

## ***DRAFT – FOR PUBLIC REVIEW AND COMMENT***

### **Determination of NEPA Adequacy**

U.S Department of the Interior, Bureau of Land Management  
Prineville District Office, 3050 NE Third Street, Prineville Oregon 97754, phone 541-416-6700

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#### **A. Background**

National Environmental Policy Act (NEPA) register #: DOI-BLM-ORWA-P040-2025-0002-DNA

Project/lease/serial/case file #: N/A

Applicant: N/A

Location: Grant County, Oregon, approximately six miles south of Dayville, Oregon

Proposed action title: Murderer's Creek Wild Horse Joint Management Area Emergency Gather

#### **Background and Rationale:**

On September 2, 2024, multiple fires started in the vicinity of the South Fork John Day River that burned together and are being managed as the Rail Ridge Fire. As of October 28, 2024, the fire was 92% contained, having burned over 176,000 acres. The fire burned almost 44,000 acres of BLM-managed lands and National Forest System lands within the jointly managed Murderer's Creek Wild Horse Joint Management Area (JMA), which is approximately 40% of Federal land within the boundaries of the JMA. Approximately 23,837 acres of BLM-managed lands within the JMA burned, which is 68% of the BLM-managed land within the JMA. In addition, over 9,000 acres of land managed by the Oregon Department of Fish and Wildlife (ODFW) within the Phillip W. Schneider Wildlife Area (located within the boundaries of the JMA) were burned.

Over the past several years, the Malheur National Forest (Lead Agency) and the Prineville District BLM (Cooperating Agency) have been working on an Environmental Assessment for Appropriate Management Level (AML), Herd Management Area Plan (HMAP) and Population Management Actions for this JMA. On July 3, 2024, the U.S. Forest Service issued a Final EA and a Draft Decision Notice, Forest Plan Amendment, and Finding of No Significant Impact (Proposed Decision) for actions on Forest Service lands. The Forest Service was midway through the objection process for its Proposed Decision when the Rail Ridge Fire started. Following completion of the objection review process and completion of consultation with the National Marine Fisheries Service for effects on Mid-Columbia River Steelhead, a species that is listed as Threatened under the federal Endangered Species Act, the Forest Service will issue a Final Decision on AML, an HMAP, and population management actions analyzed in the EA. As a

cooperating agency, the BLM anticipates adopting the Forest Service's NEPA document and issuing a BLM Decision Record to guide any management actions on BLM-managed lands.

In the meantime, however, the Rail Ridge Fire has resulted in very little forage in the lower elevation areas of the JMA, which comprise the majority of winter range for both the wild horse herd and big game species, such as mule deer, elk, and bighorn sheep. As a result, BLM anticipates that wild horses are likely to place undue pressure on what little winter forage remains available within and adjacent to the boundaries of the JMA, including an increased risk of horses straying into sensitive riparian areas and onto state and private lands. The BLM and Forest Service have determined that an immediate emergency wild horse gather is necessary to 1) protect the health and welfare of the wild horses, 2) allow recovery of native vegetation and protect proposed burned area rehabilitation investments such as seeding and herbicide treatment, 3) protect the current remaining vegetated areas, which are mainly the riparian areas that are designated critical habitat under the Endangered Species Act for Mid-Columbia summer steelhead, and 4) respond to any nuisance gather requests the agencies may receive from private landowners this winter per Section 4 of the Wild Free-Roaming Horses and Burros Act of 1971.

