

JENNIFER M. SPENCER (NV Bar #8673)  
JULIE CAVANAUGH-BILL (NV Bar # 11533)  
Cavanaugh-Bill Law Offices  
401 Railroad Street, Suite 307  
Elko, NV 89801  
Telephone: 775-753-4357

MICHAEL RAY HARRIS, *application for pro hac vice will be filed*  
JENNIFER BARNES, *application for pro hac vice will be filed*  
7500 E. Arapahoe Rd., Suite 385  
Centennial, CO 80112  
Telephone: 720-949-7791  
Fax: 888-236-3303  
michaelharris@friendsofanimal.org  
jenniferbarnes@friendsofanimals.org  
Attorneys for Plaintiff

(will comply with LR IA 10-2 within 45 days)

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FRIENDS OF ANIMALS, and	)	
PROTECT MUSTANGS	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
THE UNITED STATES BUREAU	)	
OF LAND MANAGEMENT, an agency	)	
of the United States;	)	
	)	
Defendant.	)	

Civ. No. 3:15-cv-00057-LRH-WGC

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND/OR TEMPORARY  
RESTRAINING ORDER TEMPORARY RESTRAINING ORDER**

## INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs hereby move for a preliminary injunction or temporary restraining order to enjoin the United States Bureau of Land Management (“BLM”) from implementing its December 19, 2014 decision to roundup and remove approximately 332 wild horses from the Pine Nut Herd Management Area (“HMA”), permanently remove 200 of them, and administer the fertility control drug, porcine zona pellucide (“PZP”) to mares one-year of age and older (“Pine Nut ROD”). In authorizing this drastic management action last month, BLM failed to: (1) provide the public reasonable notice that the Pine Nut herd would be subject to removals and administration of PZP in early 2015; (2) fulfill its obligation under the National Environmental Policy Act (“NEPA”) to evaluate the physical, behavioral and social impacts associated with the use of PZP on wild mares; and (3) comply with the notice and comment requirements of the federal Administrative Procedure Act (“APA”).

BLM purports to have fulfilled its legal duties through the use of a 2010 Environmental Assessment for the Clan Alpine, Pilot Mountain and Pine Nut Herd Management Areas Gather Plan (hereinafter, “2010 EA”). This document, which was open to a mere 30 day public comment period between August 23, 2010 and September 23, 2010, cannot be said to have placed the public and interested organizations (like the Plaintiffs) on reasonable notice that more than four years later the Pine Nut herd would be made subject to a hasty roundup in 2015. BLM’s reliance on the 2010 EA is especially misplaced because the 2010 EA does not adequately address the physical, behavioral and social impacts of PZP on wild mares. Since the 2010 EA, significant new scientific information has become available that PZP likely creates instability in wild horse bands, effects the health of the group members, and can increase wild horse mortality.

In order to preserve the *status quo* until the Court has an opportunity to hear this case on the merits, Plaintiffs’ respectfully request that the Court grant preliminary

injunctive relief. As demonstrated below, Plaintiffs have established: (1) a strong likelihood of success on the merits of their claims, (2) that Plaintiffs will be irreparable harm absent relief from this Court, and (3) all of the equities favor granting the requested relief. In the alternative, Plaintiffs request a temporary restraining order for thirty (30) days if the court is unable to render a ruling on the preliminary injunction motion on or before February 16, 2015.

### **FACTUAL BACKGROUND**

The Pine Nut Wild Horse Herd covers about 90,000 acres in the Pine Nut Herd Management Area (“HMA”), located near Carson City and Dayton, Nevada. BLM Fact Sheet: Pine Nut Wild Horse Herd (hereinafter “BLM Fact Sheet”) (attached hereto as Exhibit A). These wild horses are of particular importance to many wild horse advocacy organizations for many reasons. First and foremost, they are protected under federal law. *See* Declaration of Anne Novak in Support of Plaintiffs’ Motion for a Temporary Injunction (hereinafter, “Novak Decl.”) at ¶ 7. Other wild horses in the area are managed by the State of Nevada and can be removed for almost any reason without the need to comply with NEPA or the Wild and Free-Roaming Horses and Burros Act (“WHBA”). Second, the proximity to human population centers in Nevada and California makes them especially easy to observe, photograph, film or study. Novak Decl. at ¶ 8; Declaration of Craig Downer in Support of Plaintiffs’ Motion for a Temporary Injunction (hereinafter, “Downer Decl.”) at ¶¶ 7-8. Of course, proximity to human population centers is also one factor that places these horses at risk of being removed from the HMA altogether. *See* Novak Decl. at ¶ 14. Finally, the wild horses of the Pine Nut range contain elements of Shetland pony and Spanish mustang. Downer Decl. at ¶ 9. This is a rare combination, and one that could be lost. *Id.* The herd is already maintained at levels far, far lower than recommended by the International Union for Conservation of Nature (a scientific body), and that number will be made even smaller if the BLM conducts the proposed roundup and dosing of mares with PZP. *Id.* at ¶ 13.

Despite the vast size of the Pine Nut HMA, BLM has previously determined that the appropriate management level (“AML”) is somewhere between 119-179 horses. BLM Fact Sheet at 1. In 2010, BLM found that the Pine Nut herd had grown to approximately 215 horses. Record of Decision: Pine Nut Herd Management Horse Gather Plan (Oct. 20, 2010) (hereinafter, “2010 ROD”) (attached hereto as Exhibit B). At that time, BLM proposed to round up approximately 185 horses. *Id.* Of those, approximately 67 were to be removed permanently, approximately 45 were to be dosed with PZP, and approximately 118 were to be released back into the Pine Nut HMA. *Id.* Concurrently with the 2010 proposal, BLM conducted an 80-plus page environmental assessment pursuant to NEPA, which examined the environmental impacts associated with wild horse management activities within multiple HMAs under the jurisdiction of BLM’s Carson City office. Final Environmental Assessment: Clan Alpine, Pilot Mountain and Pine Nut Herd Management Areas Gather Plan (hereinafter, “2010 EA”) (attached hereto as Exhibit C). To the best of Plaintiffs’ knowledge, this round up was implemented by BLM in November 2010. *See* Worksheet: Determination of NEPA Adequacy at 2 (hereinafter, “2014 DNA”) (attached hereto as Exhibit D).

Without any further notice, analysis or public involvement, on December 19, 2014, BLM announced its plan for the roundup and PZP dosing at issue in this case. Pine Nut Wild Horse Gather Decision Record (hereinafter, “2014 ROD”) (attached hereto as Exhibit E). BLM reached this decision based upon its estimate that the Pine Nut HMA currently contains about 332 wild horses. The ROD was not accompanied by any additional environmental assessment under NEPA despite the fact that there has been a substantial new amount of scientific information generated on the effects of PZP use on wild mares.

## **LEGAL BACKGROUND**

### **A. The Administrative Procedure Act.**

The Administrative Procedure Act governs internal procedures of administrative agencies, including how they interact with the public. The APA is codified at 5 U.S.C. §§ 551-

559 and defines an "agency" broadly to mean "each authority of the Government of the United States," unless expressly excluded by the Act. BLM is not expressly excluded from the APA.

"Agency action" is defined by the APA as "the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). A "rule" is defined as "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." *Id.* § 551(4). Before making a rule, an agency must publish notice of proposed rulemaking in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. 5 U.S.C. § 553(b). The notice must include: "(1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved." *Id.* § 553(b)(1)-(3). After notice, the agency must give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments. 5 U.S.C. § 553(c). The agency must publish notice of a substantive rule at least 30 days before its effective date, unless it is a "(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule." *Id.* U.S.C. § 553(d).

## **B. The National Environmental Policy Act.**

As the Ninth Circuit has recently observed:

NEPA is "our basic national charter for protection of the environment." *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1166 (9th Cir. 2003) (citation and internal quotation marks omitted). The "twin aims" of NEPA are first, to "place[] upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action," and second, to "ensure[] that the agency will inform the public that it has indeed

considered environmental concerns in its decisionmaking process." *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97, 103 S. Ct. 2246, 76 L. Ed. 2d 437 (1983) (citation omitted). Unlike the Endangered Species Act, NEPA does not provide substantive protections, only procedural ones—it "exists to ensure a process." *The Lands Council v. McNair*, 537 F.3d 981, 1000 (9th Cir. 2008) (en banc) (citation and internal quotation marks omitted), *overruled on other grounds by Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

*Conservation Cong. v. Finley*, 2014 U.S. App. LEXIS 23675, \*7 (9th Cir. Cal. Dec. 16, 2014).

Foremost among these procedural requirements is that agencies considering "major Federal actions significantly affecting the quality of the human environment" are required to prepare an Environmental Impact Statement ("EIS"). 42 U.S.C. § 4332(C); *see also W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 486-87 (9th Cir. 2011). The EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1. Of course, agencies may prepare an Environmental Assessment ("EA") to determine whether a proposed action requires preparation of an EIS or warrants a finding of no significant impact. *Native Ecosystems Council v. Tidwell*, 599 F.3d 926, 936-37 (9th Cir. 2010).

### **C. Wild Free-Roaming Horses and Burros Act.**

In 1971 Congress passed the WHBA, 16 U.S.C. §§ 1331 *et seq.*, and found that, "wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene." Upon finding this, Congress stated its policy was that "wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death, and to accomplish this they are to be considered in the area where presently found as an integral part of the natural system of public lands." 16 U.S.C. § 1331.

WHBA requires BLM to “protect and manage wild free-roaming horses and burros as components of the public lands . . . in a manner that is designed to achieve and maintain a thriving, natural ecological balance on the public lands.” 16 U.S.C. §1333(a). Additionally, WHBA requires management of wild horses and burros to be at “the minimal feasible level.” *Id.* To do so, for each HMA, BLM must: (1) maintain a current inventory of wild horses in the management area, (2) “determine [the] appropriate management level” of wild horses that the HMA can sustain (i.e., the AML), and (3) determine the method of achieving the designated AML and managing horses within it. 16 U.S.C. § 1333(b)(1); 43 C.F.R. §§ 4710.2, 4710.3-1. An AML, according to BLM’s Wild Horses and Burros Management Handbook, is “expressed as a population range within which [wild horses] can be managed for the long term” in a given HMA without resulting in rangeland damage. Lastly, WHBA requires BLM to make a determination that there are excess wild horses prior to gathering or removing any wild horses from the range. *See Colorado Wild Horse & Burro Coal., Inc. v. Salazar*, 639 F. Supp. 2d 87 (D.D.C. 2009). WHBA defines the term “excess” as animals that “must be removed from an area in order to preserve and maintain a thriving ecological balance and multiple-use relationship in that area.” 16 U.S.C. § 1332(f). BLM’s Wild Horses and Burros Management Handbook explains that: “Before issuing a decision to gather and remove animals, the authorized officer shall first determine whether excess [wild horses] are present and require immediate removal. In making this determination, the authorized officer shall analyze grazing utilization and distribution, trend in range ecological condition, actual use, climate (weather) data, current population inventory, wild horses and burros located outside the HMA in areas not designated for their long-term maintenance and other factors such as the results of land health assessments which demonstrate removal is needed to restore or maintain the range in a [thriving, natural ecological balance].”

## STANDARD OF REVIEW

### A. Preliminary Injunction Standard.

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008); *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060 (9th Cir. 2014). The Ninth Circuit has interpreted this requirement to allow a court to issue a preliminary injunction if : (1) the motion raises serious questions on the merits; and (2) the balance of hardships tips sharply in the moving party's favor. *Alliance For The Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011); *Los Angeles Memorial Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980). These standards are not two distinct tests, but are treated as "the opposite ends of a single 'continuum in which the required showing of harm varies inversely with the required showing of meritoriousness.'" *Rodeo Collection, Ltd. v. West Seventh*, 812 F.2d 1215, 1217 (9th Cir. 1987). Under the so called sliding scale approach, serious questions are "substantial, difficult and doubtful" enough to require more considered investigation. *National Wildlife Fed'n v. Coston*, 773 F.2d 1513, 1517 (9th Cir. 1985). Such questions need not show a certainty of success, nor even demonstrate a probability of success, but rather "must involve a fair chance of success on the merits." *Id.*

### B. Review of Claims.

All of the claims in this case are governed by the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (APA). Under the APA, a federal court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be[:] (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] without observance of procedures required by law[.]" 5 U.S.C. § 706(2). Under this standard, an "agency must examine the relevant data and articulate a satisfactory explanation for its action." *Motor*

*Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). An agency's action is arbitrary and capricious if the agency fails to consider an important aspect of a problem, if the agency offers an explanation for the decision that is contrary to the evidence, if the agency's decision is so implausible that it could not be ascribed to a difference in view or be the product of agency expertise, or if the agency's decision is contrary to the governing law. *Id.*; *Organized Vill. of Kake v. United States Dep't. of Agric.*, 746 F.3d 970, 974 (9th Cir. 2014). The court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 601 (9th Cir. 2014). While "the standard of review is highly deferential," the court's "inquiry must be thorough." *Id.* Moreover, while the court generally must be "at its most deferential" when reviewing scientific judgments and technical analyses within the agency's expertise (See *Balt. Gas & Elec. Co., v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983)), even there the court need not forgive a "clear error of judgment." *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378 (1989); see also *Nat'l Parks & Conservation Ass'n v. F.A.A.*, 998 F.2d 1523, 1533 (10th Cir. 1993) ("[while] we owe deference to agency determinations in an area where the agency has expertise, we need not defer to irrational judgments.").<sup>1</sup>

///

///

///

---

<sup>1</sup> Plaintiffs would note that while there is no doubt BLM's Carson City Field Office staff are experts on range management, it is far from clear that the office has any expertise regarding the biological and other effects of PZP on horses.

## ARGUMENT

### A. Plaintiffs Are Likely To Succeed On The Merits And/Or Have Represented Serious Questions Going To The Merits.

#### 1. BLM violated NEPA by authorizing the 2015 roundup without conducting any environmental analysis.

It is beyond dispute that BLM did not prepare a separate EA or EIS regarding the proposed roundups set forth in the 2014 ROD. Instead, on December 19, 2014, the BLM Sierra Front Field Office issued the 2014 DNA incorporating the 2010 ROD and EA.

**Notably, in the very assessment BLM relies upon to comply with NEPA—the 2010 EA—BLM concedes that “future gathers will be subject to a separate NEPA analysis and decision-making process.”** 2010 EA at 72 (emphasis added). And this concession is for good reasons. First, the scope of the 2010 EA was far narrower than the scope of the current proposed roundup. For the Pine Nut HMA, the EA analyzed the gathering of 118 horses from within the HMA, the permanent removal of zero horses from the HMA, and the dosing of PZP of only 45 mares in the HMA.<sup>2</sup> 2010 EA at 6, Table 1. The 2014 ROD, on the other hand, proposes to roundup **all** 332 horses from the Pine Nut HMA, permanently removing 200 of them while returning only 132, of which **all** mares older than one year will be dosed with PZP. 2014 ROD at 2. In other words, the proposed round up scheduled to take place in February 2015, **is in excess of 2.5 times the intensity and scope of what was analyzed in the 2010 EA.** This leads to the second reason; the roundups proposed in 2010 were fully implemented, meaning that the current proposed roundup of 332 horses **was never analyzed at all in the 2010 EA.** Finally, while it is true that in the 2010 EA, BLM contemplated additional roundup within the Pine Nut HMA in the future, it said its intention was to do so, if at all, within 2-3 years, and as mentioned above, even those would be subject to additional NEPA analysis. 2010 EA at 9, 72. Instead, BLM has not only waited

---

<sup>2</sup> The 2010 EA also examined the permanent removal of 67 horses outside the Pine Nut HMA. 2010 EA at 6, Table 1.

over 4 years to proceed, but has done so without any further analysis or public participation.

None of these issues were addressed by BLM in the 2014 DNA. On the key questions of whether the 2015 roundup “[i]s the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)?” and “If there are differences, can you explain why they are not substantial?,” BLM’s brief answer is:

Yes, this proposed action is the same as described in the final EA in Sections 2.2.1 and 4.2.1. The analysis was for the same geographic area as the new proposed action, including areas within and adjacent to the Pine Nut HMA.

DNA at 3. The fact that the 2015 proposal is targeting a significantly greater number of horses, that the 2010 roundups were complete, or that the 2010 EA is almost 4 years removed from the current project, are completely ignored by BLM.

BLM’s decision to roundup all wild horses from the Pine Nut HMA, permanently remove 200 horses, and treat all mares over one year of age with the fertility drug PZP without inviting any public participation or conducting an environmental analysis is precisely the type of “uninformed” agency action prohibited by NEPA. *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1214 (9th Cir. 2008). To begin with, rounding up over 300 federally protected wild horses from the range, and forcing them all into crowded traps, some of which may be on critical habitat of federally-threatened species (such as the recently listed sage grouse), will undoubtedly result in significant impacts to the environment. In addition, because of the close relationship of wild horses to the range, a roundup of this magnitude will inevitably affect a myriad of natural resources in these HMAs including forage, water, vegetation, and other wildlife. Indeed, BLM’s own directives expressly recognize that the permanent removal of any wild horses significantly affects the environment by stating that “[a]n appropriate NEPA analysis and issuance of a decision is required prior to removing the animals.” BLM Manual

4720.2.21; *id.* at 4720.3 (“[T]he authorized officers shall conduct an appropriate site-specific analysis of the potential environmental impacts that could result from implementation of a proposed gather in accordance with [NEPA].”)

Consistent with BLM’s written directives, it is the agency’s longstanding practice to invariably prepare at least an EA for all wild horse roundups of any size. Reviewing courts have pointed to this practice in explaining that BLM typically “prepares a detailed ‘gather’ plan, including an environmental assessment in compliance with [NEPA],” before permanently removing horses from the range. *Fund for Animals. v. BLM*, 460 F.3d 13, 16 (D.C. Cir. 2006); *see also Cloud Found., v. Salazar*, 738 F. Supp. 2d 35, 37 (D.D.C. 2010) (noting that BLM prepared an EA and a FONSI for the permanent removal of 70 wild horses from the range). Failure to do so essentially stripped away the rights of the Plaintiffs and the public to participate in the decisionmaking process. *See* 40 C.F.R. §§ 1500.1(b), 1500.2(d); *see also Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 970-71 (9th Cir. 2003) (explaining that “a complete failure to involve or even inform the public” violates NEPA and this “wholesale neglect of the regulations’ mandatory inclusion of the public in the process . . . undermines the very purpose of NEPA, which is to ensure[] that federal agencies are informed of environmental consequences before making decisions and that the information is available to the public.”) (citation omitted).

In short, disregarding these mandates and directives, BLM admittedly has not taken the “hard look” required by NEPA concerning the proposed 2015 roundup. Amazingly, all of this comes on the heels of a report issued in 2013 by the National Research Council for the National Academies of Science that not only criticized BLM’s wild horse management program as unsustainable, but one that could foster better public participation. Using Science to Improve BLM Wild Horse and Burro Program: A Way Forward (2013), *available at* [http://msnbcmedia.msn.com/i/msnbc/sections/news/Wild\\_Horses\\_Report\\_Full.pdf](http://msnbcmedia.msn.com/i/msnbc/sections/news/Wild_Horses_Report_Full.pdf); Downer Decl. at ¶ 17.

