USDI, Bureau of Land Management
Malheur Field Office, Vale District

DECISION RECORD

Cold Springs Herd Management Area Population Management Plan Environmental Assessment DOI-BLM-ORWA-V040-2015-022-EA

BACKGROUND

The Cold Springs Herd Management Area (HMA) Population Management Plan Environmental Assessment (EA) analyzed issues emerging from excess wild horses and the need to maintain the population within appropriate management level (AML) over a 10-year time frame in order to achieve a thriving natural ecological balance (TNEB).

COMPLIANCE

The Cold Springs HMA Population Management Plan OR-V040-2015-022 EA, is tiered to the 2001 Southeastern Oregon Resource Management Plan and Final Environmental Impact Statement (SEORMP/FEIS, as amended) and relevant information contained therein is incorporated by reference. The Proposed Action has been designed to conform to the following documents, which direct and/or provide the framework for management of Bureau of Land Management (BLM) lands within Vale District:

1. Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195) as amended.

2. Wild Free-Roaming Horse and Burro Management (43 Code of Federal Regulations (CFR) 4700). The following are excerpts from 43 CFR 4700.

   - 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…"

   - 4710.3-1 - Herd Management Areas. "Herd Management Areas shall be established for maintenance of wild horse and burro herds."

   - 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."

3. BLM Wild Horses and Burros Management Handbook, H-4700-1 (June 2010).

4. National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347, 1970).

5. BLM NEPA Handbook, H-1790-1 (January, 2008).

6. Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701, 1976). Section 302(b) of FLPMA, states, "all public lands are to be managed so as to prevent unnecessary or undue degradation of the lands."

7. Public Rangelands Improvement Act (43 U.S.C. 1901, 1978).

8. 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).

9. Greater Sage-Grouse and Sagebrush-steppe Ecosystems Management Guidelines (BLM 2001).

10. BLM National Sage-grouse Habitat Conservation Strategy (2004).

11. Greater Sage-Grouse Conservation Assessment and Strategy for Oregon (Hagen 2011).

12. Oregon Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement (June 2015)

13. Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment and Record of Decision (September 2015).

14. Vale District 5-Year Weed Control Plan (EA-OR-030-89-19).

15. Vegetation Treatment Using Herbicides on Bureau of Land Management Lands in 17 Western States Programmatic Final Environmental Impact Statement (FEIS) (2007) and ROD (2007).

16. Vegetation Treatments Using Herbicides on BLM Lands in Oregon FEIS (2010) and ROD (2010)

17. North Star Mountain Allotment Management Plan, 1993.

18. Oregon Department of Environmental Quality (ODEQ) laws and regulations.

19. State, local, and Tribal laws, regulations, and land use plans.

20. All other Federal laws relevant to this document, even if not specifically identified.

DECISION

Having considered the Proposed Action and alternatives and associated impacts, and based on analysis in EA DOI-BLM-ORWA-V040-2015-0022, it is my decision to implement the Proposed Action which removes excess wild horses and applies available and approved fertility treatment to maintain the wild horse population within AML (75-150) over a 10-year period. Additionally, I have completed a Finding of No Significant Impact (FONSI) statement and I have found that the Proposed Action analyzed in DOI-BLM-OR-V040-2015-022 does not constitute a major Federal action that will adversely impact the quality of the human environment. Therefore, an environmental impact statement (EIS) is unnecessary and will not be prepared.

The Proposed Action - Alternative 1, is designed to manage wild horse populations over a 10-year time frame and will incorporate two to three gather cycles. Implementation of the Proposed Action will begin in the fall of 2016.

An exact annual population growth rate is not available for this Cold Springs HMA herd, so a 20 percent population growth rate is used based on the National Academy of Sciences (NAS) explanation that growth rates approaching 20 percent or even higher are realized in many horse populations (NAS Report, 2013). Based on the June 2016 Cold Springs HMA population inventory which counted 258 adult horses (77 foals) and assuming a 20 percent population growth rate (NAS 2013, p. 55), the estimated wild horse population by fall 2017 will be approximately 310 adult wild horses. This annual population growth rate includes both survival and fecundity rates (NAS 2013, p. 55).

Gathers and the actions in Proposed Action - Alternative 1 are authorized according to this 10-year plan and decision record. This 10-year timeframe enables BLM to determine the effectiveness of the Proposed Action at successfully maintaining population levels within AML in Cold Springs HMA. The number of horses gathered and excess removed will be adjusted based upon the estimated herd size and the number of excess horses determined at the time of the gather.

BLM will conduct one to three future helicopter gathers, four to five years apart, over the next 10 years following the date on this decision record. Helicopter gathers will be carried out under the same (or updated) SOPs as described in the Wild Horse and Burro Gathers: Comprehensive Animal Welfare Policy (IM No. 2015-151) and the same selective removal criteria, population control measures, release criteria, and sex ratio adjustment strategies will be applied as described in the EA and this decision record. Adaptive management will be employed that incorporates the use of the currently authorized methods of fertility control. Future gather dates and target removal numbers for gathers within the next 10 years will be determined based on future

population surveys and a determination that "excess" horses exist within the HMA. A notice to the public will be sent out 30 days prior to any future gather.

For a helicopter gather, ninety percent of the herd is gathered in order to (1) select horses to return to the HMA to re-establish the low end of AML and (2) remove excess wild horses that will be prepared for the adoption program. For example, if horses were gathered in the fall of 2016, approximately 300 horses, roughly 90 percent of the estimated herd size based on current estimates, would be gathered using the helicopter-drive method. Approximately 260 excess wild horses would be removed from the Cold Springs HMA, including those that have strayed outside the HMA boundary, to re-establish the herd size at the low end of AML (75 animals). No horses found outside of the HMA will be returned to the range. Each helicopter gather will take approximately one week. BLM will plan to gather as soon as holding space becomes available and BLM's Washington D.C. Office gives authorization.