#### Proposed Action:

The BLM proposes to gather wild horses from the Murderer's Creek JMA using bait/water trapping methods that are described in Alternative 4 of the Final EA. Trapping is proposed on BLM-managed lands within and adjacent to the JMA as well as on lands within the Phillip W. Schneider Wildlife Area managed by ODFW, as per the Memorandum of Understanding signed October 28, 2024. Trapping would also occur on private lands within and adjacent to the boundaries of the JMA, if requested by landowners. The Malheur National Forest is also proposing to conduct an emergency gather of wild horses on National Forest System lands within and adjacent to the JMA, including the Malheur and Ochoco National Forests, and on private property adjacent to the National Forests, if requested by landowners. A census flight conducted on October 8 and 9, 2024, estimates that there are currently 659 horses within and adjacent to the JMA. Approximately 350-400 horses are targeted for gather immediately within and adjacent to the JMA across all ownerships. Trap sites would be located away from sensitive natural and cultural resources and in areas where horse groups have been observed. The agencies will continue to monitor forage conditions and the health of the horses throughout the 2024-2025 winter. If additional horses are found to be in distress or poor condition, or if requests come in from private landowners, additional animals would be gathered as necessary during this period to ensure the health and welfare of the horses. The trapping would generally occur between November 1, 2024, and the end of December 2024. If weather conditions allow

for trapping later in the season, trapping could continue up to the end of February 2025. Per the existing EA, trapping would not occur after March 1, 2025, due to conflicts with the horse foaling season.

The BLM and Forest Service would use an interagency agreement and contract to retain a private firm to conduct the bait and water trapping actions. The trapping method involves using feed, water, and/or mineral licks placed in a temporary trap area to lure horses into the trap. After horses enter the trap to eat or drink, they are captured by remote closure of a one-way gate behind them. Up to 10 traps would be used across all lands in and adjacent to the JMA. The BLM may also add additional traps as requested on private land.

Horses would be gathered and then held in temporary holding facilities near the JMA for sorting and preparation for transport to an agency corral facility for vaccination (for infectious diseases per the current vaccination policy in IM 2023-028), processing and holding. The corral location(s) would be determined based on the number of horses gathered and the space available at the closest facilities. Locations would likely include the BLM Burns corrals and the Forest Service Devil's Garden corrals on the Modoc National Forest.

Horses would be held while range conditions recover from the Rail Ridge Fire and/or while the Forest Service and BLM continue the administrative process for setting an AML and approving an HMAP and population management actions for the Murderer's Creek JMA. No decision is being made at this time regarding the long-term disposition of horses gathered as part of this emergency gather. The BLM decision for the NEPA process would, among other things, make an excess determination if warranted, and include a decision at that time regarding long-term disposition of the wild horses collected as part of this emergency gather (e.g., how many of the gathered horses would be permanently removed from the JMA and how many would be released back to the JMA after range conditions have sufficiently recovered from the Rail Ridge Fire). It is estimated that range vegetation will require approximately two years of recovery time before horses could be released back to the JMA.

Applicable project design features and best management practices for the gather, as described in Chapter 2 and Appendix B of the Final EA, are included as Appendix A to this DNA.

## **B. Land use plan conformance**

Land use plan: John Day Basin Record of Decision and Resource Management Plan (RMP)  
Date approved: April, 2015

The proposed action is in conformance with the applicable plan because it is specifically

provided for in the following land use plan decisions:

### **Wild Horses**

#### **Objective HB1**

Manage the Murderer's Creek wild horse herd as a self-sustaining population of healthy animals in balance with other uses and the productive capacity of their habitat...

#### **Guidelines**

1. Use the following criteria when considering adjustments in herd size:
  - a. Extraordinary circumstances such as wildland fire...may require removal of animals to maintain animal health or an ecological balance with available habitat. (pg. 66)

The RMP is available at the BLM office or on the internet at:

<https://eplanning.blm.gov/eplanning-ui/project/55483/510>

### **C. Identify applicable National Environmental Policy Act (NEPA) documents and related documents that cover the proposed action**

The following NEPA documents cover the proposed action:

Final Environmental Assessment: Appropriate Management Level, Herd Management Area Plan and Population Management Action for the Murderer's Creek Wild Horse Joint Management Area. July 10, 2024.