**2. BLM further violated NEPA because the 2010 EA does not accurately analyze the impacts associated with PZP use that have been subsequently identified, and, thus, a new or supplemental EIS is legally required.**

Even if BLM could satisfy its NEPA obligations regarding the proposed 2015 roundup through incorporation by reference to the 2010 EA, the 2010 analysis is insufficient, outdated, and no longer accurate. As the U.S. Supreme Court has explained, the question of “whether to prepare a supplemental EIS [or EA] is similar to the decision whether to prepare an EIS [or EA] in the first instance: If there remains ‘major federal action[n]’ to occur, and if the new information will ‘affect the quality of the human environment’ in a significant manner or to a significant extent not already considered, a supplement must be prepared.” *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989). Further, the BLM must reexamine its decision when the EA “rests on stale scientific evidence . . . and false assumptions[.].” *Seattle Audubon Soc’y v. Espy*, 998 F.2d 699, 704 (9<sup>th</sup> Cir. 1993). For the following reasons, BLM’s failure here “to evaluate in a timely manner the need to supplement the original [EA] in light . . . of new information violates NEPA.” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 559 (9<sup>th</sup> Cir. 2000).

In 2010, PZP, while in use sporadically since 1980, had not been extensively researched with regards to the biological and behavioral effects it might have on wild horses. See Declaration of Dr. Cassandra Nuñez in Support of Plaintiffs’ Motion for a Preliminary Injunction (hereinafter, “Nuñez Decl.”) at ¶ 5. Dr. Nuñez, has extensively researched the behavior and physiology of wild horses and the effects of contraceptive management, including the administration of PZP, as part of her academic work and scholarship at Princeton University. *Id.* at 2. She has found that since 2010 “research has demonstrated changes in mare stress and reproductive physiology, in addition to changes in male behavior.” *Id.* at ¶ 5. For example, researchers in this area now know that:

- Mares which change groups more often (such as those treated with PZP) can exhibit increased stress levels and that this increased stress is maintained for at least two weeks after the group changes occur (Nunez, Adelman et al. 2014);

- Mares that receive PZP over extended periods are more likely to cycle, become pregnant, and subsequently give birth in the fall (Nuñez, Adelman et al. 2010) and winter (unpublished data) months. This is significant because offspring born at this time face nutritional and thermoregulatory challenges not experienced by their counterparts born during the normal foaling season (during the spring and summer), potentially making developmental benchmarks difficult to achieve (Sadleir 1969);
- After contraception management, PZP recipients both attract and initiate more instances of reproductive behavior (Nuñez, Adelman et al. 2009) and are more often the harem male's nearest neighbor during the fall and winter (Nuñez 2011), indicating that group spreads are reduced. These changes can be important as horses typically spread out in the fall and winter months to find scarce forage (Duncan 1985; Morel, McBride et al. 2006). Such changes represent an increase in energy expenditure and a potential decrease in nutrient intake during a time of year when sufficient energy reserves are at a premium (Sadleir 1969);
- PZP is not completely reversible; the ability of mares to become pregnant after treatment is dependent upon the number of consecutive treatments received (Kirkpatrick and Turner 2002);
- Mares treated for more consecutive years are more likely to exhibit the behavioral and physiological changes outlined above (Nuñez, Adelman et al. 2010), decreases in ovarian function (Kirkpatrick, Liu et al. 1992), and perhaps, permanent infertility; and
- Where, as here, the plan is to vaccinate non-reproductive females (those between 1 and 3 years old); it will preclude young mares from forming the important social attachments between males and females typically made when foals are conceived. Such changes could further affect herd dynamics.

Nuñez Decl. at ¶¶ 5-8.

The 2010 EA did not consider any of these potentially significant impacts of what amounts to an even greater emphasis on the use of PZP if the proposed 2015 roundup was to proceed. Instead, it contains less than two pages of discussion regarding PZP, most of which just explaining how it works and how it is administered. 2010 EA at 29-31. In a single sentence, the EA concludes that PZP “does not cause significant changes in behavior at the individual or herd levels.” *Id.* at 30. Notably, it relies on a similarly deficient report by

the U.S. Geological Study to reach this conclusion. But regardless of whether this conclusion had any merit in 2010, it does not now.

The requirement that BLM supplement its environmental analysis in response to new information is a “low standard.” *League of Wilderness Defenders/Blue Mts. Biodiversity Project v. Connaughton*, 752 F.3d 755, 760 (9th Cir. 2014); 40 C.F.R. § 1502.9(c)(ii). It would be disingenuous for BLM to claim that they were not aware of the growing debate over the impact that PZP use might have on wild horses. Even a simple literature search would have produced the information outlined above. In any case, by not doing anything BLM has failed in its “continuing duty to gather and evaluate new information relevant to the environmental impact of its actions.” *S. Or. Citizens against Toxic Sprays, Inc. v. Clark*, 720 F.2d 1475, 1480 (9th Cir. 1983). In short, BLM’s failure to supplement its outdated analysis blatantly violates the requirements of NEPA. *See Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1264 (D. Utah 2006).

**3. BLM violated the Administrative Procedure Act by issuing the 2014 Pine Nut ROD without complying with the Act’s notice and comment procedures.**

As stated above, “agency action” is defined by the APA as “the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13). A “rule” is defined as “the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.” *Id.* § 551(4). There is little doubt that the 2014 ROD is an agency statement of “particular applicability and future effect” designed to implement the law, namely the WHBA. Under the WHBA, the Secretary of the Interior, through her delegate, the BLM, is obligated to make, among other things, “determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals.” Given this express delegation, BLM was obliged to engage in notice and comment rulemaking as prescribed by law before BLM issued the determination to roundup and remove wild horses from the Pine Nut HMA. *See* 5 U.S.C. § 553.

Notably, BLM has previously provided for public comment and involvement in decisions regarding the Pine Nut wild horses. In fact, the 2014 DNA puts great emphasis on explaining the public involvement prior to the 2010 roundup, stating that:

On August 23, 2010 the BLM provided a 30-day public comment period on the [2010 EA]. A dear reader notification was sent to 61 individuals, organizations, and agencies on the project mailing list, including the Nevada State Clearinghouse. A news release was issued; articles appeared in the *Lahontan Valley News*, *My News 3\**, *My News 4\**, *Reno Gazette-Journal* (\*web versions) and the *Mineral County Independent*.

2014 DNA at 4-5. However, as noted above, the 2010 roundup was complete, and there would have been little reason for the public to anticipate that over 4 years later, BLM would use the 2010 public input to authorize a wholly different and more extensive roundup.

In short, the Court should vacate and remand the 2014 ROD for failure to comply with the notice and comment requirement of the APA. This remedy is needed here because public comment will allow Plaintiffs and others to raise the very deficiencies asserted here, namely the inadequate analysis of PZP in the 2010 EA. *See also Sagebrush Rebellion, Inc. v. Hodel*, 790 F.2d 760, 764-65 (9th Cir.1986) (agency's failure to provide notice and comment is harmless only where the agency's mistake "clearly had no bearing on the procedure used or the substance of decision reached").

**B. Plaintiffs Will Suffer Irreparable Harm Absent The Requested Relief.**

Absent a preliminary injunction, Plaintiffs will likely suffer irreparable injury and harm. *See Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. Cal. 2009); *see also Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003) (A showing of irreparable injury "is met if a plaintiff demonstrates a significant risk that he or she will experience harm that cannot be compensated after the fact by monetary damages.") In this regard, the Supreme Court has stated that because "[e]nvironmental injury, by its very nature, can seldom be adequately remedied by money damages and is

often permanent or at least of long duration [it is] irreparable.” *Amoco Production Co. v. Gambell*, 480 U.S. 531, 545 (1987); *see also Malama Makua v. Rumsfeld*, 163 F. Supp. 2d 1202, 1222 (D. Haw. 2001) (finding that the public has a significant interest in the protection of animals that may be in danger of extinction).

In this case, if BLM implements its Pine Nut Roundup, it will cause significant serious and irreparable injuries to Plaintiffs. First, the immediate roundup will lead to a loss of a majority of the current horses in the Pine Nut HMA, which will cause Plaintiffs irreparable harm due to their intimate connection with the wild horses on the Pine Nut range. Plaintiffs and their members have extensively visited, photographed, filmed, studied and written about these horses in recent years, and continue to do so now. Many members will be devastated by their loss and will have great difficulty returning to the Pine Nut HMA post-roundup and removal of nearly 200 horses. Second, the lasting impacts to the horses associated with the trauma of a roundup, the potential loss of band members, and the dosing of mares with PZP will permanently injure Plaintiffs’ recreational, aesthetic, and professional interests in the wild horses. Lastly, the BLM’s procedural violation of NEPA will thwart Plaintiffs’ ability to participate in the decisionmaking process for the Pine Nut ROD.

**1. Plaintiffs’ personal relationships with the wild horses of the Pine Nut range will be irreparably injured by the proposed roundup.**

Several courts have found that emotional distress, including that caused by the knowledge of harm to animals that he or she cares about, constitutes irreparable injury, particularly where, as here, it would significantly lessen a person’s ability to recreate, observe or study animals harmed by government action. For example, in *Red Wolf Coalition v. North Carolina Wildlife Resources Commission*, the court expressly found that harm to “plaintiffs and their group members through the unauthorized taking of red wolves is also irreparable, as environmental and aesthetic injuries by their nature are not adequately

remedied by money damages and have permanent or long-lasting effects.” 2014 U.S. Dist. LEXIS 65601, 25 (E.D.N.C. May 13, 2014) (citing *Amoco Prod.*, 480 U.S. at 531 (1987)). The court expressly found the “ability to enjoy red wolves in the wild and the **forced contemplation** of an increase in red wolf mortality would cause them to suffer irreparable harm.” *Id.* (emphasis added). Similarly, in *Fund for Animals v. Clark*, the district court for the District of Columbia granted a preliminary injunction based on the irreparable harm to plaintiffs caused by defendants’ “failure to comply with NEPA and the **aesthetic injury the individual plaintiffs would suffer from seeing or contemplating . . . bison being killed** in an organized hunt.” *Fund for Animals v. Clark*, 27 F. Supp. 2d 8, 14 (D.D.C. 1998) (emphasis added). The same court found that plaintiffs demonstrated “substantial irreparable harm to their interests absent the grant of injunctive relief” by the contemplation that the Government would cull 525 mute swans to manage the overpopulation. *Fund for Animals v. Norton*, 281 F. Supp. 2d 209, 222 (D.D.C. 2003). The District Court of Oregon has likewise found plaintiffs would suffer irreparable injury from “the idea that some of [the California Sea Lions] she has come to know may be killed.” *Humane Soc’y of the United States v. Bryson*, 2012 U.S. Dist. LEXIS 74688, \*22 (D. Or. May 30, 2012).

Here the contemplation of the Pine Nut horses being rounded up, placed in traps, and forcibly drugged with PZP causes serious harm to Plaintiffs and their members that no amount of money could repair. Here, Plaintiffs have an intimate connection with the Pine Nut horses. For example, Protect Mustangs member, Craig Downer, has viewed the horses for decades and values each unique individual horse. Downer Decl. at ¶¶ 7-8; *see also* ¶20 (“To me, wild horses represent the true spirit of freedom and independence of both my native country: America and of my native state: Nevada, whose official quarter was publically voted to have an image of the wild horses in the wild. There is nothing quite like these wild horses and they have inspired me to compose several poems including some published in my book of poetry, *Streams of the Soul* (2005). They have had a lot to do with

my conceiving some beautiful melodies including those scored, copyrighted and published in the piano CD *Wild Horse Rhapsody* (2007)). Protect Mustangs Executive Director, Ms. Novak, also describes how the Pine Nut horses “inspire me to educate the public about wild horses, train horses with deeper understanding of natural behaviors, help me write my book and make my documentary about native wild horses.” Novak Decl. ¶ 5.

Roundups cause severe damage, and often result in death of wild horses. While the horses live in closely-knit family structures, the gathers rip them apart and “are truly disturbing for a species that depends on familiarity for safety and comfort.” Downer Decl. ¶ 12. For Plaintiffs, the contemplation of BLM’s proposed action to roundup these horses is “heartbreaking” and causes much distress. *See* Declaration of Nicole Rivard in Support of Plaintiffs’ Motion for a Temporary Injunction (hereinafter, “Rivard Decl.”) ¶ 18. It also prevents Plaintiffs’ from being able to continue to view, study, photograph, and film horses and bands they have come to know and enjoy. *See* Downer Decl. ¶¶ 10-13, 9; *See also* Novak Decl. ¶ 8 (“I enjoy discovering them living in their wild and free state”). If the project is completed, the wild horses of the Pine Nut range will individually and collectively be different than those that Plaintiffs have an intimate relationship with today. This is sufficient to establish irreparable harm. *See Fund for Animals, Inc. v. Espy*, 814 F. Supp. 142, 151 (D.D.C. 1993) (finding that aesthetic injury inflicted by sight or contemplation of harm to protected species is not remediable by money damages and irreparable).

**2. Plaintiffs’ recreational, aesthetic, and professional interests in the Pine Nut herd will be irreparably injured as a result of the trauma that will be inflicted on the horses, from the dosing of mares with PZP, and from the loss of up to 200 horses.**

The lasting impact of the trauma that will be inflicted on the horses and from the dosing of mares with PZP would result in long-lasting impacts on individual horses and the herd structure. During a roundup, bands are torn apart, permanently altering the herd’s social structures and family units, further thwarting Plaintiffs’ ability to view, study,

photograph, and film a healthy, naturally behaving wild herd. As explained by wildlife ecologist Craig Downer, who has studied the Pine Nut herd and sees them at least six times a year:

Wild horses live in closely-knit family structures. Gathers are stressful for wild horses, and are truly disturbing for a species that depends on familiarity for safety and comfort. Not only it is difficult for the horses to run long distances from the helicopter in a state of fear, on top of that there's the social unrest from confinement in close quarters with unfamiliar horses once trapped, and the loss of or separation from lifelong herd mates. The roundup and subsequent captivity, as proposed by BLM for the Pine Nut herd, would likely have long term negative effects on the horses and the herd; the dramatic event can compromise a wild horse's ability to deal with natural stressors, such as severe weather conditions. Stress from roundups can have dramatic effects on how an animal functions, behaves and even looks. And it can last a lifetime. Epigenetic modification may even be inheritable. That means that what we humans do to and with today's generation of horses may affect future generations as well.

Downer Decl ¶ 12.

In addition to the roundup, as Dr. Nuñez explains above, the forcible dosing of mares with PZP can have long-lasting negative effects on the dosed animals as well as the herd. *See supra* at 13-14. Thus, even if wild horses are returned to the range, they would not behave the same way after BLM's proposed action. If the Court does not grant an injunction, Plaintiffs will be unable able to study a naturally behaving herd and, at best, could only study the "overly reduced and dysfunctional, remnant animals." Downer Decl. ¶ 22. Rare horses could be "lost forever." Downer Decl ¶ 9.

Finally, the permanent removal of 200 of the estimated 332 wild horses from this area will make the difficult task of finding wild horses, let alone finding those wild horses that Plaintiffs have specifically come to know and recognize during their visits, much more difficult. *See, e.g.*, Downer Decl. ¶¶ 19; Novak Decl. ¶¶ 5-6, 9. Again, Ms. Novak has been observing and filming the Pine Nut herd and plans to film them in February 2015, as well as in the fall of 2015. Novak Decl. at ¶ 6. The Pine Nut herd is reliable for filming. Novak Decl.

at ¶ 7. If BLM's proposed roundup occurs, it will be much more difficult for her to find wild horse on the 90,000 acre Pine Nut range. Novak Decl. at ¶¶ 9, 16. Money cannot repair the injury that Plaintiffs will suffer if they are no longer able to readily access and view the wild free roaming herd to which they have grown attached. *See Fund for Animals v. Norton*, 281 F. Supp. 2d 209, 220 (D.D.C. 2003) (finding that the removal of 525 out of 3,600—or 14.5% would have an appreciable and irreparable impact on plaintiffs' interests); *see also Fund for Animals v. Glickman*, Civil Action No. 99-245, Tr. of Hr'g Mot. for T.R.O. at 57-58 (D.D.C. Feb. 12, 1999) (granting a temporary restraining order enjoining initiation of deer hunt where plaintiffs alleged NEPA violations in process leading up to authorization of hunt; finding that plaintiffs had "clearly established that there would be irreparable harm" to their interest in observing the animals in the area as a result of agency action).

**3. BLM's violations of NEPA cause irreparable procedural injury to Plaintiffs and the public.**

When "a procedural violation of NEPA is combined with a showing of environmental or aesthetic injury, courts have not hesitated to find a likelihood of irreparable injury." *Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 24 (D.D.C. 2009); *accord Colo. v. Office of Legacy Mgmt.*, 819 F. Supp. 2d 1193, 1223-24 (D. Colo. 2011). Here, Protect Mustangs and Friends of Animals regularly submit comments and participate in the public process for wild horse roundups on public lands and would have participated in the NEPA process for the 2014 ROD had BLM followed legally prescribed procedures. *See* Novak Decl. at ¶¶ 2, 17; Rivard Decl. at ¶¶ 11- 15; Downer Decl. ¶¶ 16-18. On January 22, 2015, two Friends of Animals employees traveled to Nevada to participate in BLM meetings regarding the Carson City Resource Management Plan, which includes the Pine Nut HMA, in order to participate in the decisionmaking process and provide BLM with up-to-date information. However, their attempt to participate in BLM's decisionmaking process was prohibited there as well. Rivard Decl. at ¶¶ 13-15. The failure to include the public in the

decisionmaking process for the 2014 ROD causes irreparable harm to Plaintiffs. Rivard Decl. at ¶15 (“BLM’s refusal to consider new scientific information about the impact of their actions thwarts my professional and personal goals of preserving America’s wild horses.”) Once the actions are completed, the injury cannot be compensated and there is no way for the public to be involved in the decisionmaking process.

Because BLM did not prepare an EIS or EA, the agency deprived Plaintiffs of the opportunity to participate in the public notice and comment process for BLM’s decision regarding the management of Pine Nut range wild horses. “In the NEPA context, irreparable injury flows from the failure to evaluate the environmental impact of a major federal action.” *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d 630, 642 (9th Cir. 2004). Hence, in light of the many ways in which BLM’s decision has thwarted the procedural rights of Plaintiffs as mandated by NEPA, along with Plaintiffs’ demonstration that they will suffer irreparable injury as a result of BLM’s decision, this prong of the preliminary injunction tips sharply in favor of granting a preliminary injunction.

**C. The balance of equities and public interest weigh in favor of granting Plaintiffs preliminary injunction motion.**

The primary goal of a preliminary injunction is simply to preserve the status quo until a trial on the merits can occur. *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208 (10th Cir. 2009). When an environmental injury is alleged, “the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Gambell*, 480 U.S. at 545. Additionally, through passage of WHBA, 16 U.S.C. §§ 1331-1340, Congress recognized that the public has a strong interest in maintaining a healthy and viable wild horse population for future use and enjoyment. Congress declared, “that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people.” 16 U.S.C. § 1331. Congress also established a policy “that wild free-roaming horses and

burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands." Where Congress has recognized the public interest in protecting areas, or in this case animals, the public interest weighs in favor of granting a preliminary injunction. *High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 643 (9th Cir. 2004).

Plaintiffs, the wild horses and bands they care about, and the environment will all suffer irreparable harm if this roundup is not enjoined. Indeed, maintaining the *status quo* in this case is particularly important because in the past courts have in some cases dismissed challenges to a proposed roundup as moot after the challenged roundup occurred and horses were removed. *See, e.g., Am. Horse. Prot. Ass'n v. Watt*, 679 F.2d 150, 151 (9th Cir. 1982); *Cloud Found.*, 738 F. Supp. 2d at 39.