Bait, water, horseback drive, and helicopter drive trapping will continue to be used as tools to remove excess horses in areas where concentrations of wild horses are detrimental to habitat conditions or other resources within the HMA, to remove wild horses from private lands or public lands outside the HMA boundary, to selectively remove a portion of excess horses for placement into the adoption program, or to capture, treat, and release horses for application of fertility control. Bait, water, horseback drive, or helicopter drive trapping will be conducted as needed between normal helicopter drive gather cycles. Bait, water trapping, horseback drive, and helicopter drive trapping operations could take anywhere from one week to several months depending on the amount of animals to trap, weather conditions, or other considerations. Operations will be conducted either by contract or by BLM personnel.

The first implementation of the Proposed Action is planned for September, 2016 and proposes to gather 150 horses, remove 100, and apply approved fertility control treatment to approximately 25 mares to be returned to the HMA. This will result in 100 horses removed from the HMA in the fall of 2016, leaving approximately 235 adult horses and foals in the HMA. This will result in the FY17 population in the HMA at approximately 150 percent of AML based on current estimates.

Site-specific removal criteria were never set for Cold Springs HMA; therefore, animals removed from the HMA will be chosen based on a selective removal strategy set forth in BLM Manual Section 4720.33. Wild horses will be removed in the following order: (1) First Priority: Age Class – Four Years and Younger; (2) Second Priority: Age Class – Eleven to Nineteen Years; (3) Third Priority: Age Class Five to Ten Years; and (4) Fourth Priority: Age Class Twenty Years and Older should not be permanently removed from the HMA unless specific exceptions prevent them from being turned back to the range. In general, this age group can survive in the HMA, but may have greater difficulty adapting to captivity and the stress of handling and shipping if removed. BLM Manual Section 4720.33 further specifies some animals that should be removed irrespective of their age class. These animals include, but are not limited to, nuisance animals and animals residing outside the HMA or in an area of an inactive HA. One caveat to these selective removal criteria will be the release of existing geldings back to the HMA. If recaptured during future gather operations, any geldings will be returned to the range regardless of age.

Captured wild horses will be released back into the HMA under the following criteria:

- Released horses will be selected to maintain a diverse age structure of 37 mares and 38 stallions (75 total = low AML); approximately a 50/50 sex ratio.
- Released horses will be selected to maintain herd characteristics, including the draft influence. The most common colors of grey, sorrel, buckskins bay, brown, black, and red roan will have higher priority over the less common colors present
- Post-gather, every effort will be made to return released horses to the same general area from which they were gathered.
- Approximately 28 mares (75 percent), age two or older, will be selected to be returned to the HMA after receiving fertility control treatment. PZP is currently the most common form of immunocontraception BLM is using in the field. This type and method of fertility control treatment may be used in the initial gather but may be adjusted as advancements are made with available and approved fertility control treatments and methods. PZP will be administered following IM No. 2009-090, Population-Level Fertility Control Field Trials: Herd Management Area (HMA) Selection, Vaccine Application, Monitoring and Reporting Requirements.

Adaptive management will be used to maintain a TNEB with periodic gathers within the HMA over the next 10 years. "Adaptive management is about taking action to improve progress toward desired outcomes." (www.doi.gov/initiatives, 2007). Knowing that uncertainties exist in managing for sustainable ecosystems and healthy wild horse populations, adjustments to the locations and populations of wild horses within the HMA may be implemented. Examples of "adustments to locations and populations of wild horses" to supplement normal helicopter gather cycles may include: bait/water, horseback drive, or helicopter drive trapping used to relocate or remove horses outside the HMA or to reduce wild horse numbers in areas experiencing heavy utilization levels (>50 percent current year's standing crop) or other documented resource damage due to excessive concentrations of wild horses. Bait/water, horseback or helicopter drive trapping could also be used to apply fertility control to reduce the population growth rate between gathers.

1. *Project Design Features*

- Time frame for comparison of all action alternatives is 10 years.

- Helicopter drive gather and removal operations will take approximately seven days to complete. Several factors such as animal condition, herd health, weather conditions, or other considerations could result in adjustments in the schedule.

- Helicopter gather operations will be scheduled any time from July 1 through February 28 in any year and will be conducted under contract.

- Trap sites will be selected in areas where horses are located to the greatest extent possible.

- Trap sites and temporary holding facilities will be located in previously used sites or other disturbed areas whenever possible. After operations are concluded, these areas will be seeded with a seed mix appropriate to the specific site if bare soil exceeds more than ten square yards per location.

- Undisturbed areas identified as trap sites or holding facilities will be inventoried, prior to being used, for cultural and botanical resources. If cultural or botanical resources are encountered, these locations will not be utilized unless they could be modified to avoid effects to cultural resources.

- Trap sites and temporary holding facilities would be surveyed for noxious weeds prior to gather activities. Any weeds found would be treated using the most appropriate methods. All gather activity sites will be monitored for at least 2 years post-gather. Any weeds found will be treated using the most appropriate methods, as outlined in the 1989 Vale District Weed Management EA, or subsequent documents.

- All vehicles and equipment used during gather operations will be cleaned before and following implementation to guard against spreading of noxious weeds.

- Efforts will be made to keep trap and holding locations away from areas with noxious weed infestations.

- Gather sites will be noted and reported to range and weed personnel for monitoring and/or treatment of new and existing infestations.

- Maintenance may be conducted along roads accessing trap sites and holding facilities prior to the start of gather operations to ensure safe passage for vehicles hauling equipment and horses to and from these sites. Any gravel required for road maintenance is to be certified weed-free gravel. Road maintenance will be done in accordance with Vale District road maintenance policy.

