

DECISION RECORD
Environmental Assessment
DOI-BLM-CA-D050-2021-0015-2021

Bureau of Land Management, Ridgecrest Field Office

INTRODUCTION/BACKGROUND:

The Bureau of Land Management (BLM) Ridgecrest Field Office (RIFO), has determined that approximately 939 excess wild burros are present within and outside the boundaries of the Centennial, Panamint and Slate Range Herd Areas (HAs) and has prepared an environmental assessment (EA) which analyzes the potential environmental impacts associated with the proposal to implement a wild burro gather plan over a 10-year period in these HAs. The HAs are located predominantly in Inyo County and northern San Bernardino County, California. The EA is consistent with BLM's management responsibilities under the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA), as amended (Public Law 92-195).

BUREAU OF LAND MANAGEMENT NEED FOR THE PROPOSED ACTION

The need for the action is based on the BLM's obligations established by the provisions of the Wild Free-Roaming Horses and Burros Act) which mandates management of wild burros in a manner that is compliant with the land use plan decisions, and which will lead to a thriving natural ecological balance. The CDCA plan as amended (1981, Amendment 24 and 1983, Amendment 12) identified these three HAs as areas from which all burros should be removed, due to the conflicts with the Naval Air Weapons Station China Lake (NAWSCL) and the infeasibility to maintain a population on BLM lands when removals would be conducted in adjacent jurisdictions on NAWSCL and Death Valley National Park. Public safety concerns and protection of wildlife habitat resource values including critical habitat for the Inyo CA towhee and desert tortoise habitat further necessitate and support removal of all excess burros from the HAs. All three of these HAs encompass numerous ACECs created for wildlife and are essential movement corridors which link these wildlife habitats in the NAWSCL and Argus Wilderness to those protected by the Death Valley National Park.

PROJECT AND ALTERNATIVES DESCRIPTIONS

Three alternatives were considered in detail in Chapter 2 of the EA:

Alternative 1: Proposed Action – Helicopter Assisted Wild Burro Gather and Removals in Wilderness and Non-Wilderness Lands; including water/bait trapping.

The gathers would primarily implement the helicopter assisted drive trap method of capture and will utilize helicopter assisted roping and bait trap methods of capture when the drive trap method would not be feasible.

Management Actions

- The initial gather would begin in or around May 28, 2021 for the Centennial HA for the removal

of up to 350 burros. Several factors such as horse foaling season, animal condition, herd health, weather conditions, or other considerations, such as which alternative for gather operations is selected, could result in adjustments in the schedule.

- Gathers occurring within the Centennial and Slate Range HAs would be coordinated with NAWSCS. Any gather that occurs when operating in NAWSCS and/or utilizing their restricted airspace, must happen when NAWSCS provides access and security clearances. These dates are specific and would be coordinated with NAWSCS. Any gathers occurring within NAWSCS would be under their planning documents and environmental clearances.
- Gathers in the Centennial and Panamint HAs would be coordinated with NPS-Death Valley to utilize their airspace and to possibly utilize approved trapping locations on their administered lands.
- The primary gather (capture) methods would be the helicopter drive method with occasional helicopter assisted roping (from horseback).
- The BLM adheres to a Wild Horse and Burro Comprehensive Animal Welfare Program (CAWP; BLM Instructional Memorandum 2021-002) which updated wild horse and burro gather standard operating procedures (SOPs), both of which are provided in Appendix A.
- Burro gather SOPs which incorporate the CAWP, and operational standards identified in BLM Handbook 4700-1 (Wild Horses and Burros Management Handbook), BLM Manuals 4720 (Removal) and 4740 (Motor Vehicles and Aircraft) are identified in Appendix A.
- Gather operations would be conducted in accordance with the Environmental SOPs described the Proposed Action below.
- Trap sites and temporary holding facilities will be located in previously used sites or other disturbed areas (Map, Appendix B of EA) whenever possible. Undisturbed areas identified as potential trap sites or holding facilities would be inventoried for cultural resources. If cultural resources are encountered, these locations would not be utilized unless they could be modified to avoid impacts to cultural resources.
- An Animal and Plant Inspection Service (APHIS) or other veterinarian may be on-site during helicopter-assisted gather operations, as needed, to examine animals and make recommendations to BLM for care and treatment of wild burros. During non helicopter-assisted gather operations, a veterinarian would be available on call, as needed.
- Decisions to humanely euthanize animals in field situations will be made in conformance with BLM policy (Washington Office Instruction Memorandum 2015-070).
- Data including sex and age distribution, condition class information color, size and other information may also be recorded, along with the disposition of that animal (removed or released).
- Excess animals would be transported to the BLM Ridgecrest Regional Wild Horse and Burro Holding and Adoption facility where they will be prepared (freeze-marked, vaccinated, microchipped, and de-wormed) for adoption or sale (with limitations).
- The BLM would coordinate with National Park Service (NPS) staff if helicopter activity would be occurring over NPS administered lands and if burro trapping occurs within the Darwin Falls area of Death Valley National Park. Burro removal is consistent with the NPS's 2002 General Management Plan (GMP) and a GMP amendment completed in 2018. In 2019, the NPS completed the statutory and regulatory compliance necessary to remove burros from the Darwin Falls area of the park. The area designated for the burro traps is outside of wilderness. NPS analyzed the impacts of using helicopters to locate burros on wilderness character in a minimum requirements decision guide (MRDG). The analysis indicated that while using helicopters would have impacts on wilderness character at Death Valley National Park, the benefits of removing the burros from the park would provide greater benefit.

Design Features and Operating Measures will be adhered to, also. (see Appendix A of this Decision Record).

- **Alternative 2:** Helicopter-Assisted Wild Burro Gather and Removals in Non-Wilderness & Non Helicopter-Assisted Wild Burro Gather and Removals in Wilderness Lands; including bait trapping.
- **No Action Alternative**— Defer gather and removal.

Four additional alternatives were considered but dismissed from detailed analysis (Sec. 2 of EA)

LAND USE PLAN CONFORMANCE:

This proposal is in conformance with the California Desert Conservation Area Management Plan of 1980 as amended (CDCA Plan) (BLM 1980), West Mojave Plan of 2006 (WEMO) and the Desert Renewable Energy Conservation Plan (DRECP), approved on September 14, 2016 (BLM 2016). The DRECP is a land use plan amendment (LUPA) to the CDCA Plan. Each subsequent plan amendment supersedes previous plans and plan amendments where it has made changes. Specific Conservation Management Actions (CMAs) are required as part of the DRECP. The project will adhere to applicable CMAs (see Appendix C- Applicable CMA Table).

RATIONALE

I have determined that implementing the Proposed Action will not have a significant impact to the human environment and that an environmental impact statement is not required as set forth in the attached Finding of No Significant Impact.

The selected Alternative 1, is the alternative that best meets the BLM's need over other alternatives. The Proposed Action (Alternative 1) is the best alternative to adequately remove excess wild burros from the Centennial, Panamint and Slate Range Herd Areas, which are managed for zero wild burros, in order to achieve the goals of the land use plan decision and to maintain a thriving natural ecological balance between wildlife, vegetation and the available water as required under Section 3(b)(2) of the 1971 WFRHBA and Section 302(b) of the Federal Land Policy and Management Act of 1976.

