



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Winnemucca Field Office
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Winnemucca, Nevada 89445
702-623-1500

G 6/19/97
File copy

In Reply Refer To:
(NV-022.40)

June 19, 1997

Dear Interested Party:

Enclosed with this letter is a copy of the Final Gather Plan for the Happy Creek and Deer Creek Allotments of the Jackson Mountains Herd Management Area. The Draft Gather Plan was mailed on 5/19/97 and 30 days was allowed for your review. Two responses were received and considered in the development of this Final Plan.

Procedures for appeal of this Final Gather Plan and associated Full Force and Effect Decision are contained within the gather plan. If you have questions concerning the gather plan please feel free to contact Ron Hall of my staff, at (702) 623-1574 or write to the above address. We thank your for your involvement in and concern for our Wild Horse and Burro Management Program.

Sincerely yours,

Colin P. Christensen
ADM Renewable Resources
Winnemucca District Office

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Winnemucca District Office
Division of Renewable Resources

FINAL
Happy Creek/Deer Creek Allotment
Wild Horse Removal Plan

1997

FINAL
Jackson Mountain HMA
Happy Creek/Deer Creek Allotments
Wild Horse Removal Plan

I. INTRODUCTION

The intent of this removal plan is to outline the methods and procedures to be used in gathering approximately 130 wild horses and removing approximately 80 horses from the Happy Creek/Deer Creek Allotments of the North Jackson Mountains Herd Management Area (HMA), and public lands outside the HMA but immediately adjacent to it. The proposed action would reduce the horse population of the HMA to a number within the AML range established in the Happy Creek/Deer Creek Allotment Final Multiple Use Decision (FMUD's) dated respectively 2/14/97 and 2/23/94. The proposed removal operation is scheduled to begin no earlier than August 1, 1997.

II. GENERAL AREA DESCRIPTION - BACKGROUND DATA

A. Location

The geographical center of the Happy Creek Allotment is 50 air miles northwest of Winnemucca, Nevada. The Jackson Mountain HMA is inhabited by two herds of horses, one on the south end of the mountain and one on the north. The horses on the north end inhabit the Happy Creek, Deer Creek, Wilder Quinn and Bottle Creek Allotments. (See Maps appendix 1-3). Within the Happy Creek Allotment the horses occupy only the South of Highway Use Area. The Happy Creek Allotment represents the core population and contains the largest number of horses.

B. Appropriate Management Levels

Appropriate Management Levels (AML's) have been established on Happy Creek and Deer Creek Allotments. They are 36-60 adult horses in Happy Creek and 10 in Deer Creek. This gather will be conducted within these allotments pending finalization of the AML for the Wilder Quinn and Bottle Creek Allotments. Bottle Creek and Wilder Quinn contain in excess of 40 horses at times. When the AML's are final in the Bottle Creek and Wilder Quinn Allotments, the sum of the AML for all allotments will be the AML for the North Jackson Mountain Area. The north herd will be managed as one herd regardless of which allotment they may be occupying at a given point in time. When the AML's for Bottle Creek and Wilder-Quinn are final this gather plan will include those allotments. These AML's will probably not be final in time to include them in the 1997 gather.

C. Population and Removal Data

The following table shows the most current wild horse population estimates for the capture area.

<u>Capture Area</u>	<u>AML</u>	<u>Population Estimate</u>	<u>Estimated Post-removal Population</u>
Happy Ck./Deer Ck. Allotment	46-70	130	50

The last gather conducted in the Happy Ck./Deer Ck. Allotments was concluded 1/1989. 102 horses were removed from the Happy Creek/Deer Creek Area. For historical data on this herd which includes census, distribution and population estimates refer to appendices 4 and 5.

An aerial census will be conducted in late June of 1997 to refine population estimates prior to gathering.

