarily (annual utilization of grass) or longer term (if repeated overgrazing kills perennial grass), making soils more susceptible to erosion from wind, rain, and overland flow. Livestock can also compact soils in congregation areas, reducing soil productivity as well as increasing potential erosion.

Comment: Helicopter use in gathering violates the Wild Horse and Burro Act Human[e] requirements and State animal cruelty laws.

Similar Comment: The Motorized Vehicle Hearing this EA notes as meeting the analysis requirement for the use of motorized vehicles (trailers, trucks, helicopters) fails to provide any analysis or findings.

Response: Under the WHA and its implementation regulations, the BLM must conduct gathers humanely. The regulations state; “Humane treatment means handling compatible with animal husbandry practices accepted in the veterinary community, without causing unnecessary stress or suffering to a wild horse or burro” and “Inhumane treatment means any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community (43 CFR § 4700.0-5 Definitions). Both the WHA, as amended, and the implementing regulations authorize the use of helicopter operations to gather horses (43 U.S.C. § 1338a; 43 CFR § 4740.1).

The BLM has developed detailed standard operating procedures through its *Wild Horses and Burros Management Handbook*, H-4700-1, and its *Wild Horse and Burro Program Aviation Management Handbook*, H-4740-1, and associated manuals and instruction memoranda (BLM Manual Section 9400 (general aviation management), BLM Manual Section 4740 (aircraft and vehicle use during wild horse gathers), Instruction Memorandum (IM) 2021-002 (BLM’s Comprehensive Animal Welfare Program for Wild Horse and Burro Gathers)) to ensure safe and humane treatment of horses during gather operations, including in respect to the use of helicopter drive-trapping methods. A review of expected effects of gathers is included in EA section 3.1, and in appendix F.

The BLM also holds an annual public hearing on use of motorized vehicles to manage wild horses and burros. This hearing is an opportunity for members of the public to provide input on BLM’s standard operating procedures, which are subject to periodic revision, as needed. The last hearing occurred on May 23, 2024. The most recent information from the hearing can be found at <https://www.blm.gov/programs/wild-horse-and-burro/get-involved/motorized-vehicle-public-hearing>.

BLM’s standard operating procedures for the use of aircraft during gather and removal operations ensure compliance with safety regulations by the Federal Aviation Administration. In addition, the above-mentioned procedures prohibit use of helicopters from March 1 through June 30 (a time period that includes the great majority of wild horse foal births) and are designed to limit the speed

and distance animals move during a gather, to keep foals together with their mares, to prevent helicopters from touching the horses, to protect the horses from overheating, and to otherwise reduce physical and psychological stress on horses from the gather as much as possible. A review of expected effects of gathers is included in EA section 3.1, and in appendix F.

As to State law, ORS 167.320 establishes a misdemeanor offense for animal abuse in the first degree for intentionally, knowingly, or recklessly causing serious physical injury or cruelly causing death to an animal. This provision provides exceptions for activities that constitute good animal husbandry or are otherwise authorized by law. For the reasons stated in the above paragraph, the proposed action, or selected alternative, including selected methodologies for gathering horses by helicopter are authorized and in accordance with standard operating procedures to ensure humane treatment and animal welfare. Therefore, the gather operations would fall within the statutory exception for actions authorized by law.

Comment: The BLM did not adequately analyze the impacts of Green House Gas (GHGs) emissions and climate change as required by Secretarial Orders 13990 and 14008.

Response: Global climate change was not found to be an issue related to implementation of the proposed action, which would remove wild horses from the Kiger and Riddle Mountain HMAs (EA Table 1).

Comment: BLM failed to analyze the impacts of removal of wild horses on the risk of wildfires.

Response: An overpopulation of wild horses can facilitate the spread of invasive species, which can increase fire risk. As the EA states, “A decline in soil condition, plant cover, and plant species composition from trampling and overgrazing can result in bare soil and/or encourage the invasion and growth of noxious weeds or other invasive plants in riparian sites” (Section 3.3.2). Section 3.3.5 also states “Once these soils are damaged, they can become unproductive and are vulnerable to invasion from annual invasive grasses.” While livestock, with proper grazing management, can be managed to control the specific locations and timing of grazing, promoting vigor and abundance of perennial bunchgrasses while removing fine fuels and decreasing risk of catastrophic wildfire, wild horses cannot be managed at that level (Section 3.3.1).

The management of wildfire hazard and risk is a component of the BLM’s multiple-use and sustained yield mandate under FLPMA. Wildfire management addresses many things including fire suppression as well as prevention, mitigation, and education. After an incident occurs, a wildfire stabilization and rehabilitation plan (ESR) is prepared and approved when warranted. Additional information on fine fuels and the risk of wildfire was added to the Upland Vegetation (EA Section 3.3) and Invasive Plants and Noxious Weeds (EA Section 3.7) sections in the EA.

