United States Department of the Interior

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TAKE PRIDE IN AMERICA

In reply Refer to
NV 042

JUL 30 2007

DECISION RECORD (DR)
AND
FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Jakes Wash Herd Management Area
Ely Field Office
ENVIRONMENTAL ASSESSMENT (EA)
NV-040-07-045

Introduction

The Jakes Wash Gather Plan and Environmental Assessment (NV-040-07-45) was completed to analyze the impacts associated with BLM's proposal to conduct a gather to remove approximately 87 excess wild horses from the Jakes Wash HMA in about August 2007 in order to achieve and maintain the appropriate management level (AML) and prevent further range deterioration resulting from the current overpopulation of wild horses. The E.A. analyzes two alternatives in detail:

- ❒ Alternative A -- Proposed Action. – BLM's proposal to gather about 80-90% of the population (or 90-110 wild horses) is based on the authorized officer's determination that there are excess wild horses present and removal of the excess animals is needed in August of 2007 to restore wild horse herd numbers to levels consistent with the Appropriate Management Level (AML) for the Herd Management Area (HMA), prevent further range deterioration, and achieve a thriving natural ecological balance. The estimated post-gather population would be approximately 17-37 wild horses within the Complex as identified in the E.A. During the gather operation, BLM personnel would assess herd health, collect blood samples to establish baseline genetic diversity, and collect and record other data for the captured horses. As part of the proposed action, BLM would select animals for removal and/or release in accordance with BLM's Gather Policy and Selective Removal Criteria for Wild Horses (Washington Office IM 2005-206).

☐ Alternative B. No Action Alternative. In this alternative, wild horses would not be gathered at this time.

FINDING OF NO SIGNIFICANT IMPACT

Based on the analysis of potential environmental impacts in the E.A. for the Jakes Wash HMA Wild Horse Gather (NV-040-07-45), I have determined that the Proposed Action will not have a significant effect on the human environment. Therefore, the preparation of an environmental impact statement (EIS) is not required for compliance with the National Environmental Policy Act of 1969.

Reasons for this finding are based on my consideration of the Council on Environmental Quality (CEQ) criteria for significance (40 CFR 1508.27) with regard to the context and intensity of impacts.

Context: The affected region is limited to portions of White Pine County, where the project area is located. The gather has been planned with input from interested public and users of public lands.

Intensity: Based on my review of the EA against CEQ's factors for intensity, there is no evidence that the severity of impacts is significant:

1. *Impacts that may be both beneficial and adverse.* The proposed gather is expected to meet BLM's resource objective for wild horse management of maintaining a thriving natural ecological balance consistent with other multiple uses. Although the gathering and removal of excess wild horses is expected to have short-term impacts on individual animals, it is expected to ensure the long-term viability of the wild horse herds and help to improve forage and habitat conditions in the herd management areas.

2. *The degree to which the proposed action affects public health or safety.* The proposed gather has no effect on public health or safety.

3. *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.* The proposed action has no potential to affect unique characteristics such as historic or cultural resources or properties of concern to Native Americans. There are no wild and scenic rivers, or ecologically critical areas present in the areas. Maintenance of appropriate numbers of wild horses is expected to help make progress in meeting resource objectives for improved riparian, wetland, aquatic and terrestrial habitat.

4. *The degree to which the effects on the quality of the human environment are likely to be highly controversial.* Effects of the gather are well known and understood. No unresolved issues

were raised following notification of wild horse advocacy groups of the proposed gather.

5. *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.* The proposed gather includes measures for monitoring its effects on herd population dynamics and toward meeting multiple use objectives for rangeland health throughout the herd management areas. Use of the fertility drug, PZP, to reduce the frequency of gathers and associated impacts, is part of ongoing research to verify that it does not involve unique or unknown risks.

6. *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.* The action would not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.

7. *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.* The EA includes an analysis of cumulative effects which considers past, present and reasonably foreseeable future actions in the Jakes Wash HMA that supports the conclusion that the proposed gather is not related to other actions with individually insignificant but cumulatively significant impacts.

8. *The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing on the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.* The proposed gather has no potential to adversely affect significant scientific, cultural, or historical resources.

9. *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.* The action is not likely to adversely affect any listed species, and the action area does not include any habitat determined to be critical under the Endangered Species Act.