- Gather and trapping operations will be conducted in accordance with the SOPs described in the Wild Horse and Burro Gathers: Comprehensive Animal Welfare Policy (IM No. 2015-151) which was created to establish policy and procedures to enable safe, efficient, and successful wild horse gather operations while ensuring humane care and treatment of all animals gathered.

- An Animal and Plant Health Inspection Service (APHIS) veterinarian will be onsite during the gather, as needed, to examine animals and make recommendations to BLM for care and treatment of the wild horses.

- Decisions to humanely euthanize animals in field situations will be made in conformance with BLM policy (Washington Office (WO) Instruction Memorandum (IM) 2015-070). http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2015/IM_2015-070.html

- On all horses gathered (removed and returned), data including sex and age distribution will be recorded. Additional information such as color, condition class information (using the Henneke, 1983, rating system), size, disposition of the animal and other information may also be recorded.

- Excess animals will be transported to Oregon's Wild Horse and Burro Corral Facility via semi-truck and trailer where they will be prepared (freeze marked, vaccinated and dewormed) for adoption, sale (with limitations) or long-term pasture.

- Hair samples will be collected to assess genetic diversity of the herd, as outlined in WO IM 2009-062 (Wild Horse and Burro Genetic Baseline Sampling). Hair samples will be collected from a minimum of 25 percent of the post gather population (approximately 20 horses).

- Public and media management during helicopter gather and bait trapping operations will be conducted in accordance with WO IM 2013-058 (Wild Horse and Burro Gather/s: Public and Media Management). This IM establishes policy and procedures for safe and transparent visitation by the public and media at WH&B gather operations, while ensuring the humane treatment of wild horses and burros.

- Emergency gathers: BLM Manual 4720.22 defines emergency situations as an unexpected event that threatens the health and welfare of a wild horse or burro population, its habitat, wildlife habitat or rangeland resources and health. Emergency gathers may be necessary during this 10-year time frame for reasons including disease, fire, insect infestation, or other occurences of catastrophic and unanticipated natural events that affect forage and water availability for wild horses. Emergency gather operations will follow the project design elements described in this section.

2. *Monitoring*

The BLM Contracting Officer's Representative (COR) and Project Inspectors (PIs) assigned to the gather will be responsible for ensuring contract personnel abide by the contract specifications and the gather SOPs described in the Wild Horse and Burro Gathers: Comprehensive Animal Welfare Policy (IM No. 2015-151) (applies to all action alternatives, 1-4).

Ongoing monitoring of forage condition and utilization, water availability, and animal health, as well as aerial population surveys will continue on the Cold Springs HMA (applies to all alternatives). Aerial inventories are conducted every 2–3 years for each HMA on Vale District. Population estimates for Cold Springs will be updated as inventories are conducted in the future.

Genetic monitoring will also continue following gathers and/or trapping. If genetic monitoring indicates a loss of genetic diversity, the BLM will consider introduction of horses from HMAs in similar environments to maintain the projected genetic diversity (applies to all action alternatives, 1–4).

Fertility control monitoring will be conducted in accordance with the Population-level Fertility Control Treatments SOPs found in IM No. 2009-090, Population-Level Fertility Control Field Trials: Herd Management Area Selection, Vaccine Application, Monitoring and Reporting Requirements. (Applies to Alternative 1 and 3).

COMMENTS RECEIVED

Public scoping occurred in May of 2015. A scoping letter was mailed to 68 interested individuals, groups, and agencies on May 12, 2015. Letters and e-mails were received from 9,902 individuals and groups during the 15-day comment period. Scoping comments voiced concerns about the authorized level of livestock and wild horse Animal Unit Months (AUM), fences in the HMA, water usage from other multiple use resources, cattleguards, maintenance of social bands during gathers, the level of predator control in the area, and the use of catch-treat-release methods for population management. A notice of availability of the EA and unsigned FONSI were mailed to 83 interested individuals, groups, and agencies on March 4, 2016, for a 30-day public comment period. In addition, a notice was posted in the *Malheur Enterprise* and *Argus Observer* newspapers on March 9, 2016. The Vale District BLM received five comments in the forms of letters and emails. BLM responses to comments can be found in Appendix A - Response to Public Comments attached to this decision record.

CHANGES TO THE COLD SPRINGS HMA POPULATION MANAGEMENT PLAN EA FOLLOWING THE MARCH 4, 2016 VERSION RELEASED FOR PUBLIC COMMENT

- Grammatical mistakes have been corrected throughout.
- Clarifications were made where needed; these did not change context.
- Clarification was made to add WO IM 2010-057, Wild Horse and Burro Population Inventory and Estimation.
- Reference to the new IM 2015-070: Animal Health, Maintenance, Evaluation and Response, has been updated in the EA p. 5 to replace IM 2009-041: Euthanasia of Wild Horses and Burros for Reasons Related to Health, Handling and Acts of Mercy.
- Change was made in the EA (p. 6) to update the numbers of wild horses present with new information. The wording was changed from "July 2014" to "June 2016" and from "197" to "258 adult horses and 77 foals". The next sentence was changed from fall "2015" to "2017" and from "213" to "310".
- Added a sentence to clarify future aerial inventories are scheduled: "Aerial inventories are conducted every 2–3 years for each HMA on Vale District. Population estimates for Cold Springs will be updated as inventories are conducted in the future." (EA, p. 13).

- Change was made in the EA (p. 14) to update Table 2 with new information. A row as added to reflect 2016 census information acquired.

- Change was made in the EA (p. 29) to change the 15 acres of invasive annuals to 300 acres due to 2016 fieldwork observations.

