

Decision Record

McCullough Peaks Herd Management Area Bait Trap Removal

WY-020-EA12-050

Cody Field Office, Wind River/ Bighorn Basin District, Wyoming

December 2012



DECISION RECORD

McCullough Peaks Herd Management Area Bait Trap Removal

DOI-BLM-WY-020-2012-050-EA

AUTHORITIES:

The authority for this decision is contained in the 1971, Wild Free-Roaming Wild Horses and Burros Act (as amended), Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700 which states in pertinent parts:

§4700.0-6(a): “Wild horses and burros will be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.”

§4700.0-6(c): “Management activities affecting wild horses and burros will be undertaken with the goal of maintaining free-roaming behavior.”

§4710.4: “Management of wild horses and burros will be undertaken with the objective of limiting the animals’ distribution to herd areas. Management will be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.”

§4740.1: Use of Motor Vehicles or Aircraft

- (a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses or burros for capture or destruction. All such use will be conducted in a humane manner.
- (b) Before using helicopters or motor vehicles in the management of wild horses or burros, the authorized officer will conduct a public hearing in the area where such use is to be...

§4770.3: Administrative Remedies

- (a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR § 4.
- (b) Notwithstanding the provisions of paragraph (a) of 43 CFR §4.21 of this title, the authorized officer may provide that decisions...will be effective upon issuance or on a date established in the decision.

PUBLIC INVOLVEMENT:

For the Environmental Assessment (EA), BLM conducted internal (interdisciplinary) and external (public) scoping. On June 29, 2012, the BLM mailed a Scoping Notice to the public. The scoping notice was also available on the BLM Wyoming and Cody external websites. August 3, 2012, was the last day for scoping comments to be received, but comments were accepted after that date. Approximately 6026 emails were received, 4334 were form letters from individuals and 117 were originals. In addition, 24 written comments were mailed to the Cody Field Office. A database of comments has been added to the administrative case file.

On October 23, 2012 a letter was mailed to interested publics announcing the availability of the EA for comment. Press releases were also published in the Cody Enterprise on October 31, 2012 and in the Powell Tribune on November 6, 2012. The EA was posted on the BLM website by Friday, October 26 and comments were accepted for 30 days. Approximately 4544 comments were received by email during the EA comment period of those 139 were original comments. In addition, 6 written comments were mailed to the Cody Field Office. A database of the comments has been added to the administrative case file.

Public comments have been incorporated into the Finding of No Significant Impact (FONSI) and Decision Record, are made part of this decision and are a part of the Administrative File.

PLAN CONFORMANCE AND CONSISTENCY:

The proposed population control is in conformance with Cody Resource Management Plan, Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) (November 8, 1990) objectives to manage for a balance between a healthy population of wild horses and improvements in range condition, wildlife habitat, and watershed condition.

The proposed action would be in conformance with the Wild Free-Roaming Horses and Burros Act of 1971, (Public Law 92-195 as amended), and with all applicable regulations at 43 CFR 4700, and policies outlined by BLM. The Wild Free-Roaming Horses and Burros Act of 1971, (P. L. 92-195) as amended, Section 1333 (b) (1), states the Secretary of the Interior shall “determine appropriate management levels of wild free-roaming horses and burros on areas of public lands; and determine whether appropriate management levels will be achieved by the removal or destruction of excess animals, or other options (such as sterilization or natural controls on population levels).” According to 43 CFR 4700.0-6, “Wild horses will be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.”

The proposed action is in conformance with the “WO IM 2012-19 Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management Administered Lands Including the Federal Mineral Estate”.

ALTERNATIVES CONSIDERED:

ALTERNATIVE I – PROPOSED ACTION

Alternative I would be to bait trap and remove 20 wild horses from the McCullough Peaks HMA and leaving approximately 140 adults on the HMA after the gather. There would be 20 horses offered for adoption.

Also under consideration is maintaining the option through 2018 (or as long as we can reasonably conclude that no new information and no new circumstances have substantially changed in the area of analysis) to utilize bait trapping to facilitate fertility control administration and to utilize bait trapping in the future to remove wild horses that exceed the upper AML of 140. Bait trapping will occur mainly during the fall and winter months (November 1 to February 28) to avoid issues with foaling and sage grouse. Bait trapping removals will occur in increments of 20 or less on a given year if the population exceeds the 140 adult horses.

Fertility control treatments will continue as described in EA WY-020-EA11-9, Fertility Control Application for Wild Mares in the McCullough Peaks HMA.

The BLM proposes to capture individual horses and bands; then, selectively remove 20 excess wild horses, beginning in early 2013. The proposed action will consist of removing excess animals targeting the 1-5 year old cohorts that are over-represented in the population, through a combination of bait and water trapping, along with some possible herding to move congregated animals away from or towards traps.

Multiple trap sites will be used to capture the wild horses. The traps will consist of portable panels set up either at water sources or areas frequented by wild horses. Certified weed-free hay or other attractants (such as mineral or processed cubes) will be used to lure horses to the area. Prior to any wild horses being captured, the trap or bait may be in place to accustom wild horses to their presence. When a band of horses or individuals enters the trap, the gate will be closed by BLM or contract personnel. Animals identified for removal will be sorted at the trap site and transported to a holding facility located in the HMA with horse/stock trailers pulled behind trucks.