Alternative 2, would not meet the goals of burro removals inside wilderness areas and achieve the goals identified in the land use plan.

The BLM is required to manage multiple uses to avoid degradation of the rangelands. The gather plan is also necessary to protect wild burro health, reduce and mitigate public safety concerns caused by wild burros residing along major roadways within and outside HA boundaries, decrease nuisance animal complaints on private lands, and address management issues caused by wild burros that reside outside HA boundaries.

Leaving excess wild burros on the range under the No Action Alternative would not comply with the 1971 WFRHBA or applicable regulations and Bureau policy. The No Action Alternative would also result in more resource damage to critical wildlife habitat, such as riparian areas and increases the likelihood of emergency conditions arising that require an emergency gather to prevent the suffering or death of individual animals due to insufficient forage or water.

Removing the excess burros through phased gathers over a period of 10-years is necessary to: (1)

ensure that the number of burros removed in a single gather does not exceed the adoption or sale demand since there is no dedicated long-term holding facility for burros; and (2) to ensure all excess burros can be successfully captured since some animals will likely evade capture during each gather (especially as the number of excess animals remaining declines) and it will take multiple gathers over the 10-year period to bring the burro population to zero.

PUBLIC INVOLVEMENT

A Notice of Proposed Action (NOPA) was mailed out to over 50 members of the interested public, predominantly wilderness and wild horse and burro interest groups in early March 2021. A NOPA is sent to interested parties when an action affecting a Wilderness Area is proposed.

Per the Field Manager's discretion, the preliminary Centennial, Panamint and Slate Range Herd Areas Wild Burro Gather Plan Environmental Assessment (EA), DOI-BLM-CA-D050-2021-0015-EA, was posted for public review on the project ePlanning site for a 30-day period from March 16, 2021 through April 15, 2021. Comment letters were received from approximately 2162 individuals, Federal agencies, State agencies, and non-governmental organizations by email or ePlanning. Federal and State agencies that commented include Death Valley National Park and California Department of Fish and Wildlife and non-governmental organizations include the Tortoise Council, Defenders of Wildlife, American Wild Horse Campaign and Kerncrest Audubon Society.

Appendix of this Decision Record provides a summary of the comments received and BLM's response and consideration of comments in preparing the final environmental assessment.

The Environmental Assessment is available on the ePlanning web page at <https://go.usa.gov/xn5cZ> or by contacting the Ridgecrest Field Office (760-384-5400).

CONSULTATION AND COORDINATION

Agencies and groups coordinated with include but are not limited to: U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife, and Death Valley National Park. No formal consultation occurred under the The National Historic Preservation Act, as there are no adverse effects expected on sites that may be eligible for inclusion in the National Register of Historic Places (NRHP). This is an Exempt Undertaking (CA-650-EX-2021-09); Issuance of permits, leases, and rights-of-way where no surface disturbance is authorized, that has no potential for adverse effects, and that do not have the potential affect access to or use of resources by American Indians. BLM-SHPO Heritage Protocol Agreement, May 2019.

Informal Consultation per the Endangered Species Act occurred with the USFWS for the Desert Tortoise and Inyo California Towhee.

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. This decision is effective upon issuance in accordance with Title 43 of the Code of Federal Regulations (CFR) at 4770.3 (c) because removal of excess wild horses is necessary to protect animal health and prevent further deterioration of rangeland resources.

§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 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 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.

Upon analyzing the impacts of the Proposed Action and other Alternatives, and following issuance of the EA for public review and, I have determined that implementing Alternative A, the Proposed Action Alternative as described in Chapter 2 of the EA, with incorporated standard operating procedures (found in the numerous EA appendices) will not have a significant impact to the human environment and that an EIS is not required. The rationale in the attached FONSI supports this decision.

DECISION

After reviewing all the facts and considering public comments on the EA, it is my decision to implement the Proposed Action (Alternative 1) as described in the Final Environmental Assessment for the Centennial, Slate and Panamint Wild Burro Gather Plan and provided in summary below.

Implementation of this decision will:

- Gather and remove all wild burros from these three herd areas, which will comprise approximately 939 wild burros, over a 10 year period beginning in late May 2021. The BLM will return periodically over the next 10 years to gather any remaining uncaptured excess wild burros until

land-use plan management objectives to manage for zero (0) wild burros within the Herd Areas is achieved. All of the animals gathered would be removed and transported to BLM holding facilities as stated in the EA.

- The BLM would utilize all approved gather methods, including bait trapping, helicopter drive trapping, and roping if necessary, to gather wild burros. The BLM would follow the Standard Operating Procedures (SOPs) found in Appendix A: The Comprehensive Animal Welfare Policy (IM 2021-002) and BLM Handbook 4700-1 Wild Horses and Burros Management Handbook. Gather methods would be determined on a case-by-case basis.

This decision is effective immediately pursuant to 43 CFR 4770.3(c).

ADMINISTRATIVE REMEDIES:

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 the attached Form 1842-1.

APPROVING OFFICIAL (DOI-BLM-CA-D050-2021-0015-2021):

Carl B. Symons
Field Manager

Date

Form 1842-1 (September 2006)

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 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 (43 CFR 4.411 and 4.413).

2. WHERE TO FILE THE NOTICE OF APPEAL

BUREAU OF LAND MANAGEMENT

Ridgecrest Field Office
300 South Richmond Road
Ridgecrest, CA 93555

WITH COPY TO SOLICITOR...

Regional Solicitor's Office, Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

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.....

Regional Solicitor's Office, Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

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 Notice of Appeal, (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 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 of Appeal 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.

(Continued on page 2)

Form 1842-1 (September 2006)

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.

Appendix A: Design Features and Operating Measures

1. Area of Critical Environmental Concern and NCL:

No cross-country travel by vehicles in these areas is permitted.

2. Air Quality:

.a. Continue to follow applicable state and federal guidelines i.e. reasonably available control measures (RACM) to control PM-10 emissions from unpaved roads including the following:

<u>Source category</u>	<u>Control Measure</u>
Unpaved road	Control vehicular traffic speed (20 MPH on dirt roads)

b. Use water as necessary to limit fugitive dust blowing off the site during the work if fugitive emissions exceed state and/or GBUAPCD standards.

c. Curtail activities when wind speeds exceed 30 MPH.

3. Cultural Resources:

All work areas associated with the gather's activities will be confined to previously disturbed areas where the occurrence of important National Register Historic Properties are not located. However, when gathering activities on BLM administered lands cannot be confined to previous disturbances, a BLM archaeologist will examine the proposed gather site to ensure that no cultural resources are present. If cultural resources are identified within a proposed gather site, an alternate gather site will be selected.

4. Native American and Religious Concerns:

There will be no capture sites located upon nearby Timbisha Shoshone Tribal lands. Helicopter and herding activities would be conducted outside their parcel of land located in Centennial Flats.

5. Surface Hydrology:

Do not allow discharge of oil or other petroleum products on site.

6. Wild Burros:

The operating measures and procedures are described in Appendix A will be adhered to.

