



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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Decision Record Bureau of Land Management Rock Springs Field Office

2016 Removal of Wild Horses from Checkerboard within the Great Divide Basin, Salt Wells Creek and Adobe

Town Herd Management Areas (HMAs)

DOI-BLM-WY-D040-2016-0135-EA

BACKGROUND:

On April 3, 2013, the United States District Court for the District of Wyoming approved a Consent Decree and Joint Stipulation for Dismissal (2013 Consent Decree) in Rock Springs Grazing Association (RSGA) v. Salazar, No. 11- CV-00263-NDF. The lawsuit and decree arose from an October 4, 2010 request by the RSGA for the BLM to remove all wild horses that had strayed onto its private lands. The RSGA owns and leases approximately 1.4 million acres of land (including 48 percent of the private land in the four herd management areas) on alternating odd-numbered sections in the checkerboard pattern of mixed land ownership in southern Wyoming (hereafter referred to as "Checkerboard"). After the BLM did not take action on the request to RSGA's satisfaction, RSGA filed a complaint seeking to compel the removal of all wild horses from its private lands. The BLM and RSGA entered into a settlement agreement that was memorialized in the 2013 Consent Decree.

DECISION:

Based on the Environmental Assessment (EA) Review DOI-BLM-WY-D040-2016-0135-EA, it is my decision to authorize the removal of all wild horses from Checkerboard Lands within the Great Divide Basin, Adobe Town, and Salt Wells Creek Herd Management Areas, as provided by Section 4 of the Wild Free- Roaming Horse and Burro Act (WHA), 16 U.S.C. §1334, and as BLM committed to do in the judicially-approved 2013 Consent Decree. All captured wild horses would be removed from the Checkerboard lands and entered into the Wild Horse and Burro Program to be made available for adoption. The BLM currently plans to commence with the removal after October 16, 2016, to fulfill its obligations as stated above.

April 2016 Census flights confirmed that wild horses are present on Checkerboard lands within the Great Divide Basin, Salt Wells Creek and Adobe Town HMAs at levels that exceed the population thresholds identified in the 2013 Consent Decree. The BLM, the RSGA and the United States Geological Survey (USGS) completed a simultaneous double count method census survey for the Salt Wells Creek, Adobe Town, and Great Divide Basin HMAs. The direct count numbers were statistically adjusted by the USGS using this methodology and show an estimated 484 wild horses within the Checkerboard portion of these HMAs at the time of the April 2016 census.

All reasonable precautions will be taken to avoid injury to the wild horses, including adherence to the Standard Operating Procedures (Appendix II) for Wild Horse Gatherers to ensure the safety of personnel involved in the gather.

RATIONALE:

This removal is necessary to comply with a request from private land owners under Section 4 of the WHA and its regulations, and to fulfill BLM's commitments in the judicially-approved 2013 Consent Decree, which requires that all wild horses be removed from Checkerboard lands within the Great Divide Basin, Salt Wells Creek, and Adobe Town herd management areas (HMAs) in accordance with the schedule set out in the 2013 Consent Decree.

AUTHORITIES

This removal is being conducted under authority of Section 4 of the WHA, 16 U.S.C. §1334, and its implementing regulations found at 43 CFR 4700, and as required by the 2013 Consent Decree, which state in part:

16 U.S.C. §1334: If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary, who shall arrange to have the animals removed.

43 CFR 4720.2-1: Upon written request from the private landowner to any representative of the Bureau of Land Management, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable. The private landowner may also submit the written request to a Federal marshal, who shall notify the authorized officer. The request shall indicate the numbers of wild horses or burros, the date(s) the animals were on the land, legal description of the private land, and any special conditions that should be considered in the gathering plan.

43 CFR 4770.3(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 ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

2013 Consent Decree, ¶ 1: Pursuant to 16 U.S.C. §1334, BLM agrees to remove all wild horses located on RSGA's private lands, including Wyoming Checkerboard lands, with the exception of those wild horses found within the White Mountain Herd Management Area (HMA), in accordance with the schedule set forth in paragraph 5.

