

**United States Department of the
Interior**

BUREAU OF LAND MANAGEMENT

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JUL 19 2004

DEPARTMENT OF ADMINISTRATION
OFFICE OF THE DIRECTOR
BUDGET AND PLANNING DIVISION

In Reply Refer To:
4720/4710.4 (NV-042)

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

**Jakes Wash Herd Management Area Gather Plan
Ely Field Office**

**ENVIRONMENTAL ASSESSMENT
NV-040-04-014**

INTRODUCTION

The Bureau of Land Management (BLM) Ely Field Office proposes a maintenance gathering of wild horses within the boundaries of the Jakes Wash Wild Horse Herd Management Area (HMA) and any wild horses immediately outside or adjacent to the HMA. The primary purpose of the proposed action is to bring the wild horse population into a "thriving natural ecological balance". This would be accomplished by reducing the herd to a level of 14 animals. This would prevent deterioration of the health and condition of the wild horses, as well as the vegetative and riparian resources. The current population of wild horses within the herd is estimated to be 90 animals. Prolonged drought conditions have caused high stress on the rangeland resource and wild horse population. The Appropriate Management Level (AML) for the herd is 1-21 wild horses. The AML for the Jakes Wash HMA was established through the Notice of Wild Horse Management Decision and Finding of No Significant Impact (FONSI) for the Establishment of Appropriate Management Levels for Twelve Wild Horse HMA's, and was based on analysis in Environmental Assessment (EA) NV-040-03-036. Documents containing this information are filed at the Ely Field Office.

Public notification and scoping of EA NV-040-04-014 was sent to the persons, groups, and agencies listed on pages 16 and 17 of that document on May 20, 2004, with a 30-day review and comment period.

Comments pertaining to the Jakes Wash Herd Management Area Gather Plan and EA were submitted by the Fund for Animals or the "Fund" regarding wild horse management within the Ely District and the BLM as a whole. Specific concerns are summarized below and will be addressed by concern.

1. The adequacy of the Environmental Assessment (NV-040-04-014) in determining impacts from gathering and removing excess wild horses and the level of analysis for fertility control, natural controls, population modeling, and the removal of livestock.
2. Livestock grazing management within the Jakes Wash HMA.
3. The process used for determining an appropriate management level.
4. Genetic viability of the Jakes Wash wild horse herd and more specifically the long term sustainability of that herd with an AML of 1-21 wild horses.
5. Wild horse, livestock, and wildlife interactions.
6. Range improvements within the HMA; specifically locations of fences and number of fences.
7. Specific population objectives and goals for the herd.
8. Inadequacies of the BLM census techniques, census needs to be analyzed in an EA as well as be conducted prior to a gather.
9. Overall NEPA adequacy of national wild horse program guidance and policy.

All of the concerns identified by the Fund have been reviewed and considered. The Ely Field Office (BLM) analyzed the concerns 1-5 as identified above during the process of establishing the Appropriate Management Level for the Jakes Wash HMA in the Twelve Herd Management Areas EA (NV-040-03-36), therefore is outside the scope of a gather plan. Concerns six and seven would be identified in a Herd Management Area Plan and are outside the scope of this analysis. Concerns identified as numbers eight and nine are outside the scope of this effort since this is an analysis of gather and removal of wild horses.

Comments pertaining to the Jakes Wash Herd Management Area Gather Plan and EA were submitted by Thomas Rosevear, livestock grazing permittee, regarding wild horse management within the Jakes Wash HMA. Specific concerns are summarized below and will be addressed by concern.

1. The current overpopulation of wild horses is creating an economic hardship on his livestock business.
2. No wild horses should be managed for in Jakes Wash HMA due to the limited amount of water and space.
3. If gather operations occur the wild horses should be taken to a level of one wild horse.

In regards to concern one, the Ely Field Office has not proposed any reduction or changes in Mr. Rosevear's livestock grazing permit due to wild horse numbers. Concern two is out of scope for this effort since it is analyzing the gather and removal of wild horses. In response to comment three, based upon past gather operations the complete removal of all animals has proven to be difficult. Typically a success rate of 85% can be expected, therefore leaving 14 animals.

SUMMARY OF PROPOSED ACTION

The Proposed Action is to gather and remove all wild horses in excess of AML within the HMA through a "gate cut", and to remove all wild horses living outside the HMA on BLM-administered land. In a gate cut, all wild horses caught are removed. The BLM would attempt to capture and remove all of the wild horses living outside the HMA on BLM-administered land. Of the wild horses living within the HMA, the BLM would attempt to capture and remove all those in excess of AML, leaving approximately 14 wild horses. The capture would continue within the HMA until enough wild horses are caught to achieve AML. If AML cannot be achieved due to the contractor not being able to capture any more wild horses, gather operations would cease. It is expected that 85 percent of the wild horses in the HMA could be caught, leaving 14 wild horses within the HMA. An additional 30 wild horses would be outside the HMA on Forest-Service administered land, and are expected to move back into the HMA during winter. That would make the expected population after gathering to be approximately 30-40 wild horses. The BLM would also determine sex, age and color of the wild horses captured, acquire blood samples, and assess herd health (pregnancy, parasite loading, physical condition, etc).