Lead Agency: USDA Forest Service, Malheur National Forest, Blue Mountain Ranger District  
Cooperating Agency: USDI Bureau of Land Management, Prineville District

This document is available at the BLM office or on the internet at:

<https://www.fs.usda.gov/project/?project=44570>

### **D. NEPA Adequacy Criteria**

1. Is the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?

Yes, the new proposed action is a feature of each of the three action alternatives analyzed in the existing NEPA document and is in the same analysis area, the Murderer's Creek Joint Management Area. Emergency gathers were included as an implementation objective in the proposed Herd Management Area Plan for each of the action alternatives (Final EA, pg. 221, 225, 230): "Conduct emergency gathers in response to drought, wildfire or other unplanned/unforeseen events which significantly limit available forage for sustaining a healthy wild horse herd." BLM would follow the management actions and project design features common to all alternatives (Final EA, pp. 26-29) as well as applicable sections of the Comprehensive Animal Welfare Program Standards for Wild Horse and Burro Gathers (Final EA, [Appendix J](#)) and Comprehensive Animal Welfare Program Standards for Off-Range Corral Facilities, Transportation and Adoption Events (Final EA, [Appendix K](#)). Horses to be held at a government corral facility must be vaccinated for infectious diseases, per the Final EA ([Appendix K](#), Page 10: "Facilities must adhere to the current BLM vaccination policy.") The current vaccination policy is contained in BLM IM 2023-028.

2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given current environmental concerns, interests, and resource values?

Yes, the range of alternatives analyzed in the existing NEPA document is appropriate with respect to the new proposed action. Various Appropriate Management Levels (AMLs) and population management actions were considered in the existing EA. The new proposed action to conduct an emergency gather in order to sustain a healthy wild horse herd in response to wildfire that significantly limits available forage, was considered in each of the action alternatives analyzed. Even with near-term changes to forage conditions cause by the Rail Ridge Fire, the alternatives in the EA continue to provide a reasonable range of alternative means of meeting the purpose and need identified in the EA, namely, to "protect and manage wild horses to promote the health and vitality of the Murderer's Creek horse herd and to 'achieve and maintain a thriving natural ecological balance and multiple-use relationship on public lands'" in the face of anticipated growth in the wild horse population over time (page 14).

3. Is the existing analysis valid in light of any new information or circumstances (such as rangeland health standard assessment, recent endangered species listings, updated lists of BLM sensitive species)? Can you reasonably conclude that all new information and new circumstances would not substantially change the analysis of the new proposed action?

The new information and circumstances are a result of the Rail Ridge Fire that has burned a majority of forage on BLM and ODFW managed lands in the lower elevation of the JMA.

These lower elevation areas provide much of the winter range for both wild horses and native big game, such as mule deer and elk. Winter forage will be severely limited this first year following the fire. The soil burn severity is mostly low (97%), with some small pockets of moderate to high severity throughout the BLM and State lands, consistent with the natural fire regime for dry, open forest and sagebrush steppe shrubs and grasses. Recovery of native plants is predicted within two years as shrub resprouts, stored seed banks, and nutrient levels are intact and unlikely to be eroded off-site. The primary issue with respect to soil quality is increased susceptibility for opportunistic invasive or noxious plant species to establish, inhibiting recovery of the native plant communities. The EA discussed the prevalence of non-native invasive annuals that are currently present throughout the JMA (page 71, 89, 130). Proposed emergency stabilization and rehabilitation treatments in the burned areas include seeding with grasses and forbs; planting shrubs; as well as herbicide treatments to control the spread of invasive species. Livestock grazing will be deferred for two years in pastures with a high percentage of burned area and in treated areas to allow time for vegetation to recover. Due to the lack of forage for horses to eat and the need to provide recovery time for the native vegetation following the rehabilitation investments, removal of as many horses as possible is also necessary to ensure the long-term ecological health of the JMA.