- In the EA p. 32, added a paragraph identifiying the new information provided by the U.S. Fish and Wildlife Service about the Candidate Conservation Agreements.

- In the EA p. 33 and 34, added a sentence analyzing the new information provided by the U.S. Fish and Wildlife Service about the Candidate Conservation Agreements.

- Added Social and Economic Values section to EA (p. 40).

RATIONALE

I have selected Alternative 1, Remove Excess Wild Horses and Apply Available and Approved Fertility Treatment (*Proposed Action*), based on public comments, consultation with local governments and State agencies, discussions with members of the public, requirements to manage wild free-roaming horses in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands, and conformance to applicable laws and regulations. It also meets the purpose and need for action: to make progress towards maintaining the wild horse population within the established AML on Cold Springs HMA; to protect rangeland resources from deterioration associated with overpopulation; to restore a natural ecological balance and multiple use relationship on public lands in the area consistent with the provisions of Section 1333(b)(2) of the Wild Free-Roaming Horse and Burro Act (WFRHBA) of 1971; to achieve a thriving natural ecological balance on public lands; to manage wild horses in a manner that assures significant progress is made toward achieving land health standards for upland vegetation and riparian plant communities, watershed function, and habitat quality for animal populations; as well as other site-specific or landscape-level objectives including those necessary to protect and manage Threatened, Endangered, and Sensitive Species (H-4700-1, 4.1.5). Alternative 1 also conforms to the wild horse management directions set forth in the SEORMP/FEIS (2001, Chapter 3 242-246) and are in conformance with decisions made in the SEORMP/ROD (2002, 55-57).

Selecting Alternative 1 allows BLM to respond to the issue of excess wild horses within the HMA using various tools to reduce the populations to within AML and maintain that level over a 10-year time frame. With adaptive management that involves incorporating the use of the most promising methods of fertility control (as long as they are approved for use and available), BLM aims to extend the years between gather cycles decreasing the frequency of stressful events, such as gathers, put on horses and reducing the amount of horses being sent to holding facilities. Reducing and then maintaining wild horse numbers within AML using available and approved fertility treatments will provide for a thriving natural ecological balance within the HMA.

Maintaining AML will reduce the risk of horses experiencing periods of diminished available forage and/or water (e.g. during drought).

Alternative 1 was chosen over Alternative 2 - Alternative 1 ***without*** Applying Available and Approved Fertility Treatment because the inclusion of the use of fertility treatment is needed to slow population growth. Alternative 2 uses the standard operating procedures of a gather every 4–5 years to maintain AML. This alternative does not address the necessity to reduce the amount of horses being sent to holding facilities.

Alternative 3 - Alternative 1 ***plus*** Geld Up to 15 Return Stallions was not chosen because analysis shows there will not be significant population growth suppression if only up to 15 of the returned stallions were gelded.

Alternative 4 - Gate Cut Removal, was not chosen because fertility control will not be applied and therefore no population growth suppression will occur. In addition, horses not captured during gate cut removals will likely be the more difficult horses to gather and manage, further perpetuating that trait. Gate cut removals eliminate the ability to sort wild horses based on animal health or desirable or historical characteristics, which often results in unintended impacts to the remaining herd. Sex ratios and age distributions of the un-gathered population will also be unknown.

Alternative 5 - No Action - Defer Gather and Removal was not chosen because BLM has observed impacts from horses on riparian and upland use areas within the HMA with current horse numbers. Taking no action on reducing horse numbers or applying fertility control will only exacerbate the problem. Rangeland health, as well as food and water resources for other animals which share the range, will be affected by resource limited (i.e. lack of water, forage, space, etc.) horse populations which could be in conflict with the legislative mandate that BLM maintain a thriving natural ecological balance (NAS 2013, p. 56). Alternative 5 does not meet the purpose and need of this EA.

AUTHORITY

The effective date of this decision is 30 days from the date of the authorized officer's signature on this document. The authority to provide that all or part of a decision be effective upon issuance is found in 43 CFR 4770.3(c), "Notwithstanding the provisions of paragraph (a) of 43 CFR 4.21, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision."

APPEAL PROCEDURES

This decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with regulations contained in 43 CFR 4 and Form 1842-1. If an appeal is filed, your notice of appeal should be filed with Thomas Patrick "Pat" Ryan, Field

Manager, Malheur Field Office, Vale District Office, 100 Oregon St., Vale, Oregon 97918 within 30 days following receipt. The appellant has the burden of showing the decision appealed is in error.

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

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

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

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

Persons named in the *Copies sent to:* sections of this decision are considered to be persons "named in the decision from which the appeal is taken." Thus, copies of the notice of appeal and petition for a stay must also be served on these parties, in addition to any party who is named elsewhere in this decision (see 43 CFR 4.413(a) & 43 CFR 4.21(b)(3)) and the appropriate Office of the Solicitor (see 43 CFR 4.413(a), (c)) **Office of the Solicitor, US Department of the Interior, Pacific Northwest Region, 805 SW Broadway, Suite 600, Portland, Oregon 97205,** at the same time the original documents are filed with this office. For privacy reasons, if the decision is posted on the internet, the *Copies sent to:* section will be attached to a notification of internet availability and persons named in that section are also considered to be persons "named in the decision from which the appeal is taken."

Any person named in the decision, *Copies sent to:* section of the decision, or who received a notification of internet availability that receives a copy of a petition for a stay and/or an appeal and wishes to respond, see 43 CFR 4.21(b) for procedures to follow.

If you have any questions regarding this project, please contact the Project Lead, Shaney Rockefeller at the Vale District Office at 541-473-3144.