D. Population Management

Policy at this time permits the removal of age classes 9 and under. It is estimated that 80% of the population falls within these age classes. If this is true, then the age structure should allow the release of approximately 20-25 younger age class horses to minimize the impact of

selective removal on the age structure while still being able to achieve AML. Age 1-5 will represent 60% of the younger release while 6-9 will represent 40%. The release sex ratio will be 60/40 in favor of the female. These guidelines will be followed if the actual age structure and sex ratios are representative of the estimates used to develop these guidelines. Specific colors of horses will not be favored nor will attempts be made to genetically manipulate the population to favor a "type" of horse.

Blood samples will be taken and analyzed to develop genetic baseline data. In addition, movement between the north and south Jackson HMA horses has not been documented. Comparison of genetic markers will determine if this is or is not the case. All release horses, except foals, will be freeze marked on the left hip to facilitate distribution/movement studies and to provide a deterrent to illegal gather activity.

D. Authority

The Wild Free-Roaming Horse and Burro Act of 1971 (Public Law 92-195) as amended, Section 3(b)(1), states that the Secretaries of Interior and Agriculture shall "determine appropriate management levels of wild free-roaming horses and burros on areas of public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization or natural controls on population levels)." Section 3(b)(2) states, "that if an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation." The authority may also be found at Title 43 of the Code of Federal Regulations.

E. Wilderness Study Areas

Part of the North Jackson Mountain HMA is within the North Jackson Mountain Wilderness Study Area (NV-020-606). This will place constraints on the locations of trap sites.

D. Reference to Environmental Assessment (EA)

An Environmental Assessment NV-020-07-16 has been prepared addressing impacts of this gather and selective removal.

A Programmatic EA (No. NV-020-7-24) analyzing the environmental consequences and mitigating measures for the use of helicopters during gather operations was prepared and distributed for public comment in May 1987. After the incorporation of public comments, a Record of Decision and Finding of No Significant Impact was approved on August 4, 1987.

A Plan Conformance Record for the Happy Creek Allotment (NV-020-06-AD-21) was completed on 6/3/96.

These documents are available for review at the Winnemucca District Office.

III. Methods For Removal And Safety

The methods employed during this capture operation will be herding horses with a helicopter to a trap built with portable panels, or herding animals with a helicopter to ropers. Roping will be a last resort and will only be used after consultation with the ADM/DM of the Winnemucca District. The Bureau of Land Management will contract with a private party for this operation. The following stipulations and procedures will be followed during the contract to ensure the

welfare, safety and humane treatment of the wild horses.

A. Trapping and Care of Animals

1. All capture attempts will be accomplished by the utilization of a helicopter. A minimum of one saddle horse shall be immediately available at the trap site to accomplish roping only if necessary. Under no circumstances shall animals be tied down for more than one hour.
2. The helicopter shall be used in such a manner that bands will remain together. Foals shall not be left behind. The project helicopter actions may occasionally be observed by a Government controlled helicopter. All actions of the Government helicopter will be coordinated with the Contractor to prevent interference with the project helicopter and contract operations.

In the event an additional helicopter is not available to observe the project helicopter, other methods will be utilized to observe the removal operations such as using observers on horseback, in vehicles and/or placing stationary observers in strategic locations.

Capture operations shall be monitored to ensure foals are not orphaned and left on the range. It will be standard practice to check for wet mares without foals or foals coming into the trap without a mare. Field personnel should provide additional on-the-ground monitoring of capture operations where possible. Additional personnel may be requested through the National Program Office (NPO) to assist with capture operations during periods when young foals are expected. If it appears that foals are being separated during the capture operations and ground monitoring will not provide adequate information to develop a solution, a monitoring helicopter may be used to determine the cause of the separations and to assist in reaching a resolution to the situation. The health and well being of the captured animals are paramount and responsibility for meeting this objective lies with the district office and COR(Contracting Officers Representative).

3. The rate of movement and distance that animals travel shall not exceed limitations set by the COR who will consider terrain, physical barriers, weather, condition of the animals and other factors.

Temperature limitations are 0°F as a minimum and 95°F as a maximum.

The terrain in the removal areas varies from flat valley bottoms to mountainous, and the animals may be located at all elevations (ranging from 4500 feet to 7800 feet) during the time the gathering is scheduled.