In contrast, BLM will not suffer any harm should this particular roundup be delayed until this Court has an opportunity to resolve this case on the merits. Indeed, BLM prepared an Environmental Assessment before conducting the 2010 roundup in Pine Nut HMA, and there is no reason it cannot prepare the required NEPA documentation in this case. Nor can BLM legitimately argue that these wild horses need to be removed immediately in order to protect the range from further deterioration. In fact it has been nearly 5 years since BLM last rounded up horses in the Pine Nut HMA, and even longer since BLM assessed what an appropriate management level would be for wild horses. To the extent that Defendants can articulate a harm, it is only due to years of BLM's mismanaging of the wild horses. For example, Senator Mary Landrieu of Louisiana recently stated that "[t]he wild horse program, because of its mismanagement and poor, old-fashioned way of operating, is chewing up or taking up about three-quarters of the budget of the Bureau of Land Management. From a fiscal perspective and a financial management perspective, it is crying out for reform." 155 Cong. Rec. S9769-03 (emphasis added). In addition, Senator Landrieu

also noted that "the inhumaneness of some of the practices going on ... cries out for attention." *Id.* Although BLM complains about cost and administrative burdens involved in caring for the horses properly, the reality is that over the last several years, BLM's broken policies aggravated the situation the agency finds itself in today.

In issuing a preliminary injunction to protect animals, courts have previously rejected assertions by the government that precluding it from controlling animal populations will cause environmental damage, or that the window for removing the animals is too narrow to enjoin. Instead, waiting even a year to hear the case on the merits will not cause irreparable damage. *See Fund for Animals v. Norton*, 281 F. Supp. 2d 209, 222 (D.D.C. 2003) (granting injunction despite Government's declarations that "that failure to kill an additional 525 swans this year will result in as many as 250 additional breeding pairs in 2004 that will consume upwards of 2 million pounds of SAV [Submerged Aquatic Vegetation] and generate 1000 or more cygnets, ultimately "irretrievably" expanding the breeding population in three or four years").

Finally, because BLM has committed numerous violations of APA and NEPA (and departed significantly from its own stated policies), the public interest will unquestionably be served by maintaining the *status quo* since "the public has a general interest in the meticulous compliance with the law by public officials." *Fund for Animals v. Clark*, 27 F. Supp. 2d 8, 15 (D.D.C. 1998) (citations omitted); *see also Patriot, Inc. v. U.S. Dep't of Housing and Urban Dev.*, 963 F. Supp. 1, 6 (D.D.C. 1997) (finding that "the public interest is best served by having federal agencies comply with the requirements of federal law, particularly the notice and comment requirements of the APA, and the agency's own stated policies") (citations omitted). Accordingly, the public interest will be well served by preventing BLM's proposed roundup, at least until this Court has an opportunity to consider the merits of Plaintiffs' claims on the basis of the agency's administrative record. *Soda Mt. Wilderness Council v. BLM*, 534 F. App'x 680, 684 (9th Cir. 2013) ("Moreover, because the public has an

interest in having its environmental proposals adequately considered, the public interest weighs in favor of granting an injunction.”).

### **CONCLUSION**

For all the forgoing reasons, the Court should enjoin BLM from rounding up, permanently removing, or administering PZP to wild horses in and outside of the Pine Nut Range until the Court can resolve the case on the merits.

Dated: January 29, 2015

Respectfully submitted,

/s/ Jennifer Spencer

JENNIFER M. SPENCER

JULIE CAVANAUGH-BILL

Cavanaugh-Bill Law Offices

401 Railroad Street, Suite 307

Elko, NV 89801

Telephone: 775-753-4357

### **CERTIFICATE OF SERVICE**

I certify that on January 29, 2015, the foregoing will be electronically filed with the Court's electronic filing system, which will generate automatic service upon on all Parties enrolled to receive such notice.

Dated: January 29, 2015

Respectfully submitted,

/s/ Jennifer Spencer

JENNIFER M. SPENCER

Cavanaugh-Bill Law Offices

401 Railroad Street, Suite 307

Elko, NV 89801

Telephone: 775-753-4357

## **ATTACHMENT A**

## **Fact Sheet**

### **Pine Nut Wild Horse Herd**

#### **Where is the herd and what is special about these animals?**

- The Pine Nut Wild Horse Herd covers about 90,000 acres of public and private land in the Pine Nut Herd Management Area (HMA), located near Carson City and Dayton, Nevada.
- The BLM has determined the appropriate management level (AML) to be between 119-179 horses in the Pine Nut HMA.
- Current horse population estimates are approximately 148 horses within the HMA, and 67 residing outside the HMA.
- The area is also utilized by livestock (under terms and conditions outlined in grazing permits) and a variety of wildlife, including pronghorn antelope and mule deer.
- The Pine Nut wild horses are most likely descendants of local ranch horses that were found in 1971 in what is now the HMA.



**Pine Nut Management Area**

#### **What needs to be done to maintain the herd within the HMA?**

- To maintain a healthy Pine Nut herd and to restore or maintain the rangelands in a healthy condition, the BLM plans to treat approximately 45 mares with Porcine Zona Pellucida (PZP), a two-year fertility control vaccine, and release all horses back into the HMA to achieve ecological balance.
- Post-gather, every effort will be made to return the released horses to the same general area from which they were gathered. The BLM intends to return to these HMAs in 2-3 years, if necessary, to gather and retreat the mares to maintain the proposed population control measures.

#### **Why is the HMA gather necessary?**

- Slowing population growth by treating mares with PZP would ensure that the remaining wild horses are healthy and vigorous and in balance with other range resources.
- Treating 45 mares will slow reproduction, helping to maintain a healthy Pine Nut herd and to restore or maintain the rangelands in a healthy condition, maintaining the Appropriate Management Level (AML), and reduce the number of excess wild horses that would need to be removed in the future.

- Maintaining wild horse populations within AML sustains a healthy horse population, ensures a thriving natural ecological balance, and prevents degradation to rangeland conditions by deterring negative impacts to rangeland resources that can result from wild horse over population. This has been demonstrated by the evaluation of key areas and ecological sites under rangeland health assessments protocol. Damage results from over utilization of resources when populations exceed the carrying capacity of the rangeland.
- Reducing wild horse populations to within established AMLs will make significant progress in attaining the management objectives identified in the Carson City Consolidated Resource Management Plan (CRMP) and the Standards for Rangeland Health & Guidelines for Grazing Management (S&Gs) in the Sierra Front Northwestern Great Basin Area.

#### **How are fertility control and adjusting the sex ratio implemented?**

- Fertility control treatments and modification of sex ratios of released animals would slow population growth and could increase the time period before another gather was required. If the gather efficiency exceeds 85-88% (445 wild horses) then the following management actions would be implemented to the degree possible while still achieving the low range AML:
- All mares selected for release, including those previously treated with fertility control, would be treated/retreated with a two-year Porcine Zona Pellucida (PZP-22) or similar vaccine and released back to the range. Immuno-contraceptive research would be conducted in accordance with the approved standard operating and post-treatment monitoring procedures. Mares would be selected to maintain a diverse age structure, herd characteristics and conformation.
- Studs selected for release would be released to increase the post-gather sex ratio to approximately 60% studs in the remaining herds. Studs would be selected to maintain a diverse age structure, herd characteristics and conformation.
- Animals would be removed using a selective removal strategy to the extent possible. Selective removal criteria include:
  1. First Priority: Age Class-Four Years and Younger
  2. Second Priority: Age Class-Eleven to Nineteen Years Old
  3. Third Priority: Age Class Five to Ten Years Old
  4. Fourth Priority: Age Class Twenty Years and Older

Post-gather, every effort would be made to return released horses to the same general area from which they were gathered.

#### **Are there horses outside the HMA that BLM will be gathering?**

- There are approximately 67 horses residing well outside of the HMA boundaries. These horses will be gathered and removed. If these 67 wild horses were captured and released back into the HMA they will simply return to their adopted home range off the HMA.
- Between 12-20 of these horses are 12+ miles outside of the HMA in a mix of public and private lands in the Fish Springs area of Douglas County. Some of these horses have been a problem for some private land owners, as well as posing a public safety hazard on public roads. The rest of the 67 horses residing outside of the HMA are primarily in the Buckskin Range of Lyon County.
- Wild horses removed from the range will be offered for adoption to qualified individuals through the BLM's Wild Horse and Burro Adoption Program. Un-adopted horses will be placed in long-term pastures where they will be humanely cared for and will retain their "wild" status and protection under the 1971 law. The BLM does not sell or send any horses to slaughter.

#### **How does BLM determine the Appropriate Management Level (AML) for horses?**

- The AMLs were established upon completion of an in-depth analysis of habitat suitability, resource monitoring and population inventory data.
- The upper limit of the AML range is the maximum number of wild horses that can be maintained within an HMA while maintaining a thriving natural ecological balance and multiple use relationship on the public lands.
- Establishing the AMLs within a population range allows for the periodic removal of excess animals (to the low end) and subsequent population growth (to the maximum level) between removals.
- Development of the Herd Management Area Plans (HMAP) for Pilot Mountain included public involvement.

#### **Which livestock grazing allotments overlay with this wild horse HMA?**

- Portions of the Pine Nut HMA are within the Clifton, Eldorado, Hackett Canyon, Mill Canyon, Rawe Peak, Buckeye, Churchill Canyon, and Sunrise Livestock Grazing Allotments.
- Forage is allocated by Animal Unit Months (AUMs). An AUM is the amount of forage consumed in a month by an adult horse, a mare and foal, two burros, an adult cow or cow and calf, or five sheep.
- BLM actively manages authorized livestock use to mitigate the impacts, while wild horses and burros roam freely, year-round as the law allows.

**For more information:** [http://www.blm.gov/nv/st/en/fo/carson\\_city\\_field.html](http://www.blm.gov/nv/st/en/fo/carson_city_field.html)

BLM CCDO November 2010

## **ATTACHMENT B**

**DECISION RECORD**  
**PINE NUT MOUNTAINS HERD MANAGEMENT HORSE GATHER PLAN**  
**IN CARSON, DOUGLAS AND LYON COUNTIES, NEVADA**

**Environmental Assessment**  
**DOI-BLM-NV-C020-2010-0019-EA**  
**Clan Alpine, Pilot Mountain and Pine Nut Herd Management Area Gather Plan**

**BACKGROUND**

The Bureau of Land Management (BLM) Sierra Front Field Office (SFFO) has determined to implement a wild horse gather within the Pine Nut Mountain Herd Management Area (HMA) located on public lands in Carson, Douglas and Lyon Counties, Nevada. The HMA includes portions of the Clifton Canyon, Eldorado Canyon, Hackett Canyon, Mill Canyon, Rawe Peak, Churchill Canyon, Sunrise and Buckeye livestock grazing allotments. The HMA consists of approximately 98,580 acres with 90,900 acres of public lands and 7,680 acres of private lands. Approximately 67 excess wild horses are established within non-HMA areas.

The Appropriate Management Levels (AMLs 119-179 horses) in the Pine Nut Mountain Herd Management Area Plan (HMAP) were developed by an in-depth analysis of habitat suitability, resource monitoring and population inventory data. The AMLs for the HMA were established through the allotment evaluation and Final Multiple Use Decisions (FMUD) process. A population inventory conducted in 2008 documented 177 horses in the HMA. The current population estimate is 215 horses. There are approximately 67 horses established within non-HMA areas including approximately 17 horses that frequent private property and public roadways creating a serious safety hazard for both people and horses.

Wild horse removals in the Pine Nut Mountains HMA were conducted in 2000, 2003, 2006, 2007, 2008 and 2009. The 2000 gather removed 40 problem horses established within non-HMA areas, the 2003 gather removed 232 excess horses inside and outside of the HMA, the 2006, 2007, 2008 and 2009 gathers removed 51 problem horses on private lands outside of the HMA. The wild horses established on private property outside of the HMA were removed to resolve private landowner complaints and to provide for public and wild horse safety. At least several horses are injured or killed by vehicles in or adjacent to the private lands annually. Treating approximately 45 head of mares with the fertility control PZP-22 will facilitate AMLs.

The Proposed Action Alternative is to gather approximately 185 wild horses. Remove approximately 67 excess horses established within non-HMA areas, treat approximately 45 mares with fertility control vaccine and release 118 horses back into the Pine Nut Mountain HMA. The Proposed Action Alternative is consistent with the Carson City Consolidated Resource Management Plan (CRMP), facilitates the AML management objectives and maintains a thriving natural ecological balance and multiple use relationship consistent with other resource needs as required by the Wild Free-Roaming Horse and Burro Act of 1971 (WFRHBA as amended). The BLM intends, if necessary, to return to the HMA in 2-3 years to gather and re-treat the mares to maintain the population control measures. The Proposed Action Alternative decision is a site-specific action located on public lands administered by the BLM Carson City

District Office (CCDO). The gather has been planned with input from the interested public and users of public lands.

The potential environmental impacts from the Proposed Action Alternative and No Action Alternatives were evaluated in the Clan Alpine, Pilot Mountain and Pine Nut Herd Management Areas Gather Plan Environmental Assessment (EA) (DOI-BLM-NV-C020-2010-0019-EA). The Proposed Action Alternative has no known effects on the human environment. Based on the analysis of potential environmental impacts detailed in the EA, it was determined that the impacts associated with the Proposed Action Alternative were not significant. This is documented in the attached Finding of No Significant Impact (FONSI).

## **DECISION**

Based on the analysis in the Clan Alpine, Pilot Mountain and Pine Nut Herd Management Areas Wild Horse Gather DOI-BLM-NV-C020-2010-0019-EA, it is my decision to implement the Proposed Action Alternative for the Pine Nut Mountain HMA wild horse gather, effective immediately pursuant to 43 CFR § 4770.3(c). The Proposed Action Alternative will maintain the prescribed AML within the Pine Nut Mountain HMA while ensuring the continued viability of the herd. Wild horses above the AML and established within non-HMA areas are considered “excess” and subject to gather and removal. I have concluded that gathering the excess horses found within non-HMA lands necessary to preserve or maintain public health and safety, a thriving and natural ecological balance and multiple-use relationship within the HMA as specified in the CRMP and as directed by the 1971 WFRHBA as amended. This decision is contingent on meeting all monitoring, mitigation measures, Standard Operating Procedures (SOPs) for population-level fertility control treatments, and SOPs for Wild horse (or burro) gathers addressed in the DOI-BLM-NV-C020-2010-0019-EA (Appendices A, B and EA section 5.0 Monitoring and Mitigation Measures). All reasonable precautions will be taken to avoid injury to the horses and to ensure the safety of personnel involved in gather operations and the observing general public.

## **AUTHORITY**

The Proposed Action Alternative is in conformance with the Federal Land Policy and Management Act (FLPMA) of 1976, the CRMP adopted in 2001 and with current BLM policies, plans and programs.

The Proposed Action is in conformance with the 1971 WFRHBA as amended (by the Public Rangelands Improvement Act of 1978), and the applicable implementing regulations at 43 CFR §4700, §4700.0-6 Policy, 43 CFR §4710.3-1-Herd Management Areas, 43 CFR §4710.4-Constraints on Management, 43 CFR §4720.1 - Removal of excess animals from public lands, 43 CFR §4740.1-Use of Motor Vehicles or Aircraft, and 43 CFR §4700.0-6-Wild horses shall be managed as self-sustaining populations of healthy animals in balance with other uses and productive capacity of their habitat, 43 CFR 4770.3(c) – Decisions to remove wild horses or burros from public lands shall be effective upon issuance or on a date established in the decision in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving natural ecological balance and multiple use relationship.

The Proposed Action is consistent in relationship to statutes, regulations and policies of neighboring local, county, State, tribal governments and other federal agencies.

## **PUBLIC INVOLVMENT**

The EA was made available for public review and comment on August 23, 2010. Letters were sent to individuals, organizations and agencies listed on the Carson City District Office (CCDO) Wild Horse and Burro Program mailing list. Notification of the availability of the EA was made through the Nevada State Clearinghouse. The CCDO published news releases to the *Lahontan Valley News*, *This is Reno*, *My News 3\**, *My News 4\**, *Reno Gazette-Journal\** (\*web versions) and the *Mineral County Independent*. The BLM comment period closed on September 23, 2010, although comments received in a timely manner after this date were also considered. The EA was made available by hard copy at the CCDO, and on the website at:

[http://www.blm.gov/nv/st/en/fo/carson\\_city\\_field/blm\\_information/nepa.html](http://www.blm.gov/nv/st/en/fo/carson_city_field/blm_information/nepa.html).

Comment letters from the public, organizations and agencies were received by email, fax and mail delivery. All comments were reviewed, considered and then categorized. Comment letters were broken down into categories. A summary of the Consolidated Public Comments and BLM Responses are noted in Appendix G of the Final EA. Several minor changes were made to the content of the Final EA.

## **RATIONALE**

Upon analyzing the impacts of the Proposed Action Alternative and following issuance of the EA for public review, I have determined that implementing the Proposed Action Alternative will not have a significant impact to the human environment and that an environmental impact statement is not required. Refer to the attached finding of No Significant Impact (FONSI).

The gather is necessary to remove excess wild horses from within the HMA and from non-HMA areas to maintain the established Pine Nut Mountain AML ranges and to facilitate fertility control measures. The BLM is required to manage multiple uses in a manner that avoids degradation of the rangelands, maintain a thriving natural ecological balance between wild horses, wildlife, livestock and resolve public health and safety concerns. The Proposed Action Alternative will achieve the Wild Horse management objectives identified in the CRMP.

## **APPROVAL**

The Pine Nut Mountain HMA Horse Gather is approved for implementation immediately, and the gather is approved to begin on or about mid November or early December, 2010 and take six (6) days to complete. This decision is effective upon issuance in accordance with Title 43 of the Code of Federal Regulations (CFR) at 4770.3 9c) because removal of excess wild horses is necessary to protect animal health and prevent deterioration of rangeland resources.

  
Linda J. Kelly, Manager  
Sierra Front Field Office  
Carson City District Office

10-20-10

Date

## **APPEAL PROCEDURES**

If you wish to appeal this decision, it may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR Part 4. If you appeal, your appeal must also be filed with the Bureau of Land Management at the following address:

Linda J. Kelly, Sierra Front Field Manager  
BLM, Carson City District Office  
5665 Morgan Mill Road  
Carson City, NV 89701

Your appeal must be filed within thirty (30) days from receipt or issuance of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4942, January 19, 1993) for a stay (suspension) of the decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal.

Copies of the notice of appeal and petition for a stay must also be submitted to:

Board of Land Appeals  
Dockets Attorney  
801 N. Quincy Street, Suite 300  
Arlington, VA 22203

A copy must also be sent to the appropriate office of the Solicitor at the same time the original documents are filed with the above office.

