



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Burns District Office

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## United States Department of the Interior, Bureau of Land Management Burns District

### DECISION RECORD

### Warm Springs Herd Management Area Removal of 55 Wild Horses Determination of NEPA Adequacy

**(DOI-BLM-ORWA-B050-2020-0001-DNA)**

#### **DECISION**

It is my determination that 55 wild horses gathered from Warm Springs Herd Management Area (HMA) in October 2018 and previously intended to be returned to the HMA and described in the April 12, 2019 Determination of NEPA Adequacy (DNA) (DOI-BLM-ORWA-B050-2019-0009-DNA) and Decision Record (DR), are considered excess and will be permanently removed from the HMA.

Through this DNA (DOI-BLM-ORWA-B050-2020-0001-DNA) and DR, the BLM is documenting that the 2018 EA (DOI-BLM-ORWA-B050-2018-0016-EA) adequately analyzed the permanent removal of 55 wild horses from the Warm Springs HMA. The 55 excess wild horses are currently being held at the Oregon Wild Horse Corral Facility. The Bureau of Land Management (BLM) will prepare the excess animals for adoption, sale, or transfer as described in the 2018 EA (p. 63).

#### **BACKGROUND**

On September 12, 2018, the Burns District Bureau of Land Management (BLM) issued a decision record (DR) for DOI-BLM-ORWA-B050-2018-0016-EA (Appendix A: 2018 EA) to gather and remove excess wild horses and burros from the Warm Springs Herd Management Area (HMA) and initiate a spay feasibility and on-range behavioral outcomes assessment study. The 2018 EA analyzed, but the 2018 Decision Record did not select, a ten-year population management plan for the HMA. Due to limited water availability in the HMA and deteriorating conditions of the natural surface roads used for hauling water during late summer 2018, the gather portion of the DR became effective upon the signature date. From October 2–23, 2018, 845 horses, 2 mules, and 41 burros were gathered from the Warm Springs HMA (Appendix B: Warm Springs HMA Final Gather Report, Oct. 23, 2018) and taken to the Oregon Wild Horse Corral Facility in Hines, Oregon. BLM believed that approximately 30 horses and 30 burros remained on

the range following the gather based upon pre-gather population estimates from the June 2018 survey, the number of animals captured during the gather, and the pilot's counts of those remaining on the range during the final days of the gather (Appendix C: 2018 Warm Springs HMA Gather Summary Report).

The DR (Appendix D) was challenged in the United States District Courts for the District of Oregon and the District of Columbia, as well as in the Interior Board of Land Appeals (IBLA). A motion seeking a preliminary injunction (PI) was filed in the District of Oregon. On November 2, 2018, the Court preliminarily enjoined implementation of the spay portion of the DR. On November 14, 2018, the BLM filed a motion with the IBLA to remand the DR so that BLM had the authority to rescind it. On November 26, 2018, IBLA issued an order vacating the DR in its entirety. Although the DR was vacated by the IBLA, one of the three cases in district court remains active; the other two litigants voluntarily dismissed their cases.

Despite the DR being vacated, the conditions that caused the BLM to determine in the 2018 DR that excess animals existed and needed to be permanently removed (43 CFR 4720 – Removal) from the range remained present and necessitated a decision. A Determination of NEPA Adequacy<sup>1</sup> (DOI-BLM-ORWA-B050-2019-0009-DNA) and DR were signed on April 12, 2019 which concluded that the 2018 EA adequately analyzed the environmental impact of permanently removing 779 wild horses, 2 mules, and 41 burros from the Warm Springs HMA. Appropriate management level in Warm Springs HMA is 96 to 178 wild horses and 15 to 24 burros. Because there were an estimated 30 horses and 30 burros remaining in the HMA following the gather of 845 wild horses, 2 mules and 41 burros; the April DNA/DR considered 779 wild horses, 2 mules, and 41 burros excess animals and authorized their permanent removal. The decision also authorized the return of approximately 66 horses to the HMA to achieve low appropriate management level (AML), along with the treatment of mares to be returned to the HMA with porcine zona pellucida (PZP). The 66 horses estimated to be returned to the HMA was dependent upon the results of a spring 2019 simultaneous double-observer aerial survey of the HMA. The survey was intended to confirm the approximate number of horses remaining on the range and the approximate sex ratio.