7. Wild Horses:

No burros would be attempted to be removed utilizing helicopter assisted gather methods from the Centennial Horse HMA during the prohibited foaling period from March 1 to June 30. If horses are encountered outside the HMA during the foaling season, the pilot will fly the helicopter to avoid them, thus any burro(s) that are with the horses would not be gathered.

8. Wildlife Protection:

All actions will follow the conservation measures of the federally protected Inyo California towhee and Desert Tortoise:

I. All gather crews shall be made aware of the status of the Inyo California towhee. Crews shall be made aware the penalties for "take", and the stipulations to be followed for this project. The crew may contact the BLM biologists for clarification and additional information.

- LaBerteaux (2011) found that towhees begin nesting from late March to early April and conclude in early August. Gathers occurring during the nesting season will be conducted in the following manner:

(a). The helicopter will not fly below 200 feet over the riparian/spring areas in the Argus Mountain Range that may be habitat for the Inyo California towhee (i.e. Great Falls Basin, Austin Spring, and Bento Springs, etc.) to prevent the rotor wash from disturbing any potential nesting sites.

(b). If burros are located in the Inyo California towhee designated critical habitat areas, a hazer will hike or horseback into the area to try to push burro(s) out into the open a minimum of 300 feet away from the riparian/spring area, before the helicopter begins herding the burro(s) to the capture site. If the burro(s) cannot be hazed away from the riparian/spring area, they will be left behind.

II. Each proposed capture site within desert tortoise habitat will be inventoried by a biologist or designated BLM representative who has done field work with desert tortoises for tortoise burrows. Temporary structures, vehicles, equipment, helicopter landing sites and other activity shall be located in areas free of tortoise burrows. The following guidelines will be followed in desert tortoise habitat:

(a) All gather crews shall be made aware of the status of the desert tortoise. Crews shall be made aware the penalties for "take", and the stipulations to be followed for this project. The crew may contact the BLM biologists for clarification and additional information.

(b) One member of the team conducting the gather shall be responsible for overseeing compliance with protective stipulations for the desert tortoise and for coordination on compliance. This individual shall have the authority to halt all activities that are in violation of the stipulations. The person may be a BLM employee.

(c) The gather crew shall be aware of the following types of information concerning the desert tortoise:

- general behavior and ecology of the tortoise
- sensitivity to human activities
- legal protection
- penalties for violations of State or Federal laws
- reporting requirements
- project protective mitigation measures

The crew may contact the BLM biologist for clarification and additional information.

- (d) Only individuals authorized by the U.S. Fish and Wildlife Service shall handle desert tortoises
- (e). The Ridgecrest office shall receive a brief report on the effectiveness of the stipulations.

(f). Upon locating a dead or injured tortoise, the gather crew is to notify the Ridgecrest Office. The BLM must then notify the appropriate field office (Carlsbad or Ventura) of USFWS and the California Department of Fish and Wildlife (CDFW) by telephone within three days of the finding.

(g). No dogs shall be allowed on site during the operation.

(h). All trash and food items shall be promptly contained within closed, raven-proof containers. These shall be regularly removed from the project site to reduce the attractiveness of the area to ravens and other tortoise predators.

(i). The area of disturbance shall be confined to the smallest practical area, considering topography, placement of facilities, locations of burrows, public health and safety, and other limiting factors. To the extent possible, previously disturbed areas within the site shall be utilized. The project lead shall ensure compliance with this measure.

III. Bighorn Sheep protective measures- while helicopter use over flatlands is unlikely to impact bighorn sheep; helicopter use in steep, rugged terrain should be avoided during the bighorn lambing season (February-May). The proposed locations for gathering burros are unlikely to impact bighorn sheep, but if a bighorn is regularly seen at a baiting site, please consult with CDFW.

9. Wilderness, any future Wilderness Study Areas (WSAs), and Lands with Wilderness Characteristics (LWCs)

Wilderness and any future Wilderness Study Areas (WSAs):

No trap sites, temporary corrals, helicopter landings or transport of personnel, animals, or materials and no ground motorized vehicle travel would occur within any wilderness or wilderness study area. Trap sites and temporary corrals along wilderness and wilderness study area boundaries will be confined to the surface extent of the boundary roads themselves, cherry stems or areas otherwise excluded from wilderness and wilderness study areas. In addition, during gathers, BLM will:

- a. Advise helicopter pilot of location of wilderness and wilderness study area boundaries and provide maps.
- b. Minimize helicopter use over wilderness and wilderness study areas.
- c. Prohibit motorized vehicle travel or helicopter landings or transport of personnel, animals, or materials in wilderness or wilderness study areas, except for emergencies as authorized under BLM regulations and policy.

Lands with Wilderness Characteristics

Aircraft may fly, land, and transport personnel, animals, and materials within units found to have wilderness characteristics. Trap sites, corrals, and helo-spots may be located within these units but should be restricted to already disturbed sites or to sites that can be easily reclaimed upon conclusion of the activity. Vehicle travel off of the open, designated route system in support of herd management activities should be discouraged. Should such vehicle travel need to occur, it should be limited to what can be effectively reclaimed and closed to subsequent vehicle use by brushing out tracks at the

conclusion of the activity.

New road construction and/or maintenance of existing open vehicle routes in support of herd management activities should not occur within these units without additional review.

10. Invasive, Non-Native Species:

To prevent the spread of invasive, non-native species, all contractors would be required to power-wash their vehicles and equipment, including body and undercarriage, personal protective equipment, as well as inspect, remove, and dispose of weed seed and plant parts found their clothing, prior to entering BLM-administered lands.

11. Spill Prevention, Control, and Countermeasures Plan for Remote Fueling for Helicopter Project Work.

Burro capture would be planned so as not to result in the release of solid, hazardous, or special wastes. Releases of any hazardous or special waste (petroleum, etc.) material would be reported immediately in accordance with the Hazardous Materials Emergency Response Contingency Plan (24 hours a day, 7 days a week) to the Federal Interagency Communications Center (FICC) at (909) 383-5651. An Initial Report would be faxed to the authorized officer within 24 hours of the incident's discovery (760) 326-7099. Incident reports that are due over a weekend and/or holiday period must also be faxed to the FICC concurrently at (909) 383-5587. The authorized officer would receive a comprehensive follow-up report within 7 calendar days of the incident's discovery. All Environmental Protection Agency, Office of Safety and Health Administration and California Office of Safety and Health Administration regulations, and Bureau Policy will be complied with. Material Safety Data Sheets for all chemicals used on site will be available on site, and will be reviewed by users prior to use. All decontamination equipment and supplies will be provided according to MSDS and product label instructions. See Appendix F for the Spill Prevention, Control and Countermeasures for Remote Fueling for Helicopter Project Work for the Panamint, Slate Range and Centennial Wild Horse and Burro Herd Areas. Refueling would not occur within 0.25 miles from any open surface waters.

