

**Categorical Exclusion Documentation Format When Using
Categorical Exclusions Not Established by Statute
WY-040-CX14-134**

BLM Office: Rock Springs Field Office

Proposed Action Title/Type:

Removal of wild horses from checkerboard lands within the Great Divide Basin, Salt Wells Creek, and Adobe Town Herd Management Areas (HMAs) to comply with Section 4 of the Wild Free-Roaming Horses and Burros Act (WHA), 16 U.S.C. §1334 and its regulations, and the April 2013 Consent Decree, *Rock Springs Grazing Association v. Salazar* (Civil Action No. 11-CV-263-NDF).

Location of Proposed Action:

The Great Divide Basin, Salt Wells Creek, and Adobe Town HMAs are approximately 2,427,220 acres of which 1,695,517 acres are public and 731,703 acres are private. The majority of the private land holdings in the HMAs are in a checkerboard land pattern with every other section alternating between public and private land; which is part of a land grant issued as part of the transcontinental railroad. The Rock Springs Grazing Association (RSGA) currently owns or controls almost all of the private lands within the checkerboard.

A. Background

The RSGA owns or controls approximately 731,703 acres of private lands within the checkerboard lands of the HMAs, including about 39 percent within the Great Divide Basin HMA, about 31 percent within Salt Wells Creek HMA, and about 8 percent within the Adobe Town HMA.

On October 4, 2010, the RSGA requested that the BLM remove all wild horses that had strayed onto its private lands, as provided in Section 4 of the WHA, 16 U.S.C. §1334 and by regulation, 43 CFR 4720.2. On July 27, 2011, after the BLM had not made arrangements to remove the wild horses, the RSGA filed a complaint in the U.S. District Court, Wyoming, seeking to compel the removal of all wild horses from its private lands.

The BLM and the RSGA initiated settlement discussions in 2012, and on February 12, 2013, both parties filed a joint motion for the court to enter the consent decree and dismiss the case.

On April 3, 2013, the Court approved a Consent Decree and Joint Stipulation for Dismissal (Consent Decree) and dismissed the case, finding the decree to be a “fair, reasonable, equitable and adequate settlement of RSGA’s claims against the BLM, and which does not on its face violate the law or public policy.”

The April 3, 2013 Consent Decree provides in part:

Paragraph 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.”

Paragraph 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.

In November 2013, a gather was conducted in the Adobe Town and Salt Wells Creek HMAs to remove wild horses on private lands within the HMA complex. The BLM gathered 668 wild horses and removed 586 wild horses from the complex. The BLM treated 40 mares with Porcine Zona Pellucida (PZP)-22 fertility control and then released the treated mares along with 39 stallions back into the Adobe Town HMA. Three wild horses had to be euthanized during the gather, two for pre-existing body condition and one for an acute injury. Not all wild horses were removed from the private lands within the HMA complex.

On December 10, 2013, the BLM released a public scoping notice for a 2014 gather within the Great Divide Basin HMA and the comment period ended on January 10, 2014. In excess of 13,000 comment letters were received from individuals, organizations, and agencies. Many comments, including comments from the RSGA, identified concerns with BLM's proposed action to remove wild horses to the low appropriate management level for the HMA, as this was believed to be inconsistent with the 2013 Consent Decree provision for removing all wild horses from checkerboard lands. Additionally, many comments expressed concern for the general management of wild horses.

On February 4, 2014, RSGA notified the BLM of what it asserted were individual instances of non-compliance with the 2013 Consent Decree that require correction. One of the non-compliance issues was as follows: “Failure to remove all wild horses from the Wyoming Checkerboard in Salt Wells Creek and Adobe Town Complex”.

In consideration of the public comment, including that of RSGA, the BLM has decided to not proceed with the action described in the December 2013 public scoping notice. The BLM will therefore not gather the Great Divide Basin HMA to low appropriate management level under Section 3 of the WHA, 16 U.S.C. §1333. Rather, the BLM will gather all wild horses from the checkerboard within the HMA as required by Section 4 of the WHA and the Consent Decree. Due to RSGA's notification of non-compliance, the BLM will also remove all wild horses from the checkerboard in the Salt Wells Creek and Adobe Town HMAs, as required by the Consent Decree.

In April 2014, the BLM, the RSGA and the United States Geological Survey (USGS) completed a simultaneous double count method census survey for the Great Divide Basin, Salt Wells Creek, and Adobe Town HMAs. The wild horse numbers and locations were recorded with the use of a Global Positioning System and compiled on the attached maps. These maps display the HMAs

along with the checkerboard land, including the direct count of wild horses observed during these flights. The direct count numbers have been adjusted by the USGS using the simultaneous double count method as indicated below:

2014 Statistically Corrected Census Counts		
HMA	Total within HMA	Total within Checkerboard
Great Divide Basin	618	394
Salt Wells Creek	728	402
Adobe Town	566	10

Description of Proposed Action:

The proposed action is to remove all wild horses from checkerboard land within the Great Divide Basin, Salt Wells Creek and Adobe Town HMAs (see estimates above), as provided by Section 4 of the WHA and the 2013 Consent Decree. All captured wild horses would be removed from the checkerboard land and entered into the Wild Horse and Burro Program to be made available for adoption.

