

**FINDING OF NO SIGNIFICANT IMPACT
and
DECISION RECORD
for the
McCullough Peaks Herd Management Area Gather Plan
and
Fertility Control Implementation Plan
EA # WY-020-E04-039**

I. FINDING of NO SIGNIFICANT IMPACT

BLM has reviewed this environmental assessment including the explanation and resolution of any potentially significant environmental impacts. BLM has determined that the Proposed Action will not have any significant impacts on the human environment and that an EIS is not required. BLM finds that implementation of the Proposed Action would not result in unnecessary or undue degradation of the Public Lands. BLM has determined that the Proposed Action is in conformance with the appropriate and approved land use plans.

II. DECISION

Based on the analysis in Environmental Assessment No. WY-020-E04-039, it is my decision to implement a gather and fertility control program as described in Alternative I (Proposed Action) of the EA. I find that this alternative best implements the planning decision to maintain the McCullough Peaks herd at or near the Appropriate Management Level (AML) while ensuring the continued viability of the herd.

I have carefully considered all public comments received on the EA. I wish to thank all commenters for their interest in public lands management and their sincere concern for the preservation of wild horses on the public lands. Their comments and our responses are below.

Wild horses above the AML specified in the RMP are considered “excess” and subject to gathering and removal. I have concluded that gathering the excess horses is necessary to avoid unacceptable damage to rangeland health in the HMA, to preserve and maintain a thriving natural ecological balance and multiple-use relationship within the HMA as specified in the Cody Resource Management Plan (RMP) and as directed in the Wild Free-roaming Horse and Burro Act of 1971. All reasonable precautions will be taken to avoid injury to the horses, and to ensure the safety of personnel involved in the gather. The gather and fertility control program will not compromise the long-term viability of the McCullough Peaks Herd.

This decision is issued in full force and effect in accordance with 43 CFR 4770.3(a), which states in part: “decisions to remove ... shall be effective on issuance or on a date established in the decision.”

III. ALTERNATIVES CONSIDERED

The Proposed Action and four alternatives, including alternatives for Removal to the Mid-Point (100 Animals) of the Management Range without Fertility Control, Removal to the Lower Limit (70 Animals) of the Management Range with Fertility Control, Removal to the Lower Limit (70 Animals) of the Management Range without Fertility Control, and a “No Action” alternative, represent a reasonable range of alternatives based on issues and goals previously identified through public scoping efforts and research specific to the McCullough Peaks HMA.

Two alternatives were considered during the NEPA process but eliminated from detailed analysis; these were Fertility Control Only and Alternative Gather methods alternatives. The reasons they were not considered in detail are stated in the EA.

IV. USE AUTHORITY for the PZP VACCINE

The Humane Society of the United States (HSUS) has made the PZP vaccine available to the BLM under the Investigational New Animal Drug exemption (INAD #8857) filed with the federal Food and Drug Administration (FDA). As a condition of using the PZP vaccine, the HSUS expects the BLM to follow the Draft Criteria for Immunocontraceptive Use in Wild Horse Herds recommended by the Wild Horse and Burro National Advisory Board in August 1999. Cody Field Office, in its management of the McCullough Peaks HMA, is in full compliance with all pertaining criteria. The Proposed Action would also adhere to all guidance and research protocol set by the BLM National Wild Horse Fertility Control Field Trial program.

V. OVERSIGHT provided by the WILD HORSE FERTILITY CONTROL FIELD TRIAL PROGRAM

The BLM National Wild Horse Fertility Control Field Trial program requires close monitoring of all treated populations in order to evaluate management-level use of the fertility control vaccine under a research protocol. On the McCullough Peaks HMA, any wild mares receiving the vaccine will be individually-identified and tracked regularly with data non-intrusively gathered on behavior, estrous, fertility, reproduction, survival, and any health concerns. The field studies will be conducted by seasonal and term United State Geological Survey-Biological Resources Division (USGS-BRD) biological technicians under the supervision of research biologists and in coordination with the BLM Wild Horse and Burro Specialist, Cody Field Office (CYFO).