2013 Consent Decree, ¶ 4: If BLM determines, based on the results of any census and projected reproduction rates, that the population in the Checkerboard lands is likely to exceed 200 wild horses for the Salt Wells/Adobe Town Areas combined or 100 wild horses for Divide Basin, the BLM shall prepare to remove the wild horses from Checkerboard lands within the respective area.

2013 Consent Decree, ¶ 5: *BLM will commit to gather and remove wild horses from checkerboard lands within Salt Wells and Adobe Town HMAs in 2013, Divide Basin HMA in 2014, and White Mountain HMA in 2015.*

COMPLIANCE AND MONITORING

The BLM will monitor gather operations for adherence to the Standard Operating Procedures (Appendix II) for Wild Horse Gatherers. The BLM will also continue to monitor wild horse populations in these HMAs.

STATUTORY AND LAND USE PLAN CONFORMANCE

As explained herein, this removal is in compliance with the WHA, as amended by the Federal Land Policy and Management Act of 1976 (FLPMA); the Public Rangelands Improvement Act of 1978; and the two governing land use plans: the 1997 Green River and 2008 Rawlins Resource Management Plans (RMPs), respectively; as amended.

The FLPMA and its land use planning requirements apply only to the BLM's management of the public lands, not private lands, 43 U.S.C. §1712. As to public lands, the policies of FLPMA are to be construed as supplemental to and not in derogation of the purposes for which the lands are administered under other provisions of law, 43 U.S.C. §1701. The management direction set forth in the Green River and Rawlins RMPs, including that related to appropriate management levels (AMLs), do not apply to private lands.

This decision authorizes the gather and removal of wild horses from the Checkerboard portions of three herd management areas, as required by Section 4 of the WHA, 16 U.S.C. §1334, its implementing regulations at 43 CFR 4720.2, and the 2013 Consent Decree. Through this gather, the BLM is not removing excess wild horses from the public lands under Section 3 of the WHA, 16 U.S.C. §1333. In response to the scoping comments received, the BLM now clarifies that it will remove wild horses from the Checkerboard as required by Section 4 of the WHA and the Consent Decree.

The BLM acknowledges that in discharging its duties under Section 4 of the WHA wild horses will also be removed from the public land portions of the Checkerboard. However, due to the unique pattern of land ownership, and as recognized in the Consent Decree, it is practicably impossible for the BLM to meet its obligations under Section 4 of the WHA while removing wild horses solely from the private lands sections of the Checkerboard. This is because, as explained in the EA, the herd sizes are large, gather operations at this scale use helicopters to move herds to trap sites (which sometimes involves horses running for several miles), and wild horses travel freely between the one-square mile unfenced public and private portions of the Checkerboard. Neither Section 3 nor Section 4 of the WHA clearly speaks to BLM's responsibilities in a situation such as this. Nor do they proscribe BLM from exercising its discretion in this manner to remove horses in the Checkerboard. BLM therefore understands Section 4 to provide it with the authority to conduct this gather.

BLM also acknowledges that it is possible that the proposed gather and removal will result in horse populations in the three HMAs that are temporarily below AMLs for those HMAs. However, because BLM is gathering horses under Section 4 of the WHA, the AMLs outlined in the RMPs do not govern BLM's management action. Moreover, the AMLs for these HMAs apply to the entire HMA, which includes Checkerboard (private) portions.

The HMA boundaries were developed decades ago, at a time when RSGA consented to leave wild horses on its private lands within the HMAs. RSGA has indicated to BLM that it no longer consents to do so. In light of these changed circumstances, BLM acknowledges a need to reevaluate how it manages wild horses on areas of the public lands within these HMAs. This analysis is a land-use planning level decision, however, that is being considered through a separate land use planning process. BLM had already started its scoping process for a revised land use plan before RSGA revoked its consent to leave wild horses on its private lands in the Checkerboard. Thus, when RSGA revoked its consent, the BLM published a Notice of Intent in the *Federal Register* on August 16, 2013 to extend the public scoping period for the Rock Springs RMP revision and to amend the 2008 Rawlins RMP to address wild horse management in the Rock Springs and Rawlins field offices. The plan revision and plan amendment will consider adjusting AMLs for the HMAs, among other alternatives. A meeting was held in August 2016 to update the public on the status of the land use planning process. BLM anticipates that it will release a draft Environmental Impact Statement for the revised land use plans sometime in 2017.