Other changed circumstances from the fire include damage to riparian fences that are needed to protect sensitive streambanks that provide critical habitat for Federally listed Mid-Columbia Summer Steelhead. The emergency stabilization and rehabilitation report found that almost 60% of fences will need minor repairs, almost 35% will require more extensive repairs (as they contained wooden supports) and approximately 5% will require full reconstruction. These riparian areas contain some of the only green vegetation within the JMA. If horses are not removed, they will compromise damaged fences and congregate in these riparian areas to access some of the only available forage, which will damage streambanks and riparian vegetation. This would be a detrimental impact to the designated critical habitat for this fish species. Removal of horses and livestock will allow time for fences to be repaired or replaced.

Analysis in the Final EA describes how the current number of horses within the JMA has various effects to available forage, rangeland health and riparian health. These effects highlight that there is already competition among wildlife, horses and livestock for available forage in a normal year (ungulates currently utilize approximately 78% of average annual available forage, page 82). Losing a majority of forage to the fire only exacerbates this competition for forage, especially between horses and wildlife for this winter, since most standing forage was consumed by the fire. Existing analysis also highlights how “when grazer density is high relative to available forage resources...then overgrazing by any species can lead to long-term reductions in plant productivity, including decreased root biomass...” (page 72).

Existing analysis in the EA also described adverse impacts from overuse by horses in riparian areas, including “bank shearing and erosion from hoof action, destructive foraging habits including clipping of grasses and forbs down to soil level...and ground disturbance caused by trampling...During increased streamflow, this degradation can cause streambank erosion, impacting water quality.” (page 100). Horses would be more likely to access fenced riparian areas through damaged fences and there will be increased streamflow following the fire.

Therefore, existing analysis in the EA found that current horse population numbers were contributing to adverse impacts to available forage and rangeland and riparian health. That analysis remains valid, and the new environmental conditions do not substantially change the analysis of the new proposed action. Post-fire conditions merely exacerbate the adverse effects identified in the EA, supporting the need to remove horses on an emergency basis to protect the welfare of the wild horse herd, allow forage vegetation recovery, and protect remaining vegetated riparian areas, as contemplated in all of the action alternatives analyzed in the EA.

4. Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document(s)?

Yes, the existing EA thoroughly described the direct, indirect and cumulative effects of bait and water trapping on wild horses (pages 59-61), as well as post-gather holding actions (pages 63-64). Effects of the gather actions themselves, in terms of trampling vegetation and soil disturbance at trap sites are discussed on pages 74-75. Effects to overall forage use from the current population of horses and as a result of reducing the number of wild horses in the JMA is discussed on pages 77-85. With the loss of much of this year’s vegetation growth due to wildfire, leaving the current population of wild horses in the JMA would have an adverse impact on rangeland health and available forage for wild horses and wildlife. The EA found that “fluctuating climatic conditions, site changes such as ...invasive grass infestations...and fires can all affect the amount of forage produced (page 78). Projected changes in climate may result in an increase in ecological disturbances, such as wildfire (page 181).

The EA discusses how “areas without wild horses had greater shrub cover, plant cover, species richness, native plant cover and overall plant biomass, and less cover percentage of grazing-tolerant, unpalatable, and invasive plant species, including cheatgrass, compared to areas with horses...In contrast to domestic livestock grazing, where post-fire grazing rest and deferment can foster recovery, wild horse grazing occurs year-round. These effects imply that horse presence can have broad effects on ecosystem function that could influence conservation and restoration actions” (page 73).

5. Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?

The BLM has participated as a cooperating agency with the Malheur National Forest on the joint NEPA analysis for establishing AML, an HMAP, and Population Management Actions for the Murderer's Creek Wild Horse Joint Management Area for the past several years. The agencies have engaged in several joint Tribal and public involvement activities during this time.

Tribal consultation on a government-to-government basis is ongoing with the Burns Paiute Tribe, Confederated Tribes of the Umatilla Indian Reservation, and Confederated Tribes of Warm Springs Reservation. Consultation was initiated on June 24, 2019 through individual letters sent to each Tribe providing details of the project. No comments were received from the Tribes during the scoping period. Tribes were mailed preliminary environmental assessment notification letters on June 12, 2023. No comments on the preliminary environmental assessment were received from the Tribes. The final environmental assessment notification letters were mailed to each tribe on July 3, 2024. The Malheur National Forest sent the tribes a letter on September 30, 2024, to inform them of the potential to conduct emergency gathers of the wild horse herd, in cooperation with the BLM. No correspondence has been received to date from the Tribes regarding the emergency gathers.