VI. PUBLIC INPUT

The Cody Field Office completed the environmental assessment (EA) on August 6, 2004 and provided for a 30-day review and comment period starting August 11, 2004. A letter of availability of the EA was sent on August 6, 2004 and the EA was posted on the WY BLM website on August 11, 2004. Subsequently, six (6) letters (conventional and electronic) were received by the CYFO in response to EA #WY-020-E04-039 for the FY2004/FY2005 proposed gather and fertility control on the McCullough Peaks HMA. A list of individuals and groups that responded is on file at CYFO as are all original submitted documents. The public may use the

Freedom of Information Act (FOIA) procedures to request these documents. Details on requesting documents under FOIA processes are available by contacting CYFO.

All submissions were reviewed and comments and concerns were consolidated for BLM consideration. The consolidated comments and our responses to those comments follow:

General Comments and Concerns:

- **Some commenters expressed general support for while others expressed general opposition to the proposal to gather horses from the Herd Management Area.**

Response: The BLM appreciates that commenters took the time to express their opinions on this project.

- **Concerns were raised regarding the locations of “holding facilities and sanctuaries” and for the humane treatment of “wild animals”.**

Response: BLM adoption preparation and holding facilities are located in seven (7) western states where wild horses are currently managed. The BLM has eight (8) long-term holding facilities in Kansas and Oklahoma. The wild horses that are prepped and held in our corral facilities are provided with the best care possible until they can be placed in the care of an adopter. The horses maintained on our long-term facilities are in a large pasture setting where they can live out their lives.

- **Keeping the horses on the range and providing supplemental feed would be more cost effective than gathering/adopting.**

Response: Providing supplemental feed would not address all impacts related to a wild horse population greatly in excess of AML. It is BLM’s policy to manage all uses, including livestock and wild horse use, so that these uses can be accommodated within the natural carrying capacity of the range without the use of supplemental feed.

Comments related to Alternatives:

- **Predators (mountain lion) should be introduced into the area to provide natural population control.**

Response: BLM does not manage wildlife populations or initiate reintroduction programs for game and non-game species in Wyoming. This is the responsibility of the state wildlife management authority, in this case, the Wyoming Game and Fish Department. In any event, it is doubtful that control by reintroducing predators could accomplish the stated purpose and need, or that it could be reliably managed so as to maintain the herd at or near AML. Mountain lions occasionally use the area but are not found long-term in the same areas as the horses. For these reasons, this alternative was not considered in the EA.

Comments related to AML:

- **Additional vegetative monitoring should be conducted to determine if the current AML is appropriate. Results of monitoring should be made available to the public.**

Response: Vegetation monitoring is conducted on a regular basis in the McCullough Peaks HMA. The results of past monitoring are described in the EA at pages 2 and 3. We will continue to conduct similar monitoring in the future. The results of monitoring are available for review at the Cody Field Office.

- **The AML is too low to ensure herd viability.**

Response: The AML was established in the Herd Area Management Plan, to which this EA is tiered. It was determined in the environmental assessment for the Plan that this AML would ensure continued herd viability and genetic diversity.

- **The AML is too high in light of the long-term drought currently being experienced in the area.**

Response: Monitoring has not indicated a need to reduce the AML. The AML was established with the potential for drought in mind. The present overuse is a result of animals in excess of the established AML which was determined through resource monitoring in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship within the HMA as directed in the Wild Free-roaming Horse and Burro Act of 1971.

Comments related to Grazing Management:

- **Livestock grazing should be reduced or eliminated in the Herd Management Area. This could be accomplished by trading for grazing rights in other areas. Fences constructed for livestock grazing management should be removed.**

Response: The mix of land uses allowed on a given tract of public land including whether livestock grazing will be allowed and at what level, is a land use planning decision made in the Cody RMP. Whether or not to continue livestock grazing in the Herd Management Area is an issue that would be addressed in the next revision of the Cody Resource Management Plan scheduled to begin in 2006.

