

## Determination of NEPA Adequacy

# MARIETTA WILD BURRO RANGE GATHER PLAN

## Decision Record

DOI-BLM-NV-C010-2017-0030-DNA

U.S. Department of the Interior  
Bureau of Land Management  
Carson City District  
Stillwater Field Office  
5665 Morgan Mill Road  
Carson City, NV 89701  
(775) 885-6000

**JUNE 2017**



It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

DOI-BLM-NV-C010-2017-0030-DNA

**DECISION RECORD  
MARIETTA WILD BURRO RANGE GATHER  
MINERAL COUNTY, NEVADA**

**DETERMINATION OF NEPA ADEQUACY  
DOI-BLM-NV-C010-2017-0030-DNA**

**INTRODUCTION**

The Bureau of Land Management (BLM) Carson City District, Stillwater Field Office will implement a bait and water trapping gather within and outside the Marietta Wild Burro Range (MWBR) to remove approximately 125 excess wild burros and horses.

A Determination of National Environmental Policy Act (NEPA) Adequacy (DNA) to the Garfield Flat and Marietta Herd Management Area Gather Plan Environmental Assessment (EA) (DOI-BLM-NV-C010-2011-0529-EA) has been completed for this Decision (DOI-BLM-NV-C010000-2017-0030-DNA).

**BACKGROUND**

On December 5, 2011, BLM issued a decision to gather 151 excess wild horses and burros from within and outside the MWBR using a helicopter gather as the primary gather mechanism, supplemented by bait and water trapping. At that time, the wild burro population of 144 burros was above the AML range of 78-104, and there were 85 wild horses present in the MWBR, which is not managed for any horses. The purpose of the MWBR gather portion of the 2011 Decision was to manage for a thriving natural ecological balance by removing excess wild burros that were causing resource degradation, to bring the population to the low range of AML, and to remove all wild horses present in the MWBR. After the decision was issued, the gather operations authorized for the MWBR were delayed until funding became available, and have not been implemented to-date due to insufficient funding and resources. Today, the burro population has increased to an estimated 341 burros. The overpopulation of wild horses and burros is causing adverse resource impacts both within and outside the MWBR, and poses risks to public safety and animal health from vehicles colliding with burros on highways and roads.

Due to the wild burro and wild horse over population within the MWBR's, many of the desirable grass plants have disappeared due to over grazing. With limited resources within MWBR, due to over population, an increasing number of burros are leaving the range seeking forage elsewhere. They have become nuisance animals in the town of Mina and have caused numerous public safety concerns along Hwy 95, State Routes 359 and 360. Excess animals have created an increased risk of vehicular accidents that threaten the safety of motorists and wild burros and horses. Since April 2015, BLM has received reports from the Nevada Highway Patrol and State Brand Inspector that 28 burros associated with the MWBR were killed in vehicle accidents. Several of the Highway Patrol Officers stated that these numbers are low since semi-truck drivers rarely report collisions with burros.

Because of the large number of burros and limited water sources, burros frequently congregate at the natural springs within the MWBR. This negatively impacts not only the spring sources but the local wildlife as well. The bighorn sheep that come down from the Excelsior Mountains and

adjacent ranges to the west that utilize the springs during the dry season since will not access springs if burros are nearby. Additionally pronghorn will avoid use of springs if more than a few horses are present.

The last helicopter gather occurred in 1987, in which 94 burros were removed. Since this gather, there have been five removals of nuisance burros that have occurred along the highways near Mina totaling 45 burros. The most recent flight inventory of MWBR occurred in November 2015 and resulted in a population estimation of 265 burros, of which 132 were located outside of the MWBR. In addition, 37 wild horses, which most likely originated from Garfield HMA or Tonopah, were counted within the MWBR. These horses compete with the wildlife and burros for the limited resources. The current population estimate is 341 wild burros inside and outside of the MWBR and 48 wild horses inside the MWBR based upon natural reproduction rates. The current estimated wild horse population within the MWBR is lower than the 2011 census possibly due to the recent drought, lack of adequate forage and overpopulation. During the 2014 census approximately 10% of the horses seen were in very poor condition. As a result of very limited forage near water sources horses and burros must travel considerable distances between grazing areas and water sources. Burros are better adapted to surviving in areas with limited resources, they require less water and forage than horses, which likely explains their observed good condition while some of the horses were observed to be in very poor condition.

The EA analyzed helicopter gather techniques as the primary gather method and bait and water methods as a secondary technique for the removal of 151 animals from within and outside the MWBR. Based on new observations and the capacity to remove only approximately 125 total animals, the BLM believes that this number of animals can be captured successfully without the need for a helicopter at this time through bait and water trapping, since the 125 animals that would be trapped and removed represent a lower percentage of the total wild horse and burro population to be removed as compared to the Proposed Action in the 2011 EA.

## **DECISION**

It is my decision to implement bait and water trapping to remove approximately 125 excess wild burros and horses from the Marietta Wild Burro Range within Mineral County, Nevada, as described in the Proposed Action. This action is necessary to remove excess wild burros and horses that are adversely impacting limited resources within the MWBR and that pose a threat to public safety along public highways.

A Determination of NEPA Adequacy to the Garfield Flat and Marietta Herd Management Area Gather Plan Environmental Assessment (EA) (DOI-BLM-NV-C010-2011-0529-EA) has been completed and it has been determined that no additional NEPA analysis is required.

