

# Desatoya Herd Management Area Wild Horse Gather Plan

## Decision Record

DOI-BLM-NV-C010-2021-0004-EA

April 2021



## **Introduction**

The Bureau of Land Management (BLM) Carson City District (CCD), Stillwater Field Office is proposing to finalize the Desatoya Herd Management Area Wild Horse Gather Plan for the Desatoya Herd Management Area (HMA) and to implement the Proposed Action to gather and remove excess wild horses from within and outside the Desatoya HMA in or after February 2021.

Four alternatives were considered in the EA:

Alternative 1: (Proposed Action): Gather and Removal of Excess Wild Horses to Low-Appropriate Management Level (AML), with Sex Ratio Adjustment, and Population Growth Suppression

Alternative 2: Removal Only to Low-AML

Alternative 3: Removals to Low-AML with Temporary Fertility Control and Some Physical Sterilization of animals returned to the HMA

Alternative 4: No Action

The Proposed Action would gather and remove excess wild horses down to the low AML which is 127 wild horses (an estimated 104 excess wild horse would need to be removed in the initial gather to reach low AML) and return periodically to gather excess wild horses to maintain AML and administer or booster population control measures over a period of ten years. A ten-year gather plan is needed to both bring and maintain the population at a level that allows vegetative resources to recover and reestablish, and to implement population control measures over a sufficient period to reduce population growth and measurably reduce the number of excess animals that would need to be removed from the HMA. The ten-year period would begin at the time of the first gather. All horses residing outside the HMA boundary would be gathered and removed. This Proposed Action would allow BLM to achieve management goals and objectives of attaining a herd size that is at the low range of AML, reduce population growth rates, and over a 10-year period would allow for a thriving natural ecological balance on the range as required under the Wild Free Roaming Horses and Burros Act (WFRHBA).

The BLM has determined that this Project does not constitute a major federal action having a significant effect on the human environment. Therefore, an environmental impact statement (EIS) will not be required. The approved Finding of No Significant Impact (FONSI) is hereby incorporated by reference.

## **Public Involvement**

Comments were accepted on the Desatoya Herd Management Area Wild Horse Gather Preliminary Environmental Assessment (EA), DOI-BLM-NV-C010-2021-0004-EA, for a 30-day period from December 10, 2020 through January 9, 2021, but the close date was extended to January 11 since January 9 fell on a weekend.

BLM mailed letters to 22 individuals, organizations, and agencies on December 10, 2020, and sent emails to 50 individuals, organizations, and agencies about the comment period. BLM notified other state and federal offices of the availability of the Preliminary EA through the Nevada State Clearinghouse distribution list on December 9, 2020. The CCD published a Press

Release on December 9, 2020 that was sent to media outlets listed on the Nevada BLM State Office media list.

Comment letters were received by email from a total of 606 individuals, state agencies, and non-government organizations. State agencies that commented include Nevada Department of Environmental Protection, Nevada Department of Water Resources, and the Nevada Department of Wildlife.

The BLM considered and incorporated the comments received in the preparation of this EA where appropriate. All comment letters are retained in the project's decision file. The BLM read each comment letter submitted on the Preliminary EA, and identified potentially substantive comments from the letters that would prompt the BLM to revisit the analysis, assumptions, accuracy, and other information contained in the Preliminary EA. BLM's responses to the substantive comments are provided in Appendix J of the final EA.

#### **Comment Types**

There were 40 individual letters and 566 form letters received via email. While there were minor variations, the content of the form letter emails were essentially the same. In addition to the 518 form letters, there were 13 modified form letters that included substantive comments and 37 modified form letters with non-substantive comments. Minor non-substantive changes were made to the EA as a result of the individual and form letters (noted in the response to comments).

Minor changes or clarifications were made to the final EA. A minor numerical change is the inclusion of results from the analysis of the survey data results (Lubow 2021). Instead of using the 215 raw count animals seen in the October survey, the estimated total # of animals present was 231. There was the addition of Appendix J, Consolidated Public Comments and BLM Responses and Appendix K, Supplemental Monitoring Data.

#### **Tribal Consultation**

The BLM notified the Yomba Shoshone Tribe and the Fallon Paiute-Shoshone Tribe of the proposed gather EA in a letter sent on December 10, 2020. The letter included a description of proposed gather projects included in the EA, and an invitation for comments or feedback regarding the EA. The BLM did not receive any responses from the Tribes regarding the EA; however, consultation with the Tribes is ongoing and will continue through the decision and the implementation.