Thomas Patrick "Pat" Ryan
Field Manager
Malheur Field Office

8/1/2016
Date:

Appendix A

Response to Public Comments

On March 4, 2016, a letter was mailed to interested parties informing them a copy of the Environmental Assessment (EA) and unsigned Finding of No Significant Impacts (FONSI) were available online and at the Vale District Bureau of Land Management (BLM) office. The letter was mailed to 83 agencies, organizations, tribes, and other individuals. A notice was also posted in the *Malheur Enterprise* and *Argus Observer* newspapers on March 9, 2016, informing the public of the availability of the EA and unsigned FONSI. The Vale District BLM received five comments in the forms of letters and email communications.

Comments are grouped by subject and some have been lumped together when the same subject is addressed.

Urgency of Maintaining Appropriate Management Level (AML)

***Comment*:** Based on the analysis in the EA, the Oregon Department of Fish and Wildlife supports helicopter gathers as the most efficient and humane method for removing surplus horses from the range. The other methods are all less efficient and have greater impacts to other species and rangeland resources.

> ***BLM Response***: The EA states BLM would plan to gather as soon as holding space becomes available and BLM's (WO) gives authorization (p. 6). All action alternatives are designed to achieve and maintain AML throughout the 10-year timeframe of this EA. Until holding space is available, various trapping methods would be used for implementation of available and approved fertility treatments (Proposed Action) to limit the increase in excess horses.

Wild Horse "Removal"

***Comment*:** BLM should consider allowing horses to roam freely without conducting roundups.

> ***BLM Response*:** This action was not analyzed as it is not consistent with agency management detailed in the WFRHBA.

***Comment*:** Removals of horses that have strayed outside the boundaries of HMAs should also be avoided, and horses should be relocated back inside the boundaries of the HMAs.

> ***BLM Response*:** Removal of horses outside HMAs is consistent with agency management detailed in the WFRHBA. Generally, there is no success in relocating horses back into the HMA as they will continue to keep getting out and going back to the outside areas due to many factors.

Livestock Reduction and Forage Consumption

Comment: The EA must consider alternatives that would mitigate any need to remove any or all of the horses both temporarily or permanently and must provide the specific data and a complete analysis of accommodation of the present Wild Horse population without removals, making forage and water adjustments for livestock grazing, if necessary, pursuant to CRF 43 C.F.R. 4710.5(a).

> ***BLM Response*:** Closure of the HMA to livestock use was considered but eliminated from detailed analysis on page 9 and reductions in livestock animal unit months (AUM) was an issue "Considered but Not Analyzed in Detail" in Appendix C (p. 59) of the EA. Adjustments to forage allocations are outside the scope of this analysis as forage allocations and an AML for wild horses have already been set in the SEORMP (2002). The "Purpose of and Need for Action" (EA, p. 1) identifies removals are necessary to return the population to within AML and maintain a TNEB.

***Comment*:** The BLM has also violated its obligations under the National Environmental Policy Act ("NEPA"), 42 U.S.C § 4321-4370f, by failing to adequately analyze the environmental consequences of its proposed decisions on the individual wild horses and wild burros or the herds as a whole; failing to consider reasonable alternatives such as reducing the amount of domestic livestock permitted on these lands. I decidedly object to the proposed dramatic reduction in wild horse populations on their Congressionally designated acreage to make way for or assist with continued domestic livestock grazing on these public lands…."

> ***BLM Response*:** This comment is outside the scope of this project as forage allocations have already been made in the SEORMP/ROD. The EA (Table 6, p. 26) addresses fluctuations in livestock actual use over the past 5 years. The EA (Table 7, p. 27) shows that voluntary reductions in permitted livestock use have occurred. Therefore adaptive management has been applied over the past 5 years. The Proposed Action (p. 6) incorporates adaptive management in the management of horses to maintain a TNEB over the next 10 years.

***Comment**:* The only mention of any domestic livestock monitoring within the Cold Springs HMA is that there was a recent fire and that "Due to a large wildfire in 2014, the Wildcat/Coldsprings Pasture was rested in 2015 and will be rested again in 2016." The EA then goes on to state that "Permitted AUMs per pasture have not been identified; however, average actual use for the Wildcat/Cold Springs pasture between 2011-2015 has been 1616 AUMs." First, I believe that the BLM is aware that before wild horses can be considered for removal, accurate and defensible monitoring data must be provided for the range. This includes ALL usage. Second, the implication that only 1616 AUMs for livestock are authorized for the domestic livestock is very misleading since the EA clearly states that the Wildcat/Cold Springs grazing pasture is 35% of the entire Cold Springs grazing allotment which has a usage of 9030 AUMs. 1616 authorized AUMs for the WildCat portion of the Cold Springs allotment or is it 35% of the total of 9030 AUMs which would be 3161 AUMs.

BLM Response: Table 6 (p. 26) shows the average actual livestock use for the North Star Mountain Allotment over the last five years and Table 7 (p. 27) shows the livestock utilization over the last five years. The comment is confusing the terms permitted, actual use, and authorized on p. 26 of the EA. Permitted AUMs per pasture have not been identified. Average actual livestock use in the Cold Springs HMA has been 1616 AUMs over the past five years. Nothing in the EA states this being the authorized livestock AUMs for the Cold Springs HMA. As there are multiple resources grazing within the Wildcat/Cold Springs pasture (livestock, wild horses, and wildlife), a direct mathematic determination cannot be assumed from the pasture making up 35% of the allotment.

Wild Horse AML Adjustments

***Comment*:** The EA should consider and analyze raising the wild horse AML so that horses receive a fairer share of the forage allocation. The current AML of 75-150 should be raised, at minimum, to reflect a 49-51 authorized AUM split between livestock and wild horses.