Experience gained from past removals in this area indicates the proposed action may cause some stress to the animals. It will be difficult to remove animals from these areas without some concern for the welfare of the animals due to the following reasons.

- a. Excessively dusty conditions may occur in the capture area. Animals may suffer from dust pneumonia.

Prior to any gathering operation, BLM will provide for a pre-capture evaluation of existing conditions in the gather areas. The evaluation will include animal condition, prevailing temperatures, soil conditions, topography, road conditions, location of fences and other physical barriers, and animal distribution in relation to potential trap locations. The evaluation will also arrive at a conclusion as to whether the level of activity is likely to cause undue stress to the animals, and whether such stress would be acceptable or whether a delay in the capture activity is warranted. If it is determined that the capture efforts necessitate the services of a veterinarian, one will be obtained before the capture will proceed.

The Contractor will be provided with a topographic map of the removal area which shows acceptable trap locations and existing fences and/or physical barriers prior to any gathering operations, and distribution of the horses..

The Contractor will also be appraised of the above conditions and will be given direction regarding the capture and handling of animals to ensure their health and welfare is protected.

4. It is estimated that a minimum of one trap site will be required in each capture area to accomplish the work. All trap locations and holding facilities must be approved by a BLM employee prior to construction. The Contractor may also be required to change or move trap locations as determined by the BLM. All traps and holding facilities not located on public land must have prior written approval of the landowner.

Each general site will be selected by a BLM employee after determining the habits of the animals and observing the topography of the area. Site specific locations may be selected by the Contractor with the BLM's approval within this general preselected area. Trap sites will be located to cause as little injury and stress to the animals and as little damage to the natural resources of the area as possible. Sites will be located on or near existing roads and will receive cultural, and threatened/ endangered plant and animal clearances prior to construction. Additional trap sites may be required, as determined by the BLM, to relieve stress caused by certain conditions at the time of the gather (i.e. dust, rocky terrain, temperatures, etc.).

Due to the many variables affecting the distribution of animals such as weather, health and condition, and time of year, it is not possible to identify specific locations at this time. They will be determined at the time of the removal operation.

5. All traps, wings, and holding facilities shall be constructed, maintained and operated to handle the animals in a safe and humane manner and be in accordance with the following:
 - a. Traps and holding facilities shall be constructed of portable panels, the top of which shall not be less than 72 inches high, and the bottom rail of which shall not be more than 12 inches from the ground level. All traps and holding facilities shall be oval or round in design.
 - b. All loading chute sides shall be fully covered with plywood without holes or separation of plies, or like material. The loading chute shall also be a minimum of 6 feet high.
 - c. All runways shall be a minimum of 30 feet long and a minimum of 6 feet high, and shall be covered with plywood without holes or separation of plies, or like material a minimum of 1 foot to 6 feet above ground.
 - d. Wings shall not be constructed out of barbed wire or other material injurious to animals and must be approved by a BLM employee.
 - e. All crowding pens, including the gates leading to the runways, shall be covered with a material which prevents the animals from seeing out (plywood without holes or separation of plies, burlap, jute, snow fence etc.) and shall be covered a minimum of 2 feet to 6 feet above ground level. Eight linear feet of this material shall be capable of being removed or let down to provide a viewing window for brand inspection.
 - f. All pens and runways used for the movement and handling of shall be connected with hinged self-locking gates.

6. No fence modifications will be made without authorization from the BLM. The Contractor shall be responsible for restoration of any fence modifications which he has made.

If the route the Contractor proposes to herd animals passes through a fence, the Contractor shall be required to roll up the fence material and pull up the posts to provide at least a 50 yard gap. The standing fence on each side of the gap will be well flagged or covered with jute or like material for a distance of 50 yards from the gap on each side.

7. When excessively muddy conditions occur within or adjacent to the trap or holding facility, the Contractor shall be required to scatter wood shavings or straw to alleviate the problem.