U.S. Department of the Interior  
Office of the Regional Solicitor  
Pacific Southwest Region  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay is required to 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 appellants' success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

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

## **ATTACHMENT C**

**FINAL ENVIRONMENTAL ASSESSMENT**

# **Clan Alpine, Pilot Mountain and Pine Nut Herd Management Areas Gather Plan**

DOI-BLM-NV-C010-2010-0019-EA

U.S. Department of the Interior  
Bureau of Land Management  
Carson City District  
Stillwater Field Office  
5665 Morgan Mill Road  
Carson City, NV 89701  
775-885-6000

**October 20, 2010**



It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

DOI-BLM-NV-C010-2010-0019-EA

## Table of Contents

<b>1.0 Purpose of and Need for the Proposed Action .....</b>	<b>5</b>
1.1 Introduction.....	5
1.2 Background.....	6
1.3 Purpose of and Need for the Proposed Action.....	9
1.4 Land Use Plan Conformance .....	9
1.5 Relationship to Statutes, Regulations, and Other Plans .....	10
1.6 Conformance with Rangeland Health Standards and Guidelines by Livestock Grazing Allotment ..	11
1.7 Decision to be Made .....	13
1.8 Scoping and Identification of Issues .....	13
<b>2.0 Proposed Action and Alternatives.....</b>	<b>14</b>
2.1 Introduction.....	14
2.2 Description of Proposed and No Action Alternative Considered in Detail .....	14
2.2.1 Proposed Action Alternative:.....	14
2.2.2 No Action Alternative:.....	16
2.3 Summary Comparison of the Proposed Action Alternative and the No Action Alternative .....	16
2.4 Additional Alternatives Considered but Dismissed from Detailed Analysis.....	17
2.4.1 Use of Bait and/or Water Trapping.....	17
2.4.2 Remove or Reduce Livestock within the HMA.....	17
<b>3.0 Affected Environment .....</b>	<b>17</b>
3.1 General Description of the Affected Environment .....	17
3.2 Description of Affected Resources/Issues .....	17
3.3 Supplemental Authorities.....	18
3.4 Resources or uses other than Supplemental Authorities.....	19
3.5 Description of the Affected Environment.....	20
3.5.1 Wild Horses .....	20
3.5.2 Vegetation .....	23
3.5.3 Noxious Weeds .....	23
3.5.4 Invasive Weeds .....	23
3.5.6 General Wildlife.....	25
3.5.7 Game Species.....	27
3.5.8 BLM Designated Sensitive Species .....	27
3.5.9 BLM Sensitive Species (Plants).....	28
3.5.10 Migratory Birds.....	28
3.6 Health and Safety .....	28
<b>4.0 Environmental Consequences.....</b>	<b>29</b>
4.1 Introduction.....	29
4.2 Predicted Affects of Alternatives.....	29
4.2.1 Wild Horses .....	29
4.2.2 Vegetation .....	36
4.2.3 Noxious Weeds .....	37
4.2.4 Invasive Weeds .....	37
4.2.5 Livestock.....	37
4.2.6 General Wildlife.....	38
4.2.7 Migratory Birds.....	40

4.2.8 BLM Sensitive Species .....	40
4.2.9 BLM Designated Sensitive Species .....	41
4.2.10 Health and Safety .....	41
4.3 Cumulative Effects for All Alternatives .....	41
4.3.1 Past and Present Actions .....	41
4.3.2 Reasonably Foreseeable Future Actions .....	42
4.4 Summary of Past, Present, and Reasonably Foreseeable Future Actions .....	42
<b>5.0 Monitoring and Mitigation Measures .....</b>	<b>43</b>
<b>6.0 List of Preparers .....</b>	<b>44</b>
<b>7.0 Consultation and Coordination .....</b>	<b>44</b>
<b>8.0 Public Involvement .....</b>	<b>44</b>
<b>9.0 List of References .....</b>	<b>45</b>
<b>10.0 Appendices .....</b>	<b>47</b>
APPENDIX A .....	48
Standard Operating Procedures for Population-level Fertility Control Treatments .....	48
APPENDIX B .....	50
Standard Operating Procedures for Wild Horse (or Burro) Gathers .....	50
APPENDIX C .....	57
WinEquus Population Modeling Results .....	57
APPENDIX D .....	62
Herd Management Areas and Grazing Allotments – Maps .....	62
APPENDIX E .....	66
List of Acronyms .....	66
APPENDIX F .....	68
Persons, Groups, or Agencies Consulted .....	68
APPENDIX G .....	70
Consolidated Public Comments and BLM Responses for the Environmental Assessment /Clan Alpine, Pilot Mountain and Pine Nut Herd Management Ares Gather Plan 2010. ....	70
APPENDIX H .....	79
Wild Horse Gather Public Observation Protocol .....	79

## **1.0 Purpose of and Need for the Proposed Action**

### **1.1 Introduction**

The Clan Alpine, Pilot Mountain, and Pine Nut Herd Management Areas (HMA) gathers are proposed to begin in November, 2010. The Clan Alpine, Pilot Mountain and Pine Nut HMAs are situated within the administrative jurisdiction of the BLM Carson City District Office (CCDO; see appendix D for maps).

The Bureau of Land Management (BLM) proposes to gather approximately 1,111 wild horses, vaccinate approximately 420 mares with a two year fertility control vaccine and remove approximately 224 excess wild horses from the Clan Alpine, Pilot Mountain, and Pine Nut Herd Management Areas (HMAs) and associated non-HMA areas. Treating 420 mares with a two year fertility control vaccine will assist in maintaining the Appropriate Management Levels (AML) and reduce the number of excess wild horses that would need to be removed in the future. If gather efficiency exceeds 80% additional mares will be treated and released to the HMAs. The BLM intends to return to these HMAs in 2-3 years, if necessary, to gather and retreat the mares to maintain AML through fertility control measures.

Approximately 76% (171 horses) of the proposed 224 excess wild horses to be removed have established home ranges well outside the boundaries of the Pilot Mountain and Pine Nut HMAs. Approximately 104 of these wild horses often congregate on and along highway U.S. 95 near Walker Lake, NV creating a serious public safety hazard. In the two months of February - March 2010, at least seven wild horses were killed by vehicle collisions. Approximately 887 wild horses will be released back to the HMAs upon completion of the gather and each HMA will be within their established AML range. An estimated 420 mares out of the approximately 887 total wild horses to be released back into the HMAs, would be vaccinated with Porcine Zona Pellucida (PZP-22), a two year fertility control vaccine. The utilization of the PZP-22 vaccine will help reduce population growth and assist in maintaining a population size within the AML.

The Pilot Mountain and Pine Nut HMA gathers are proposed to begin in November, 2010 while the Clan Alpine HMA is proposed to begin in February, 2011.

**Table 1: Current Population Estimates, AML Ranges, Proposed Number Of Animals To Be Removed And Proposed Number To Be Treated And Released Back Into The HMAs.**

HMA	Current Estimate*	AML Range	Proposed Gather**	Horses Removed	Mares Treated	Horses Released
Clan Alpine	724	619-979	580	0	232	580
Pine Nut	148	119-179	118	0	45	118
Pine Nut Outside	67	Outside of HMA	67	67	0	0
Pilot Mt.	302	249-415	242	53	76	189
Pilot Mt. Outside	104	Outside of HMA	104	104	0	0
Total	1,345		1,111	224	420	887

\*Population estimates are based on population inventory counts and/or an annual rate of increase of 10% since the last population inventory count.

\*\* Gather efficiency expected to be approximately 80% based on terrain, vegetation cover, etc. Female foals, (fillies) would not be treated.

This Environmental Assessment (EA) is a site-specific analysis of potential impacts that could result from the implementation of the Proposed Action and No Action Alternatives. The EA will assist the BLM's Stillwater (SFO) and Sierra Front (SFFO) Field Offices during project planning and ensures compliance with the National Environmental Policy Act (NEPA). Preparation of an EA enables the authorizing officer to determine if significant impacts could result from implementing the Proposed Action and No Action Alternatives.

Should the determination be made that implementation of the Proposed Action would not result in "significant environmental impacts" or "significant environmental impacts beyond those already addressed in the Resource Management Plan/Environmental Impact Statement (RMP/EIS) and Management Framework Plan (MFP)", a Finding of No Significant Impact (FONSI) will be prepared to document that determination, and a Decision Record (DR) will be issued providing the rationale for approving the selected alternative.

## 1.2 Background

In passing the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA) (Public Law 92-195), Congress found that: "Wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West." The Act states that wild free-roaming wild horses (and burros) are to be considered in the area where presently found, as an integral part of the natural ecosystem of the public lands. The Secretary was directed to "manage wild free-roaming wild horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands." To achieve this balance, the BLM has established appropriate management levels and manages and controls wild horse population size within HMAs that have been designated for their long-term management. The terms "horse" and "wild horse" (*Equus caballus*) are used synonymously throughout this document.

**Table 2: County in which the HMA is located.**

<b>HMA Name</b>	<b>County</b>	<b>Acres</b>	<b>Multiple Use Decision Date</b>	<b>AML Range</b>	<b>Distance from Nearest Town</b>
Clan Alpine	Churchill	314,986	1991	619-979	45 miles E. of Fallon
Pine Nuts	Carson/Lyon/Douglas	98,580	1995	119-179	5 miles E. of Carson city
Pilot Mt.	Mineral	475,500	1993	249-415	10 miles E. of Hawthorne

See appendix D for maps of the 3 HMAs.

The AMLs were established through Final Multiple Use Decisions following completion of an in-depth analysis of habitat suitability, resource monitoring and population inventory data, and public input into the decision-making process. The upper limit of the AML range is the maximum number of wild horses that can be maintained within a HMA while maintaining a thriving natural ecological balance and multiple use relationship on the public lands. Establishing the AMLs within a population range allows for the periodic removal of excess animals (to the low end) and subsequent population growth (to the high end) between removals. Development of the Herd Management Area Plans (HMAP) for all three HMAs has also included public involvement.

The BLM CCDO has previously prepared gather EAs for the above three HMAs as follows: the Clan Alpine Herd Management Area Plan and Capture Plan and EA #NV-030-93-004, 1993, Clan Alpine Determination of Land Use Plan Conformance and NEPA Adequacy #NV-030-00-006, 2000, Pine Nut Mountain Herd Management Area Capture Plan and EA #NV-030-03-18, 2003, and Pilot Mountain Herd Management Area Final Capture Plan and EA #NV-030-04-20, 2004. These NEPA analyses are incorporated by reference. The population inventory counts and gather history since 2000 for each HMA are listed in tables 3-6. These EAs are available at BLM's web site at:

[http://www.blm.gov/nv/st/en/fo/carson\\_city\\_field/blm\\_information/nepa.html](http://www.blm.gov/nv/st/en/fo/carson_city_field/blm_information/nepa.html)

**Table 3: Clan Alpine HMA Population inventory and Gather History since 2000, (AML 619-979).**

<b>Year</b>	<b>Action</b>	<b>Number of Horses</b>	<b>Number of Mares Treated and released into HMA</b>
2000	Removal	233	96
2005	Population Inventory Count	442	
2006	Removal	88	
2007	Population Inventory Count	519	
2010	Population Inventory Count	524	

The low population inventory numbers below the low AML resulted from several large wild fires which burned substantial areas of the Clan Alpine HMA, necessitating emergency removals of animals. Since the unburned areas of the Clan Alpine HMA could only support several hundred wild horses the population was reduced below the low end of the AML. In February, 2000, 96 mares were treated with fertility control PZP-22 vaccine and freeze-marked for future identification.

**Table 4: Pine Nut Mountains HMA Population inventory and Gather History since 2000, (AML 119-179).**

<b>Year</b>	<b>Action</b>	<b>Number of Horses</b>
2000	Removal	40 problem horses outside of HMA
2000	Population Inventory Count	329
2003	Removal	232 inside and outside of HMA
2003	Population Inventory Count	118
2006	Removal	25 problem horses outside of HMA
2007	Removal	14 problem horses outside of HMA
2008	Removal	2 problem horses outside of HMA
2008	Population Inventory Count	177
2009	Removal	10 problems horses outside of HMA

The above Table notes “problem horses outside of the HMA” which were removed following complaints from private land owners and to provide for public and wild horse safety. A residential area (Fish Springs) is located approximately 12 miles southwest of the Pine Nut Mountains HMA and often has bands of horses moving into it. The horses are largely attracted by the lush landscaping in numerous yards and available water in a creek and reservoir. Many home owners complain about damage to landscaping and sprinkler systems. At least several horses are killed annually by vehicles in this area. The county often removes dead horses before the BLM is aware of the fatality and some horses that are struck by vehicles sustain terminal injuries and leave the area before dying.

**Table 5: Pilot Mountain HMA Population inventory and Gather History since 2000, (AML 249-415)**

<b>Year</b>	<b>Action</b>	<b>Number of Horses</b>
2000	Population Inventory Count	414
2003	Population Inventory Count	526
2005	Removal	154
2005	Population Inventory Count	327
2006	Removal	99
2008	Population Inventory Count	406
2010	Partial Population Inventory Count	104 outside of the HMA along U.S 95

The 104 horses (residing outside the boundaries of the HMA) along U.S. highway 95 near Hawthorne/Walker Lake, NV are a public safety hazard as vehicle collisions are potentially fatal to humans. If the 104 wild horses were captured and released back into the HMA they will simply return to their home range adjacent to the highway.

### **1.3 Purpose of and Need for the Proposed Action**

The purpose of the Proposed Action is to manage the HMAs for a thriving natural ecological balance by gathering approximately 1,111 wild horses, removing approximately 224 excess wild horses which have established home ranges outside of the HMAs, and treating approximately 420 mares with the fertility control vaccine PZP-22 to facilitate maintenance of the population within the respective AMLs and reduce the number of excess wild horses that would need to be removed in future gathers. If gather efficiency exceeds 80%, additional mares will be treated and released back into the HMAs. The BLM intends to return to these HMAs in 2-3 years in order to maintain AML through population control measures by gathering and re-treating the mares. The proposed action would manage wild horse populations within established AMLs and allow BLM to make significant progress in attaining the management objectives identified in the Carson City Consolidated Resource Management Plan (CRMP), and the Standards for Rangeland Health & Guidelines for Grazing Management (S&Gs) in the Sierra Front Northwestern Great Basin Area.

The proposed action is needed to achieve compliance with the CRMP, provide for public safety, improve rangeland health, and enhance the health and safety of the wild horses. Management of wild horses at the AMLs protects rangeland resources from deterioration that could result from wild horse overpopulation and movement to areas outside the HMAs. The action would also result in fewer wild horses being placed in short/long-term holding facilities and the adoption sale pipeline over time.

### **1.4 Land Use Plan Conformance**

The 2001 CRMP is incorporated by reference. The Proposed Action and No Action alternatives described are in conformance with pages WHB –1-5. This EA is a project specific refinement of the Lahontan EIS

(1983) and the Walker RMP (1985) focusing on the management of wild horses in the Clan Alpine, Pilot Mountain and Pine Nut HMAs. The AMLs for the HMAs were established through the allotment evaluation and Final Multiple Use Decision (FMUD) process. The HMAs are located within the administrative jurisdiction of the Carson City District Office (CCDO).

The following decisions from the CRMP affect the three HMAs:

1. WHB-2, decision 2 – “Maintain sound thriving populations of wild horses within HMAs.”
2. WDL-3, decision 4 – “Maintain and improve wildlife habitat, and reduce habitat conflicts while providing for other appropriate resource uses.”
3. WDL-2, decision 6 – “Maintain or improve the condition of the public rangelands so as to enhance productivity for all rangeland values (including wildlife).”

### **1.5 Relationship to Statutes, Regulations, and Other Plans**

The Proposed Action is in conformance with the WFRHBA (as amended), applicable regulations at 43 CFR § 4700, Public Rangelands Improvement Act of 1978 and BLM policies. Applicable regulations and BLM policies include:

- **43 CFR 4700.0-6:** (a) Wild horses shall be managed as self-sustaining populations of healthy animals in balance with other uses and productive capacity of their habitat.
- **43 CFR 4710.3-1: Herd management areas.** Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in 4710.4. The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas.
- **43 CFR 4710.4: Constraints on management.** Management of wild horses and burros shall be undertaken with limiting the animals’ distribution to herd areas. Management shall be at the minimum feasible level necessary to attain the objectives identified in approved land use plans and herd management area plans.
- **43 CFR 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 shall be conducted in a humane manner. (b) Before using helicopters or motor vehicles in the management of wild horses or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.
- **43 USC Sec. 1901:** (4) continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and disposal

of excess wild free-roaming horses and burros which pose a threat to themselves and their habitat and to other rangeland values.

### **Other Plans**

- The Clan Alpine Herd Management Area Plan and Capture Plan and EA #NV-030-93-004, 1993, pages 3-5.
- Clan Alpine Determination of Land Use Plan Conformance and NEPA Adequacy #NV-030-00-006, 2000, pages 3-4.
- Pine Nut Mountain Herd Management Area Capture Plan and EA #NV-030-03-18, 2003, pages 6-7.
- Pilot Mountain Herd Management Area Final Capture Plan and EA #NV-030-04-20, 2004, pages 6-7, contains additional statements regarding conformance with existing Land Use Plans.

## **1.6 Conformance with Rangeland Health Standards and Guidelines by Livestock Grazing Allotment**

Maintaining wild horse populations within AML sustains a healthy horse population, ensures a thriving natural ecological balance, and prevents degradation of rangeland conditions by deterring negative impacts to rangeland resources that can result from wild horse over population. This has been demonstrated by the evaluation of key areas and ecological sites under rangeland health assessment protocols. Damage results from over utilization of resources when populations exceed the carrying capacity of the rangeland.

### **The Pilot-Table Mountain Livestock Grazing Allotment/Pilot Mountain HMA:**

A Pilot-Table Mountain Allotment rangeland health protocol assessment evaluation of key areas and ecological sites was conducted the summer of 2009. Although the final Standards and Guidelines Assessment and Determination have not been completed, as of this date, it was noted at some of the ecological sites that excess wild horses were a contributing factor for reduced amounts of perennial grasses and forbs, including winterfat ([www.blm.gov/nv/st/en/res/resource\\_advisory/sierra\\_front-northwestern/standards\\_and\\_guideline.html](http://www.blm.gov/nv/st/en/res/resource_advisory/sierra_front-northwestern/standards_and_guideline.html)). During the rangeland health evaluations, wild horse sign was commonly evident and abundant, while signs of use by cattle were negligible. Excess wild horses can damage spring developments such as corrals, troughs, spring boxes and the spring source. Spring development damage is a major contributing factor to the reduction of the available water supply. Maintaining wild horse numbers within the AML could reduce the occurrence of damage to springs and spring developments enhancing the availability of water for wildlife, livestock and riparian vegetation.

Managing vegetation utilization within the moderate or less categories is important to establishing a viable rangeland plant community. When plants are not over utilized there is an adequate amount of photosynthetic material remaining for the production of carbohydrates to meet the vegetation's growth and respiration demands. The plants enter dormancy with more root reserves for next year's growth and reproduction.

### **The Gillis Mountain Livestock Grazing Allotment/Pilot Mountain HMA:**

A Standards and Guidelines Assessment was completed for the Gillis Mountain Allotment in 2004. The wild horse population size was estimated to be higher than the 526 horses that were counted in 2003. A determination was made that this allotment met all Standards and Guidelines, to include soils, riparian/wetlands, water quality, plant and animal habitat, and Special Status Species Habitat

([www.blm.gov/nv/st/en/res/resource\\_advisory/sierra\\_front-northwestern/standards\\_and\\_guideline.html](http://www.blm.gov/nv/st/en/res/resource_advisory/sierra_front-northwestern/standards_and_guideline.html)).

Only about five percent of the Pilot Mountain HMA is within the Gillis Mountain Allotment. Given the lack of available water, this allotment is not significantly impacted by wild horses.