On June 18, 2019, the simultaneous double-observer method aerial survey of the Warm Springs HMA was conducted with a direct count of 149 animals. Direct counts resulting from aerial surveys are typically corrected for systematic biases (undercounting) that are known to occur during aerial surveys (Lubow and Ransom 2016). Sightability bias correction has not been applied to the data collected in June 2019, however uncorrected direct count results are that at least 149 horses remain in the HMA.

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<sup>1</sup> A Determination of NEPA Adequacy (DNA) is not a NEPA document. Instead, it is a tool BLM uses to determine whether an existing NEPA document appropriately analyzes the specific action being proposed, or whether there is relevant new information not already considered, and therefore whether or not additional NEPA analysis is warranted. BLM NEPA Handbook H-1790-1, pp. 22-25 (2008).

On October 30, 2019, a total of 11 horses (aged 20 years and older) were returned to the HMA. These animals were returned to the range because animals of this age generally do not get placed into adoption and most have surpassed their period of reproduction. This brought the total estimated on-range population to at least 160 horses.

AML for the Warm Springs HMA is 96 to 178 wild horses, so the current population of wild horses on the HMA is near the high end of AML. As a result, the BLM continues to hold 55 wild horses that were authorized to be returned to the HMA in the April 2019 DR at the Oregon Wild Horse Corral Facility.

## **COMPLIANCE**

The actions authorized by this decision comply with and are consistent with the following statutes, regulations, and documents:

1. Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment (GRSG ARMPA) (September 2015), Wild Horses and Burros (WHB) Objectives (p. 2-21).
2. Three Rivers Resource Management Plan and Record of Decision (RMP/ROD) (1992) (p. 2-43).
3. Wild Free-Roaming Horses and Burros Act of 1971 (Pub. L. 92-195) as amended (WHB Act).
4. Wild Free-Roaming Horse and Burro Management Regulations (43 CFR Part 4700).
5. BLM Wild Horses and Burros Management Handbook, H-4700-1 (June 2010).
6. Warm Springs Equine HMA Plan (1979).
7. Warm Springs Wild Horse HMA Plan – Update (December 1987).
8. Warm Springs HMA Plan Update (June 2010).
9. Livestock Grazing Allotment Objectives: West Warm Springs Allotment Management Plan (AMP) (1980) and East Warm Springs AMP (1993).
10. IM No. 2009-062, Wild Horse and Burro Genetic Baseline Sampling.
11. IM No. 2009-090, Population-Level Fertility Control Field Trials: HMA Selection, Vaccine Application, Monitoring and Reporting Requirements.
12. IM No. 2010-057, Wild Horse and Burro Population Inventory and Estimation.
13. IM No. 2018-066, Guidance for the Sale of Excess Wild Horses and Burros.
14. IM No. 2015-070, Animal Health, Maintenance, Evaluation and Response.
15. IM No. 2015-151, Comprehensive Animal Welfare Program for Wild Horse and Burro Gatherers.
16. Burns District BLM IM-ORB-000-2018-004, Oregon Wild Horse and Burro Corral Facility Access for Visitors.
17. The Federal Land Policy and Management Act (FLPMA) of 1976, as amended.
18. National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) (1970).
19. BLM NEPA Handbook, H-1790-1 (January 2008), FLPMA (43 U.S.C. 1701, 1976), Section 302(b) of FLPMA, states, “all public lands are to be managed so as to prevent unnecessary or undue degradation of the lands.”