When excessively dusty conditions occur within or adjacent to the trap or holding facility, the Contractor shall be required to water down the area to alleviate the problem.

8. Alternate pens within the holding facility shall be furnished by the Contractor to separate animals with small foals, sick and injured animals, and estray animals from the other animals. Animals shall be sorted as to age, number, size, temperament, sex, and condition when in the holding facility so as to minimize, to the extent possible, injury due to fighting and trampling.

9. Animals shall be transported to final destination from temporary holding facilities within 24 hours after capture unless prior approval is granted by the BLM for unusual circumstances. Animals shall not be held in traps and/or temporary holding facilities on days when there is no work being conducted except as specified by the BLM. The Contractor shall schedule to arrive at the final destination between 8:00 a.m. and 4:00 p.m.. No shipments shall be scheduled to arrive at final destination on Sundays or Federal holidays. Animals shall not be allowed to remain standing in trucks while not in transport for a combined period of greater than 3 hours.

10. The Contractor shall provide animals held in the traps and/or holding facilities with a continuous supply of fresh clean water at a minimum rate of 10 gallons per animal per day. Animals held for 10 hours or more in the traps or holding facilities shall be provided good quality hay at the rate of not less than two pounds of hay per 100 pounds of estimated body weight per day.

Separate water troughs shall be provided at each pen where animals are being held. Water troughs shall be constructed of such material (e.g. rubber, rubber over metal) so as to avoid injury to animals.

11. It is the responsibility of the contractor to provide security to prevent loss, injury or death of captured animals until delivery to final destination.

12. The Contractor shall restrain sick or injured animals if treatment by the Government is necessary. The BLM will determine if injured animals must be destroyed and provide for destruction of such animals. The Contractor may be required to dispose of the carcasses as directed by the BLM.

Any severely injured or seriously sick animal shall be destroyed in accordance with 43 CFR Subpart 4730.1. Animals shall be destroyed only when a definite act of mercy is needed to alleviate pain and suffering. The COR will have the primary responsibility for determining when an animal will be destroyed and will perform the actual destruction. When a BLM employee is unsure as to the severity of an injury or sickness, a veterinarian will be called to make a diagnosis and final determination. Destruction shall be done in the most humane method available. A veterinarian can be called, if necessary, to care for any injured animal.

The carcasses of the animals which die or must be destroyed as a result of any infectious, contagious, or parasitic disease will be disposed of by burial to a depth of at least 3 feet.

The carcasses of the animals which must be destroyed as a result of age, injury, lameness, or noncontagious disease or illness will be disposed of by removing them from the capture site or holding corral and placing them in an inconspicuous location to minimize the visual impacts. Carcasses will not be placed in drainages regardless of drainage size or downstream destination.

13. Branded or privately owned animals whose owners are known will be impounded by BLM, and if not redeemed by payment of trespass and capture fees, will be sold at public auction. If owners are not known, the private animals will be turned over to the State for processing under Nevada estray laws.
14. Selecting pairs (mares and foals) to be released back to the range as opposed to those to be shipped to PVC should consider the selective removal and the gather plan and/or herd management area plan objectives.

The following criteria shall be used to determine which animals will be returned to the range or sent to PVC:

- a. Mares older than the age group to be removed should be paired with their foals and returned to the range if the foal is not of weanable age.
 - b. When mares older than the age group to be removed will not pair with their foals, the foals should be sent to PVC and the mares returned to the range.
 - c. When mares older than the targeted age group to be removed will accept their foals, but either the mare or the foal or both are in poor physical condition and their survival on the range is questionable, the animals should be held on site until healthy. If at the termination of the gather it still appears that the animal's survival is questionable, they should then be sent to PVC.
 - d. When mares within the targeted age group to be removed are captured and will accept her foal, the pair should be sent to PVC unless selected for release.
 - e. When mares within the age group to be removed are captured and will not accept the foal, both the mare and the foal should be sent to PVC.
15. When holding the animals at the capture site, every attempt will be made to pair animals at the trap site and ensure they remain paired. Although it is standard practice for the contractor to construct separate pens for holding pairs, should the COR determine it is necessary to construct special facilities beyond the contractor's capability additional portable panels are available at several districts and at PVC. It is recommended that the pen used to hold pairs be separated from the stallion pens by as great a distance as possible. It may be prudent to consider a satellite facility for the pairs removed from the main holding facility, yet within convenient access for feeding, watering, security, and observation.
 16. When releasing animals back into the HMA, every effort will be made to avoid releasing all of the pairs at once so as to avoid a herd stampede mentality. The pairs should be released slowly, preferably a pair at a time and the animals allowed to fully clear the area around the gather site before releasing the remaining mares and stallions. The order of animal release should be adjusted to reflect the specific characteristics of each capture site and previous