Appendix B: Public Comments and Responses

The Centennial, Panamint and Slate Range Herd Areas Wild Burro Gather Plan Environmental Assessment (EA), DOI-BLM-CA-D050-2021-0015-EA, was posted for public review on the project ePlanning site for a 30-day period from March 16, 2021 through April 15, 2021. Comment letters were received from approximately 2162 individuals, Federal agencies, State agencies, and non-governmental organizations by email or ePlanning. Federal and State agencies that commented include Death Valley National Park and California Department of Fish and Wildlife and non-governmental organizations include the Tortoise Council, Defenders of Wildlife, American Wild Horse Campaign and Kerncrest Audubon Society.

A federal agency, such as the BLM, may choose to respond to substantive and timely comments, although it is not required by regulation for an EA. Substantive comments-1) question, with reasonable basis, the accuracy of information in the EA; 2) question, with reasonable basis, the adequacy of, methodology for, or assumptions used for the environmental analysis; 3) present new information relevant to the analysis; 4) present reasonable alternatives other than those analyzed in the EA; and/or 4) cause changes or revisions in one or more of the alternatives (BLM's National Environmental Policy Act Handbook H-1790-1, Section 6.9.2.)

All comments submitted were reviewed; substantive comments were separated from non-substantive; and the BLM responses are below. Comments were summarized as multiple comments from different commenters were similar or identical. If a response resulted in the modifications to the EA, it is noted.

Proposed Action

Comment 1: Commenters oppose the issuance of a 10-year Decision because it side-steps the agency's requirement to review changing environmental conditions and new information. They believe it also infringes upon the public's right to review and comment on related government actions over the next 10 years.

Response: Having a multiple-gather timeline follows current BLM policy (IM 2019-004), is reasonable for meeting the purpose and need as it is unlikely that BLM would be able to meet management goals with a single gather. BLM's use of a single gather plan and a single environmental assessment to cover a period of years and a series of individual gather operations is a commonly accepted practice, as determined by a Nevada district court and affirmed by the 9th Circuit (*Friends of Animals vs. Silvey*, 353 F. Supp. 3d 991 (D. Nev. 2018), *aff'd*, No. 18-17415).

As is identified under 1.1 Introduction "If new, relevant information or changes affecting the Wild Horse and Burro Element in the CDCA Plan occur, then additional NEPA analysis would occur as appropriate.". When subsequent gathers are planned, BLM may conduct a determination of NEPA adequacy to ensure the EA is adequate.

Comment 2: Commenters believe the current AML of zero (0) for wild burros in these three HAs must be reassessed in conformance with the NAS Report and the Wild Free-Roaming Horses and Burros Act. BLM must remand this EA and issue a revised EA concurrently with a Resource Management Plan amendment to increase AML for burros in order to address the BLM-created genetic crisis which now faces these animals who are to be "considered an integral part of the natural system of public lands". And, if the land could sustain wild burros at the original AMLs again considering the factors relevant to this decision, forage, water, cover and space are present in sufficient amounts to sustain healthy WH&B populations and healthy rangelands over the long-term.

Response: The 1994 California Desert Protection Act designated the Department of Navy to manage for wild horses and burros on NAWS-CL administered lands and upgraded Death Valley National Monument to a National Park and transferred to the Park 48% of the land base for the Panamint HA. The Naval Air Weapons Station/China Lake has approximately 60% of the land base for the Centennial HA and 77% of the Slate Range HA, another 11% falls within Department of Defense National Training Center- Fort Irwin. The NAWS-CL Wild Horse and Burro Management Plan (November 2013), adapted from the previous NAWS-CL Wild Horse and Burro Management Plan (Epsilon 2005) directed the management action for the removal of burros from NAWS-CL administered lands. The Final Environmental Impact Statement / Legislative Environmental Impact Statement for Renewal of Naval Air Weapons Station China Lake Public Land withdrawal January 2015 addressed the 2014 Integrated Natural Resources Management Plan (INRMP) incorporating the overall direction and strategy for managing wild horses and burro populations on NAWS-CL. The National Park Service, U.S. Department of the Interior, Death Valley National Park, Death Valley General Management Plan (April 2002) directed the management action for the removal of burros from Death Valley National Park.

BLM Manual: 4700 Wild - Free Roaming Horses and Burros Management; identifies under section .06 Policy, Section C. Herd Management Areas shall be established in those HAs within which wild horses and burros can be managed for the long term. The 1981 CDCA Plan Amendment 24, removed the Centennial and Slate Range HMAs designation for burros, because of the conflicts with the Naval Air Weapons Station China Lake (NAWS-CL). The 1983 CDCA Plan Amendment 12, removed the Panamint HMA designation for burros, because burro movement patterns overlap BLM, NAWS-CL and NPS, making it unfeasible to maintain a population on BLM lands when removals would be conducted in adjacent jurisdictions.

The amount of BLM managed lands within these HA's have been reduced significantly by the California Desert Protection Act (1994) which also authorized the Secretary of Navy to manage wild horses and burros within NAWS-CL administered lands. These land-use determinations reflects the existing CDCA plan amendments regarding burro management are more prevalent today, due to the limited habitat provided for burros on BLM lands.

As identified under 1.7 Decision to be Made; "The decision will not set or adjust AML or modify the designation of these HAs as those decisions were set through previous planning and implementation-level decisions".

Comment 3: Commenter is concerned about the gather methods, stating that the EA listed a few ways, but then used the word "and other ways." They would like to know what other ways are possible? They would like to know what happens to the burros that are not sold, who are the buyers, and are the burros going to be sold for slaughter?

Response: A word search for "other" and "ways" conducted throughout the EA and Appendix A- CAWP and Burro Gather Standard Operating Procedures could not find the language referenced by commenter. The only gather methods this EA identifies is as follows: helicopter assisted drive-trap; helicopter assisted roping; and water/bait trapping methods.

The BLM offers the burros for adoption or sale (with limitations) to the public from its facilities around the country and online. Any wild horse or burro can be offered for adoption. Wild horses and burros more than 10 years old – as well as younger animals that have been offered for adoption at least three times – are eligible for sale. Each year, Congress passes appropriations language that prohibits sale authority animals from being sold for slaughter. It has been and remains the policy of the BLM not to sell or send wild horses or burros for slaughter.

Adopters and purchasers must formally apply and receive approval to acquire an animal. The application for adoption and sale of wild horses and burros and the bill of sale, among other things, states that the buyer agrees not to process any of the sold horses or burros into commercial products, or to knowingly sell or transfer ownership to any person or organization whose intent is to commercially process the animals. A copy of the application can be located at: <https://www.blm.gov/sites/blm.gov/files/4710-010.pdf> and a sample of the bill of sale can be located at: https://www.blm.gov/sites/blm.gov/files/wildhorse_equinesales_doc1.pdf.

Purchasing a wild horse or burro means that ownership of the animal passes immediately from the federal government to the buyer. An adopted wild horse or burro goes through the process where the adopter signs a Private Maintenance and Care Agreement and after 1 year will be eligible to receive title to the animal(s). A copy of the Private Maintenance and Care Agreement can be located at: <https://www.blm.gov/sites/blm.gov/files/docs/2021-04/4710-009%20%28PMACA%29.pdf>

There have been no long-term issues finding homes for burros through the adoption/sale program. The BLM does not have off-range pastures for burros because of the public's interest in owning burros. Burros have many desirable qualities. Many people use them as pack animals, for riding and driving. They also act as herd protectors by warding off predators. They help with fire fuel management reducing brush, grass and forbs. They are excellent companions with sweet and gentle temperaments.