BLM Response: Raising the wild horse AML was an issue considered but not analyzed in detail in Appendix C (p. 59) of the EA as it outside the scope of this analysis. Changes to AUMs allocated to both livestock and/or wild horses would require an amendment to the SEORMP (2002), which authorize AUMs for wild horses and for livestock grazing within Cold Springs HMA.

Principally But Not Necessarily Exclusively…

***Comment*:** "The 1971 Congressional Wild Free-Roaming Horse and Burro Act, (Public Law 92-195), declares that the land where wild horses and burros were found at the time of the passing of the Act, is to be devoted principally although not exclusively to the wild horses' and wild burros'." and "Since by law the wild horses and burros are to have the principal usage of their congressionally designated resources (i.e. 51%) and there are a total of 4961 AUMs in the WildCat pasture (3161 livestock and 1800 wild horse) then the true number of AUMs allowed for the wild horses would be 2841 which would equal 207 wild horse…."

***BLM Response*:** The law's language stating that public lands where wild horses and burros were found roaming in 1971 are to be managed "principally but not necessarily exclusively" for the welfare of these animals relates to the Interior Secretary's power to "designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation" - which are, thus far, the Pryor Mountain Wild Horse Range (in Montana and Wyoming), the Nevada Wild Horse Range (located within the north central portion of Nellis Air Force Range), the Little Book Cliffs Wild Horse Range (in Colorado), and the Marietta Wild Burro Range (in Nevada). The "principally but not necessarily exclusively" language applies to specific Wild Horse Ranges, not to HMAs in general. The Code of Federal Regulations (43 CFR Subpart 4710.3) describes herd management areas (§4710.3-1) and wild horse and burro ranges (§4710.3-2). In

delineating each HMA, the authorized officer shall consider the appropriate management level (AML) for the herd, the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in §4710.4. HMAs may also be designated as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds. The Cold Springs HMA has not been designated as a wild horse "range" and therefore must consider the factors described above in the management of the HMA.

NEPA Requirements

***Comment*:** Where was this posted? I don't see it on your web page. The decision making public cannot comment on a proposed action unless they are informed. You will not receive many comments at this rate and any decisions would not be in conformance with NEPA law.

> ***BLM Response*:** BLM Oregon/Washington Policy, (IM 2015-037 - ePlanning Phase 1 Implementation Minimum Standards for Oregon and Washington) guides Vale District to use ePlanning to post NEPA documents, therefore, this EA and all related information were posted on the ePlanning site. A notice of availability of the EA and unsigned FONSI were mailed to 83 interested individuals, groups, and agencies on March 4, 2016, for a 30-day public comment period. In addition, a notice was posted in the *Malheur Enterprise* and *Argus Observer* newspapers on March 9, 2016. The letter and notice both contained the link to find the EA on the ePlanning site as well as information on how to submit comments.

***Comment*:** BLM intends to avoid the requirements of the National Environmental Policy Act (NEPA) by using this 2015 EA as the basis for 10 years of future roundups and removals in the South Steens. Current and on-going site-specific analyses will need to be conducted for each potential capture and/or removal operation that takes place in the future in this HMA or HA. The NEPA law states that the public has a right to know. Since environmental conditions change over time, the NEPA requires additional environmental analysis of and public comment on future roundups that may occur under the auspices of this proposal.

> ***BLM Response*:** This EA analyzes various wild horse management actions to meet the Purpose of and Need for Action (EA, p. 1) over the next 10 years. This 10-year timeframe enables BLM to determine the effectiveness of the Proposed Action at successfully maintaining population levels within AML in Cold Springs HMA (EA, p. 13). Future gather dates and target removal numbers for gathers within the next 10 years would be determined based on future population surveys and a determination that "excess" horses exist within the HMA. A notice to the public would be sent out 30 days prior to any future gather. If new information or circumstances arise during this 10-year period, a Determination of NEPA Adequacy (DNA), per NEPA Handbook H-1790-1 guidance, p. 22, would be used to identify if the analysis in this EA is still valid, or if

supplemental or new NEPA analysis is required. BLM IM No. 2010-130 specifies a 30-day public comment period for public review of a DNA for wild horse and burro gather decisions.

Affected Environment

***Comment*:** I request that BLM thoroughly and specifically address all impacts of current and proposed multi-use projects within the Cold Springs HMA. Address damage to plants, terrain and destruction of the fragile ecosystem from trucks and trailers as well as from equipment driving in and out. Please provide information that shows all fencing within and around the HMAs.

> ***BLM Response*:** Appendix C of the EA (p. 59) addressed scoping comments regarding fences, water usage of and acres designated to oil and gas rigs, wind turbine and geothermal plants. Chapter 3. "Affected Environment and Environmental Consequences" section (EA p. 11) includes analysis of the direct, indirect, and cumulative effects on all affected resources from enacting the proposed alternatives. This section also describes the current state of the environment (affected environment by resource, Chapter 3) which includes the effects of past actions.

***Comment*:** Where is the accurate and comprehensible data that shows the number of animals and number of AUMs on the HMA per the 1) the Wild Horses 2) livestock and 3) foraging wildlife (deer, elk, bighorn sheep, and antelope)?

> ***BLM Response*:** Table 2 (EA, p. 13-14) includes data pertaining to past inventories and gathers within the HMA since 1976. Table 6 (EA, p. 26) shows actual livestock use over the last 5 years within the allotment containing Cold Springs HMA. The EA (p. 36) discusses the forage allocations for wildlife in the allotment that contains the Cold Springs HMA.

***Comment*:** EA fails to analyze and incorporate social factors affecting the Proposed Action.

> ***BLM Response*:** A social and economic values section was added (EA, p. 40).