Pursuant to Title 43 of the Code of Federal Regulations (CFR) §4770.3(c), this decision is effective immediately.

## **RATIONALE**

The BLM is required to manage multiple uses in a manner that avoids degradation of the rangelands, maintain a thriving natural ecological balance between wild horses and burros, wildlife, livestock and resolve public health and safety concerns. The current populations of wild

horses and burros within the MWBR are in excess of the numbers that the range can sustain, as evidenced by excessive forage use by wild horses and burros, concentrations of wild horses and burros at water sources, movement of wild burros to areas outside the Range, and by the poor body condition observed for a number of the wild horses that are present in the MWBR.

Average annual precipitation for this area is approximately six inches. Low precipitation and relatively hot summers result in relatively low production of forage grasses. The dry range sites found within the MWBR can take many decades to recover from over grazing, by removing 125 wild burros and horses the amount of over grazing will be reduced, reducing the stresses to the native grass species.

Spring snails, a BLM sensitive species have been identified at two springs within the MWBR. Spring snails require cool, clean flowing water as an essential habitat component. This habitat requirement is degraded by excessive wild burro and horse use due to over population and competition for limited water sources.

Large numbers of horses and burros congregating at springs negatively impacts local bighorn sheep and pronghorn populations that compete for water resources in the area. Bighorn sheep and pronghorn typically avoid springs when more than a few horses or burros are present.

Over population of wild burros, within the HMA has led to animal dispersion off the range and into the vicinity of the adjacent state highways. This burro migration has resulted in 28 animal deaths due to vehicle collisions, as reported by the Nevada Highway Patrol and State Brand Inspector. There is a continued and proven risk to public safety and animal health.

Overpopulation has resulted in increased competition for limited water and forage. As nearby resources are over utilized animals must increasingly travel further to sustain health. Overall health deteriorates with these increasing distances and decreasing availability of forage and water resources.

Implementing the gather of 125 excess wild horses and burros is necessary to ensure progress continues to be made towards achieving a thriving natural ecological balance consistent with the Wild and Free-Roaming Horses and Burros Act of 1971 (WFRHBA) and towards achieving the wild horse management objectives identified in the Carson City Resource Management Plan (2001).

## **PUBLIC INVOLVMENT**

The EA # DOI-BLM-NV-C010-2011-0529-EA was made available for public review and comment on September 22, 2011. Letters were sent to individuals, organizations and agencies listed on the Carson City District Office (CCD) Wild Horse and Burro Program mailing list. Notification of the availability of the EA was made through the Nevada State Clearinghouse. The Nevada State Office provided news releases to the Tahoe Daily Tribune, Record Courier, San Francisco Chronicle, Mason Valley News, Las Vegas Review Journal, Sacramento Bee, Lahontan Valley News, Nevada Appeal, Reno Gazette Journal, Associated Press, Nevada News, Fox news Reno, KNPB, KRNK, KTVN, Lotus Radio, Daily Sparks Tribune, and organizations on the Media Reno Area, Media Other NV&CA, Media So NV, Wild Horse Interest and Congressionals group

database. On August 17<sup>th</sup> BLM presented information regarding this plan at the Mineral County Commissioners Meeting in Hawthorne NV; the response from the commissioners was positive. The BLM comment period closed on October 26, 2011, although comments received in a timely manner after this date were also considered. The EA was made available by hard copy at the CCD, and on the BLM website.

Comment letters from the public, organizations and agencies were received by email, fax and mail delivery. All comments were reviewed, considered and then categorized. Comment letters were broken down into categories. A summary of the consolidated Public Comments and BLM Responses were noted in Appendix I of the Final EA. Several minor changes were made to the content of the Final EA.

### **AUTHORITY**

The authority for this Decision is contained in Section 1333(a) of the WFRHBA, Section 302 (a) and (b) of the Federal Land Policy and Management Act (FLPMA) of 1976, the Public Rangelands Improvement Act (PRIA) of 1978 (Pub. L. 95-514, Sec. 4) and at 43 CFR Part 4700.

### **43 CFR § 4700.0-6 Policy.**

- (a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat;
- (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans;
- (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior;
- (d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

### **43 CFR § 4710.3-1 Herd Management Areas**

Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in § 4710.4.

### **43 CFR § 4710.4 Constraints on Management**

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

### **43 CFR § 4770.3 Administrative Remedies**

- (a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR, part 4.
- (c) Notwithstanding the provisions of paragraph (a) of §4.21 of this title, 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 natural ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

**42 USC Sec. 1732(b):** In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

**APPROVAL OF THE AUTHORIZED OFFICIAL**

This decision is effective upon issuance in accordance with 43 CFR § 4770.3 (c). The gather is needed to promptly remove excess wild burros and horses in order to protect animal health, public land and wildlife habitat resources, and to reduce public health and safety risks from vehicular collisions with excess burros that have left the MWBR. This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR Part 4.

  
\_\_\_\_\_  
Kenneth R. Collum  
Field Manager  
Stillwater Field Office

  
\_\_\_\_\_  
Date

## **APPEAL PROCEDURES**

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

Kenneth R. Collum, Stillwater Field Manager  
BLM, Carson City District Office  
5665 Morgan Mill Road  
Carson City, NY 89701

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

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

Copies of the notice of appeal and petition for a stay must also be submitted to:

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

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

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

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

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

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