**The Cedar Mountain Livestock Grazing Allotment/Pilot Mountain HMA:**

A Rangeland Health data assessment was completed for the Cedar Mountain Allotment in 2006. The 2006 wild horse population size was 24 horses, the upper range of AML for the portion of this allotment falling within the HMA. The 2006 data assessment determined that excess wild horses were a contributing factor for not achieving and/or not allowing for progress towards achieving the Standards for Rangeland Health: Standard 2 – Riparian/Wetlands and Standard 3 – Water Quality.

([www.blm.gov/nv/st/en/res/resource\\_advisory/sierra\\_front-northwestern/standards\\_and\\_guideline.html](http://www.blm.gov/nv/st/en/res/resource_advisory/sierra_front-northwestern/standards_and_guideline.html)).

**The Clan Alpine Livestock Grazing Allotment/Clan Alpine HMA:**

A Standards and Guidelines Rangeland Health Assessment is in progress. The 2009 utilization data showed moderate use for the last growing season. In the past when the wild horse population was above AML, utilization data indicated heavy use resulting in a determination that excess wild horses were a contributing factor for the over utilization of forage grasses.

**The Cow Canyon Livestock Grazing Allotment/Clan Alpine HMA:**

During the period covered by the 2009 Standards and Guidelines Rangeland Health Assessment, wild horse population was within AML. The only problem area where there was over grazing by cattle and wild horses was at the mouth of Dyer Canyon. By contrast, when wild horse numbers were above AML, use pattern mapping documented heavy use in several areas throughout the allotment.

**The Dixie Valley Livestock Grazing Allotment/Clan Alpine HMA:**

A Rangeland Health analysis has been completed and the Standards and Guidelines Assessment will be completed this summer (2010). A riparian functionality assessment will be completed this summer (2010). The use pattern mapping data indicates moderate use when the wild horse numbers are within the AML range and heavy use when the wild horse numbers are above the upper end of AML. The Dixie Valley Allotment utilization category is currently moderate.

**The Clifton, Eldorado, Hackett Canyon, Mill Canyon, Rawe Peak Livestock Grazing Allotments/Pine Nut Mountain HMA:**

Recent utilization data indicated light use for the last growing year (2009) in the Clifton and Eldorado allotments. Utilization of perennial grasses should not exceed 55%. Wild horse use of perennial grass species ranged between 2%-40% and the overall utilization goal was met for the last growing season, but no livestock grazing occurred on the allotments. It can be expected that if full livestock numbers were run, over use would likely occur. In the past when the horse population was above AML, utilization data showed heavy use, resulting in a determination that excess wild horses were contributing factors for the overuse of forage grasses.

### **The Buckeye, Churchill Canyon, Sunrise Livestock Grazing Allotments/Pine Nut HMA:**

Key areas within specific ecological sites were evaluated on the Buckeye allotment from 2000-2003 and on the Churchill Canyon and Sunrise allotments in the summer of 2007. A determination was made that resource conditions within the Buckeye and Churchill Canyon allotments met all the Standards and Guidelines for Rangeland Health (soils, riparian/wetlands, water quality, plant and animal habitat, and Special Status Species Habitat) ([www.blm.gov/nv/st/en/res/resource\\_advisory/sierra\\_front-northwestern/standards\\_and\\_guideline.html](http://www.blm.gov/nv/st/en/res/resource_advisory/sierra_front-northwestern/standards_and_guideline.html)). The standard for riparian areas was not met on the Sunrise allotment; the cause was attributed to livestock use. The wild horse population size was 118 horses in 2003 and 177 horses in 2008. The wild horse population was within AML and the standards for rangeland health were met excluding the riparian areas within the Sunrise allotment attributed to livestock use.

### **1.7 Decision to be Made**

The BLM authorizing officer would determine whether to implement the proposed capture of wild horses to vaccinate all of the released mares with a fertility control vaccine to maintain population size within the established AMLs and avoid the deterioration of the range that can result from wild horse overpopulation. The authorizing officer's decision would not set or adjust AMLs, nor would it adjust livestock use, as these were set through previous decisions. Approximately 224 excess wild horses, including all wild horses residing outside the HMA boundaries, would be removed from the range to achieve and maintain a population size within the AMLs.

### **1.8 Scoping and Identification of Issues**

All individuals identified on the CCDO mailing list will be mailed a letter furnishing the necessary BLM website contact information where the Clan Alpine, Pilot Mountain, Pine Nut Herd Management Area Gather Plan/EA is located for their review and comments. The following Native American Tribe(s) were notified of the proposed gather(s) Fallon Paiute-Shoshone Tribe, Walker River Paiute Tribe, Washoe Tribe of Nevada and California (July 8, 2010) and the Yerington Paiute Tribe (August 17, 2010). A preliminary version of this EA was made available on the CCDO web site to allow federal and State agencies as well as the general public an opportunity for review and comments.

BLM internal, external, public, State and federal agency coordination and Native American tribes consultation was also completed during the development of the previously prepared Herd Management Area Plans (HMAP), gather plans and EAs: The Clan Alpine Herd Management Area Plan and Capture Plan and EA #NV-030-93-004, 1993; The Clan Alpine Determination of Land Use Plan Conformance and NEPA Adequacy #NV-030-00-006, 2000; The Pine Nut Mountain Herd Management Area Capture Plan and EA #NV-030-03-18, 2003; and The Pilot Mountain Herd Management Area Final Capture Plan and EA #NV-030-04-20, 2004.

The issues listed below were identified as a result of BLM's internal scoping relative to the proposed contraceptive control treatment of wild horses (mares) in the planning areas.

1. Impacts to individual wild horses and the herd. Measurement indicators for this issue include:
  - Projected population size and annual growth rate (WinEquus population modeling).
  - Expected impacts to individual wild horses from handling stress.

- Expected impacts to herd social structure.
  - Expected effectiveness of proposed fertility control application.
  - Potential effects to genetic diversity.
  - Potential impacts to animal health and condition.
2. Impacts to vegetation/soils, riparian/wetland, and cultural resources. Measurement indicators for these issues include:
- Expected forage utilization.
  - Potential impacts to vegetation/soils and riparian/wetland resources.
3. Impacts to wildlife, including migratory birds and BLM special status species, and their habitat. Measurement indicators for these issues include:
- Potential for temporary displacement, trampling or disturbance.
  - Short and long term for potential competition over forage and water.

## **2.0 Proposed Action and Alternatives**

### **2.1 Introduction**

The EA describes the Proposed Action and alternatives, including those that were considered but eliminated from detailed analysis.

### **2.2 Description of Proposed and No Action Alternative Considered in Detail**

#### **2.2.1 Proposed Action Alternative:**

The Proposed Action would involve gathering an estimated 1,111 wild horses, removing approximately 224 excess wild horses (171 of which are established on lands outside of the HMAs), and releasing 887 wild horses back into the HMAs after treating an estimated 420 mares with a fertility control vaccine (PZP-22) to maintain AMLs and reduce the number of excess wild horses that would need to be removed in the future. If gather efficiency exceeds 80% of the current wild horse populations, additional mares will be treated and released back to the respective HMAs. The BLM intends to return to these areas in 2-3 years in order to maintain AML by continuing the population control protocols of gathering and re-treating the mares with PZP. The Proposed Action would allow BLM to achieve significant progress toward attainment of rangeland health standards requirements and resource objectives. Managing wild horse populations within the HMAs at AML reduces the movement of horses outside of the HMAs in their search for forage and water. The Proposed Action will reduce the number of excess wild horses that need to be removed from the HMAs over time, and thereby result in fewer wild horses being placed in short or long-term holding facilities or in the adoption and sale program.

Though many of the treated mares will foal normally in the spring 2011, the majority of mares vaccinated with PZP under the Proposed Action will not produce a foal for the following 22 months, which will help maintain the horse populations within the AML range. Over the long term it is estimated that there will be at least several hundred fewer foals being born. The use of PZP-22 can be repeated in 2 years or as necessary to control the population growth rate. There are always some

portion of the wild horse population, including mares, that manage to evade capture and some mares produce a foal even when treated with PZP-22 assuring the populations will continue to have reproduction occurring. After the contraceptive wears off the population will increase at or slightly above the normal growth rate for these HMAs.

All of the gathered mares that are to be released would be treated with a two-year PZP-22 or similar vaccine and then released back to the open range. Fertility control treatment will be conducted in accordance with the approved Standard Operating and post-treatment monitoring Procedures (SOPs, Appendix A). Post-gather, every effort will be made to return the released horses to the same general area from which they were gathered.

The Pilot Mountain and Pine Nut gathers would begin in or about November 2010 and the Clan Alpine gather would begin in or about February 2011. Several factors such as animal physical condition, herd health, weather conditions, or other considerations could result in schedule adjustments. Gather operations will be conducted in accordance with the Standard Operating Procedures (SOPs) described in the National Wild Horse and Burro Gather Contract (Appendix B). The primary gather (capture) method would be the helicopter drive method with occasional helicopter assisted roping (from horseback). Trap sites and temporary holding facilities will be located at previously used sites or other heavily surface disturbed areas (Maps 1-3) whenever possible. Several previously used trap sites were located on private lands that were near horse concentrations, provided easy vehicle access and suitable terrain features for capturing wild horses. Dependent upon private land owner consent, these sites may be utilized again. New undisturbed areas selected as potential trap sites or holding facilities will be inventoried for cultural resources by qualified BLM personnel. If cultural resources are encountered, the locations would be avoided, unless they could be mitigated to eliminate any impacts.

Trap sites and holding facilities will not be located inside of Wilderness Study Areas (WSAs). Motorized vehicle use will only be permitted on authorized designated existing (cherry stemmed) roads and trails extending into the WSAs.

An Animal and Plant Inspection Service (APHIS) or other veterinarian may be on-site during the gathers, as needed, to examine animals and make recommendations to the BLM for care and treatment. Any wild horses residing outside the HMA boundaries, any weaned foals, yearlings or orphaned foals would be removed and made available for adoption to qualified individuals. Old, sick or lame horses unable to maintain an acceptable body condition greater than or equal to a Henneke Body Condition Score (BCS) of 3 or with serious physical defects such as club feet, severe limb deformities, or sway back would be humanely euthanized as an act of mercy. Decisions to humanely euthanize animals in field situations will be made in conformance with BLM policy (Washington Office Instruction Memorandum 2009-041). Refer to:

[http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction/2009/IM\\_2009-041.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2009/IM_2009-041.html)

Wild horse data including sex and age distribution, condition class information (using the Henneke rating system), color, size and other information may also be recorded. Hair samples may be collected on about 25-100 animals to assess the genetic diversity of the herds.

### 2.2.2 No Action Alternative:

The BLM would not conduct a capture/gather at this time. Direct management of the wild horse populations in the Clan Alpine, Pilot Mountain and Pine Nut HMAs would be deferred to a later date. The horse populations would not be maintained at the AMLs, which represent the wild horse population being compatible with ensuring a thriving natural ecological balance. The fertility control vaccine would not be administered to mares within the HMA. A greater number of excess wild horses would need to be removed in future gathers to achieve AML and to reverse resource degradation from an overpopulation of wild horses. It is projected that by not applying a fertility control vaccine to mares and not removing the 224 excess wild horses at this time, future gathers would need to remove over 800 excess wild horses in 2013 from the three HMAs in order to achieve low range of AML. The 104 horses along U.S. highway 95 would continue to present a serious public safety hazard and continue to be killed or injured by vehicle accidents. Also the excess wild horses in the Fish Springs area would continue to cause problems with private horses and landscaping. Compliance with the CRMP or with promoting a healthy natural ecological habitat in conformance with rangeland health standards and the provisions of Section 1333 (a) of the WFRHBA would not be met.

### 2.3 Summary Comparison of the Proposed Action Alternative and the No Action Alternative

**Table 6: Summary Comparison of the Alternatives.**

Item	Proposed Action	No Action
<u>Impacts to Wild Horses</u> <ul style="list-style-type: none"><li>• Wild Horse Gather and Removal Numbers</li><li>• Fertility Control - # Mares Treated</li><li>• Public Safety Concerns</li></ul>	1,111 wild horses gathered, 224 removed, 420 mares treated. Wild horses would no longer pose a serious public safety concern along highway 95, Fish Springs area and would no longer be killed by vehicle collisions. Also wild horses would no longer cause problems with private domestic horses and landscaping in the Fish Springs area.	0 wild horses gathered, 0 removed, 0 treated. Wild horses would continue to pose a serious public safety concern along highway 95 and in the Fish Springs area and would likely continue to be killed in vehicle collisions. Also horses would continue to cause problems with domestic private horses and landscaping in the Fish Springs area.
Impacts to Vegetation/Soils and Riparian/Wetland Resources	Short term, would not differ much as relatively few horses would be removed. However, in the longer term since fewer wild horses would be present less impacts would occur to vegetation/soils and riparian/wetland resources.	Short term, would not differ much as relatively few horses would be removed. However in the longer term since more horses would be present increasing negative impacts would occur to vegetation/soils and riparian/wetland resources.

Impacts to Wildlife, including migratory birds and BLM special status species	Same as above. However, in the longer term since the vegetation would improve wildlife, including migratory birds and BLM special status species would benefit.	Same as above. However, in the longer term the vegetation and riparian resources would deteriorate and adverse impacts to wildlife, including migratory birds and BLM special status species would be anticipated.
---	---	--

## 2.4 Additional Alternatives Considered but Dismissed from Detailed Analysis

### 2.4.1 Use of Bait and/or Water Trapping

The use of bait and water trapping, though effective in specific areas and circumstances, would not be timely, cost-effective or practical as the primary gather method. The number of water sources on both private and public lands within and outside the HMAs would make it almost impossible to restrict wild horse access to selected water trap sites. As a result, this alternative was dismissed from detailed analysis.

### 2.4.2 Remove or Reduce Livestock within the HMA

This action would not be in conformance with the existing land use plan and is contrary to the BLM's multiple-use mission as outlined in the 1976 Federal Land Policy and Management Act (FLPMA), and would be inconsistent with the WFRHBA, which directs the Secretary to immediately remove excess wild horses. Additionally this would only be effective for the very short term as the horse population would continue to increase. Eventually the HMAs and adjacent lands would no longer be capable of supporting the horse populations. Removing approximately 224 excess wild horses now and treating released mares with a fertility control vaccine would delay the need for future removal of excess horses. Horse populations can double every four to five years without fertility control.

## 3.0 Affected Environment

In accordance with the BLM's NEPA Handbook (H-1790) (BLM, 2008) internal scoping was conducted by an interdisciplinary team to identify potential resources that may be impacted by the Proposed and No Action Alternatives. Relevant components of the human environment which would be either affected or potentially affected by the Proposed Action or No Action alternatives and other alternatives are briefly discussed below.

### 3.1 General Description of the Affected Environment

Refer to the following prior EAs: Clan Alpine NV-030-93-004 & NV- 030-00-006, Pine Nut Mountains NV-030-03-18, and Pilot Mountains NV-030-04-20 for a general description of the HMAs and the affected environment ([http://www.blm.gov/nv/st/en/fo/carson\\_city\\_field/blm\\_information/nepa.html](http://www.blm.gov/nv/st/en/fo/carson_city_field/blm_information/nepa.html) ).

### 3.2 Description of Affected Resources/Issues

In preparing this environmental analysis, the elements of the human environment subject to requirements in statute, regulation, or executive order which were considered in preparing the: Clan

Alpine NV-030-93-004 & NV- 030-00-006, Pine Nut Mountains NV-030-03-18, and Pilot Mountains NV-030-04-20 were reviewed. The only updates to the Supplemental Authorities of the human environment are to the wildlife and migratory bird sections. Supplemental Authorities present and potentially affected by the Proposed Action and/or the No Action Alternative are discussed below.

### 3.3 Supplemental Authorities

Appendix 1 of BLM's NEPA Handbook (H-1790-1) identifies Supplemental Authorities that are subject to requirements specified by statute or executive order and must be considered in all BLM environmental documents. The table below lists the Supplemental Authorities and their status in the project area. Supplemental Authorities that may be affected by the Proposed Action are analyzed further in this EA.

**Table 7: Supplemental Authorities Considered for Analysis.**

Supplemental Authority*	Not Present	Present/Not Affected	Present/May Be Affected	Rationale and/ or Reference Section
Air Quality	X			The affected area is not within an area of non-attainment or areas where total suspended particulates or other criteria pollutants exceed Nevada air quality standards. Particulate matter (dust) from the wild horse gather is expected to be similar to that occurring from normal herd movements, and any increase in particulate matter that might occur from herding the horses to the trap sites would be short term (temporary) and minimal in nature.
Areas of Critical Environmental Concern	X			Not Present
Cultural Resources		X		A review of previous cultural inventories was conducted for the holding and trap sites as identified for the current gather. The locations are within previously inventoried locations or areas of existing disturbance. In the event that any location is shifted a member of the cultural resources staff will facilitate the process to avoid cultural resources.
Environmental Justice	X			No environmental justice issues are present at or near the project.
Farm Lands (prime or unique)		X		Present not affected
Forests and rangelands (HFRA Projects Only)	X			Not Present
Human Health and Safety (Herbicide Projects)			X	Human Health and Safety Analysis mitigated in EA.

Floodplains	X			No floodplains have been identified by HUD or FEMA within the project area. Floodplains as defined in Executive Order 11988 may exist in the area, but would not be affected by the proposed action.
Invasive, Nonnative and Noxious Species			X	Analysis in EA
Migratory Birds			X	Proposed action would be planned to occur outside of Migratory Bird nesting season. However, habitat may be affected.
Native American Religious Concerns	X			The following Native American Tribe (s) were notified of the proposed gather(s) Fallon Paiute-Shoshone Tribe, Walker River Paiute Tribe, Washoe Tribe of Nevada and California and the Yerington Paiute Tribe. No concerns have been identified for the horse gather (s).
Threatened and/or Endangered Species	X			BLM wildlife biologists reviewed the USFWS website for Nevada's Protected Species ( <a href="http://www.fws.gov/nevada/protected_species/species_by_county.html">http://www.fws.gov/nevada/protected_species/species_by_county.html</a> ) and determined that there are no federally-listed species in the project area (Appendix X).
Wastes, Hazardous or Solid	X			No hazardous or solid wastes exist on the permit renewal area, nor would any be introduced.
Water Quality (Surface/Ground )	X			No effects to water quality are expected.
Wetlands/Riparian Zones			X	Reduced numbers of horses will lessen impacts to wetlands and riparian zones. All trap sites and disturbances will be located away from wetlands and riparian zones.
Wild and Scenic Rivers	X			Not Present
Wilderness		X		All trap sites, holding facilities and disturbances will be located outside of Wilderness Study Areas. Motorized vehicles are restricted to authorized designated (cherry stemmed) roads within the WSAs.

The following Supplemental Authorities of the environment are not present or are not affected by the proposed action or alternatives in this EA: air quality; areas of critical environmental concern; cultural resources; environmental justice; flood plains; Native American religious concerns; wilderness; prime or unique farmlands; forests and rangelands; wastes, hazardous or solid; water quality (surface and ground); wild and scenic rivers; and threatened and endangered species (plant and animal).

### 3.4 Resources or uses other than Supplemental Authorities

The following resources or uses, which are not Supplemental Authorities as defined by BLM's Handbook H-1790-1, are present in the area. BLM specialists have evaluated the potential impact of the Proposed Action on these resources and documented their findings in the table below.