***Comment*:** In my scoping letter I clearly stipulated that the EA must prove that a hard look was considered on the scientific monitoring data that supports the claim that horses are overpopulating the HMA land and/or causing damage for the range versus livestock and wildlife and other multiple uses (rangeland monitoring data)

> ***BLM Response*:** In Chapter 3 of the EA, wild horse (p. 13), livestock (p. 26), and wildlife use is documented in the Affected Environement sections. The upland vegetation section (p. 29) identifes rangeland health, condition, and threats to achieving a TNEB. In the WFRHBA, acheiving and maintaining a TNEB does not mean the BLM waits for damage to occur before responding to changes in management. All resources are managed with this intent as recovery is much more difficult to manage for than prevention of damage.

***Comment*:** The EA does not sufficiently justify the Proposed Action since the law does not require that wild horses be removed merely because they are over the AML. Rather, the agency must show that the existence of the horses on the range as opposed to livestock or other factors are causing harm to the TNEB.

> ***BLM Response*:** The WFRHBA "requires the BLM to manage horses in a manner that is designed to achieve and maintain a TNEB on the public lands (16 USC § 1333(a)). To achieve a TNEB on the public lands, WH&B should be managed in a manner that assures significant progress is made toward achieving the Land Health Standards for upland vegetation and riparian plant communities, watershed function, and habitat quality for animal populations, as well as other site-specific or landscape-level objectives, including those necessary to protect and manage Threatened, Endangered, and Sensitive Species (TES)." WH&B herd health is promoted by achieving and maintaining TNEB through the land resource management process which does not designate waiting for damage to occur before action is taken. In addition to managing the wild horse population within the AML set in the SEORMP (2002), monitoring data indicate herbaceous upland utilization levels have met or exceeded target levels. This is discussed in the "Purpose of and Need for Action" (EA, p. 1) as well as in the "Affected Environment and Environmental Consequences" section beginning on page 13.

Gather Operations

***Comment*:** I require the BLM include and respond in the EA to the following article by Bruce Nock and describe the measures that would be taken in order to avoid stress to Wild Horses and/or Burros in any capture operation..

> ***BLM Response*:** The EA (p. 16) discusses the risk to animals during helicopter and bait trapping and how BLM now follows IM 2015-151, Wild Horse and Burro Gathers: Comprehensive Animal Welfare Policy, which was created to establish policy and procedures to enable safe, efficient, and successful wild horse gather operations while ensuring humane care and treatment of all animals gathered. The Comprehensive Animal Welfare Policy was developed through coordinated efforts from universities, government agencies, and independent equine practitioners. IM No. 2015-151 was included in the EA (p. 5) as a project design feature as well as in Appendix D (p. 61).

Census

***Comment*:** The scientific monitoring raw data research and report data for all pre and post capture actions on this HMA within the past ten years, including but not limited to aerial and ground observation that verifies the post roundup census population of WH&B.

> ***BLM Response*:** Refer to Table 2 in the EA (p. 13) for gather and census history of the HMA. In July 2014, 189 adult horses were counted and in June 2016, 258 adult horses were counted using the same method. To clarify the census schedule for HMAs in

Oregon the following sentences were added to the EA (p. 13), "Aerial inventories are conducted every 2–3 years for each HMA on Vale District. Population estimates for Cold Springs will be updated as inventories are conducted in the future."

Census - Population Growth

***Comment*:** "The BLM just "saying" the wild horses are in excess and "assuming" there is a 20% annual herd population increase does make it a fact. Where is the BLM accurate and scientific census reporting raw data and summary? Without accurate census information an adequate management plan cannot be developed. Without an accurate estimate of the wild horse population, the BLM cannot move forward with making any population control plans. Simply publishing inaccurate environmental assessments without proven scientific research is meaningless without the facts. The BLM is required to follow the law and using "best available science is the law."

***BLM Response*:** The National Academy of Sciences (NAS) (CH. 2, p. 55) suggests many wild horse populations are realizing annual population growth rates of 20 percent or higher. This was referenced in the EA (p. 6) to clarify where the 20 percent annual population growth rate is derived from. This population growth rate is used to estimate wild horse populations between inventory events. Thus the commenter's claim that BLM is unscientifically "assuming" herd increases and populations is not accurate. To clarify that population inventories are done according to scientific method, a reference to the IM detailing population inventory procedures was included in the EA (p. 5). These estimates were further validated by a June 2016 population inventory of 258 adult wild horses, which is very close to a 20% increase of the 2015 estimate of 213 adult wild horses.

Fertility Control

Comment: BLM should prepare an EIS to disclose the negative impacts of intensive chemical and surgical population control on the Cold Springs horses.

***BLM Response*:** According to the NEPA Handbook (H1790) "You must also prepare an EIS if, after preparation of an EA, you determine that the effects of the proposed action would be significant and cannot be mitigated to a level of nonsignificance". As analyzed in the population modeling (EA p. 19 and Appendix E), fertility control treatments proposed in the EA would not put the herd at risk of any population decrease. This is not a significant impact to the Cold Springs horses. As stated in the EA on p. 8, only approved and available fertility control treatments and methods will be used. Therefore, an EA is the appropriate level of NEPA for the analysis of this population management plan. The 2013 NAS review of the BLM WH&B program (p. 135) recommended GonaCon and chemical vasectomy, along with PZP, as the most promising methods of fertility control however, "further research is needed before they are ready for widespread deployment for horse population management". Any new fertility treatment methods

applied to the Cold Springs herd will be conducted following appropriate NEPA analysis, which will also include a public comment and appeal period.

Comment: BLM must disclose impacts of gelding, which not only fails to reduce herd size, the complications of castrations include evisceration and death.