B. Land Use Plan Conformance

Land Use Plan Name: Green River Resource Management Plan (RMP),

Date Approved/Amended: August 8, 1997

The Green River RMP Management Objectives for wild horses are:

1) protect, maintain, and control viable, healthy herds of wild horses while retaining their free-roaming nature; 2) provide adequate habitat for free-roaming wild horses through management consistent with principles of multiple use and environmental protection; and 3) provide opportunity for the public to view wild horses.

Management Actions for wild horses include:

Wild horses will be maintained within 5 Wild Horse Herd Management Areas (Map 27).

An appropriate management level of 1,105 to 1,600 wild horses will be maintained among the five herd management areas (Table 15).

Land Use Plan Name: Rawlins Resource Management Plan (RMP),

Date Approved/Amended: December 24, 2008

The Rawlins RMP objectives for managing wild horses are to:

1. *Maintain wild horse populations within the appropriate management levels (AML) of the HMA.*
2. *Manage wild horses to meet the Wyoming Standards for Healthy Rangelands.*
3. *Identify existing genotypes and phenotypes through recognized means of genetic evaluation and maintain genetic integrity.*
4. *Maintain the health of wild horse herds at a level that prevents adverse effects to domestic horse populations.*
5. *Maintain habitat for existing AMLs.*
6. *Conduct all activities in compliance with relevant court orders and agreements, including the Consent Decree (August 2003).*

Management Actions for wild horses includes:

1. *Conduct regular, periodic gathers when necessary to maintain AMLs.*
2. *Utilize monitoring and evaluation data to maintain habitat within HMAs.*
3. *Conduct animal health monitoring.*
4. *Employ selective removal criteria during periodic gathers to increase the recognized occurrence of the New World Iberian genotype and associated phenotype above current levels.*
5. *The AML for the Adobe Town HMA will remain at 700 adults; the AML for the Stewart Creek HMA will remain at 150 adults. These AMLs could change based on future monitoring (Appendix 12).*
6. *Manage wild horses to meet the Wyoming Standards for Healthy Rangelands.*
7. *Utilizing accepted means of genetic testing and analysis, in cooperation with the Lander and Rock Springs Field Offices, the total extent of the New World Iberian genotype within the metapopulation that includes the Lost Creek HMA (current AML of 70 adults) will be documented. Management practices will be implemented to accomplish the goal of preserving the New World Iberian genotype.*
8. *Identify and designate the total extent of the metapopulation that includes the Lost Creek HMA.*

The Federal Land Policy and Management Act (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 RMPs, including that related to appropriate management levels (AMLs), do not apply to private lands.

The proposed action is to gather and removal of wild horses from the checkerboard, 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. While in its 2013 scoping notice, the BLM contemplated a gather and removal under both Section 3 and Section 4 of the WHA, in response to the scoping comments it 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 infeasible 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.

The BLM intends to address its future management of wild horses on areas of the public lands within these HMAs through a separate land use planning process. 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 AML for the HMAs, among other alternatives. Public meetings were held on September 11 and 12, 2013. The comment period closed on September 27, 2013 with more than 20,000 comments received.

C: Compliance with NEPA:

Proposed Action: Comply with Section 4 of the WHA, 16 U.S.C. §1334, and the April 2013 Consent Decree, *Rock Springs Grazing Association v. Salazar* (Civil Action No. 11-CV-263-NDF), through removal of wild horses from Checkerboard Lands within the Great Divide Basin, Salt Wells Creek, and Adobe Town Herd Management Areas. All captured wild horses would be removed from the checkerboard land and entered into the Wild Horse and Burro Program to be made available for adoption.

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance 516 DM 11.9, D4. "Removal of wild horses or burros from private lands at the request of the landowner."

Table 1.

	Extraordinary Circumstances	Yes/No	Staff Specialist	Comments
1.	Have significant adverse effects on public health or safety	No	JCD/RDP	The removal of wild horses will be in accordance with BLM policies for gather operations.

Extraordinary Circumstances	Yes/No	Staff Specialist	Comments	
2.	Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.	No	JCD/JF	No significant impacts to any resources are expected from this removal, including to any unique geographic characteristics. No such unique geographic characteristics or ecologically significant or critical areas are located within the checkerboard. The checkerboard land is within the HMAs and has been managed for wild horses, including gather operations, for decades. The removal of wild horses will be in accordance with BLM policies for gather operations. See also circumstances 7 and 8.
3.	Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA, Sec. 102(2)(E)]	No	JCD/PB	The removal of wild horses from the checkerboard is taken under authority of 16 U.S.C. §1334, which provides for the removal of wild horses from private lands. Additionally, the current proposed action is required as a provision in the 2013 Consent Decree. The removal of wild horses from checkerboard will therefore not involve unresolved conflicts concerning alternative uses of available resources. The effects of gather operations in the checkerboard on wild horses are well understood and do not create highly controversial (i.e., scientifically controversial) environmental effects.