experience releasing animals from that site.

17. Following release from the trap site, the area surrounding the trap will be monitored to determine the success of the releases prior to the contractor moving to another trap site or termination of the task order. The method of monitoring is dependent on the terrain in which the gather is being conducted and the trap site location. Monitoring should emphasize ground observation techniques and only be necessary within the immediate trap site area. In situations when ground observation is impractical due to terrain or vegetative cover, a monitoring helicopter may be employed.

B. Motorized Equipment

1. All motorized equipment employed in the transportation of captured animals shall be in compliance with appropriate State and Federal laws and regulations applicable to the humane transportation of animals.
2. Vehicles shall be in good repair, of adequate rated capacity, and operated so as to ensure that captured animals are transported without undue risk or injury.
3. Only stock trailers with a covered top shall be allowed for transporting animals from traps to temporary holding facilities. Only bobtail trucks, stock trailers, or single deck trucks shall be used to haul animals from temporary holding facilities to final destination. Sides or stock racks of transporting vehicles shall be a minimum height of 6 feet 6 inches from vehicle floor. Single deck trucks with trailers 40 feet or longer shall have two partition gates providing three compartments within the trailer to separate animals. Trailers less than 40 feet shall have at least one partition gate providing two compartments within the trailer to separate animals. The compartments shall be of equal size plus or minus 10 percent. Each partition shall be a minimum of 6 feet high and shall have a minimum 5 foot wide swinging gate. The use of double deck trailers is unacceptable and shall not be allowed.
4. All vehicles used to transport animals to the final destination shall be equipped with at least one door at the rear end of the vehicle, which is capable of sliding either horizontally or vertically. The rear door must be capable of opening the full width of the trailer. All panels facing the inside of all trailers must be free of sharp edges or holes that could cause injury to the animals. The material facing the inside of the trailer must be strong enough, so that the animals cannot push their hooves through the sides.

The Contractor will not be allowed to begin work on the contract until all vehicles and equipment are in compliance with these stipulations.

5. Floors of vehicles and the loading chute shall be covered and maintained with wood shavings to prevent the animals from slipping.

The adequacy of this material will be confirmed prior to every load by a BLM employee.

6. Animals to be loaded and transported in any vehicle shall be as directed by a BLM employee and may include limitations on numbers according to age, size, temperament and animal condition. The following minimum linear feet per animal shall be allowed per standard 8 foot wide stock trailer/truck:

1.40 linear foot per adult horse (11 square feet per adult horse)

.75 linear foot per horse foal (6 square feet per horse foal)

The BLM employee supervising the loading of the animals to be transported from the trap to the temporary holding corral will

require separation of small foals and/or weak animals from the rest should he/she feel that they may be injured during the trip. He/she will consider the distance and condition of the road in making this determination. Animals shipped from the temporary holding corral to the BLM facility will be separated by sex and age class (including small yearlings). Further separation may be required should condition of the animals warrant.

The BLM employee supervising the loading will exercise his/her authority to off load horses should he/she feel there are too many animals in any compartment.

7. The BLM shall consider the condition of the animals, weather conditions, type of vehicles, distance to be transported, or other factors when planning for the movement of captured animals. The BLM shall provide for any brand and/or inspection services required for the captured animals.