20. Public Rangelands Improvement Act (43 U.S.C. 1901) (1978).
21. Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands Administered by the BLM in the States of Oregon and Washington (1997).
22. Vegetation Treatment Using Herbicides on BLM Lands in 17 Western States Programmatic Final Environmental Impact Statement (FEIS) (2010) and ROD (2010).
23. Integrated Invasive Plant Management for the Burns District Revised EA (DOI-BLM-OR-B000-2011-0041-EA) Decision Record (DR) (2015).
24. BLM Manual 6310, Conducting Wilderness Characteristics Inventory on BLM Lands (March 2012). Section 201 of FLPMA requires that BLM maintain on a continuing basis an inventory of all public lands and their resources and other values, which includes wilderness characteristics. It also provides that the preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of public lands.
25. BLM Manual 6320, Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process. Section .04 Responsibilities, "C. District Managers and Field Managers shall: 1. Update and maintain the wilderness inventory for lands within the planning area consistent with BLM wilderness characteristics inventory guidance. 2. Ensure that wilderness characteristics inventories are considered and that, as warranted, lands with wilderness characteristics are protected in a manner consistent with this manual in BLM planning processes."

### **RATIONALE FOR DECISION**

I have decided to permanently remove 55 excess horses from Warm Springs HMA to return the wild horse population to within AML (96 – 178 horses) in order to comply with management direction in the Three Rivers RMP/ROD (1992), as amended by the Oregon GRSG ARMPA (2015). Managing within established AMLs allows for the maintenance of healthy wild horse populations on the range and moves toward achieving and maintaining a thriving natural ecological balance (TNEB) and multiple-use relationships in the HMA.

The BLM originally intended to conduct a spay feasibility study on Warm Springs HMA following the October 2018 gather. The on-range sample size required for this study was approximately 200 wild horses. Following the completion of the study, BLM planned to gather and remove excess animals to return to management within AML in the HMA (EA, p. 34). BLM has no immediate plans to implement a spay feasibility study on Warm Springs HMA. Therefore, BLM is choosing to manage the wild horse population in Warm Springs HMA within AML as was described in the 2018 EA (EA, p. 34). Since the spay study is not scheduled to occur in Warm Springs HMA, there is no need (e.g. research) to temporarily exceed the authorized AML, nor to return additional horses to the range since the population is already within AML.

The 2018 EA specifically describes the proposed action “to manage wild horses and burros within AML and existing HMA objectives” (p. 19). There would be no need to return the on-range population to high AML (178 horses) because the wild horse average annual population growth rate of 20 percent (EA, p. 2) would cause high AML to be exceeded by 2020.

Although the 779 excess horses (April 12, 2019 DNA and DR) plus 55 excess horses proposed in this DNA is greater than the 652 excess horses that page 21 of the 2018 EA expressly contemplated being permanently removed in 2018, the 10-year population management plan portion of the 2018 EA (pp. 34-41) did plan for and analyze the effects of future gathers and removals through 2028 to reduce the population to within the AML of 96 to 178 horses. Based on multiple years of monitoring wild horse and burro population growth, surveying the population on the range and the distribution of their use patterns, and monitoring direct and indirect impacts on range conditions and locally important wildlife, the proposed action in the 2018 EA included the ability to conduct gathers and removals of wild horses to within AML “each time the high end of AML is exceeded” (p. 34).

The 2018 EA analyzed available forage and water when horses are maintained within AML and there have been no material changes to those conditions since the final 2018 EA was released. The AML has not changed for this HMA and is therefore still the target to achieve in order to move toward a thriving natural ecological balance on the range. As such, since September 2018 (final 2018 EA), there are no new circumstances or information that would substantially change the analysis of the action of permanent removal of 55 excess horses who have been residing at the Oregon Wild Horse Corral Facility since the October 2018 gather.