> ***BLM Response*:** Analysis of using geldings is located in the EA starting on p. 22. Mortality at holding facilities is referenced in the EA (p. 19).

PZP

Comment: BLM must disclose the negative impacts of PZP on wild horses.

> ***BLM Response*:** In the Environmental Consequences section of the EA (p. 20), use of PZP is discussed and analyzed. The protocol outlined in IM 2009-090 Population Level Fertility Control Field Trials: Herd Management Area (HMA) Selection, Vaccine Application, Monitoring and Reporting Requirements will continue to be followed.

Comment: PZP and GonaCon are NOT vaccines … they are both legally listed by the United States Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances as pesticides. By incorrectly describing these pesticides as vaccines, BLM has tried to make it appear and is deceiving the public that they are "helping" a non-existing "problem" when they are actually supporting the eventual demise and extinction of our wild horses and wild burros. Stating that these chemical pesticides are vaccines is deceptive and fringes on fraud against the American people by BLM. It is clear that the BLM has had a wanton disregard for science, evidence and best-practice.

> ***BLM Response*:** As stated above, the use of PZP has been approved and will be administered according to the IM 2009-090. The EA was further clarified by adding PZP-22 to the verbage on p. 8. PZP-22 is not listed as a pesticide.

***Comment*:** The BLM must provide past scientific monitoring research and report data for all contraception applications including but not limited to capture and field darting and type of fertility drug, number and estimated age of each mare darted and identifying marks of each animal for purposes of non-removal of those mares during the proposed capture and also data to include any previously castrated horses

> ***BLM Response*:** The protocol outlined in IM 2009-090, Population Level Fertility Control Field Trials: Herd Management Area (HMA) Selection, Vaccine Application, Monitoring and Reporting Requirements, was followed in 2010. Future application of PZP will also follow this protocol or updates to the protocol as they arise.

***Comment*:** The EA fails to outline in the Proposed Action the data collection on the individual horses that will be treated with PZP in order to determine the efficacy of the fertility control treatment. Without concrete and accurate data (photographs, biological information on each mare, etc.) it is difficult to impossible to evaluate the effectiveness of the Proposed Action.

> ***BLM Response*:** The EA (p. 8) references how PZP treatment will be in conformance with IM 2009-090.

Predator Management

Comment: Protect predators. They are an essential part of a Thriving Ecological Balance and play a crucial role in helping to maintain this balance. Please provide the public with information regarding activities related to the hunting and/or killing of predators on the HMAs or surrounding areas.

> ***BLM Response*:** As stated in the "Response to Comments" portion of the EA on p. 60, it was explained that BLM does not make decisions on predator management but can make recommendations to Oregon Department of Fish and Wildlife. Changes to predator management are outside the scope of this EA.

Genetic Viability

***Comment*:** Where are the detailed plans to maintain or recover the short and long term genetic diversity and health of the proposed remaining herd? Where is BLM's proof that shows that the remaining wild horse bands are able to intermingle and that there is any scientific proof that these few wild horses will remain genetically healthy? Where are the genetic testing results for this herd for the past ten years and if any genetic variation has been below mean, what the BLM has done to correct this problem to avoid further decline in genetic health of this herd?

> ***BLM Response*:** The EA (p. 15) provides a summary of past genetic monitoring performed on Cold Springs herd. The project design features in the EA (p. 5) and the Monitoring in the EA (p. 6) explains how BLM follow the policy related to genetics within wild horse herds.

Wild Horses Benefit Rangeland Ecosystems

Comment: In order to satisfy the legal requirement of the NEPA law, I require the below information be included in the environmental assessment for the Cold Springs HMA. Information showing how wild horses benefit the rangeland ecosystem must be given to the public for consideration.

> ***BLM Response*:** The EA (p. 24) discusses the effects to wild horses and their habitat under the "No Action Alternative - Defer Gather and Removal". The NAS report

indicates rangeland health as well as food and water resources for other animals which share the range would be affected by resource limited horse populations which could be in conflict with the legislative mandate that BLM maintain a thriving natural ecological balance (NAS, p. 56). The NAS report (p. 76) also states, "It can be expected - on the basis of logic, experience, and modeling studies that because horses or burros left to "self-limit" will be food-limited, they will also have poorer body condition on the average. If animals are in poorer condition, mortality will be greater, particularly in times of food shortage resulting from drought or severe winter weather. Indeed, when population growth rate is zero, mortality must balance natality. Whether that is acceptable to managers or the public is beyond the purview of the committee, but it is a biological reality." Section 3(a) of the WFRHBA states the Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the fields of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the advisory board established in section 7 of this Act. BLM interprets the Act and the sciences of biology and ecology to conclude that self-limitation is not a best management practice for wild horses and burros.

Fences and Cattleguards

***Comment*:** Please provide information that shows fence lines and how they prevent or assist wild horses from intermingling and/or from seasonal migration as well as the purpose for each fence and the effect of each fence on the wild horses – including details with justification and impact on the horses and effectiveness of all fences for wild horse management? The EA fails to analyze and address in detail these issues and possible actions that could be taken to mitigate the negative impacts that fencing is having on wild horse movement.

***BLM Response*:** Appendix B (p. 58) of the EA includes a map showing locations of all fences within the HMA. The EA (p. 59) Appendix C addressed issues raised during public scoping; removal of fences was addressed. Impacts of fences or other range improvement projects are fully analyzed in site-specific NEPA analysis for the range improvement project. This EA does not propose any new fences.

***Comment*:** The EA must address the removal of any/all cattleguards or retrofit with "Wild Horse Annie" safety features, so as to allow WH&B to cross them without danger.

***BLMResponse*:** The EA (p. 59) Appendix C addressed issues raised during public scoping. This is outside the scope of this document.