DECISION RECORD

As a result of the analysis presented in the EA, and to be in conformance with the Wild Horse Decision process, it is my decision to approve capture and removal of all excess wild horses. The Jakes Wash HMA will be gathered down to a level of 14 wild horses. The capture of all 90 wild horses within the gather area will not occur.

Rationale: The gathering and removal of excess wild horses is being selected in order to ensure 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. Further, this action is needed in order to prevent the range from deterioration associated with an overpopulation of wild horses and to remove wild horses residing off the HMA. The gather operation will leave a level of 14 wild horses within the HMA. Due to the nature of this gather and the implementation of a "gate cut", immunocontraception vaccine (fertility control) is unfeasible since there will be no wild horses released. Fertility control was analyzed but eliminated from detailed analysis due to these factors. Therefore the use of fertility control will not be administered during the Jakes Wash gather.

FINDING OF NO SIGNIFICANT IMPACT

For the Jakes Wash HMA Wild Horse Gather

FONSI

I have reviewed Environmental Assessment (EA) NV-040-04-014, dated May 2004. After consideration of the environmental effects as described in the EA I have determined that the action of removing excess wild horses as identified in the EA will not significantly affect the quality of the human environment and that an Environmental Impact Statement (EIS) is not required.

Rationale

Context:

Within the Ely District, 24 HMAs encompassing 5,300,000 acres are designated for the management of wild horses as one of the multiple uses. All 24 HMAs have an established AML specifically identifying the amount of wild horse use the rangeland resource can support. The removal of excess wild horses has been analyzed and implemented numerous times within the Ely District and the west as a whole. The implementation of the proposed action as analyzed within EA NV-040-04-014 for wild horse management is consistent with the management of other HMAs within the Ely District.

Intensity:

1) Impacts that may be both beneficial and adverse.

The environmental assessment has considered both beneficial and adverse impacts of removing wild horses in excess of the established appropriate management level (AML) for the Jakes Wash HMA; and the removal of wild horses outside the HMA. The removal of excess wild horses has previously occurred on 23 other HMAs within the Ely District and within Jakes Wash HMA in 2001. No significant beneficial or adverse impacts will occur.

2) The degree to which the proposed action affects public health or safety.

My decision to remove excess wild horses will have no affect to 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.

There are no unique characteristics or ecologically critical areas within the gather area.

4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

Management of wild horses can be controversial. Continuing to manage wild horses in excess of the established appropriate management as well as wild horses which reside outside the HMA as analyzed is unacceptable to many members of the public, as well as State agencies and governments. Active management of wild horses has always had proponents and opponents. Based upon public input during the review process and based upon the analysis in the EA my decision to gather and remove excess wild horses to a level of 14 animals will not be highly controversial to the degree that significant impacts would occur.

5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The gathering and removal of excess wild horses within the Ely District is done on an annual basis. Therefore, my decision does not have any highly uncertain effects or involve any 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.

My decision does not establish any precedent for future actions with significant effects and does not represent a decision in principle about future considerations. Further, all future wild horse gather actions would be subject to the same environmental assessment standards as well as an independent decision making process.

7) *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.*

No significant cumulative impacts are identified in the EA.

8) *The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources.*

My decision will not cause the loss or destruction of significant scientific, cultural or historical resources nor would these resources be adversely affected since there are none known within gather area.

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 ESA of 1973.*

During the time of the gather no threatened or endangered species will be present. There is no designated critical habitat in the gather area. The EA has identified that no adverse impacts would result to these species from implementing this action.

10) *Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.*

This action will not violate or threaten to violate any federal, state, or local law or requirement imposed for the protection of the environment.

REMOVAL DECISION

In accordance with 43 CFR 4770.3 (c), this constitutes my final decision to gather wild horses within and outside the Jakes Wash HMA and is placed in full force and effect.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR, Part 4. If an appeal is taken, your appeal must be filed with the Bureau of Land Management, Ely Field Office, HC33 Box 33500, Ely, Nevada, 89301, within 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 4939, January 19, 1993) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to the Interior Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, and to the Office of the Solicitor, U.S. Department of the Interior, Suite 6201, Federal Bldg., 125 South State St., Salt Lake City, Utah, 84138, at the same time the original documents are filed with this office.

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay of a decision pending appeals shall show sufficient justification based on the following rules:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success of 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.

Peter McFadden, acting for
Peter McFadden
Assistant Field Manager, Renewable Resources
Ely Field Office

July 15, 2004
Date

I concur.

Gene A. Kolkman
Gene A. Kolkman
Field Manager
Ely Field Office

7/15/04
Date

Jakes Wash HMA CC: Mailing List

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