Comment 4: Commenters recommend that the Lacey- Cactus McCloud grazing allotment which is within the Centennial HA should be a designated area for the burros. The southern portion of the Slate Range HA on BLM lands within the Superior Valley Allotment should be designated to the burros. Designation of all boundaries and AML, forage allocation, options for range improvements, etc. are to be included and updated in a Herd Management Area Plan (HMAP) according to existing law and policy.

Response: As indicated in Table 1.8: Resources identified but eliminated from further analysis: Livestock Grazing: No grazing allotments occur within the East side of the Centennial HA where the main burro populations are located and no range improvements have been installed.

The Lacey-Cactus-McCloud (L-C-M) Allotment (Perennial) has no viable perennial water sources / springs that would support burros. A map of the allotment (Appendix J) has been added to the EA for clarification purposes. The permittee is required to haul water for the time the cows are permitted. Most perennial springs are located on NAWS-CL where cattle grazing has been terminated.

The Superior Valley Allotment "was" an ephemeral allotment within critical desert tortoise habitat. Under a Stipulation and Order Concerning Livestock Grazing in Desert Tortoise Habitat, decided by the United State District Court, Northern District of California, San Francisco Division Case No. 3-00-0927-WHA (JCS) (2000), the allotment has been withdrawn from being grazed. The U.S. Fish and Wildlife Service Revised Recovery Plan for

the Mojave Population of the Desert Tortoise (*Gopherus agassizii*) (2011) identifies “Minimize impacts to tortoises from horses and burros” which entails continued exclusion of horses and burros from desert tortoise conservation areas by fencing and/or removal.

The majority of the Superior Valley Allotment is outside the Congressional designation of Herd Area. As identified in section 1.6, Decision to be Made: The authorized officer’s decision is limited to the need to remove excess wild burros. It would not set or adjust AML nor would it adjust livestock use, as these were set through previous decisions.

Comment 5: Commenters state that BLM must fully analyze research on how megafauna populations can boost biodiversity and that their absence could put other species at risk. The agency must disclose the mountain lion population, the current take of mountain lions, the current predation of mountain lions, and an analysis for re-establishing a viable and robust predator population within the HAs.

Response: This comment is outside the scope of this EA; BLM is responsible for managing wildlife habitat on public lands in cooperation with state and federal wildlife agencies. The California Department of Fish and Wildlife is the agency which manages wild megafauna populations, such as mountain lions.

Comment 6- Zeroing out all burros is an admission from BLM that it failed in their land management of this congressionally-approved CDCA of the management of the burros.

Response- Please see Response to Comment 2.

Comment 7- Commenter would like to know who authored the Great Falls Basin Springs Report in Appendix E.

Response- The report was authored by BLM Contractors and was reviewed by BLM Specialists for adequacy.

The NEPA Regulations

Comment 8: Commenter is concerned that there was no formal “scoping period” for the public and the BLM must provide an explanation as to why external scoping was not conducted for this specific action as recommended by Section 8.3.3 of the BLM’s NEPA Handbook. Commenter states that simply sending a NOPA days before the draft EA is released is not sufficient.

Response: “While some public involvement is required in the preparation of an EA, (Agencies) have the discretion to determine how much, and what kind of involvement works best for each individual EA. For preparation of an EA, public involvement *may include* any of the following: external scoping, public notification before or during preparation of an EA, public meetings, or public review and comment of the completed EA and unsigned FONSI. The type of public involvement is at the discretion of the decision-maker” (Section 8.2 of the NEPA Handbook). Section 8.3.3 further states “...external scoping for EAs is optional (40 CFR 1501.7)...it is up to the decision-maker to determine the need for and level of scoping to be conducted...”

The NOPA sufficiently addressed the requirements to notify interested parties of a proposed action in Wilderness (BLM Manual 6340).

Comment 9: The Commenter states that in the Purpose and Need for the Proposed Action, the sentence, “Excess animals are defined as those animals which must be removed from an area to preserve and maintain a thriving natural ecological balance (TNEB) and multiple-use relationship in that area” does not apply in this situation because the management goal is zero, and removing excessive animals for the purpose of “maintaining a thriving natural ecological balance and multiple-use relationship in that area” likewise does not apply because, again, the management goals is zero burros. The term, “maintaining a thriving natural ecological balance,” is taken from the Wild and Free-Roaming Horses and Burros Act of 1971, and only applies to areas where BLM has determined that maintaining populations of wild burros and/or horses is proper use of the public lands through the land use planning process.

Response: BLM agrees that the area is not managed for wild burros under the land-use plan and therefore the AML

is zero. Based on existing case law, BLM makes an excess determination if animals are being removed from the range, even when the AML is zero for a Herd Area.

Comment 10: The Commenter asks why the public was not given notice in the Federal Register.

Response: Environmental Impact Statements require a Federal Register Notice for scoping. However, Environmental Assessments do not unless they include a plan amendment (Section 6.3 Scoping and Glossary page 133 of the BLM NEPA Handbook).

Comment 11: The Commenter states that including a discussion of why the burros need to be removed in Chapter 1 is against 40 CFR 1500 regulations including the Purpose and Need section which must be brief and focused only on the authority and the need for the action.

Response: Chapter 1 includes an introduction and background information that is needed to clearly explain to the reader the issues related to the proposed action (per the 40 CFR 1500 Regs-general CEQ NEPA regs). “NEPA's purpose is not to generate paperwork or litigation, but to provide for informed decision making...”. “Nothing contained in the regulations in this subchapter is intended or should be construed to limit an agency's other authorities or legal responsibilities.” (40 CFR 1500.1: Purpose and Policy and 1500.6: Agency Authority). For an internally generated project such as this one, the Purpose and Need statement should describe the problem or opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action (Sec. 6.2: Purpose and Need, p. 35, BLM NEPA Handbook).

Comment 12: The Commenter states that all references should be readily available to the public such as CA-650-2002-099 as noted in the NOPA.

Response: All references, including CA-650-2002-099 are readily available to the public, if requested.

Alternatives

Comment 13: Commenters believe the EA should propose an alternative action that will not only preserve the wild burros a permanent place in the wild but will also cost the taxpayers less than it will to roundup, remove and warehouse these burros in holding facilities. The new alternative should fully evaluate and give priority to the following scientifically, economically, and socially acceptable actions:

- a) Restore all Herd Areas to active management status as Herd Management Areas, thereby affording the wild burros the protection granted to them by Congress;
- b) Implement a consistent PZP fertility control program that manages the wild burros within the areas in a manner that is consistent with the recommendations from the NAS;
- c) Utilize only least intrusive capture methods, such as bait- and water-trapping that are much less expensive and traumatic for the burros than roundups; and
- d) If any removals of wild burros do take place, they must be small in numbers, incremental, and limited to burros who have the best chance of being adopted.