The agencies sent a joint scoping letter to approximately 341 individuals, groups, and Federal and State agencies on July 17, 2019, initiating a 30-day scoping period. A notice was also published in the Blue Mountain Eagle newspaper (the USFS newspaper of record). The agencies received 84 comment letters in response, which included about 634 comment points. Scoping comments were considered in the development of issues and alternatives for analysis in the Environmental Assessment.

The Malheur National Forest published a legal notice of opportunity to comment on the preliminary environmental assessment in the newspaper of record on June 14, 2023, initiating a 30-day comment period. Information regarding the preliminary environmental assessment was provided to 330 people and entities. The agencies received 47 letters from 41 individuals. Comments on the preliminary environmental assessment were used to make changes to the final environmental assessment. Responses to comments were included in an appendix to the final environmental assessment.



The BLM will notify interested parties of the emergency gather and post draft copies of this DNA and the FONSI on ePlanning for a one-week comment period. Comments pertinent to the emergency gather and temporary holding actions will be considered by the Agency Administrator prior to issuing a Decision Record.

Prior to the emergency gather, the agencies will be providing News Releases and information on agency websites to inform the public about the gathers. Information will include answers to frequently asked questions and other talking points to describe the need for the gathers and the methods to be used.

## **E. Preparers**

<u>Name</u>	<u>Resource represented or title</u>
Christina Ryan	Planning and Environmental Coordinator
Brie Porter	Wildlife
Anna Smith	Hydrology
Joe Smietana	Fisheries
Jarod Lemos	Botany and Invasive Species
Ryan Griffin	Cultural Resources
Michael Anderson	Recreation and Wilderness
Elena Burlet	Rangeland Management and Wild Horses
Stephanie McKinney	Assistant District Manager, Resources

Note: Refer to the EA for a complete list of the team members participating in the preparation of the original environmental analysis or planning documents.

## Conclusion

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitutes BLM's compliance with the requirements of the NEPA.

*This unsigned DNA Worksheet is being circulated for public review and comment  
Prior to issuance of a signed DNA, FONSI and Decision Record for this project*

Signature

Responsible official: \_\_\_\_\_  
Kyle E. Hensley, Central Oregon Field Manager      Date \_\_\_\_\_

Note: The signed Conclusion on this worksheet is part of an interim step in the BLM's internal decision process and does not constitute an appealable decision. However, the Decision Record based on this DNA is subject to appeal in accordance with the regulations contained in 43 CFR Part 4.410, 4.411, 4.412, and 4.413.

Contact Person

For additional information concerning this review, contact: Chris Ryan, Planning and Environmental Coordinator, Central Oregon Field Office, 3050 NE 3rd Street, Prineville, OR 97754, telephone: (541) 416-6743 or [cmryan@blm.gov](mailto:cmryan@blm.gov)

## **Appendix A – Applicable Project Design Features and Best Management Practices from the Final EA**

The following design features and best management practices would be followed for the emergency gather. They would apply to all agency managed or State lands affected, except where specified.