Comment: BLM failed to fully analyze the impacts to social and economic values of the proposed removal of horses.

Response: Social and economic values are discussed in Section 3.9.2 of the EA.

Comment: Range Management should be prioritized for wild horses. To prevent land degradation near dependable watering holes the BLM needs to provide water enhancement such as guzzlers or solar wells away from the grazing areas that tend to be overcrowded. This would also draw horses away from the HMA boundaries and help maintain the wild equines on the land that has been assigned to them for their primary use.

Similar Comment: Fencing is the responsibility of the BLM. Fences that prohibit water access for horses need to be removed. Some fencing may need to be repaired for safety concerns.

Response: The current EA does not consider any water enhancement actions. Water enhancement actions are outside of the scope of the current document. None of the alternatives would result in changes to wild horse or livestock grazing distribution. Fencing addition or removal is outside the scope of the current document. No fencing additions or removals would occur under any alternative.

Comment: I would like to request to find out who the contractor will be and how you will humanely be handling the roundup please. After the deal of the Kat Balou in WY recently I want to make sure that all the animals are treated in a humane manner and that includes the contractors who chase them down into your holding pen.

Response: The purpose of an EA is to analyze the environmental impacts associated with a specific action. At the time of this EA and decision record no contractor has been awarded a contract to gather these horses. The BLM awarded an indefinite-delivery indefinite-quantity (IDIQ) parent contract under procurement provisions to five separate contractors for gather activities over the course of five years. When the BLM issues a decision adopting the proposed action, the BLM will issue a solicitation for a task order and select one of the five contractors' bids under this National IDIQ Contract for this particular HMA gather. The IDIQ requires compliance with Comprehensive Animal Welfare Program standards.

Comment: The EA's Table 6, which lists the known invasive plants and noxious weeds and locations in each HMA, does not specifically describe any species in the Quail Creek area. The Bureau should update its invasive and noxious plant inventory in the HMAs and include that information in its site-specific analysis of potential trap site locations.

Response: Noxious weeds and annual grasses are discussed in EA Section 3.7. All trap sites would be located in previously used sites or other disturbed areas whenever possible. Trap sites are not identified specifically because the contractor is ultimately responsible for picking the trap sites where they can achieve the contract objectives. However, cultural resource surveys would be conducted at trap sites or holding facilities outside existing areas of disturbance prior to their use (EA Table 1). Also see EA 2.1.2 Project Design Features for trap sites. While the BLM does not identify specific trap sites, the Kiger and Riddle Mountain HMAs are all within comparable ecological sites and the BLM believes that effects associated with trap sites would be consistent no matter the specific location. The BLM recognizes that trap sites may cause disturbance to vegetation and soils (see EA Section 3.7.2 Invasive Plants and Noxious Weeds & 3.8.2 Soils & Biological Crusts).

Comment: EIS should be completed.

Response: The Council on Environmental Quality's NEPA regulations direct agencies to examine the "context" and "intensity" of effects as part of a determination of whether the effects of a proposed action are significant, and, therefore, whether an EIS is required (See 40 CFR 1501.3(d)). The FONSI associated with this project outlines BLM's interpretation of the context and intensity of the selected actions. To BLM's knowledge, all known and published possible effects to wild horses have been disclosed in the EA. The *BLM NEPA Handbook* (H-1790-1, p. 71, 7.3 Significance) explains that "Controversy in this context means disagreement about the nature of the effects, not expressions of opposition to the proposed action or preference among the alternatives." Although individuals and organizations have voiced disagreement with the gathers and fertility control actions, BLM is not aware of scientific controversy (disagreement on effects) surrounding any of the environmental impacts identified and disclosed in the EA. The authorized officer has determined that the environmental effects, together with the proposed project design features, do not constitute a major Federal action having a significant effect on the human environment as defined by the tests of significance found at 40 CFR 1508.27.

Comment: The EA must consider and implement the following with regard to ensuring transparency, First Amendment rights, and public observation:

- Improved public observation of all agency actions. There is significant public interest in the agency's management of wild horses and its management of these protected animals. The NAS specifically recommended the BLM improve the transparency of its management of the Wild Horse and Burro Program (Attachment 1). The treatment of the wild horses and agency transparency are paramount. Coincidentally transparency (as outlined herein) will help ensure accountability and humane treatment.
- Ensure members of the public can clearly see the trap site; are able to clearly view the animals in temporary holding; observe from a vantage point the handling of the animals at the trap, being loaded into trailers, sorted at temporary holding, and all aspects of the removal and handling of the animals.
- All removal operations must be located on public lands to allow public observation of all activities. No government operations should be located on private lands for which the owners will not give permission for public observation of activities.
- Real-time cameras with GPS should be installed on all aircraft and/or helicopters used in operations and video should be live-streamed on the Internet. This will improve the transparency and accountability of roundup operations and enable the BLM and the public to monitor the direct impact motorized vehicle usage has on wild horses and the environment.
- Real-time cameras should be installed on any traps, corrals, and temporary holding pens, again, so that BLM personnel, the public, and media can monitor the entire roundup operation and treatment of the horses.