Response: a) Please see response to Comment 2.

b) and c) Please see **Sec. 2.5- Alternatives Considered but Dismissed from Detailed Analysis:**

2. Bait and Water Trapping as Sole Gather Method, 3. Field Darting PZP Treatment to Reduce Population. Neither of these alternatives meet the Purpose and Need for the proposed action (Sec. 1.3 of the EA).

d) As described in comment 3, BLM expects there will be adoption or sale (with limitations) demand for all of the burros that are removed.

Comment 14: Commenters are concerned about the genetics of the burro population, stating “Dr. Gus Cothran, the BLM’s equine geneticist, stated that BLM-managed burros face a genetic crisis due to the small number of burros the agency permits on public lands”.

Response:

As noted in response to Comment 2, the AML for burros was set to zero on these lands as a result of considerations including but not limited to the essential national security mission for military lands, and issues related to cross-jurisdictional management. As a result of specific land use decisions noted in that response, the BLM does not actively manage burro populations in these HAs, and reconsideration of AML for burros is not included in this EA and associated decision. Managing the genetics of all burro herds on public lands is beyond the scope of this EA, but it is certainly worth considering in general terms. While not a specific topic of analysis, the expected effects of removing all burros from these three HAs can be anticipated, based on available evidence.

Although the BLM monitors genetic diversity in herds it manages, preservation of genetic diversity is not a legal mandate. As noted in the 2013 NAS report, the BLM has collaborated with outside scientists since 1985 to monitor herd-specific genetic diversity. Dr. Gus Cothran is one of those scientists. Dr. Cothran has provided analyses of genetic material for the BLM, with support provided to his laboratories via contracts and financial assistance agreements. Dr. Cothran is not, however, a BLM employee. BLM considers his advice, as he is extremely well informed about the population genetics of wild horses and burros, but Dr. Cothran's advice or any recommendations from the National Academies of Sciences (NAS) do not equate to BLM policy.

Where and when possible, BLM collects burro genetic samples for analysis. The summaries of burro genetic diversity and relatedness noted in the NAS (2013) report provide clear indication that the burros in the Centennial HA, Slate Range HA, and Panamint HA represent genetic diversity that is also present in a number of other wild burro herds. Because of history, context, and periodic introductions, wild burros now living in these three HAs are not isolated populations. The National Academies of Sciences report to the BLM (2013) recommended that single herds should not be considered isolated genetic populations. Rather, managed herds of wild horses and burros should be considered as components of interacting metapopulations, connected by interchange of individuals and genes due to both natural and human-facilitated movements. In the specific case of wild burros in these three HAs, these animals are part of a larger metapopulation (NAS 2013) that appears to have demographic and genetic connections with other BLM-managed herds in California, Nevada, Arizona, and beyond. Herds in that larger metapopulation have a background of shared domestic breed heritage.

As evidence that the wild burro herds in these three HAs are not genetically unusual, with respect to other wild burro herds, Appendix F-1 of the 2013 NAS report is a table showing the estimated 'fixation index' (Fst) values between 25 pairs of samples from wild burro herds. Fst is a measure of genetic differentiation, in this case as estimated by the pattern of microsatellite allelic diversity analyzed by Dr. Cothran's laboratory. Low values of Fst indicate that a given pair of sampled herds has a shared genetic background. The lower the Fst value, the more genetically similar are the two sampled herds. Values of Fst under approximately 0.05 indicate virtually no differentiation, and values of 0.10 or less indicate very little differentiation. Only if values are above about 0.15 are any two sampled subpopulations considered to have evidence of elevated differentiation (Frankham, R., J. D. Ballou, and D. A. Briscoe. 2010. Introduction to conservation genetics, second edition. Cambridge University Press, New York, New York.). The Centennial HA burro herd had pairwise Fst values that were ≤ 0.10 with 7 other sampled herds, not including Panamint HA or Slate Range HA. Panamint HA burro herd had pairwise Fst values that were ≤ 0.10 with 8 other sampled herds, not including Centennial HA or Slate Range HA. Fst values for the Slate Range HA burro herd had pairwise Fst values that were ≤ 0.10 with 10 other sampled herds, not including Panamint HA or Centennial HA. These results support the interpretation that the genetic diversity represented within wild burros from these three HAs is also well represented in other wild burro herds under BLM management.

Considering the high degree of apparent historic or contemporary genetic connection between the burros in these three HAs and those in a number of other wild burro herds, it is not expected that the removal of burros from these three HAs will preclude or endanger the ability of other wild burro herds to continue as self-sustaining subpopulations in any broader metapopulation of wild burros. Likewise, removal of wild burros from these three HAs is not expected to substantially affect the demographic rates (i.e., birth, death, and movement rates) for wild burros in any other BLM-managed herds, as those are generally expected to be independent in different herds. And, as noted above, the AML for wild burros in these three HAs was determined through land use planning documents, in consideration of a number of factors, and amendment of those AMLs is not under consideration here.

Comment 15: The EA fails to address the BLM-sponsored NAS Report which stated there is no science-based rationale for the Appropriate Management Level (AML) which is set at ZERO for burros in these three Herd Areas. The Report recommended a reassessment of AMLs for burros to ensure self-sustaining, genetically healthy population. The NAS noted:

- “removing burros permanently from the range could jeopardize the genetic health of the total population.”
- BLM “may need to assess whether the AMLs set for burros can sustain a genetically healthy total population.”

Response: Please refer to Response to Comment 2 with respect to issues around the setting of AML. The governing documents noted in that response include explanations for the rationale behind the setting of AML to zero for wild burros in all three of the HAs under consideration here.

Please refer to the response to Comment 13 with respect to genetic diversity concerns, and the conclusion that removal of burros from these three HAs will not preclude self-sustaining populations from continuing in other BLM-managed wild burro herds. The quotes provided in this comment are somewhat inapplicable to the analysis of burro removal from the three HAs under consideration in this EA. Both quotes provided were in a paragraph of the report (NAS 2013) in which the discussion touched on the advisability of wild burro removals from herd management areas, not from herd areas. The NAS report (2013) did not advocate that wild burro AMLs should be reevaluated in herd areas (where AML is set to zero). For example, in the same paragraph as contains the quoted text in Comment 14, the authors of the NAS report (2013) suggest that “...if more animals were needed to sustain a healthy population, burros from HMAs that are above their AMLs could be relocated to HMAs that have AMLs set for burros but few or no animals on them.” In this context, it is noteworthy that the authors did not recommend adding burros to herd areas, the distinction being that wild burro herd areas have an AML of zero, while wild burro herd management areas have a non-zero AML.

Comment 16: Commenter recommends an alternative that accommodates wild burro number by utilizing 43 CFR 4710.5 which authorizes the BLM to reduce or eliminate livestock grazing to provide habitat for wild burros and disclose all rangeland health assessments for livestock allotments which overlap with the HMA (including pastures, allotments, etc.) – including all rangeland assessments used for the renewal of livestock permits.

Response: See Response to Comment 4.

Comment 17: Commenter requests the BLM disclose information (including maps) regarding fencing within the HMA, when fencing is open or closed which might hinder burros from leaving the northern section of the livestock allotment and might be contributing the concentration of burro use of specific areas; whether any livestock water sources are fenced off from the burros. They recommend erecting fencing to prevent burros to return to NAWCLA lands – as per the EA statement that “There is a potential of 152 burros located in the northwestern portion of the Slate Range HA within NAWSCL moving onto BLM administered lands in their seasonal movements.”