### **Applicable Project Design Features from Chapter 2 of the Final EA (page 26-29)**

- We would conduct gather operations in accordance with the Comprehensive Animal Welfare Program and/or the National Wild Horse Gather Contract (see [Appendix J](#) of Final EA).
- We would conduct bait or water trapping to October 1 through March 1 on Federal and State lands to remove excess wild horses to maintain appropriate management level, or to relocate horses causing declining range conditions. Within the Phillips W. Schnider Wildlife Area, we would prioritize bait and water trapping on State lands, as it provides the smallest number of negative impacts to fish and wildlife species. Up to 10 trap site locations may be used annually; however, we would limit operations to two bait trap locations at any one time. We would limit human activity at a given trap site to approximately 2 weeks per use. We would monitor bait or water trap locations daily to verify whether horses are present in the traps (see [Appendix J](#) of the Final EA).
- A Memorandum of Understanding must be in place before gathers would be conducted on State land.
- For gathers on Federal and State lands, an Animal and Plant Inspection Service or other licensed veterinarian would be on site or on-call, as specified in [Appendix J](#), to examine animals and make recovery recommendations to agencies for care and treatment of wild horses.
- We would record gather location, sex and age distribution, reproduction, survival, condition class information using the Henneke rating system (see [Appendix E](#) of the Final EA), along with color, size, and other information, and whether the animal is removed, treated with fertility suppression methods, or released.
- We would conduct genetic diversity monitoring. Samples (generally hair follicle or fecal DNA samples) would be collected and analyzed as needed, to determine whether management is maintaining acceptable genetic diversity (avoiding inbreeding depression). Generally, agencies would use hair follicle samples from captured horses to provide an unbiased sample of the herd's genetic diversity. Genetic diversity monitoring would be approximately every 5 years for alternatives 2 and 4 and approximately every 10 years for alternative 3.

- Post-gather, we would make reasonable effort to return released animals gathered on Federal lands to the same general area they were gathered. Exception may include horses gathered in close proximity of State or private lands or where resource damage is occurring. Horses gathered on State and private lands would not be returned to lands of other ownerships.
- We would transport excess animals to a Forest Service or Bureau of Land Management facility where they would be humanely cared for in accordance with current agency policies and regulations, and the Wild Horse and Burro Act, including:
  - Comprehensive Animal Welfare Program Standards for Wild Horse Program for Wild Horse and Burro Gathers (see [Appendix J](#) of the Final EA)
  - Comprehensive Animal Welfare Program Standards Off-Range Corral Facilities, Transportation and Adoption Events (see [Appendix K](#) of the Final EA)
- Nuisance wild horses on private lands under Section 4 of the Free-Roaming Horses and Burros Act of 1971 and Forest Service and Bureau of Land Management regulation could be removed at any time using horseback-drive trapping, bait trapping, and water trapping. We would locate trap locations where resource damage would be minimized.
- Horses that stray outside the joint management area to State and Federal lands would be removed using bait trapping, water trapping, or horseback drive trapping.
- Any gathered horses we determine to be domestic animals<sup>1</sup> would be turned over to the local brand inspector in accordance with State law.
- We would send out public notification<sup>2</sup> before larger gather operations on Federal or State lands, with viewing opportunities and links to more information on gather operations. Opportunities for public observation of gather activities on Federal lands would be provided, when and where feasible considering public and wild horse safety.
- Decisions made to humanely euthanize animals in field situations would conform with agency policies, including the Bureau of Land Management policy (USDI BLM PIM 2021-007 and Forest Service policy (Forest Service Manual 2265.61). See also [Appendix J](#) and [Appendix K](#) of the Final EA.
- We would plow snow on existing roads to trap locations. Plowed roads would be signed as closed to public travel to reduce disturbance to wintering big game. See Appendix B of the Final EA for additional design features related to snow plowing.

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<sup>1</sup> This determination would be made in consultation between agencies and brand inspectors.

<sup>2</sup> Public notification would include (but may not be limited to) a news release and letters to interested stakeholders. All other observation at the Oregon Corral Facility in Burns, Oregon would be in accordance with IM ORB-000-2018-004, Oregon Wild Horse and Burro Corral Facility Access for Visitors.

- To protect resources, we would follow project design features listed in Appendix B of the Final EA during gather and removal operations on Federal and State lands.

## **Applicable Project Design Features from Appendix B of the Final EA (pages 233-238)**

### **General**

To the greatest extent possible, place trap sites within the pastures and areas where horses are located.

When possible, give priority to removal of animals from outside the joint management area and on lands of other ownership. Within the joint management area, focus trapping of wild horses on heavily concentrated areas or where resource concerns due to the presence of wild horses have been identified.