- **The voluntary reduction in livestock use cited in the EA should be quantified.**

Response: This is discussed in the EA at page 14. The permittees have voluntarily reduced use on the affected allotments by approximately 59% of active preference.

Comments related to Recreation:

- **The timing of the proposed gather could conflict with hunting season.**

Response: There is a potential that the gather would overlap with the last few days of antelope and sage grouse seasons. This could inconvenience a few hunters who would normally use the area, but since there is a large area that would be open to hunting at that time, both game and the hunters could relocate. No impact is anticipated.

Comments related to Threatened and Endangered (T&E) Species:

- **The EA does not describe the potential impacts to bald eagles from low-flying helicopters, nor how these impacts would be avoided or mitigated.**

Response: Bald eagles typically do not occupy the project area until the end of November, and use is generally concentrated in the river corridor, away from the proposed operations. Therefore, no impact is anticipated. Field checks, as described in the EA, would confirm this.

Comments related to Wild Horse Management:

- **BLM should establish a removal schedule which ensures that the herd does not exceed the AML.**

Response: BLM is committed to maintaining the herd at or near AML to the greatest extent practical. We will continue to monitor the herd's population and propose gathers and fertility control projects in response to monitoring. Due to unpredictable fluctuations in populations caused by weather conditions, disease, predation, etc., it is difficult to predict in advance with any measure of certainty when gathers will be needed in the future. BLM must also take presently-unknown future management considerations, such as available budget and competing priorities, into account when scheduling gathers.

- **BLM should remove fewer horses that called for in the Proposed Action. Removal of 80% of the herd will disrupt the herd social structure.**

Response: The potential for effects to the herd social structure is discussed in the EA at pages 18 and 19. It is anticipated that band size would decrease, competition for mares would increase, and the number of bachelor bands would increase. These effects would be temporary and would not threaten overall herd viability.

- **The EA should specify what physical (genetic) criteria would be used to determine what horses will be returned to the range.**

Response: As discussed in the EA at page 18, horses to be returned will be selected so as to match the historic characteristics of the herd. The specifics cannot be determined until the gather is conducted and the horses are inventoried.

- **The projected 95% foal crop is unrealistically high.**

Response: The 94% figure cited in the EA at page 2 and 43 refers to anticipated fertility control effectiveness not foal crop.

- **How does the PZP vaccine affect the behavior of treated mares?**

Response: As discussed in the EA on page 21, from a mare physiological standpoint, PZP contraception has no impact on mare hormone secretion or behavioral responses to stallions.

VII. APPEALS

Under the regulations found at 43 CFR, Part 4, Subpart E and 43 CFR 4770.3(a) and (c), this decision may be appealed by any adversely affected party to the Interior Board of Land Appeals (IBLA). Procedures and timeframes for submitting an appeal of this decision is described at 43 CFR 4770.3(a) and (c). If an appeal is filed, the notice of appeal must be filed with or delivered to the Cody Field Office, 1002 Blackburn Avenue, Cody, Wyoming, 82414 within 30 days of receipt of the decision in accordance with 43 CFR Part 4. In 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 a petition for a stay of the effectiveness of this decision while your appeal is under review by the Board, the petition for a stay must accompany your notice of appeal as required by the procedures and timeframes codified at 43 CFR part 4 (58 FR 4939, January 19, 1993). Copies of the Notice of Appeal and Petition for a Stay must also be submitted to the Interior Board of Land Appeals and the appropriate Office of the Solicitor at the same time the original documents are filed with the Cody Field Office, 1002 Blackburn Avenue, Cody, Wyoming, 82414. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

VIII. SIGNATURE

Approved by: Shirley Bya-Jech Date 9-24-04
acting Cody Field Manager
Cody Field Office
Cody, WY