#### **Land Use Conformance**

The EA is in conformance with the Carson City Field Office Consolidated Resource Management Plan (CRMP), May 2001:

- WHB-1, #2. "Remove excess wild horses from public land to preserve and maintain a thriving ecological balance and multiple-use relationship."
- WHB-2, Desired Outcomes #2 – "Maintain sound thriving populations of wild horses within herd management areas."
- WLD-2, Desired Outcomes #4 – "Maintain and improve wildlife habitat, including riparian/stream habitats, and reduce habitat conflicts while providing for other

appropriate resource uses.”

- WLD-2, Desired Outcomes #6 – “Maintain or improve the condition of the public rangelands so as to enhance productivity for all rangeland values (including wildlife).”

### Authority

The Proposed Action and Alternatives are in compliance with the following federal, State, and local plans to the maximum extent possible:

- Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 et seq.);
- Fundamentals of Rangeland Health (43 CFR 4180);
- Migratory Bird Treaty Act (1918 as amended) and Executive Order 13186;
- National Environmental Policy Act of 1969 (as amended);
- National Historic Preservation Act of 1966, as amended;
- Public Rangelands Improvement Act of 1978;
- State Protocol Agreement between the BLM, Nevada and the Nevada Historic Preservation Office (2009);
- Special Status Species Manual and Direction for State Directors to Review and Revise Existing Bureau Sensitive Species Lists (IM No. NV-2011-059);
- Taylor Grazing Act of 1934 (as amended);
- Wild Free-Roaming Wild horses and Burros Act of 1971 (as amended);
- Wild horses and Burros Management Handbook (H-4700-1);
- Record of Decision and Land Use Plan Amendment for the Nevada and California Greater Sage-Grouse Bi-State Distinct Population Segment in the Carson City District and Tonopah Field Office 2016.

The Proposed Action and action alternatives are consistent with the applicable regulations at 43 CFR 4700 and are also consistent with the *Wild Free-Roaming Horses and Burros Act* of 1971 (WFRHBA), which mandates that BLM “*prevent the range from deterioration associated with overpopulation,*” and “*remove excess wild horses in order to preserve and maintain a thriving natural ecological balance and multiple use relationships in that area.*” Additionally, federal regulations at 43 CFR 4700.0-6 (a) states, “*Wild horses shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.*”

The Interior Board of Land Appeals (IBLA) in *Animal Protection Institute et al*, (118 IBLA 75, 1991) found that under the WFRHBA, “excess animals” must be removed from an area in order to preserve and maintain a thriving and natural ecological balance and multiple-use relationship in that area. Regulations at 43 CFR 4700.0-6 (a) also direct that wild horses be managed in balance with other uses and the productive capacity of their habitat. 43 CFR 4700 regulations governing the management of wild horses include:

- 43 CFR 4700.0-6: (a) “Wild horses shall be managed as self-sustaining populations of healthy animals in balance with other uses and productive capacity of their habitat.”
- 43 CFR 4710.3-1: Herd management areas. “Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd,

the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in 43 CFR 4710.4. The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas.”

Although 43 CFR 4710.3-1 states that the BLM shall prepare a herd area management plan, this regulation does not set a timeframe to complete such plan, nor does the regulation require that a plan be in place in order for the BLM to complete a gather plan.

- 43 CFR 4710.4: Constraints on management. “Management of wild horses and burros shall be undertaken with limiting the animals’ distribution to herd areas. Management shall be at the minimum feasible level necessary to attain the objectives identified in approved land use plans and herd management area plans.”
- 43 CFR 4720.1: “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.”

## **Rationale**

### *Proposed Action (Selected Alternative)*

The Proposed Action is the adoption of a Desatoya Herd Management Area Wild Horse Gather Plan to implement an initial gather and removal of approximately 104 excess horses from the Desatoya HMA and surrounding area, as a corrective action to address current degraded habitat conditions and downward habitat trend. The initial gather would start no earlier than September 2021. Additional wild horses would be gathered to be treated with contraceptive methods and released back into the HMA, more stallions would be released than mares to adjust the sex ratio to 60 percent male and 40 percent female. BLM would return periodically to gather excess wild horses to maintain AML and administer or booster population control measures over a period of ten years. A ten-year gather plan is needed to both bring and maintain the population at a level that allows vegetative resources to recover and reestablish, and to implement population control measures over a sufficient period to reduce population growth and measurably reduce the number of excess animals that would need to be removed from the HMA. The ten-year period would begin at the time of the first gather. This Proposed Action would allow BLM to achieve management goals and objectives of attaining a herd size that is at the low range of AML, reduce population growth rates, and over the 10-year period would allow for a thriving natural ecological balance on the range as required under the WFRHBA.