Extraordinary Circumstances	Yes/No	Staff Specialist	Comments
4. Have highly uncertain environmental effects or involve unique or unknown environmental risks.	No	JCD/	There are no unique or unknown risks associated with this removal of wild horses from the checkerboard land. The checkerboard land is within the HMAs and has been managed for wild horses, including gather operations, for decades. The effects of gather operations on wild horses are well understood and this removal is not expected to create highly uncertain environmental effects.
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.	No	JCD/PB	This removal is not expected to create significant environmental impacts to any resource. The removal is being conducted in accordance with the 2013 Consent Decree, which specifies that all wild horses be removed from checkerboard land using the identified schedule of HMAs (Adobe Town/ Salt Wells in 2013 and Great Divide Basin in 2014). Under Section 4 of the Wild and Free Roaming Wild Horse Act of 1971 (WHA), the BLM has a responsibility to remove wild horses from private lands at the request of the land owner. Not only has BLM received such a request for this private land, the 2013 Consent Decree that BLM entered into with the RSGA requires the removal of all wild horses from checkerboard land within these HMAs.

Extraordinary Circumstances	Yes/No	Staff Specialist	Comments
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.	No	JCD/PB	The removal of wild horses from the checkerboard land is not expected to have a significant effect to any resources. The permanent removal of the checkerboard land from the HMAs is being analyzed in the ongoing revision of the Green River RMP and the amendment to the Rawlins RMP. The checkerboard land is within the HMAs and has been managed for wild horses, including gather operations, for decades.
7. Have significant impacts on properties listed, or eligible for listing on the National Register of Historic Places as determined by either the bureau or office.	No	JCD/SS/GS	The removal of wild horses from the checkerboard land is not expected to impact any historical resources. The gather will be conducted in accordance with BLM policy and any temporary trap sites will be located on private lands and outside of any known historic resources. When previously cleared trap sites are in the gather area, these will be utilized to prevent impact to previously recorded or unknown cultural resources.
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.	No	JCD/MS	The removal of wild horses from the checkerboard land is not expected to impact any critical habitat or special status species. No critical habitat is present in the HMA. The wild horse removal will be conducted in accordance with BLM policy and any temporary trap sites will be located outside of any known special status species habitat.

Extraordinary Circumstances		Yes/No	Staff Specialist	Comments
9.	Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.	No	JCD/SS	The removal of wild horses from checkerboard land will be conducted in accordance with BLM policy for gathering of wild horses. This gather will be in compliance with the 2013 Consent Decree and does not violate any Federal, State or local laws.
10.	Have a disproportionately high and adverse effect on low income or minority populations (EO 12898).	No	JCD/RDP	A review of EO 12898 indicates that the checkerboard land is not within an area of low income or minority populations.
11.	Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007).	No	JCD/SS	Cultural Staff will clear trap sites as they are proposed to ensure that none of the approved locations on checkerboard land will cause a limitation of access to or ceremonial use of Federal land. During gather operations, some roads may need to be temporarily closed to allow helicopter gather operations to proceed; however, any closures would be less than 8 hours.
12.	Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).	No	JCD/JG	The removal of wild horses from checkerboard land will not contribute to the introduction, existence or spread of noxious weeds. All gather operations will be in compliance with BLM policies, which include measures to avoid the introduction or spread of noxious weeds.

This categorical exclusion is appropriate in this situation because there are no extraordinary

circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 43 CFR 46.215 and 516 DM2 apply.

BLM Reviewers:

BLM staff from the Rock Springs and Rawlins Field Offices who participated in the preparation of this are listed in Table 2.

<u>Table 2. BLM Reviewers</u>	
<u>Name:</u>	<u>Title:</u>
Ben Smith	Rawlins Wild Horse & Burro Specialist
Bob Price	Supervisory Rangeland Management Specialist
Gavin Lovell	Rock Springs Assistant Field Manager Resources
Gene Smith	Archeologist
Scott Stadler	Supervisory Archeologist
Mark Snyder	Supervisory Wildlife Biologist
Dennis Doncaster	Hydrologist
John Henderson	Fisheries Biologist / Riparian Specialist
Jim Glennon	Botanist
Tim Novotny	Rawlins Assistant Field Manager Resources
Caleb Hiner	HDD Resource Advisor

D: Preparer/s

Prepared By: Jay C. D'Ewart
Jay C. D'Ewart
Wild Horse & Burro Specialist

JUL 18 2014
Date

Reviewed By: Phillip Blundell
Phillip Blundell
Environmental Reviewer

JUL 18 2014
Date

Decision:

I have reviewed the proposed action using the Categorical Exclusion Review (CER) process described in BLM Manual H-1790-1 and have determined that the proposal is in conformance with applicable law, and that the action would not result in significant environmental effects and that no extraordinary circumstances apply. Therefore, it does not represent an exception, and is categorically excluded from further environmental review.

Approved By: Kimberlee D. Foster
Kimberlee D. Foster
Authorized Officer - RSFO

JUL 18 2014
Date

Approved By: Dennis Carpenter
Dennis Carpenter
Authorized Officer - RFO

JUL 18 2014
Date

Great Divide Basin HMA Census (Direct Count) April 7-8, 2014 466 Wild Horses