To minimize impacts to identified resources and values (natural and cultural), place trap sites and holding facilities in previously used locations accessed by existing routes. When applicable, complete botanical, wildlife, and cultural clearances before holding facilities and trap sites are used.

For all gathers within the Phillip W. Schneider Wildlife Area, the Forest Service or Bureau of Land Management will consult Oregon Department of Fish and Wildlife personnel prior to gathers to verify location of horses, optimal trap site locations that minimize resource impacts, additional site- or timing-specific sideboards, or to coordinate road access, snow plowing, or other assistance as needed.

### **Botany**

To protect threatened, endangered, or sensitive species and to reduce expansion of invasive species, surveys would be conducted by the appropriate personnel before bait or water trap sites are deployed. Appropriate trap sites would be located outside of rare plant areas.

Trap sites and holding areas within the Phillip W. Schneider Wildlife Area would be reviewed for threatened, endangered, and candidate species (Federal and State), and sensitive species in advance of gathers. If threatened endangered, candidate, and sensitive species are identified in the area, the federal agency personnel would work with the Oregon Department of Fish and Wildlife to protect plant species, or to identify alternate sites.

### **Heritage**

All Federal and State Lands

Proposed gather and management activities would avoid any known eligible or potentially eligible historic properties to the National Register of Historic Places.

#### Bureau of Land Management

Temporary traps or corrals used on Bureau of Land Management administered land would be located in areas which have been previously disturbed and for which a Bureau of Land Management archaeologist determines that new disturbances are not likely to affect known or undetected cultural resources. Such proposed gather area locations will be provided for review to the assigned Bureau of Land Management archaeologist prior to all Bureau of Land Management gathering activities to ensure no historic properties or cultural resources are impacted by any gathering activities. Reconnaissance survey may be conducted by the Bureau of Land Management archaeologist prior to determining if such areas can be used and are exempt from Section 106 inventory and State Historic Preservation Office consultation according to the Protocol.

It should also be noted that emergency gathers (rescue and salvage) operations conducted to preserve life or property from destruction per 36 CFR 800.12(d) as determined by the BLM are exempt from Section 106 consultation. Furthermore, an emergency gather is necessary and would be completed immediately after BLM approval to preserve life (wildlife) and both BLM and adjacent private property.

#### State Lands

State lands are subject to the applicable provisions of the National Historic Preservation Act and its implementing regulations, 36 CFR 800. State lands are also subject to Oregon statutes protecting archaeological resources and Indian burials: ORS 97.740-97.760, 358.905-358.962, and 390.235 and all applicable administrative rules.

If it is determined through inspection or monitoring that eligible or potentially eligible historic properties are being adversely affected by wild horse congregation or management actions or activities, the appropriate staff will visit the location and identify and execute suitable mitigation measures.

If cultural resources are located during implementation of project activities, work will be halted, and the appropriate heritage or cultural resource management staff will be notified.

#### **Invasive Plants**

Survey trap sites and temporary holding facilities for invasive plants prior to gather activities. Keep trap and holding locations away from areas with invasive plant infestations or treat invasive plants following Forest Service and Bureau of Land Management protocols. Monitor trap sites and holding facilities for invasive plants for at least 2 years post-gather.

Clean vehicles and equipment used during gather operations before and following implementation to minimize spread of invasive plants.

## **Aquatics and Water Quality**

Do not place or construct trap sites or temporary holding facilities in riparian management areas (RMAs) (300 feet on both sides of perennial/intermittent streams and wetlands, and 25 feet from ephemeral channels). If traps sites are needed on the outer edges of a RMA, interdisciplinary review is required to ensure a sufficient buffer to allow attainment of John Day Basin Resource Management Plan objectives to conserve and restore water quality, riparian-wetland vegetation, and aquatic habitat. Trap sites identified on BLM, at the time of this DNA, have been through interdisciplinary review and impacts of horse traps/facilities located within RMAs were short term and the long-term benefit to RMAs, would equal or exceed short term impacts.