Response: Burros within these HAs are dependent upon permanent water sources provided by the various perennial springs located throughout the BLM, CL-NAWS and DV-NPS administered lands. Burros will become less dependent on these perennial springs during rain events where pockets of water may form or ephemeral green up during the Spring months, creating seasonal movements that when the ephemeral waters or vegetation dry, the burros will go back to a known perennial water source. As such in the south range, burros will move off from CL-NAWS during the cool season and ephemeral growth but returns to the perennial water sources located within NAWS-CL for their survival.

Please refer to response to Comment 4 for additional information.

DRECP and ACECs

Comment 18: Commenter asks what the status of the Desert Renewable Energy and Conservation Plan (DRECP) is?

Response: The DRECP Record of Decision was signed and finalized in September of 2016. Therefore, it is final (see Section 1.4, Land Use Plan Conformance).

Comment 19: Commenter asks what the status of the Area of Critical Environmental Concern (ACEC) is. They state that it is not clear if it is final and a land use plan has been completed for it.

Response: As stated in Section 1.4, there are numerous ACECs found within these Herd Areas including the Great Falls Basin ACEC and the Panamint-Argus ACEC, these all are final as the DRECP Plan Amendment to the CDCA plan was finalized as stated in the response to Comment 16 above.

Impacts to Burros

Comment 20: Commenter states that the BLM should have made the Memorandum of Agreement (MOA) with the Commander, Navy Region Southwest for coordinated management of the Centennial and Slate Range HAs available during the public comment period.

Response: Thank you for that suggestion. We have attached the MOA as Appendix H to the EA.

Comment 21: Commenter suggests that the agency should work with NPS to establish active joint management of the burro populations in this region, similar to the joint management efforts the BLM holds with the U.S. Forest Service where populations of wild horses and burros overlap.

Response: Unlike the U.S. Forest Service, the NPS does not fall under the WFRHBA and the NPS-DV GMP identifies for the management of zero burros.

Comment 22: Commenter would like to ensure interested parties have the ability to adequately monitor the BLM's actions.

Response: In Appendix A, Under Burro Gather Standard Operating Procedures, Item K Public Participation: Opportunities for public observation of the gather activities on public lands would be provided. Appendix G, Burro Gather Observation Protocol has been added to the EA to further clarify the protocol for interested public for the opportunity to observe the gather event.

Comment 23: Commenter is concerned this proposal is taking place during burro "foaling season- March 1 and July 1".

Response: Please see BLM Washington Office Instruction Memorandum No. 2010-183 which allows for the use of helicopters for capturing wild burros year-round, as wild burros do not exhibit a specific foaling season ([Helicopter Capture of Wild Horses and Burros | Bureau of Land Management \(blm.gov\)](#)).

Comment 24: The EA should have included an analysis of existing information available to determine where improvements could be made to reduce potential stress and harm to the burros during the roundup to minimize stress and injury to burros during roundups, including that burros do not react to helicopters in a manner similar to horses.

Response: Section 3.8 Wild Burros of the EA evaluated impacts common to action alternatives (1-2) and in Sections. The Standard Operating Procedures identified in Appendix A, Burro Gather Standard Operating Procedures as Amended by CAWP - Comprehensive Animal Welfare Program for Wild Horse and Burro Gathers- Standards will be implemented to ensure humane care and handling of animals during the gather process. It identifies a BLM contract veterinarian, Animal and Plant Health Inspection Service (APHIS) Veterinarian or other licensed Veterinarian would be on call or on site in accordance with the CAWP as the gather is started and then as needed during the gather to examine animals and make recommendations to the BLM for the care and treatment of wild burros, and ensure humane treatment.

Comment 25- In the whole state of CA, this is the last remaining HMA for burros.

Response- These are Herd Areas (HAs) with an AML of 0 not Herd Management Areas (HMAs) with established AML ranges for management of wild burros. Please refer to Comment Response 2 for further discussion on the HA statuses. There are many HMAs in California which include wild burro populations, such as Chemehuevi HMA, Chocolate Mule Mountains HMA, and Twin Peaks HMA.

Impacts to Human Safety:

Comment 26: Commenter asks when the last burro was hit by a car on a public highway and who comes up with these numbers?

Response: Unfortunately, vehicles do collide with burros on public highways. As stated in the EA in Sec. 1.3, the most recent incident that BLM is aware of was that a burro was hit by a vehicle on public HWY 190 in February, 2021. Correspondence with California Highway Patrol (4/5/21) identified that the burro-vehicle collision occurred at night on Father Crawley Pass.

These “numbers”, or incidences, are just the ones reported to BLM by law enforcement entities, including California Highway Patrol, Sheriff’s Departments and BLM Law Enforcement Rangers. There may be other collision incidents that BLM is not aware of.

Comment 27: Commenter states that the burros are creating traffic hazards along roadways and in developed areas in Death Valley National Park.

Response: Comment noted.

Federal Laws and Regulations:

Comment 28: Commenter states there is no reference to public law 86-234 which outlaws motorized vehicles.

Response: Public Law 86-234, the Wild Horse Annie Act dated Sept. 8, 1959, prohibits the use of motorized vehicles to hunt certain wild horses and burros on all public lands.

Public Law 94-579, the Federal Land Policy and Management Act dated Oct. 21, 1976, amended the Wild Free-Roaming Horse and Burro Act of 1971 to allow the Secretaries of the Interior and Agriculture to use or contract for the use of helicopters and motorized vehicles to manage wild horses and burros on public lands. Additional guidance is provided under 43 CFR 4740.1 Use of motor vehicles or aircraft: 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.

Comment 29: Commenters indicate the 1971 Wild Free-Roaming Horses & Burros Act states that these Herd Areas should be “devoted principally” to the welfare of wild horses and burros. The plain language of the Act is clear. No laws cited in the EA supersede the Act, yet the EA fails to adhere to this clear direction.

Response: Commenter confuses Herd Areas with “ranges.” The “devoted principally” language appears under the definitions section of the Wild Free-Roaming Horses and Burros Act at Section 1332 (c) Definitions: (c) "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands. From the 43 CFR §4700.0-5 Definitions (d) *Herd area* means the geographic area identified as having been used by a herd as its habitat in 1971. The regulations clearly state that ranges must be derived from Herd Management Areas. From 43 CFR § 4710.3-2 Wild horse and burro ranges. Herd management areas may also be designated as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds.

Economic and Social Impacts

Comment 30: Commenter states that the EA must consider the social preference of American taxpayers, 80 percent of whom want wild horses and burros protected and managed humanely on public lands (as noted from “*Public Policy Polling, July 2017*”).

Response: BLM manages wild horses and burros on public lands consistent with the Wild Free-Roaming Horses and Burros Act, affording the public opportunities to observe wild horses and burros in 10 Western States.