Response: As described in the EA (2.1) public and media management during helicopter gather and bait trapping operations would be conducted in accordance with IM 2013-058 (Wild Horse and Burro Gathers: Public and Media Management).¹ This IM establishes policy and procedures for safe and transparent visitation by the public and media at WHB gather operations, while also ensuring the humane treatment of wild horses and burros and aircraft safety. In accordance with IM 2013-058: “The public/media are prohibited from riding or placing equipment in the helicopters contracted for a gather.” The National Gather Contract section 3.1.i specifies that “No cameras, including video cameras will be placed on the Contractor’s drive trapping equipment.” The comment supporting cameras on aircrafts has been noted, but revisions to BLM’s national instruction memorandum do not meet the purpose and need for the proposed action within the Burns District of BLM Oregon and thus fall outside the scope of this EA. Although BLM strives to provide public viewing on public land each day of gather operations, there are instances where traps or holding corrals located on private lands are more conducive to animal welfare than facilities located on public lands. Primary examples include (but are not limited to) animals residing on private land that must be removed by statute, and feasible trap sites located on private lands that significantly reduce the distance animals must be driven when compared to trap sites located on public land. The BLM and the helicopter pilot must also comply with 14 CFR Part 91 of the Federal Aviation Regulations, which determines the minimum safe altitudes and distance people must be from the aircraft.

Comment: The EA and Appendixes address “marking” horses who have been treated with fertility control. Wild horses should not be marked by humans. We strongly oppose marking or freeze-branding wild horses released to the wild. Such markings are generally reserved for use on domestic animals; the BLM must stop trying to manage wild horses as domestic livestock. The population of horses in this HMA is so small that utilizing WHIMSWeb (Wild Horse Identification Management System) can easily be used to document which horses have been administered fertility control. WHIMSWeb is used to manage fertility control programs that involve thousands of horses; using this online system can easily be used for these small populations.

Response: The proposed action includes freeze marking wild horses that are treated with fertility control and returned to the range. This will allow BLM to identify and track treatment history of these animals during future gathers, as well as ascertain certain demographic information pertaining to animal longevity on the range. BLM Oregon has been freeze marking returned animals for decades with no negative effects. BLM Instruction Memorandum 2023-028 provides guidance on marking and microchipping wild horses treated with fertility and returned to the range. The BLM is also open to utilizing a database such as the Wild Horse Identification Management System for identification in the future.

¹ BLM’s policies, including IMs, manuals, and handbooks can be accessed online at: <https://www.blm.gov/policy>.

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 they wish to appeal. A person served with the decision being appealed must transmit the Notice of Appeal 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 Notice of Appeal in time for it to be filed within 30 days after the date of publication (43CFR 4.41 I and 4.413).

2. WHERE TO FILE NOTICE OF APPEAL Don Rotell, Andrews/Stoops Field Manager
Burns District Office
28910 Hwy 20 W.
Hines, OR 97738

WITH COPY TO SOLICITOR Office of the Solicitor
U.S. Department of the Interior
601 SW 2nd Avenue, Suite 1950
Portland, Oregon 97204-3172

3. STATEMENT OF REASONS Within 30 days after filing the *Notice of Appeal*, 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 *Notice of Appeal*, no additional statement is necessary. (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR Office of the Solicitor
U.S. Department of the Interior
601 SW 2nd Avenue, Suite 1950
Portland, Oregon 97204-3172

4. SERVICE OF DOCUMENT A party that files any document under 43 CFR Subpart 4, must serve a copy of it concurrently on the appropriate official of Office of the Solicitor under 43CFR 4.413 (c) and 4.413 (d). For a notice of appeal and statement of reasons, a copy must be served on each person named in the decision under appeal and for all other documents, a copy must be served on each party to the appeal (including intervenors). Service on a person or party known to be represented by counsel or other designated representative must be made on the representative, unless the person, party or representative has notified the serving party of a subsequent change of address.

5. METHOD OF SERVICE If the document being served is a notice of appeal, service may be made by (a) Personal delivery; (b) Registered or certified mail, return receipt requested; (c) Delivery service, delivery receipt requested, if the last address of record is not a post office box; or (d) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means in writing.

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 Notice of Appeal (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 Notice of Appeal (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 Notice 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 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.

(Continued on page 2)

43 CFR SUBPART 1821-GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Grand Junction, CO 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 Offices 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 State 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 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 Headquarters Office, Bureau of Land Management, 760 Horizon Drive, Grand Junction, CO 81506.

(Form 1842-1, September 2020)