At existing spring developments, troughs are available to be used as water traps, if the riparian-wetland areas have been fenced to exclude ungulates. Horse facilities associated with those water traps would be located off the channel and outside RMAs, or have been approved by an interdisciplinary team review through this DNA. If there is a critical need to utilize additional or unfenced spring habitats for water baiting, coordination with fisheries and hydrology staff of each agency is required to develop additional design measures.

During servicing or refueling of equipment or helicopters used in any operation, pollutants shall not be allowed to enter any waterway, riparian area, or stream course. Refueling areas will be located outside riparian areas, including seeps and springs. If helicopters are used as the gathering technique, all landing and refueling areas will be in prior- approved sites and not within identified riparian areas. Hazardous material spill control equipment and absorbent material will be on-site at all times of fuel use or storage.

Vehicles will not travel through live water, seeps, springs, or streams except for use of existing fords on road crossings on open, seasonally open roads, or roads identified for administrative use. Off-highway vehicle travel off open roads within 100 feet of streams will occur only during periods when soil is dry.

Manage winter road use during gather operations to minimize unacceptable damage to the road surface. Ensure all culverts and ditches are functional before winter road use.

If snow removal on roads is necessary to facilitate gather operations, move snow in a manner that will avoid or minimize disturbance of or damage to road surface and drainage structures. Mark drainage structure (including culverts to avoid damage during plowing. Conduct frequent inspections to ensure road drainage is not adversely affecting soil and water resources. Discontinue road use and snow removal when use would likely damage the roadway surface or road drainage features or modify snow removal procedures as necessary to meet water quality concerns.

Plow any snow cover off roadways to facilitate deep freezing before heavy use. Control areas where snow removal equipment can operate to minimize damage to riparian areas, floodplains, and stream channels. Install frequent drainage through snow berms to avoid concentration of snowmelt runoff and will serve to dissipate melt water.

Snow plowed roads would be signed closed to public travel. When plowed roads are no longer needed for gather operations, place snow berms at the beginning of roads to discourage public use and damage to road surfaces. Only open roads, seasonally open roads or roads identified for administrative use would be snow plowed.

## **Wildlife**

### *Bureau of Land Management Managed Lands (Based on John Day Basin Plan)*

The joint area also falls within mule deer, elk, and pronghorn winter range, and year-long bighorn sheep habitat. The big game winter range time restriction is from December 1 to April 15. Due to these activities needing immediate action and with the benefit to resource availability, this restriction will be waived unless a depth of 12 inches of snow is produced or accumulated. If this occurs, an exception will need to be requested.

- In addition, if seasonally closed roads are plowed to assist with gather activities, these roads will be appropriately signed to increase road closure compliance with the public.

**Golden eagle** surveys will be conducted at proposed trap site locations prior to trapping on Bureau of Land Management managed lands. If an occupied nest is located, trap sites will be located outside the 0.25-to-0.5-mile nest buffer from February 1 to August 31.

**Peregrine falcon** surveys will be conducted at proposed trap site locations prior to trapping on Bureau of Land Management managed lands if suitable habitat is nearby (tall cliffs). If an occupied nest is located, trap sites will be located outside the 1.0-mile nest buffer from January 1 to August 15.

### *Philip W. Schnider Wildlife Area (State Lands)*

Within the Phillips W. Schnider Wildlife Area, we will prioritize bait and water trapping on State lands, as it provides the smallest number of negative impacts to fish and wildlife species.

## **Special Areas**

Use of previously used trap sites within special areas may be authorized if use is temporary, and no new surface disturbance will occur. Cross-country vehicle use off existing open roads would not be authorized.



No new trapping and holding facilities would be located within Forest Service or Bureau of Land Management special areas.

No new road construction would occur within any of the Forest Service or Bureau of Land Management special areas.

**Public Notification and Safety**

The public will be notified through news releases of ongoing gathering and trapping activities, and potential road or area closures.