Any animals not identified for removal will be released back onto the range. When an animal is captured and must be held for the day before being transported to the holding facility, the animal(s) would be provided with feed and water at the trap site. Bait trap and holding corral sites would most likely be placed in areas shown on Map 3. Other sites may be used as necessary based upon flow and success of the bait trap operation.

Appropriate site-specific clearance and review for cultural resources and species of concern will be conducted at each trap site prior to set up (if an area is not previously utilized or is without developments on site). The trap sites will be located in previously disturbed areas and in areas with no or very little sagebrush. The holding corrals will be located in either, gravel pits, previously disturbed areas, areas lacking Wyoming big sagebrush, and outside the 0.6 mile buffer of sage grouse leks. The areas will be monitored for noxious weeds over the next several years. All sites will be assessed for post bait trap or holding corral reseeding. All capture and handling activities (including capture site selection) will be conducted in accordance with the standard operating procedures (SOPs) found in Appendix B.

In addition, all domestic animals will be removed during this bait trap removal as well. As per state law, the "estrays horses" will be turned over to the Wyoming Brand Inspector. As of October 7, 2012, there were 8 known domestic horses to be removed.

ALTERNATIVE II – NO ACTION

The no action alternative is required by the National Environmental Policy Act (NEPA) to provide a baseline for impact analysis.

The wild horse population would be allowed to reach equilibrium by regulating their numbers through periodic elevated mortality rates caused by drought, disease, and insufficient forage, water and/or space availability or a combination of these factors.

SELECTED ALTERNATIVE:

Based on the analysis in Environmental Assessment No. WY-020-EA12-050, it is my decision to implement a bait trap removal program as described in Alternative I (Proposed Action) of the EA. I find 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. This decision constitutes the management prescription and use of bait trapping as described in the EA for the removal of small numbers of wild horses above the AML from 2013 through 2018 or longer if no new information or circumstances develop in the area of analysis. It is also my decision to maintain the option to utilize bait trapping to facilitate fertility control administration and to utilize bait trapping in the future to remove wild horses that exceed the upper AML of 140. Bait trapping will occur mainly during the fall and winter months (November 1 to February 28) to avoid issues with foaling and sage grouse. Bait trapping removals will occur in increments of 20 or less on a given year if the population exceeds the 140 adult horses.

I have carefully considered all public comments received on the EA. I wish to thank all commenter's for their interest in public lands management and their sincere concern for the preservation of wild horses on the public lands.

I have concluded that it is necessary to remove 20 wild horses in order to work towards maintaining the appropriate management level (AML) of 70 – 140 wild horses in the McCullough Peaks HMA. Maintaining the AML will help prevent deterioration of rangelands, balance wild horses with other public rangeland resources and uses, and comply with the Consent Decree between the BLM and the State of Wyoming. The removal of 20 horses in 2013 by means of bait trapping will not compromise the long-term viability of the McCullough Peaks Herd.

The decision to implement fertility control in the McCullough Peaks Herd Management Area is being issued under the regulations found at 43 CFR § 4770.3(c), and will be effective the date the decision is signed.

Compliance and Monitoring: The removal of 20 horses through the use of bait trapping has standard operating procedures and tracking requirements which are reflected in Appendix B of the EA and are made a part of this Decision.

Project Design Features/Mitigation: Mitigation measures identified in the EA and incorporated as a part of the proposed action are designed to reduce the impacts of management actions and protect resources. The BLM will continue with vegetation and population monitoring.

RATIONALE FOR DECISION:

This decision is based on the FONSI and its compliance with policy and 43 CFR § 4700 and the Wild Horse and Burro Act of 1971.

In addition, the decision conforms to the Cody Resource Management Plan, (Record of Decision (ROD), 1990), which is to maintain 100 adult wild horses. This is within the established appropriate management level (AML) of 70 – 140 wild horses in the McCullough Peaks HMA. Maintaining the AML will help prevent deterioration of rangelands and balance wild horses with other public rangeland resources and uses and comply with the Consent Decree between the BLM and the State of Wyoming.

EFFECTIVE DATE:

For the following reasons, the BLM is exercising the authority provided at 43 CFR§ 4770.3(c) to make this decision effective 31 days from the date of this signed decision. The BLM currently plans to commence with the bait trap removal on or about January 17, 2013, to fulfill its obligations as stated above. In the event that changes occur due to weather or other factors, this wild horse bait trapping can occur in future years during the prescribed dates of November 1 through February 28. Washington Office Instruction Memorandum (IM) No.2010-130 provides, subject to certain exceptions, that wild horse decisions should be issued 31days 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).

APPEAL LANGUAGE:

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 Street, 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).

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. If you decide to 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.

Bureau of Land Management
Cody Field Office
1002 Blackburn Street
Cody, Wyoming, 82414

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

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

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

for *Fred McDonald*
Michael P. Stewart
Cody Field Manager

11/30/12
Date