**Table 8: Resources other than supplemental authorities.**

Resource or Issue	Present/Not Affected	Present/May Be Affected	Rationale
BLM Designated Sensitive Species		X	Analysis in EA
General Wildlife		X	Analysis in EA
Vegetative Resources		X	Analysis in EA
Wild Horses		X	Analysis in EA
Livestock Grazing		X	Analysis in EA
Soils/Watershed		X	Analysis in EA

### 3.5 Description of the Affected Environment

#### 3.5.1 Wild Horses

Detailed information about the history of the HMAs and the wild horse herds are provided in the following EAs: Clan Alpine NV-030-93-004; Pine Nut Mountains NV-030-03-18; and Pilot Mountains NV-030-04-20. The following table summarizes the AML, current population, and estimated removal numbers for the affected HMAs under the Proposed Action. Reference Table 1: Current Population Estimates, AML Ranges, Proposed Number Of Animals To Be Removed And Proposed Numbers To Be Treated And Released Back Into The HMAs included in this EA section 1.1 Introduction.

The Clan Alpine HMA was last gathered to remove excess wild horses in 2006. A total of 88 horses were gathered and removed, this was in response to a wildfire which burned a portion of the HMA. In 2000, 233 excess wild horses were removed from the Clan Alpine HMA and 96 mares were treated with Porcine Zona Pellucida (PZP-22) and released back into the HMA. This gather was also in response to a wildfire which burned a substantial portion of the HMA. The un-gathered population was estimated at 68 animals. A total of 111 mares and 114 stallions (225 animals) were released back into the Clan Alpine HMA, resulting in an estimated post-gather population of 293 horses within the HMA in 2000.

The Pine Nut Mountain HMA was last gathered to remove excess wild horses in 2003 when 279 horses were gathered and 232 were removed. The un-gathered population was estimated at 71 animals for a total estimated post-gather population of 118 animals. No animals were treated with fertility control vaccine.

The Pilot Mountain HMA was last gathered to remove excess wild horses in 2005 and 2006 when 253 horses were gathered and removed. The estimated post-gather population (un-gathered portion of the population) was estimated at 294 animals. No animals were treated with the fertility control vaccine.

**Table 9: Removals, releases and treatment**

HMA	Gather Date	Wild Horses Gathered	Wild Horses Removed	Males Released	Females Released	Not Captured	Total Released	Treated with PZP	Total Remaining Post-Gather Population
Clan Alpine	2000	458	233	114	111	68	225	96	293
Clan Alpine	2006	88	88	0	0	519	0	0	519
Pine Nut	2003	279	232	22	25	71	47	0	118
Pilot Mt.	2005-2006	253	253	0	0	0	0	0	294

A population inventory was completed for the Clan Alpine HMA in June 2010, when 524 horses were counted, or 5 more horses than were counted in 2007. The Clan Alpine HMA is difficult to inventory because of substantial tree cover and broken terrain. The ideal time to inventory this HMA is during the winter when the majority of horses move to relatively open areas at lower elevations to avoid deep snow cover facilitating detection. However, this year it was not possible to inventory during the winter. The BLM observer indicated that 200 horses could easily have been missed which would be equivalent to a 10 percent rate of increase since 2007. Currently the BLM is proposing to only capture and treat mares with PZP-22 vaccine. If substantially more horses are found than expected, some of the adoptable aged mares may be removed to leave the population at approximately 700 animals.

The population of horses in the Pine Nut Mountains HMA has averaged approximately a 10 percent rate of annual increase over the past 10 years. There has been one gather of the entire HMA and numerous small gathers of a few horses that were causing problems in residential areas. At least 5 wild horses have been killed by vehicle collisions. The current population estimate, based on a 2008 inventory with a projected population rate increase is 215 horses of which 148 reside within the HMA and 67 have home ranges outside of the HMA.

The Pilot Mt. HMA also has a relatively low rate of wild horse population increase at about 10 percent annually; however, this may be a result of an incomplete population inventory and horses moving outside of the inventory area. The current population estimate for the HMA is 406 wild horses, including an estimated 104 horses residing well outside of the HMA along U.S. highway 95.

The Clan Alpine and Pilot Mountain HMAs are within the AML range and generally the vegetative community is in good condition. There are a few areas receiving heavy use, though overall utilization is within acceptable levels. Horses within these HMAs are in good health. The few horses within the Pine Nut Mountains HMA that have been observed are also in good health.

### **Results of Win Equus Population Modeling**

The Win Equus Population Model was designed to project how wild horse populations may react to different management techniques. The Alternatives (1-2) were modeled using Version 3.2 of the WinEquus population model (Jenkins, 2000). Results see (Appendix C). The best recruitment and mortality data available for these HMAs is from the Garfield HMA, also located in this district.

However, this data results in a 20% annual rate of increase, which was used for the model simulations. Using the available data, results from the model show that over the next ten years the rate of increase can be reduced from approximately 19% to 7% for all three HMAs with PZP-22 contraception boosters given every three years. This equates to 1,412 fewer excess wild horses that would need to be gathered and placed into the adoption program or sanctuaries.

However, as previously noted, the rate of increase for these HMAs appears to be closer to 10%. The lower rates of increase may have resulted from drought conditions, low foal survival, mountain lion predation and poor census timing. If the annual rate of increase is closer to 10% rather than 20% the difference between the total numbers of excess wild horses needing to be removed under each of the two alternatives will be less than reflected in the tables below, but would remain proportionally greater under the No Action alternative. The “Total Number Removed” under the “No Action” alternative is the number that would need to be removed in 11 years if the Proposed Action is not selected.

**Table 10: Summary of Population Modeling Results for Clan Alpine HMA.**

<b>Alternative</b>	<b>Ave. Pop. Size (11 years)*</b>	<b>Ave. Growth Rate Next 10 Years (%)*</b>	<b>Total Number Gathered*</b>	<b>Total Number Removed*</b>	<b>Total Number Treated*</b>
Proposed Action	953	6.8%	2,880	522	1,012
No Action	2,236	19.3%		1,283**	

\* Median Trial

\*\* Median number of horses needed to be removed to equal the estimated population size under the proposed action. Female foals, (fillies) would not be treated.

**Table 11: Summary of Population Modeling Results for Pilot Mountain HMA.**

<b>Alternative</b>	<b>Ave. Pop. Size (11 years)*</b>	<b>Ave. Growth Rate Next 10 Years (%)*</b>	<b>Total Number Gathered*</b>	<b>Total Number Removed*</b>	<b>Total Number Treated*</b>
Proposed Action	481	6.7%	1,390	0	604
No Action	942	19.7%		461**	

\* Median Trial

\*\* Median number of horses needed to be removed to equal the estimated population size under the proposed action. Female foals, (fillies) would not be treated.

**Table 12: Summary of Population Modeling Results for Pine Nut Mountain HMA.**

<b>Alternative</b>	<b>Ave. Pop. Size (11 years)*</b>	<b>Ave. Growth Rate Next 10 Years (%)*</b>	<b>Total Number Gathered*</b>	<b>Total Number Removed*</b>	<b>Total Number Treated*</b>
Proposed Action	180	7.1%	552	99	186
No Action	475	19.2%		295**	

\* Median Trial

\*\* Median number of horses needed to be removed to equal the estimated population size under the proposed action. Female foals, (fillies) would not be treated.

### 3.5.2 Vegetation

A mosaic of plant communities is present within the HMAs. Plant communities within the HMAs include: small areas of riparian vegetation associated with springs, meadows and drainages such as aspen trees, cottonwood trees, willow (*Salix* species), sedges (*Carex* species), saltgrass (*Distichlis spicata*), and rushes (*Juncus* species), watercress (*Nasturtium* species), rose (*Rosa* species); salt desert shrub communities (greasewood, shadscale, salt brush), low sagebrush (*arbuscula* & *Lahontan*), big sagebrush (Wyoming, *Basin & Mountain*) and woodlands (*pinyon-juniper*).

The major perennial grass species found in the HMAs are Indian ricegrass (*Achnatherum hymenoides*), bottlebrush squirreltail (*Elymus elymoides*), galleta grass (*Hilaria jamesii*), needle and thread grass (*Hesperostipa comata*), king desertgrass (*Blepharidachne kingii*), desert needlegrass (*Achnatherum speciosum*), Thurber's needlegrass (*Achnatherum thurberianum*), Basin wildrye (*Leymus cinereus*), and Sandberg bluegrass (*Poa secunda*).

The major shrub species are Bailey greasewood (*Sarcobatus vermiculatus* var. *baileyi*), shadscale saltbush (*Atriplex confertifolia*), fourwing saltbush (*Atriplex canescens*), winterfat (*Krascheninnikovia lanata*), big sagebrush (*Artemisia tridentata*), low sagebrush (*Artemisia arbuscula*), Wyoming big sagebrush (*Artemisia tridentata* var. *wyomingensis*), bud sagebrush or budsage (*Artemisia spinescens*), black sagebrush (*Artemisia nova*), antelope bitterbrush (*Purshia tridentata*), Nevada dalea (*Psoralea polydenia*), green rabbitbrush (*Chrysothamnus viscidiflorus*), littleleaf horsebrush (*Tetradymia glabrata*), spiny hopsage (*Grayia spinosa*), spiny menodora (*Menodora spinescens*), burrobrush (*Hymenoclea salsola*), Shockley's wolfberry (*Lycium shockleyi*), Nevada ephedra, (*Ephedra nevadensis*), and green ephedra (*Ephedra viridis*).

The major forbs species found on the HMAs are *Eriogonum* species, *Phlox* species, evening primrose (*Oenothera biennis*), *Astragalus* species, Prince's plume (*Stanleya* species), globemallow (*Sphaeralcea* species), and four-o'clock (*Mirabilis* species).

The major tree species include Utah juniper (*Juniperus osteosperma*) and singleleaf pinyon pine (*Pinus monophylla*).

Cacti species, including golden cholla (*Cylindropuntia echinocarpa*) and beavertail pricklypear (*Opuntia basilaris* var. *basilaris*), also grow on the Pilot Mountain HMA.

### 3.5.3 Noxious Weeds

Noxious weeds found within the Pilot Mountain HMA are salt cedar (*Tamarix* species) and hoary cress (*Cardaria draba*). Noxious weeds found within the Clan Alpine HMA are musk thistle (*Carduus nutans*), salt cedar, perennial pepperweed (*Lepidium latifolium*), Russian knapweed (*Acroptilon repens*) and hoary cress. Noxious weeds found within the Pine Nut HMA are hoary cress, salt cedar, perennial pepperweed and Canada thistle (*Cirsium arvense*).

### 3.5.4 Invasive Weeds

Cheatgrass (*Bromus tectorum*), halogeton (*Halogeton glomeratus*) and Russian thistle (*Salsola tragus*) are found in both the Clan Alpine and Pilot Mountain HMAs, Cheatgrass and Russian thistle are found

in the Pine Nut Mountain HMA. The invasive plant Cheatgrass (*Bromus tectorum*) is common throughout Nevada especially in areas that have recently burned.

### 3.5.5 Livestock

Livestock grazing occurs within the HMAs as authorized through grazing permits as summarized below.

**Table 13: Authorized livestock use occurs within the HMAs as shown below.**

Allotment	% in HMA	HMA	Active Preference	Actual use AUMs 2009-10	Season of use
Pilot-Table Mt.		Pilot Mt.	900 cattle; 4,468 AUMs		11/01-03/31
Pilot-Table Mt.		Pilot Mt.	150 cattle; 1,055 AUMs		04/01-10/31
Pilot-Table Mt.		Pilot Mt.	12 horses; 144 AUMs		03/01-02/28
Pilot-Table Mt.		Pilot Mt.		1,944	
	46				
Gillis Mt	6	Pilot Mt.	422 cattle; 2,317 AUMs	1,674	11/15-04/30
Cedar Mt.	19	Pilot Mt.	186 cattle; 925 AUMs	372	11/01-03/31
Clan Alpine		Clan Alpine	927 cattle; 10,210 AUMs	9,247	05/01-03/31
Clan Alpine		Clan Alpine	1,737 sheep; 1,200 AUMs	771	12/01-03/15
	50				
Cow Canyon	48	Clan Alpine	365 cattle; 2,388 AUMs	2,074	05/01-11/15
Dixie Valley	35	Clan Alpine	528 cattle; 6,341 AUMs	5,341	Yearlong
Clifton	77	Pine Nut	123 cattle; 613 AUMs	0	01/01-05/31
Rawe Peak	100	Pine Nut	cattle ; 54 AUMs	0	11/01-03/31
Buckeye	12	Pine Nut	375 cattle; 1,471AUMs	500	04/01-09/15
Churchill Can	18	Pine Nut	167 cattle 1,074 AUMs	1,074	11/01-05/15
Hackett Can.	88	Pine Nut	cattle/ sheep; 187 AUMs	0	03/15-06/30
Mill Can.	43	Pine Nut	9,275 sheep; 2,049 AUMs	0	11/01-03/31
El Dorado	79	Pine Nut	342 sheep; 270 AUMs	0	11/01-02/28
Sunrise	97	Pine Nut	52 cattle; 159 AUMs	159	03/15 -06/15

\*TNR Temporary non-renewable, no permitted use occurs; TNR is at the discretion of the BLM

### 3.5.6 General Wildlife

Based on the Southwest Regional GAP Analysis Project, the Nevada Department of Wildlife's Wildlife Action Plan (2006) characterizes Nevada's vegetative land cover as falling into 8 broad ecological system groups and links those with Key Habitat types, which are further refined into Ecological Systems characterized by plant communities or associations (USGS 2005). Key Habitats can be used to infer likely occurrences of wildlife species assemblages when survey data are lacking, as is the case within these HMAs. Some of the known or potential wildlife species that could be supported by the plant communities in the HMAs are displayed in Table 15. Because intensive plant and animal surveys have not been completed, not all species in the tables are known to currently exist within the HMAs.

**Table 14: Potential BLM designated sensitive species, migratory bird species of conservation concern (as per IM 2008-050), and general wildlife that may use components of the key habitats in the HMAs.**

Key Habitats	Potential Wildlife Species	Scientific Name	BLM Sensitive Species	Migratory Bird (per IM 2008-050)	Primary Habitat Use Affected
Intermountain Cold Desert Scrub	Black-tailed jack rabbit	<i>Lepus californicus</i>	No	N/A	Food sources and thermal cover
Sagebrush	Black-throated sparrow	<i>Amphispiza bilineata</i>	No	No	Increased nesting cover
Lower Montane Woodlands	Brewer's sparrow	<i>Spizella breweri</i>	No	Yes	Increased nesting cover
	Burrowing owl	<i>Athene cunicularia</i>	Yes	Yes	Increased food sources
	Coachwhip	<i>Masticophis flagellum</i>	No	N/A	Food sources and thermal cover
	Common side-blotched lizard	<i>Uta stansburiana</i>	No	N/A	Food sources and thermal cover
	Dark kangaroo mouse	<i>Microdipodops megacephalus</i>	No	N/A	Food sources and thermal cover
	Desert horned lizard	<i>Phrynosoma platyrhinos</i>	No	N/A	Food sources and thermal cover
	Desert spiny	<i>Sceloporus magister</i>	No	N/A	Food sources and thermal cover
	Ferruginous hawk	<i>Buteo regalis</i>	Yes	Yes	Increased prey base
	Golden eagle	<i>Aquila chrysaetos</i>	Yes	Yes	Increased prey base

	Great Basin collared lizard	<i>Crotaphytus bicinctores</i>	No	N/A	Food sources and thermal cover
	Great Basin rattlesnake	<i>Crotalus viridis lutosus</i>	No	N/A	Food sources and thermal cover
	Kit fox	<i>Vulpes macrotis</i>	No	N/A	Increased prey base
	Loggerhead shrike	<i>Lanius ludovicianus</i>	Yes	Yes	Increased nesting cover and prey base
	Long-nosed leopard lizard	<i>Gambelia wislizenii</i>	No	N/A	Food sources and thermal cover
	Pale kangaroo mouse	<i>Microdipodops pallidus</i>	No	N/A	Food sources and thermal cover
	Pallid bat	<i>Antrozous pallidus</i>	Yes	N/A	Increased prey base
	Prairie falcon	<i>Falco mexicanus</i>	Yes	Yes	Increased prey base
	Sage sparrow	<i>Amphispiza belli</i>	No	Yes	Increased nesting cover
	Sage-grouse	<i>Centrocercus urophasianus</i>	Yes	Yes	Nesting and brood-rearing cover
	Western fence lizard	<i>Sceloporus occidentalis</i>	No	N/A	Food sources and thermal cover
	Western whiptail	<i>Cnemidophorus tigris</i>	No	N/A	Food sources and thermal cover
	Zebra-tailed lizard	<i>Callisaurus draconoides</i>	No	N/A	Food sources and thermal cover

Wildlife water developments (guzzlers) exist for pronghorn (*Antilocarpa americana americana*), desert bighorn sheep (*Ovis canadensis nelsoni*), and chukar partridge (*Alectoris chukar*), (10 guzzlers) in the Pilot Mountain HMA, for desert bighorn sheep and chukar (15 guzzlers) in the Clan Alpine HMA, and for small game species (4 guzzlers) in the Pine Nut HMA. Small game guzzlers are used by a variety of wildlife including chukar, quail and other birds, small mammals, and reptiles. Natural water sources are limited in the Pilot Mountain and Pine Nut HMAs and wildlife, livestock, and wild horses all rely on the same limited sources. Natural water sources are not as limited in the Clan Alpine HMA. Degradation of water sources has occurred from use by livestock and wild horses. Mountain lions (*Felis concolor*) inhabit the HMAs and will predate foals and possibly weaker adult horses. Golden eagles (*Aquila*

*chrysaetos*) and various other raptors inhabit and forage in the HMAs.

### **3.5.7 Game Species**

**Mule Deer** — Mule deer (*Odocoileus hemionus*) have experienced a 50% decline in Nevada since the 1980s (Wildlife Action Plan Team 2006). Mule deer generally feed on forbs, grasses, and shrubs depending on the time of year. Forbs and grasses are most important in spring and summer while shrubs are most utilized during winter and dry summer months. The Pilot Mountain and Pine Nut HMAs have limited mule deer habitat and occupancy is restricted by water availability (NDOW 2010). Approximately 52% (164, 245 acres) of the Clan Alpine HMA supports mule deer populations, including crucial winter, summer, and year-round habitat (NDOW 2010).

**Desert Bighorn Sheep** — Desert bighorn prefer areas near rough, rocky, and steep terrain; require freestanding water in the summer months or during drought; and eat grasses, shrubs, and forbs. The Pilot Mountains HMA encompasses 181,855 acres (71%) of occupied habitat and 325 acres of potential habitat, the Clan Alpine HMA encompasses 207,259 acres (65%) of occupied habitat, and the Pine Nut HMA encompasses 81,480 acres (83%) of potential habitat (NDOW 2010).

**Pronghorn** — Pronghorn have an evolutionary history of 20 million years in North America. They were almost wiped out in the 1800s but have rebounded due to changes in wildlife and rangeland management techniques. Pronghorn primarily eat forbs and shrubs with grasses being the least preferred forage. The Pilot Mountain HMA supports 212,472 acres of year-round habitat. The Clan Alpine HMA does not have any habitat delineated but pronghorn utilize areas from the north to the south (NDOW 2010, Axtell pers. comm.). The Pine Nut HMA does not have delineated pronghorn habitat (NDOW 2010), however, pronghorn do occur within the HMA.

**Chukar** — this species from the pheasant family was originally introduced from Pakistan as an upland game bird. It can be found on rocky hillsides or open and flat desert with sparse grassy vegetation. Chukar primarily eat seeds but will forage on some insects.