The management objective for the Desatoya Herd Management Area would be to gather and remove excess wild horses within and outside the HMA to achieve and maintain AML. BLM would achieve this through population growth suppression measures to include:

- Administration of fertility control vaccines (i.e., PZP vaccines, GonaCon-Equine or newly developed vaccine formulations) to released mares.
- Intrauterine Devices (IUDs)
- Adjustment of sex ratios to achieve a 60% male to 40% female ratio.

While in the temporary holding corral horses would be identified for removal or release based on age, gender and/or other characteristics. As part of periodic sampling to monitor wild horse



genetic diversity in the HMA, hair follicle samples would be collected from a minimum of 25 horses. Samples would be collected for analysis to assess the levels of observed heterozygosity, which is a measure of genetic diversity (BLM 2010) within the HMA and may be analyzed to determine relatedness to established breeds and other wild horse herds. Mares identified for release would be aged, microchipped and freeze-marked for identification prior to being released to help identify the animals for future treatment/boosters and monitor the efficacy of fertility control treatment.

Edwards Creek, Carson, and Porter Canyon Allotments (ECPA) Standards for Rangeland Health Determination Document signed July 2, 2020

As stated in the ECPA Standards for Rangeland Health Determination Document (signed July 2, 2020), BLM determined that wild horses, historic and current grazing by livestock, and introduction of non-native plant species were Significant Causal Factors in Failing to Achieve Rangeland Health Standards.

Specifically, Standard 2 is not being achieved and that livestock and wild horse use were significant causal factors. BLM determined that livestock and wild horse use at all assessed riparian and wetland areas were significant causal factors for not meeting the standard as associated with streambank alteration. Furthermore, BLM concluded that impacts observed at springs were more severe in comparison to streams as there was less protective vegetation (in general) to maintain soil stability and protect spring sources.

The ECPAs are not achieving Standard 4 and historic livestock grazing practices and wild horses are the causal factors with the introduction of non-native plants as a contributing factor. In order to achieve Standard 4, Standards 1 and 2 in addition to other plant and wildlife habitat indicators must also be achieved as healthy soils and riparian areas provide critical habitat for plants and wildlife.

The ECPAs are not achieving Standard 5 and current and historic livestock grazing practices and wild horses are the causal factors while the introduction of non-native plants and climate change are contributing factors.


### **Mitigation Measures**

Proven mitigation and monitoring are incorporated through BLM standard operating procedures (SOPs) and statements of policy that have been developed over time. These SOPs represent the "best methods" for reducing impacts associated with gathering, handling, transportation, herd data collection, and application and monitoring of fertility control.

### **Decision**

After consideration of the Desatoya Herd Management Area Wild Horse Gather Environmental Assessment (EA #DOI-BLM-NV-C010-2021-0004-EA, March 2021), the approved FONSI, and public comments received during the 30-day review of the preliminary environmental assessment, it is my Decision to select the Proposed Action (Alternative 1) and authorize the implementation of the Desatoya Herd Management Area Wild Horse Gather Plan. Implementing the Plan over a 10-year period will prevent further resource degradation and impacts to wildlife

habitat and restore a thriving natural ecological balance and the desired multiple use relationships on public lands in the area consistent with the provisions of Section 3(b)(2) of the WFRHBA.

  
Jake Vialpando  
Acting Stillwater Field Manager

4-1-2021  
Date

#### **APPEAL PROCEDURES**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR Part 4. If you appeal, your appeal must also be filed with the Bureau of Land Management at the following address:

Jake Vialpando  
Acting Field Manager  
BLM, Stillwater Field Office  
5665 Morgan Mill Road  
Carson City, NV 89701

Your appeal must be filed within thirty (30) days from receipt or issuance of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4942, January 19, 1993) for a stay (suspension) of the decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to:

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

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

U.S. Department of the Interior  
Office of the Regional Solicitor  
Pacific Southwest Region  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay is required to show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellants' success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

The Office of Hearings and Appeals regulations do not provide for electronic filing of appeals. Electronically filed appeals will therefore not be accepted.