However, not all public lands are suitable for management of wild horses and burros and land-use plans are the mechanism by which BLM determines – following an extensive public decision-making process – which public lands are suitable for and to be managed for which multiple uses. Despite the commenter’s desire for BLM to consider the “social preference” of the proposed action, BLM’s interpretation of NEPA guidance is that social acceptability is not an issue requiring analysis. The BLM NEPA Handbook (2008) explains that BLM must analyze an issue identified through internal or external scoping if analysis is necessary to:

- make a reasoned choice among alternatives (That is, does it relate to how the proposed action or alternatives respond to the purpose and need?), or
- determine the significance of effects.

Comment 31: Commenter suggests that removal of wild burros from public lands negatively impacts the human environment for those who enjoy observing, photographing and researching these wild burros.

Response: These are Herd Areas with an AML of 0. Please refer to Comment Response 2 for further discussion on the HA statuses. The commenter has the opportunity to observe, photograph, and research wild burros in other HMAs within California that are managed for burros, such as Chemehuevi HMA, Chocolate Mule Mountains HMA, and Twin Peaks HMA.

Comment 32: The proposed roundup and removal of all the wild burros within these HAs will only add to expensive and overcrowded taxpayer-funded holding facilities unnecessarily. The BLM must disclose these costs to American taxpayers in order for the public to have all information when submitting public comment on the proposed action.

Response: The Wild Free Roaming Horses and Burros Act (WFRHBA) does not authorize a cost-based decision-making process if excess wild horses or burros are present. BLM has a responsibility under the WFRHBA to remove excess wild burros. Comments regarding the annual costs of administering the Bureau-wide wild horse and burro program including off-range facilities, gathers, federal tax collection, or cost effectiveness of program components or individual budget expenditures are outside the scope of this EA.

Impacts to Special Status Species

Comment 33: Commenter states that while helicopter use over flatlands is unlikely to impact bighorn sheep; helicopter use in steep, rugged terrain should be avoided during the bighorn lambing season (February-May). The proposed locations for gathering burros are unlikely to impact bighorn sheep, but if a bighorn is regularly seen at a baiting site, please consult with CDFW.

Response: Comment noted and this protective measure has been added to the EA at Sec. 23 Design Features and Operating Measures and to the Decision Record.

Comment 34: Commenters are concerned about impacts to the federally and state listed California Inyo Towhee during their nesting season and question why the dates were not in the EA. Commenters, also, oppose the use of helicopter near critical habitat and state that if a helicopter is used in the protected areas, they may not fly the chopper lower than 200 ft.

Response: The towhee nesting season was identified in the EA, see the wildlife protective measures page 27 of the EA. Additionally, the measures that will be implemented include the 200 ft. helicopter buffer. The BLM received a letter from CDFW in support of the Proposed Action as described in the Environmental Assessment. In addition, as stated in the EA at Sec. 3.3.5 the BLM has consulted and received concurrence from the U.S. Fish and Wildlife Service regarding Inyo California towhee and its critical habitat and the Concurrence Memo has been added to the Environment Assessment as Appendix I.

Comment 35: Commenters are concerned about impacts to the federally and state listed desert tortoise and request that the BLM follow all guidelines and protocols set forth by USFWS and the CDFW and the commenter recommends in addition to pre-capture surveys, that at least initial capture activities be monitored by

knowledgeable biologists so they may provide constructive feedback on approaches that will minimize impacts to tortoises.

Response: Please see response to Comment 28 above. The BLM has consulted and received concurrence from the U.S. Fish and Wildlife Service regarding the desert tortoise and the protective measures there-in and approved by them will be followed.

Comment 36: The commenter states the BLM must not only notify USFWS within three days of the finding a take of a tortoise, but also it is prudent that the take be reported to the appropriate office of the California Department of Fish and Wildlife (CDFW).

Response: Comment noted and verbiage has been added to the EA at Sec. 23 Design Features and Operating Measures and to the Decision Record.

Comment 37: Commenter suggests that if the burros are to be corralled for longer than a few days, particularly in the spring or fall, it may be prudent to attach tortoise-proof mesh, one inch wide and two inches tall, to the bottom of the larger fencing material.

Response: There will be no long-term temporary holding corral located within desert tortoise habitat. Water/bait trap corrals when actively trapping burros will be checked twice daily, early morning and late afternoon for captured burros. Most, if not all water / bait trap locations will be outside desert tortoise habitat. Prior to establishing a water/bait trap, the BLM-RIFO Wildlife Biologist or one member of the team conducting the gather, shall be responsible for overseeing compliance with protective stipulations for the desert tortoise and for coordination on compliance. If tortoise activity is present, trap/holding locations will be moved. Any captured burros would be removed and transported to the Ridgecrest Wild Horse and Burro Holding Facility.

Comment 38: Commenter recommends that BLM conduct the capture activities in July-August and/or December-January to minimize the likelihood of crushing tortoises during capture activities.

Response: Most trap locations will be outside desert tortoise habitat. Prior to establishing any trap, the BLM-RIFO Wildlife Biologist or one member of the team conducting the gather shall be responsible for overseeing compliance with protective stipulations for the desert tortoise. The BLM has consulted and received concurrence from the U.S. Fish and Wildlife Service regarding the desert tortoise and the protective measures there-in and approved by them will be followed.

Comment 39: Commenter states that they have recently observed burro scat north of Cuddeback Lake, which is within tortoise critical habitat and the Fremont Kramer ACEC, and believe that the BLM should target critical habitats to remove this particular threat from these essential habitats.

Response: Observation noted. While there is the likelihood of the occasional wild burro wandering from the Slate Range Herd area southwest to the area north of Cuddeback Dry Lake, currently the target habitats are north in the Argus (Inyo CA Towhee habitat) and Panamint Ranges and those are the priority gather areas. That could, however, change for future gathers and these comments have been noted.

Comment 40: Commenter asks what authority says a state-listed has primacy over congressionally-declared free-roaming burros on public lands.

Response: The BLM is assuming commenter meant state listed “*species*”, but nowhere in the EA does it allude to this statement. As stated in Section 3.6 Wildlife including T & E and Sensitive Species of the EA, the listed wildlife species mentioned in the EA, the desert tortoise and the Inyo California Towhee are not only state-listed, but they are also Federally listed threatened species with Federally designated critical habitat that protected by the Federal Endangered Species Act.

Impacts to Water Resources

Comment 41: Commenters are concerned about sensitive fresh-water springs in the area, specifically in Death

Valley National Park and the Golar Wash area. They state that the burros have fouled the water and turned them into mud holes now. One Commenter who has hiked the area for years, stated it was common to see Bighorn sheep in the Panamint mountains in the past, but they have not seen sheep in Goler Canyon in almost 5 years. Commenter requests that some additional focus be placed in the southern Panamint Mountains.

Response: Comment noted, the focus of the proposed gathers would include the Southern Panamint Mountains.

Impacts to Cultural and Historic Resources

Comment 42: Commenter states that burros are impacting historic cabins and other cultural resource sites and within Death Valley National Park.

Response: Comment noted, please see response to Comment 2.

Impacts to Local Property

Comment 43: Multiple Commenters had concerns that the burros are coming into the town of Trona and defecating in the streets, especially Pioneer Point area. One commenter states, “They are constantly damaging our property and the surrounding areas”.

Response: Comment noted.