### **3.5.8 BLM Designated Sensitive Species**

Species designated as Bureau sensitive species must be native species found on BLM-administered lands for which the BLM has the capability to significantly affect the conservation status of the species through management, and either:

1. There is information that a species has recently undergone, is undergoing, or is predicted to undergo a downward trend such that the viability of the species or a distinct population segment of the species is at risk across all or a significant portion of the species range; or
2. The species depends on ecological refugia or specialized or unique habitats on BLM-administered lands, and there is evidence that such areas are threatened with alteration such that the continued viability of the species in that area would be at risk.

A list of sensitive animal and plant species associated with BLM lands in Nevada was signed in 2003 (BLM 2003). Many of these species that depend on cold desert scrub ecosystems are currently impacted through decreased plant species diversity within the project area.

### 3.5.9 BLM Sensitive Species (Plants)

There are two BLM sensitive plant species that are found within the herd management areas. The Lavin eggvetch (*Astragalus oophorus* var. *lavinii*) is found within the Pine Nut Mountain HMA. The Lahontan beardtongue (*Penstemon palmeri* var. *macranthus*) is found within the Clan Alpine HMA. Both species are perennial forbs that occupy drainages and washes. See the Affected Environment, General Wildlife section (Section 3.5.6) for a detailed discussion on existing habitat. The sensitive species that may be present in the area are listed in Table 15 (animals) and Table 16 (plants).

Although the Pilot Mountain HMA is not in a greater sage-grouse (*Centrocercus urophasianus*) population management unit (PMU), sage-grouse have been sighted at four different springs within the HMA. Population abundance for sage-grouse in this HMA is currently unknown. The Clan Alpine HMA is within the Clan Alpine sage-grouse PMU. This PMU contains one known active lek and large areas of nesting, summer, and winter habitat. The Pine Nut HMA is in the Pine Nut sage-grouse PMU. This PMU contains two breeding populations and large areas of nesting, summer, and winter habitat. Wild horses have been observed around the lek and brooding area that occur in the portion of the PMU that overlaps with the HMA. In March 2010, a decision by the U.S. Fish and Wildlife Service on whether to list the greater sage-grouse under the Endangered Species Act was finalized. A determination of “warranted but precluded” by higher listing priorities was made. One of the primary threats documented in the listing decision is habitat loss/modification.

### 3.5.10 Migratory Birds

On January 11, 2001, President Clinton signed Executive Order 13186 (Land Bird Strategic Project) placing emphasis on conservation and management of migratory birds. Migratory birds are protected under the Migratory Bird Treaty Act (MBTA) of 1918 and the EO addresses the responsibilities of federal agencies to protect them by taking actions to implement the MBTA. BLM management for these species is based on Instruction Memorandum No. IM 2008-050 dated December 18, 2007 (BLM 2007). See the Affected Environment, General Wildlife section (Section 3.5.6) for a detailed discussion on existing habitat. The migratory bird species of concern that occur or are likely to occur in the project area are displayed in Table 15.

## 3.6 Health and Safety

In recent gathers, members of the public have increasingly traveled to the public lands to observe BLM’s gather operations. Members of the public can inadvertently wander into areas that put them in the path of wild horses that are being herded or handled during the gather operations, creating the potential for injury to the wild horses or burros and to the BLM employees and contractors conducting the gather and/or handling the horses as well as to the public themselves. Because these horses are wild animals, there is always the potential for injury when individuals get too close or inadvertently get in the way of gather activities.

The helicopter work is done at various heights above the ground, from as little as 10-15 feet (when herding the animals the last short distance to the gather corral) to several hundred feet (when doing a recon of the area). While helicopters are highly maneuverable and the pilots are very skilled in their operation, unknown and unexpected obstacles in their path can impact their ability to react in time to avoid members of the public in their path. These same unknown and unexpected obstacles can impact

the wild horses or burros being herded by the helicopter in that they may not be able to react and can be potentially harmed or caused to flee which can lead to injury and additional stress. When the helicopter is working close to the ground, the rotor wash of the helicopter is a safety concern by potentially causing loose vegetation, dirt, and other objects to fly through the air which can strike or land on anyone in close proximity as well as cause decreased vision.

During the herding process, wild horses or burros will try to flee if they perceive that something or someone suddenly blocks or crosses their path. Fleeing horses can go through wire fences, traverse unstable terrain, and go through areas that they normally don't travel in order to get away, all of which can lead them to injure people by striking or trampling them if they are in the animal's path.

Disturbances in and around the gather and holding corral have the potential to injure the government and contractor staff who are trying to sort, move and care for the horses and burros by causing them to be kicked, struck, and possibly trampled by the animals trying to flee. Such disturbances also have the potential for similar harm to the public themselves.

Public observation of the wild horse gather activities on public lands will be allowed and would be consistent with BLM IM No. 2010-164 and visitation protocols for scheduled and non-schedule visitation in Appendix H.

#### **4.0 Environmental Consequences**

Environmental consequences are potential direct/indirect/residual/cumulative impacts to resources that may result from the Proposed Action or Alternatives, as well as identifies the potential mitigation measures and monitoring needs associated with the specific resources.

##### **4.1 Introduction**

This section addresses the direct impacts (those that result from the management actions) and indirect impacts (those that exist once the management action has occurred).

##### **4.2 Predicted Affects of Alternatives**

The direct and indirect impacts that would be expected to result with implementation of the Proposed Action or No Action alternatives are discussed in detail below.

###### **4.2.1 Wild Horses**

Under the Proposed Action, approximately 1,111 wild horses would be captured, of which approximately 224 excess wild horses removed, which includes the 104 wild horses established along U. S. highway 95 outside of the Pilot Mountain HMA and 67 horses remaining in the Fish Springs area. Approximately 887 wild horses would be released back to the range after treatment of some 420 mares with PZP-22 (female foals, (fillies) would not be treated.). The horses to be removed would primarily consist of all the wild horses residing outside the HMAs, mares, weaned foals and yearlings. These animals would be transported to a BLM short-term corral facility where they would receive appropriate care and be prepared for adoption, sale (with limitations) or long-term holding. Any old, sick or lame horses that would be unable to maintain an acceptable body condition (greater than or equal to a Henneke BC of 3) would be humanely euthanized as an act of mercy.

Fertility control would be applied to all the released mares to decrease fertility and future annual wild horse population growth within the HMAs. The detailed procedures to be followed for the implementation of fertility control are described in Appendix A. Each released mare would receive a single dose of the two-year PZP contraceptive vaccine. When injected, PZP (antigen) causes the mare's immune system to produce antibodies and these antibodies bind to the mare's eggs, which effectively blocks sperm binding and fertilization (Zoo, Montana, 2000). PZP is relatively inexpensive, meets BLM requirements for safety to mares and to the environment, and can be easily administered in the field. Based on behavioral studies, PZP-22 does not cause significant changes in behavior at the individual or herd levels (USGS). Additionally, PZP contraception appears to be completely reversible.

The highest success for fertility control has been obtained when applied during the timeframe of November through February. The efficacy for the application of the two-year PZP vaccine (representing the percent of vaccinated mares that do not foal) based on winter applications follows:

<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>	<b><u>Year 4</u></b>
Normal	94%	82%	94%

One-time application at the capture site would not affect normal development of a fetus, hormone health of the mare or behavioral responses to stallions, should the mare already be pregnant when vaccinated (Kirkpatrick, 1995). The vaccine has also proven to have no apparent effect on pregnancies in progress, the health of offspring, or the behavior of treated mares (Turner, 1997). Mares would foal normally in 2011 (Year 1).

Ransom et al. (2010) found no differences in how PZP-treated and control mares allocated their time between feeding, resting, travel, maintenance, and social behaviors in 3 populations of wild horses, which is consistent with Powell's (1999) findings in another population. Likewise, body condition of PZP-treated and control mares did not differ between treatment groups in Ransom et al.'s (2010) study. Turner and Kirkpatrick (2002) found that PZP-treated mares had higher body condition than control mares in another population, presumably because energy expenditure was reduced by the absence of pregnancy and lactation.

In two studies involving a total of 4 wild horse populations, both Nunez et al. (2009) and Ransom et al. (2010) found that PZP-treated mares were involved in reproductive interactions with stallions more often than control mares, which is not surprising given the evidence that PZP-treated females of other mammal species can regularly demonstrate estrus behavior while contracepted (Shumake and Wilhelm 1995, Heilmann et al. 1998, Curtis et al. 2002). Ransom et al. (2010) found that control mares were herded by stallions more frequently than PZP-treated mares, and Nunez et al. (2009) found that PZP-treated mares exhibited higher infidelity to their band stallion during the non-breeding season than control mares. Madosky et al. (in press) found this infidelity was also evident during the breeding season in the same population that Nunez et al. (2009) studied, resulting in PZP-treated mares changing bands more frequently than control mares. Long-term implications of these changes in social behavior are currently unknown.

The fertility control treatment would be controlled, handled, and administered by a trained BLM employee. Mares receiving the vaccine would experience slightly increased stress levels associated with handling while being vaccinated and freeze-marked. Serious injection site reactions associated with fertility control treatments are rare in treated mares. Any direct impacts associated with fertility control, such as swelling or local reactions at the injection site, would be minor in nature and of short duration. Most mares recover quickly once released back to the HMA, and none are expected to have long term consequences from the fertility control injections.

### **Direct and Indirect Gather Impacts**

The BLM has been conducting wild horse gathers since the mid-1970s. During this time, methods and procedures have been identified and refined to minimize stress and impacts to wild horses during gather implementation. The SOPs in Appendix B would be implemented to ensure a safe and humane gather occurs and would minimize potential stress and injury to wild horses. Various impacts to wild horses as a result of gather activities have been observed. Under the Proposed Action, impacts to wild horses would be both direct and indirect, occurring to both individual horses and the population as a whole.

In any given gather, gather-related mortality averages about one half of one percent (0.5%), which is very low when handling wild animals. Approximately, another six-tenths of one percent (0.6%) of the captured animals could be humanely euthanized due to pre-existing conditions and in accordance with BLM policy, according to the Government Accountability Office (GAO-09-77). The data affirms that the use of helicopters and motorized vehicles has proven to be a safe, humane, effective, and practical means for the gather and removal of excess wild horses from the public lands. The BLM also avoids gathering wild horses by helicopter during the six weeks prior to and six weeks following the peak foaling period (mid-April to mid-May), therefore the BLM does not use a helicopter to gather wild horses between March 1 through June 30.

Individual, direct impacts to wild horses include the handling stress associated with the roundup, capture, sorting, handling, and transportation of the animals. The intensity of these impacts varies by individual animal, and is indicated by behaviors ranging from nervous agitation to physical distress. When being herded to trap site corrals by the helicopter, injuries sustained by wild horses may include bruises, scrapes, or cuts to feet, legs, face, or body from rocks, brush or tree limbs. Rarely, wild horses will encounter barbed wire fences and will receive wire cuts. These injuries are very rarely fatal and are treated on-site until a veterinarian can examine the animal and determine if additional treatment is indicated.

Other injuries may occur after a horse has been captured and is either within the trap site corral, the temporary holding corral, during transport between facilities, or during sorting and handling. Occasionally, horses may sustain a spinal injury or a fractured limb, but based on prior gather statistics serious injuries requiring humane euthanasia are rare. Similar injuries could be sustained if wild horses were captured through bait and/or water trapping, as the animals still need to be sorted, aged, transported, and otherwise handled following their capture. These injuries result from kicks and bites, or from collisions with corral panels or gates.

To minimize the potential for injuries from fighting, the animals are transported from the trap site to the temporary (or short-term) holding facility where they are sorted as quickly and safely as possible, then

moved into large holding pens where they are provided with hay and water. On many gathers, no wild horses are injured or die. On some gathers, due to the temperament of the horses, they are not as calm and injuries are more frequent. Indirect individual impacts are those which occur to individual wild horses after the initial event. These may include miscarriages in mares, increased social displacement, and conflict in studs. These impacts, like direct individual impacts, are known to occur intermittently during wild horse gather operations. An example of an indirect individual impact would be the brief 1-2 minute skirmish between older studs which ends when one stud retreats. Injuries typically involve a bite or kick with bruises which do not break the skin. Like direct individual impacts, the frequency of these impacts varies with the population and the individual. Observations following capture indicate that the potential for miscarriages varies, but is more likely if the mares are in very thin body condition or in poor health.

A few foals may be orphaned during a gather. This can occur if the mare rejects the foal, the foal becomes separated from its mother and cannot be matched up following sorting, the mare dies or must be humanely euthanized during the gather, the foal is ill or weak and needs immediate care that requires removal from the mother, or the mother does not produce enough milk to support the foal. On occasion, foals are gathered that were previously orphaned on the range (prior to the gather) because the mother rejected it or died. These foals are usually in poor, unthrifty condition. Every effort is made to provide appropriate care to orphan foals. Veterinarians may administer electrolyte solutions or orphan foals may be fed milk replacer as needed to support their nutritional needs. Orphan foals may be placed in a foster home in order to receive additional care. Despite these efforts, some orphan foals may die or be humanely euthanized as an act of mercy if the prognosis for survival is very poor. Due to the timing of the proposed gather, it is unlikely that orphan foals will be encountered as the majority of the current year's (2010) foals will be weaned already from their mothers. In private industry, domestic horses are normally weaned between four and six months of age.

In some areas, gathering wild horses during the winter may avoid the stress that could be associated with a summer gather. By fall and winter, foals are of good body size and sufficient age to be easily weaned. Winter gathers are often preferred when terrain and higher elevations make it difficult to gather wild horses during the summer months. Under winter conditions, horses are often located in lower elevations due to snow cover at higher elevations. This typically means the horses will be closer to the potential trap sites and reduces the potential for fatigue and stress. While deep snow can tire horses as they are moved to the trap site, the helicopter pilots allow the horses to travel slowly at their own pace. Trails in the snow are often followed to make it easier for horses to travel to the trap site. On occasion, trails can be plowed in the snow to facilitate the safe and humane movement of horses to a trap.

In some areas, a winter gather may result in less stress as the cold and snow does not affect wild horses to the degree that heat and dust might during a summer gather. Wild horses may be able to travel farther and over terrain that is more difficult during the winter, even if snow does not cover the ground. Water requirements are lower during the winter months, making distress from heat exhaustion extremely rare. By comparison, during summer gathers, wild horses may travel long distances between water and forage and become more easily dehydrated. Most summer related concerns can be mitigated by conducting gather activities during the early morning hours when it is cooler. Temperature related concerns in the winter can be avoided by limiting activities when temperatures are below zero.

Through the capture and sorting process, wild horses are examined for health, injury and other potential physical defects. Decisions to humanely euthanize animals in field situations would be made in conformance with BLM policy. BLM Euthanasia Policy IM-2009-041 is used as a guide to determine if animals meet the criteria and should be euthanized (refer to SOPs, Appendix A). Animals that are euthanized for non-gather related reasons include those with old injuries (broken or deformed limbs) that cause lameness or prevent the animal from being able to maintain an acceptable body condition (greater than or equal to BCS 3); old animals that have serious dental abnormalities or severely worn teeth and are not expected to maintain an acceptable body condition, and wild horses that have serious physical defects such as club feet, severe limb deformities, or sway back. Some of these conditions have a causal genetic component and the animals should not be returned to the range in order to prevent suffering, as well as to avoid amplifying the incidence of the problem in the population.

Wild horses not captured may be temporarily disturbed and may move into another area during the gather operation. With the exception of changes to herd demographics from removals, direct population impacts to gathered horses have proven to be temporary in nature with most, if not all, impacts disappearing within hours to several days of release. No observable affects associated with these impacts to gathered horses would be expected within one month of release, except for a heightened awareness of human presence.

It is not expected that genetic health would be impacted by the Proposed Action as the AML ranges should provide for acceptable genetic diversity.

By maintaining wild horse population size within the AMLs, there would be a lower density of wild horses across the HMA, reducing competition for resources and allowing wild horses to utilize their preferred habitat. Maintaining population size within the established AMLs would be expected to improve forage quantity and quality and promote healthy, self-sustaining populations of wild horses in a thriving natural ecological balance and multiple use relationship on the public lands in the area. Deterioration of the range associated with wild horse overpopulation would be avoided. Managing wild horse populations in balance with the available habitat and other multiple uses would lessen the potential for individual animals or the herd to be affected by drought, and would avoid or minimize the need for emergency gathers, which would reduce stress to the animals and increase the success of these herds over the long-term.

Over the next 11 years, implementation of the Proposed Action could result in as many as 1,412 fewer excess wild horses which would require removal from the range. For every excess horse not adopted or sold, a cost to the American taxpayer of up to \$12,000 per animal over 20 years would accrue.

### **Transport, Short Term Holding, and Adoption (or Sale) Preparation**

About 224 excess horses would be removed. Animals would be transported from the capture/temporary holding corrals to the designated BLM short-term holding corral facility(s). From there, they would be made available for adoption or sale to qualified individuals or sent to long-term pastures (LTPs).

Wild horses selected for removal from the range are transported to the receiving short-term holding facility in a straight deck semi-trailers or goose-neck stock trailers. Vehicles are inspected by the BLM Contracting Officer Representative (COR) or Project Inspector (PI) prior to use to ensure wild horses can be safely transported and that the interior of the vehicle is in a sanitary condition. Wild horses are segregated by age and sex and loaded into separate compartments. A small number of mares may be shipped with foals. Transportation of recently captured wild horses is limited to about 8 hours. During transport, potential impacts to individual horses can include stress, as well as slipping, falling, kicking, biting, or being stepped on by another animal. Unless wild horses are in extremely poor condition, it is rare for an animal to be seriously injured or die during transport.

Upon arrival at the short term holding facility, recently captured wild horses are off-loaded by compartment and placed in holding pens where they are fed good quality hay and water. Most wild horses begin to eat and drink immediately and adjust rapidly to their new situation. At the short-term holding facility, a veterinarian examines each load of horses and provides recommendations to the BLM regarding care, treatment, and if necessary, euthanasia of the recently captured wild horses. Any animals affected by a chronic or incurable disease, injury, lameness or serious physical defect (such as severe tooth loss or wear, club feet, and other severe congenital abnormalities) would be humanely euthanized using methods acceptable to the American Veterinary Medical Association (AVMA). Wild horses in very thin condition or animals with injuries are sorted and placed in hospital pens, fed separately and/or treated for their injuries as indicated. Recently captured wild horses, generally mares, in very thin condition may have difficulty transitioning to feed. Some of these animals are in such poor condition that it is unlikely they would have survived if left on the range. Similarly, some mares may miscarry. Every effort is taken to help the mare make a quiet, low stress transition to captivity and domestic feed to minimize the risk of miscarriage or death.

After recently captured wild horses have transitioned to their new environment, they are prepared for adoption or sale. Preparation involves freeze-marking the animals with a unique identification number, drawing a blood sample to test for equine infections anemia, vaccination against common diseases, castration, and de-worming. During the preparation process, potential impacts to wild horses are similar to those that can occur during handling and transportation. Serious injuries and deaths from injuries during the preparation process are rare, but can occur.

At short-term corral facilities, a minimum of 700 square feet is provided per animal. Mortality at short-term holding facilities averages approximately 5% per year (GAO-09-77, Page 51), and includes animals euthanized due to a pre-existing condition; animals in extremely poor condition; animals that are injured and would not recover; animals which are unable to transition to feed; and animals which are seriously injured or accidentally die during sorting, handling, or preparation.