10. *Whether the action threatens a violation of Federal, State, local or tribal law or requirements imposed for the protection of the environment.* The proposed gather conforms to the approved Egan Resource Management Plan and subsequent record of deciscion. Work Plan. Further the proposed gather is consistent with other Federal, State, local and tribal requirements for protection of the environment to the maximum extent possible.

DECISION

It is my decision to implement the proposed action as described in the EA for the Jakes Wash Wild Horse Gather (Ely NV-040-07-45). 90-110 wild horses will be gathered, a gate cut removal criteria will be used to sort the wild horses, approximately 87 wild horses will be removed within the HMA, any wild horse residing outside any herd management area. Approximately 17-37 horses will remain after the gather.

Rationale

The Proposed Action is selected for implementation because it would remove excess wild horses in August 2007 in order to achieve the established Appropriate Management Level (AML), prevent further range deterioration, and achieve a "thriving natural ecological balance" as well as preserve the multiple use relationship within the Jakes Wash HMA immediately and over the next several years. Removal of excess horses will result in improved vegetation and riparian resource conditions currently being impacted by the current overpopulation of wild horses. Additionally, implementation of the Proposed Action would make progress toward attainment of Rangeland Health Standards and site-specific resource management objectives.

AMLs were established following in-depth analysis of habitat suitability and monitoring data and issuance of a Wild Horse Decision in November 2003 for Jakes Wash HMA. Implementation of the Proposed Action would make progress toward achieving the established AMLs and monitoring data collected post-gather would be used to adjust AMLs, if needed, in the future.

2. The Proposed Action is subject to the Egan Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS) dated December 24, 1983, and resolution of protests received on the proposed RMP and FEIS documents dated September 21, 1984, and the Egan Resource Area Record of Decision (ROD) which was finalized February 3, 1987. The proposed wild horse gather is in conformance with the Egan RMP as required by regulation (43 CFR 1610.5-3(a)). The applicable decision(s) from this plan are (refer to Record of Decision, page 29):

3. The No Action Alternative was not selected because it would not allow for the removal of wild horses to preserve the multiple use relationship within the area and help to make progress in meeting objectives for wild horses and riparian, wetland, aquatic and terrestrial habitat. The No Action Alternative does not comply with the 1971 WFRHBA which requires BLM to remove excess animals immediately upon determination they are present.

Public Involvement

The preliminary environmental assessment was made available to 82 interested individuals, agencies and groups for a 30 day public review and comment period on June 15, 2007. Written comments were received from four individuals and e-mail comments were received from 149 individuals. Many of these comments contained overlapping issues/concerns which were consolidated into 15 distinct topics. Refer to EA, Appendix V for a detailed summary of the comments received and how BLM used these comments in preparing the final environmental assessment. The final Environmental Assessment / Gather Plan for Jakes Wash is available on the BLM's web site at http://www.blm.gov/nv/st/en/fo/ely_field_office/blm_information/nepa.2.html, or contact the Ely BLM Field Office.

In response to public review and comment, the following changes were made in the final EA: (1) comments that the established AML of 1-21 wild horses violates the 1971 WFRHBA were incorporated as an issue not addressed in this EA (refer to page 5 for more information); (2) comments expressing concern about genetic viability of the post-gather wild horse population were incorporated as an issue addressed in detail in this EA (page 5) – potential impacts are also addressed in the impacts analysis (EA, page 10-11). Additionally, under Mitigation Measures and Suggested Monitoring (EA, page 18), a discussion regarding proposed monitoring to establish baseline genetic diversity and to detect any changes over time was added.

Approval

The Jakes Wash HMA wild horse gather is approved for implementation upon signature and date below. This decision is made effective upon issuance in accordance with Title 43 of the Code of Federal Regulations (CFR) at 4770.3 (c). Removal of excess (Note: nowhere in the EA have we expressed any concern about protecting animal health in the short term) achieve a thriving ecological balance and multiple use relationship and to prevent further deterioration of rangeland resources resulting from the current overpopulation. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR part 4 (see attachment).

William E. Dunn

William Dunn
Assistant Field Manager
Renewable Resources

7/30/07
Date

Attachment
Jakes Wash
WILD HORSE GATHER
Decision Record

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:

William Dunn, Assistant Field Manager
BLM, Ely Field Office
HC 33 Box 33500
702 N. Industrial Way
Ely, NV 89301

Your appeal must be filed within thirty (30) days from receipt 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.

US Department of the Interior
Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, California 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.