The 10-year population management plan section of the proposed action in the 2018 EA (p. 40) describes the monitoring that would be collected, some of which would be used to determine future gather and removal numbers. Additional rangeland monitoring documents not cited in the 2018 EA, because they were collected following the release of the EA, are listed below.<sup>2</sup> Although these monitoring reports were not part of the 2018 EA, they support the EA’s analyses and the need to remove excess horses to manage within AML.

My decision has been informed by population and resource monitoring data, comments received from the public, and consultation with local governments and State agencies. The action authorized herein will help the BLM achieve the AML established for the

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<sup>2</sup> Documents:

- Wilson Butte area water check memo to HMA file (July 25, 2018). This report documented the rapidly declining availability of water for the horses in this portion of the HMA (approximately 156 square miles).
- Wild horse herd and habitat monitoring report documenting the severe utilization levels by wild horses in the Coyote Fire Emergency Stabilization Treatment area (July 26, 2018).
- Road Lake water and Coyote Fire area visit memo to file noted low water available with indication of a large number of horses utilizing this water source (July 30, 2018). In addition, the memo documented approximately 80 horses within the Coyote Fire burned area along with heavy horse utilization, trailing, and sign in the fire rehabilitation area.



HMA, which in turn will help the BLM restore a TNEB and multiple-use relationship on these public lands. This action is consistent with the provisions of section 1333(b) of the WHB Act, the multiple-use mandate of FLPMA (1976), and the Three Rivers RMP/ROD (1992) that established the AML for the HMA.

Without a new decision and determination of excess by the authorized officer, the BLM is not able to permanently remove the 55 excess wild horses from the HMA that were gathered in October 2018. Permanent removal of excess horses is necessary in order to comply with management direction in the Three Rivers RMP/ROD (1992), as amended by the Oregon GRSG ARMPA (2015), to manage wild horse and burro population levels within established appropriate management levels. This action aids in restoring a thriving natural ecological balance and multiple-use relationship on these public lands. This actions helps address the need to ensure water availability for the wild horse and burro population and reduces the potential threat of high congregations of horses within 4 miles of GRSG leks. The permanent removal of the excess wild horses from the HMA reduces the competition with native wildlife species for water sources and promotes improved GRSG nest site screening cover. The removal of excess wild horses reduces the potential for conflicts with other uses of public lands (such as wildlife and permitted livestock grazing) and is, therefore, consistent with the multiple-use policy of public rangelands.

The BLM prepared a Determination of NEPA Adequacy that found that the action authorized by this decision is adequately analyzed in the 2018 EA. Additionally, a finding of no significant impact (FONSI), signed September 12, 2018, found the action authorized by this decision does not constitute a major Federal action that will significantly impact the quality of the human environment. Therefore an environmental impact statement (EIS) is unnecessary and will not be prepared.

## **PUBLIC INVOLVEMENT**

The action being proposed in this DNA was analyzed in the 2018 EA, which was subject to extensive public comment and review periods. On May 21, 2018, the BLM mailed a scoping letter for the 2018 EA to 127 interested individuals, groups, and agencies regarding the proposed study and population management plan. The scoping letter was also posted to BLM's ePlanning website. Letters mailed to Burns District BLM and emails sent to the project's public comment email address were received from 2,044 individuals, groups, and agencies during the scoping period. Comments received following the May 21, 2018, scoping period were incorporated into a draft EA that was mailed to 105 interested individuals, groups, tribes, and agencies for a 30-day public comment period on June 29, 2018. The announcement of the availability of the EA for public comment was also emailed to 49 interested parties. In addition, the EA and unsigned FONSI were posted to BLM's ePlanning website, and a notice was posted in the Burns Times-Herald newspaper for one week, beginning on July 4, 2018. A total of 8,326 comment emails, letters, and faxes were received during the 30-day public comment period. The comments and issues identified in public letters and emails, along with the issues identified during the interdisciplinary team (IDT) meetings and through

contact with other agencies, were addressed by the BLM IDT. In August 2018, the partnering university associated with the spay study analyzed in the 2018 EA withdrew from the project causing a slight update to that portion of the EA. The updated EA was released for an additional public comment period from August 22 through September 2, 2018. These documents were posted on BLM's ePlanning website, and a notice of availability was posted in the Burns Times-Herald newspaper. Comments from this comment period were also incorporated into the final 2018 EA and the September 12, 2018 DR (since remanded).