It is currently planned to ship all animals to the Palomino Valley facility. Communication lines have been established with the Palomino Valley personnel involved in off-loading the animals, to receive feedback on how the animals arrive. Should problems arise, gathering methods, shipping methods and/or separation of the animals will be changed in an attempt to alleviate the problems.

8. If a BLM employee determines that road conditions are such that animals could be endangered during transportation, the Contractor will be instructed to adjust speed. The maximum distance over which animals may have to be transported on dirt roads is approximately 3 miles per load.

In general, roads in the capture areas are in fair to good condition. If a problem develops, speed restrictions shall be set or alternate routes used.

Periodic checks by BLM employees will be made as the animals are transported. If speed restrictions are in effect, then BLM employees will, at times, follow and/or time trips to ensure compliance.

C. Helicopter, Pilot and Communications

1. The Contractor must operate in compliance with Federal Aviation Regulations, Part 91. Pilots provided by the Contractor shall comply with the Contractor's Federal Aviation Certificates, applicable regulations of the State of Nevada and shall follow what are recognized as safe flying practices.
2. When refueling, the helicopter shall remain a distance of at least 1,000 feet or more from animals, vehicles (other than the fuel truck), and personnel not involved in refueling.
3. The BLM shall have the means to communicate with the Contractor's pilot and be able to direct the use of the gather helicopter at all times. If communications cannot be established, the Government will take steps as necessary to protect the welfare of the animals.
4. The proper operation, service and maintenance of all Contractor furnished helicopters is the responsibility of the Contractor. The BLM reserves the right to remove from service, pilots and helicopters which, in the opinion of the BLM violate contract rules, are unsafe or otherwise unsatisfactory. In this event, the Contractor will be notified in writing to furnish replacement pilots or helicopters within 48 hours of notification. All such replacements must be approved in advance of operation by the BLM.

IV. Responsibility and Lines of Communication

The Contracting Officer's Representative, Ron Hall and Project Inspector Dave Stockdale, or other individuals selected at the time of preparation of the task

orders, have the direct responsibility to ensure the Contractor's compliance with the contract stipulations. However, the ADM Renewable Resources and the Winnemucca District Manager will take an active role to ensure that appropriate lines of communication are established between the field, District, State, and Palomino Valley offices. All employees involved in the gathering operations will keep the best interests of the animals at the forefront at all times.

All publicity, formal public contact and inquiries will be handled through the ADM/Renewable Resources. This individual will be the primary contact and will coordinate the contact with the Palomino Valley Corrals to ensure animals are being transported from the capture site in a safe and humane manner and are arriving in good condition.

The contract specifications require humane treatment and care of the animals during removal operations. These specifications are designed to minimize the risk of injury and death during and after capture of the animals. The specifications will be enforced.

Should the Contractor show negligence and not perform according to contract stipulations, he will be issued written instructions, stop work orders, or defaulted.

V. Appeals

Within 30 days of the receipt of the Full Force and Effect Decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c). Within 30 days after filing a Notice of Appeal, you are required to provide a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file an appeal and petition for a stay, the petition for a stay must accompany your notice of appeal and be in accordance with 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(c). Copies of the Notice of Appeal and Petition for a Stay must be submitted to (1) the Interior Board of Land Appeals, Office of Hearing and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, (2) the Regional Solicitor's Office, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890, and (3) Winnemucca District Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445. The original documents should be 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 decision pending appeals shall show sufficient justification based on the following standards:

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

V. Full Force and Effect

To implement the Final Multiple Use Decisions toward attainment of the AML and to promote progression toward the attainment of a thriving natural ecological balance and multiple use relationship, this action is placed in Full Force and Effect (43 CFR 4770.3(c)).

VI. Signatures:

Prepared by: Ron Hall
Wild Horse and Burro Specialist

Date 6-19-97

Recommended by: [Signature]
Associate District Manager
Renewable Resources

Date 6/19/97

Approved by: [Signature]
Winnemucca District Manager

Date 6/19/97