PUBLIC INVOLVEMENT

DOI regulations require public participation when preparing an EA to the extent practicable, but the methods of providing that participation are at the discretion of the authorized official. 43 CFR 46.305(a). Scoping and publication of a “draft” EA are not required. *Id.* The BLM must consider comments that are timely received. *Id.* The BLM may revise EAs based on comments received without need of initiating another comment period. 43 CFR 46.305(b).

On March 22, 2016, the BLM released a public scoping statement for a 2016 gather within the Checkerboard and the comment period ended on April 22, 2016. A total of 350 comment letters were received from individuals, organizations, and agencies.

On August 11, 2016, the BLM released for public comment the Environmental Assessment for the *2016 Removal of Wild Horses from Checkerboard within the Great Divide Basin, Salt Wells Creek and Adobe Town Herd Management Areas (HMAs) DOI-BLM-WY-D040-2016-0135-EA*. A total of 639 comment letters were received from individuals, organizations, and agencies, during the public comment period. Many of these comments identified concerns with BLM’s Proposed Action to remove all wild horses within Checkerboard lands, and have argued over the legality of the Proposed Action under FLMPA and the WHA. Additionally, many comments expressed concern for the general management of wild horses.

All substantive comments, including comments on the legality of the action, were considered and were determined to have been already addressed in the preliminary analysis, or are addressed either through revision to the analysis in the EA narrative or in the comment response in Appendix I. As explained there, the Proposed Action is in accordance with the WHA and FLPMA consistent with order of the U.S. District Court in *American Wild Horse Preservation Campaign v. Jewell*, 14-CV-152-NDF (D. Wyo. March 3, 2015).

This decision and Environmental Assessment DOI-BLM-WY-D040-2016-0135-EA will be available online at: <http://bit.ly/2bj4PzJ>

EFFECTIVE DATE

The BLM is exercising the authority provided at 43 CFR 4770.3(c) to make this decision effective upon September 16, 2016. The BLM currently plans to commence with the removal after October 16, 2016 to fulfill its obligations as stated above.

Washington Office Instruction Memorandum (IM) No. 2010-130, Change 1 provides, subject to certain exceptions, that wild horse decisions should be issued 31 days prior to the gather implementation. The purpose of the 31-day period is to “ensure the public has an opportunity to participate in and request administrative review of WH&B gather decisions” (IM No. 2010-130, Change 1).

ADMINISTRATIVE PROCEDURES

This decision is issued in accordance with 43 CFR 4770.3(c) which states in part: “decisions . . . shall be effective upon issuance or on a date established in the decision.” Once the decision is final, it will be subject to appeal. If you wish to appeal this decision, as provided by 43 CFR 4770.3 and 43 CFR 4.4, you must file an appeal in writing within 30 days of receipt of this decision with the Field Manager, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

The appeal must state clearly and concisely why you think the decision is in error.

Should you wish to file a petition for stay, the appellant 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 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.

If you decide to also submit a petition for stay of the decision, a copy of the notice of appeal and petition for stay must be served simultaneously upon the parties identified below.

Field Manager
Rock Springs Field Office
280 Highway 191 North
Rock Springs, Wyoming 82901

Office of the Regional Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, Colorado 80215

Office of Hearings and Appeals
Interior Board of Land Appeals
801 North Quincy Street, Suite 300
Arlington, Virginia 22203

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

Kimberlee D Foster
Kimberlee D. Foster
Rock Springs Field Manager

Date: 9/16/14

for Nancy R Baker
Dennis J. Carpenter
Rawlins Field Manager

Date: 9/16/2016