Following the remand of the 2018 EA DR, the April 2019 DNA (DOI-BLM-ORWA-B050-2019-0009-DNA) and DR determined that the 2018 EA adequately analyzed the environmental impact of permanently removing 779 wild horses, 2 mules, and 41 burros from the Warm Springs HMA, the proposed return of horses to low appropriate management level (AML) for the HMA, and the treatment of mares to be returned to the HMA in 2019 with porcine zona pellucida (PZP). This proposed action was dependent "on the results of the spring 2019 survey" (p. 2). On February 15, 2019, that DNA was made available for a 30-day public comment period by posting it on BLM's ePlanning website and emailing notification of the availability of the DNA to 14 interested parties. 285 comment letters were received through the ePlanning website along with 8 comment letters mailed or emailed to the Burns District BLM Office. Comments were reviewed and incorporated into a final DNA and Decision Record signed on April 12, 2019. While that DNA and DR did not apply to the 55 excess horses proposed for permanent removal in this DNA and authorized under this DR, it dealt with a similar action for horses that are from the same HMA and were captured during the same gather. Many of the public comments that BLM received in April 2019 would be relevant to the proposed action of this DNA.

The action of an excess determination and permanent removal of 55 horses, along with its effects, were proposed and analyzed in the 2018 EA and the 2019 DNA. The public involvement associated with the existing EA and DNA is adequate for the current action. There are no new actions or effects proposed in this DNA that have not already received public involvement.

### **AUTHORITY**

The Wild Free-Roaming Horses and Burros Act of 1971 (Pub. L. 92-195), as amended, specifically authorizes the Secretary to "make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals..." (16 USC 1333(b)(1)).

In accordance with 43 CFR 4720.1, "upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove excess animals immediately."

This decision is issued under the authority found in 43 CFR 4770.3(c), "the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision." The effective date of this decision is 14 days from the date of the authorized officer's signature on this document.

### **APPEAL PROCEDURES**

You have the right to appeal this decision to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of the Interior, Board of Land Appeals (Board), in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1 (Appendix A). In taking an appeal, there must be strict compliance with the regulations.

If you choose to appeal, a notice of appeal must be filed with the Burns District BLM Office within thirty (30) days of receipt of this letter for transmittal to the Board. If your notice of appeal does not include a statement of reasons, one must be filed with the Board within thirty (30) days after the notice of appeal was filed.

A copy of your notice of appeal and any statement of reasons, written arguments, or briefs, must also be served upon the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 601 SW 2<sup>nd</sup> Avenue, Suite 1950, Portland, Oregon 97204-3174. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations.

As provided by 43 CFR Part 4, you have the right to petition the Office of Hearings and Appeals to stay implementation of the decision; however, you must show standing and present reasons for requesting a stay of the decision that address your interests and the manner by which they would be harmed.

A petition for 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.

Should you choose to file one, your petition for a stay must accompany your notice of appeal. A notice of appeal with petition for stay must be served upon the Board, Regional Solicitor, and adverse parties at the same time such documents are served on the deciding official at this office. The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR 1.3.



A notice of appeal and/or petition for stay electronically transmitted (e.g., email, facsimile, or social media) will not be accepted. A notice of appeal and/or petition for stay must be on paper.

Authorized Officer: Jeffrey Rose, District Manager, Burns District BLM

Signature: \_\_\_\_\_

A handwritten signature in blue ink, appearing to read "Jeff Rose", written over a horizontal line.

Date: \_\_\_\_\_

A handwritten date "12/10/2019" in blue ink, written over a horizontal line.