### **Adoption or Sale with Limitations, and Long Term Pastures**

Adoption applicants are required to have at least a 400 square foot corral with panels that are at least six feet tall for horses over 18 months of age. Applicants are required to provide adequate shelter, feed, and water. The BLM retains title to the horse for one year and the horse and the facilities are inspected to assure the adopter is complying with the BLM's requirements. After one year, the adopter may take title to the horse after an inspection from a humane official, veterinarian, or other individual approved by the authorized officer, at which point the horse becomes the property of the adopter. Adoptions are conducted in accordance with 43 CFR 4750.

Potential buyers must fill out an application and be pre-approved before they may buy a wild horse. A sale-eligible wild horse is any animal that is more than 10 years old; or has been offered unsuccessfully for adoption three times. The application also specifies that all buyers are not to re-sell the animal to slaughter buyers or anyone who would sell the animal to a commercial processing plant. Sales of wild horses are conducted in accordance with Bureau policy.

Between 2007 and 2009, nearly 62% of excess wild horses or burros were adopted and about 8% were sold with limitation (to good homes) to qualified individuals. Unadopted animals 5 years of age and older are transported to LTPs. Each LTP is subject to a separate environmental analysis and decision making process. Animals in LTPs remain available for adoption or sale to individuals interested in acquiring a larger number of animals who can provide the animals with a good home. The BLM has maintained LTPs in the Midwest for over 20 years.

Potential impacts to wild horses from transport to adoption, sale or LTP are similar to those previously described. One difference is that when shipping wild horses for adoption, sale or LTP, animals may be transported for a maximum of 24 hours. Immediately prior to transportation, and after every 18-24 hours of transportation, animals are offloaded and provided a minimum of 8 hours on-the-ground rest. During the rest period, each animal is provided access to unlimited amounts of clean water and 25 pounds of good quality hay per horse with adequate bunk space to allow all animals to eat at one time. Most animals are not shipped more than 18 hours before they are rested. The rest period may be waived in situations where the travel time exceeds the 24-hour limit by just a few hours and the stress of offloading and reloading is likely to be greater than the stress involved in the additional period of uninterrupted travel.

LTPs are designed to provide excess wild horses with humane, life-long care in a natural setting off the public rangelands. There wild horses are maintained in grassland pastures large enough to allow free-roaming behavior and with the forage, water, and shelter necessary to sustain them in good condition. About 22,700 wild horses, that are in excess of the existing adoption or sale demand (because of age or other factors), are currently located on private land pastures in Iowa, Kansas, Oklahoma, and South Dakota. Located in mid or tall grass prairie regions of the United States, these LTPs are highly productive grasslands as compared to more arid western rangelands. These pastures comprise about 256,000 acres (an average of about 8-10 acres per animal). The majority of these animals are older in age.

Mares and castrated stallions (geldings) are segregated into separate pastures except one facility where geldings and mares coexist. No reproduction occurs in the long-term grassland pastures, but foals are

born to mares that were pregnant when they were removed from the range and placed onto the LTP. These foals are gathered and weaned when they reach about 8-10 months of age and are then shipped to short-term facilities where they are made available adoption. Handling by humans is minimized to the extent possible although regular on-the-ground observation and weekly counts of the wild horses to ascertain their numbers, well-being, and safety are conducted. A very small percentage of the animals may be humanely euthanized if they are in very thin condition and are not expected to improve to a BCS of 3 or greater due to age or other factors. Natural mortality of wild horses in LTP averages approximately 8% per year, but can be higher or lower depending on the average age of the horses pastured there (GAO-09-77, Page 52). The savings to the American taxpayer which results from contracting for LTP averages about \$4.45 per horse per day as compared with maintaining the animals in short-term holding facilities.

### **Euthanasia and Sale without Limitation**

While humane euthanasia and sale without limitation of healthy horses for which there is no adoption demand is authorized under the WFRHBA, Congress prohibited the use of appropriated funds between 1987 and 2004 and again in 2010 for this purpose. It is unknown if a similar limitation will be placed on the use of FY2011 appropriated funds. Sale with limitations has been used by the BLM since 2005 when the Act was amended.

### **No Action Alternative**

Under the No Action Alternative, there would be no active management to maintain the population size within the established AML at this time. In the absence of a gather, wild horse populations would continue to grow at an average rate of at least 10% per year. Without a gather and removal now, the population would grow to the upper limit of AML in five years time based on the average annual growth rate for both the Clan Alpine and Pilot Mountain HMAs. The wild horse population for the Pine Nut Mountain HMA already exceeds the upper limit of the AML and would exceed the AML by an even greater number within five years. In order to bring the HMAs back to AML, the BLM would be required in the next 10 years to gather and remove 692 excess wild horses from the Clan Alpine and Pilot Mountain HMAs that would otherwise not be present under the Proposed Action. An additional 354 excess wild horses would also need to be removed from the Pine Nut Mountain HMA under the No Action alternative. The excess animals would be transported to BLM short-term corral facilities where they would be prepared for adoption, sale or long-term holding. Any excess animals not adopted or sold would be maintained at a cost of up to \$12,000 per horse over 20 years.

## **4.2.2 Vegetation**

### **Proposed Action Alternative**

Native plant communities can only sustain a certain level of grazing utilization. The upper limit of the AML range is the maximum number of wild horses that can be maintained within an HMA and not adversely impact the plant community in combination with other multiple uses such as wildlife and livestock grazing. The proposed action would also help in achieving and maintaining the wild horse populations within AML, vegetative health would be promoted.

### **No Action Alternative**

Under the no action alternative wild horse populations would continue to increase. When wild horse populations are above AML, overutilization of vegetation occurs. The potential negative effects of over-

utilization to vegetation are root crown damage, plant stress and the reduced ability of forage species to reproduce and compete with other species in the plant community. If wild horse populations continue to grow and exceed AML, desirable plant species would eventually be lost from the HMAs and surrounding areas. Maintaining and achieving S&Gs would not occur.

#### **4.2.3 Noxious Weeds**

##### **Proposed Action Alternative**

Intact healthy native plant communities are more resistant to the establishment and spread of noxious weeds. By managing wild horses at a level compatible with the native plant communities, noxious weeds will be less likely to become established and spread.

##### **No Action Alternative**

Under the no action alternative the wild horse population would continue to increase and eventually the health of the native plant communities would become stressed, thereby facilitating the establishment and spread of noxious weeds.

#### **4.2.4 Invasive Weeds**

##### **Proposed Action Alternative**

Intact healthy native plant communities are more resistant to establishment and spread of invasive weeds. By managing wild horses at a level compatible with the native plant communities, invasive weeds will be less likely to become established and spread.

##### **No Action Alternative**

Under the no action alternative the wild horse population would continue to increase and eventually the health of the native plant communities would become stressed, facilitating the establishment and spread of invasive weeds.

#### **4.2.5 Livestock**

Impacts to livestock would be similar to those described in the following EAs: Clan Alpine Herd Management Area Plan and Capture Plan and EA #NV-030-93-004, 1993; Clan Alpine Determination of Land Use Plan Conformance and NEPA Adequacy #NV-030-00-006, 2000; Pine Nut Mountain Herd Management Area Capture Plan and EA #NV-030-03-18, 2003; and Pilot Mountain Herd Management Area Final Capture Plan and EA #NV-030-04-20, 2004. These analyses are incorporated by reference.

##### **Proposed Action Alternative**

By managing horses at AML, adequate forage would be available for grazing by domestic livestock, in addition to wild horses, which would achieve or move toward meeting management objectives.

##### **No Action Alternative**

Loss of desirable plant species would affect livestock grazing as a result of over utilization of forage by an excess number of wild horses above AML.

#### 4.2.6 General Wildlife

Key Habitat types and associated Ecological Systems (plant communities) in the HMAs that could potentially be affected directly or indirectly by the Proposed Action are displayed in Table 15.

**Table 15: Key Habitat types and associated Ecological Systems that may exist and be potentially affected in the Pilot Mountains and Clan Alpine HMAs. Based on SWReGAP descriptions (USGS 2005).**

Key Habitat / Associated Ecological System(s)	Potential Plant Species	Scientific Name
Intermountain Cold Desert Scrub / Intermountain Basins Mixed Salt Desert Scrub	Alkali sacaton	<i>Sporobolus airoides</i>
Sagebrush / Great Basin Xeric Mixed Sagebrush Shrubland, Inter-Mountain Basins Big Sagebrush Shrubland, Inter-Mountain Basins Semi-Desert Grassland	Big galleta	<i>Pleuraphis rigida</i>
Lower Montane Woodlands / Great Basin Pinyon-Juniper Woodland	Bailey's greasewood	<i>Sarcobatus vermiculatus</i> var. <i>baileyi</i>
	Big sagebrush	<i>Artemisia tridentata</i>
	Black sagebrush	<i>Artemisia nova</i>
	Bottlebrush squirreltail	<i>Elymus elymoides</i>
	Bud sagebrush	<i>Picrothamnus desertorum</i>
	Common spikerush	<i>Eleocharis palustris</i>
	Desert needlegrass	<i>Achnatherum speciosum</i>
	Fourwing saltbush	<i>Atriplex canescens</i>
	Galleta	<i>Pleuraphis jamesii</i>
	Indian ricegrass	<i>Achnatherum hymenoides</i>
	Low sagebrush	<i>Artemisia arbuscula</i>
	Nevada jointfir	<i>Ephedra nevadensis</i>
	Needle and thread grass	<i>Hesperostipa comata</i>
	Rubber rabbitbrush	<i>Ericameria nauseosa</i>
	Saltbush spp	<i>Atriplex spp</i>
	Sandberg bluegrass	<i>Poa secunda</i>
	Shadscale saltbush	<i>Atriplex confertifolia</i>
	Spiny hopsage	<i>Grayia spinosa</i>
	Winterfat	<i>Krascheninnikovia lanata</i>
	Yellow rabbitbrush	<i>Chrysothamnus viscidiflorus</i>

#### Proposed Action Alternative

Direct, short-term, localized impacts could occur to wildlife species during gather operations. Wildlife, including small mammals, rodents, and reptiles, could be trampled or have burrows destroyed. However, any potential spatial displacement to big game, upland game, and resident birds would likely be temporary.

Horse numbers are within the established AML range for the Clan Alpine and Pilot Mt. HMAs, but exceed the upper range of AML for the Pine Nut HMA. Beneficial indirect effects to wildlife resources would be expected from a reduction in horse numbers to within AML for the Pine Nut HMA and continued maintenance of horse numbers within AML for the Clan Alpine and Pilot Mt. HMAs, because the health of rangeland resources necessary for wildlife habitat would be protected by avoiding the habitat degradation associated with wild horse overpopulation. Managing horses within AML should provide adequate habitat requirements of forage, water, cover, and space for wildlife species.

Overall, if the gather and contraception efforts are successful, maintaining less utilization and competition for forage would benefit species dependent on these key habitats for food, water, and cover. Additionally, species that prey on wildlife that inhabit these plant communities, such as golden eagles, may benefit from an increased prey base over time.

### **No Action Alternative**

While no direct, short-term, localized impacts from potential trampling and spatial displacement would occur to wildlife species because no gather operations would occur, horse populations that increase over the upper limit of the AML can indirectly have long-term negative impacts to wildlife resources. Wild horses primarily eat native bunchgrasses so dietary overlap between horses and mule deer, as well as pronghorn, has been documented as minimal (1%). Dietary overlap with desert bighorn sheep has been documented around 50% when averaged throughout the year (Hanley & Hanley 1982, Hansen et al. 1977). However, if AML is exceeded over time and overutilization of vegetation and water sources by wild horses occurs, this is a factor in decreasing plant diversity and altering habitat structure (Beever and Brussard 2000). A less diverse plant community can be vulnerable to fire and in turn invasive grasses such as cheatgrass. Cheatgrass displaces native perennial shrub, grass, and forb species because of its ability to outcompete native plants for water and nutrients by germinating earlier and quicker. Cheatgrass is also adapted to recurring fires that are perpetuated in part by the fine dead fuels that it leaves behind. In general, most wildlife species have a difficult time thriving in these altered fire regimes because diverse native vegetation is required for food, water, and cover. Beever et al. (2008) conducted a study of vegetation response to removal of horses in 1997 and 1998 (part of this study was in the Clan Alpine HMA) and concluded that horse-removed sites exhibited 1.1–1.9 times greater shrub cover, 1.2–1.5 times greater total plant cover, 2–12 species greater plant species richness, 1.9–2.9 times greater native grass cover, and 1.1–2.4 times greater frequency of native grasses than did horse-occupied sites.

The effects of wild horses are not uniform across the landscape. Horses will utilize areas of the HMAs that have more grasses because they are primarily grazers. While impacts to water sources and riparian areas from horses are different than cattle due to behavior (horses tend to not linger at a source and drink in the morning and at night), decreased cover and diversity of grasses and shrubs as well as decreased mammal burrow density have been documented at water sources utilized by wild horses (Beever and Brussard 2000, Ganskopp and Vavra 1986). Small mammals are a prey base for many species and as a result, less prey can negatively affect raptors and carnivores that may inhabit the area. Mountain lion populations have been shown to predate foals which in turn increased lion numbers (Turner and Morrison 2001).

#### **4.2.7 Migratory Birds**

##### **Proposed Action Alternative**

Gather operations would not be expected to directly impact breeding populations of migratory bird species because operations would occur in winter outside the breeding season. Direct, short-term, localized impacts could occur to resident birds during gather operations via potential spatial displacement of individual birds.

For reasons described in the Environmental Consequences, General Wildlife section (Section 4.2.3), managing wild horse populations within AML should maintain habitat conditions that benefit migratory bird species over the long-term by providing a diverse vegetation structure that provides for the applicable components of the life cycle requirements that any given species may need to successfully reproduce

##### **No Action Alternative**

While no direct, short-term, localized impacts from potential spatial displacement would occur to migratory birds because no gather operations would occur, horse populations that increase over the upper limit of the AML could indirectly have long-term negative impacts to wildlife resources. Over-utilization of forage by wild horses could occur if population numbers increase beyond AML. Habitat could become degraded, which would decrease forage and cover available to migratory bird species. Over time this could decrease the abundance of species that inhabit the HMAs.

#### **4.2.8 BLM Sensitive Species**

##### **Proposed Action Alternative**

Impacts would generally be the same to BLM sensitive species as described in the Environmental Consequences, General Wildlife section (Section 4.2.3). Managing horses within AML should ensure habitat conditions that, over time, would benefit sensitive species by providing a diverse vegetation structure and composition that provides for the applicable life cycle requirements of any given species.

Minimizing or maintaining current levels of competition for water and forage would be beneficial to sensitive species dependent on key habitats for water, food, and cover. Sensitive species such as the golden eagle or burrowing owl that forage in the HMAs would benefit from a healthy prey base.

##### **No Action Alternative**

Over-utilization of forage by wild horses could occur if population numbers increase beyond AML. Habitat could become degraded, which would decrease forage and cover available to BLM sensitive species. Prey for BLM sensitive species could also decline. Over time this could decrease the abundance of sensitive species that inhabit the HMAs.

Sage-grouse require specific amounts of grass cover for optimal nesting habitat, an abundance of forbs for brood-rearing habitat, and free water with sufficient vegetation to support insects and to provide cover (Connelly et al. 2000). Sage-grouse habitat can therefore be negatively affected if grass is over-utilized as a result of an over-population of wild horses.

#### **4.2.9 BLM Designated Sensitive Species**

##### **Proposed Action Alternative**

Lavin eggvetch and Lahontan beardtongue are grazed; extent of utilization by livestock and horses is not currently established. Managing wild horses within the AML could be expected to result in less grazing pressure on Lavin eggvetch and Lahontan beardtongue.

##### **No Action Alternative**

High densities of wild horses may graze on the two forb species with unknown impacts over time.

#### **4.2.10 Health and Safety**

##### **Proposed Action Alternative**

Public safety as well as that of the BLM and contractor staff is always a concern during the gather operations and would be addressed through Observation Protocols that have been used in recent gathers to ensure that the public remains at a safe distance and does not get in the way of gather operations, and by the presence of law enforcement officers at the site. These measures minimize the risks to the health and safety of the public, BLM staff and contractors, and to the wild horses themselves during the gather operations. Public observation of the gather would be consistent with BLM IM No. 2010-164.

##### **No Action Alternative**

There would be no gather related safety concerns for BLM employees, contractors and the general public as no gather activities would occur.

#### **4.3 Cumulative Effects for All Alternatives**

The NEPA regulations define cumulative effects as impacts on the environment that result from the incremental impact of the Proposed Action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such actions (40 CFR 1508.7). Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. The relevant supplemental authorities and resources other than supplemental authorities identified by the internal BLM ID team during scoping for the Proposed Action related to wild horses, vegetation resources, wetlands and riparian zones, noxious and invasive species, wildlife, BLM designated sensitive species, migratory birds, and human health and safety. The Herd Management Area Plans completed for the 3 HMAs evaluated habitat, established short and long-term management and monitoring objectives for the wild horse populations. The Cumulative Effects Study Area (CESA) for evaluating the Proposed and Alternative actions for this EA is the Clan Alpine, Pilot Mountain and Pine Nut HMAs.

##### **4.3.1 Past and Present Actions**

The actions which have influenced today's wild horse populations are primarily wild horse gathers, which have resulted in the removal of 321 excess horses from the Clan Alpine HMA since 2000, 323 excess horses from the Pine Nut HMA since 2000 and 253 excess horses from the Pilot Mountain HMA since 2000. Refer to EAs Clan Alpine Herd Management Area Plan and Capture Plan and EA #NV-030-93-004, 1993, Clan Alpine Determination of Land Use Plan Conformance and NEPA Adequacy #NV-030-00-006, 2000, Pine Nut Mountain Herd Management Area Capture Plan and EA #NV-030-03-

18, 2003, Pilot Mountain Herd Management Area Final Capture Plan and EA #NV-030-04-20, 2004 for additional information.

#### 4.3.2 Reasonably Foreseeable Future Actions

Over the next 10-20 year period, reasonably foreseeable future actions include gathers about every two-three years to revaccinate the mares and remove a few excess wild horses in order to manage population size within the established AML range. The HMAPs which have been completed for the three HMAs to establish short and long-term management and monitoring objectives for the herd and its habitat will be evaluated. Any future wild horse management would be analyzed in appropriate environmental documents following site-specific planning with public involvement.

Other reasonably foreseeable future actions include the transport, handling, care, and disposition of the excess wild horses removed from the range. Initially wild horses would be transported from the capture/temporary holding corrals to a designated BLM short-term holding corral facility. From there, the animals would be made available for adoption or sale to individuals who can provide a good home, or to LTH pastures.

**Table 16: Past, Present and Reasonably Foreseeable future actions applicable to the CESA.**

Project -- Name or Description	Status (x)		
	Past	Present	Future
Issuance of multiple use decisions and grazing permits for ranching operations through the allotment evaluation process and the reassessment of the associated allotments.	X	X	X
Livestock grazing.	X	X	X
Wild horse gathers.	X	X	X
Invasive weed inventory/treatments.	X	X	X
Wild horse issues, issuance of multiple use decisions AML adjustments and planning.	X	X	X

#### 4.4 Summary of Past, Present, and Reasonably Foreseeable Future Actions

##### Proposed Action Alternative

The cumulative affects associated with the capture and removal of excess wild horses and the application of fertility control vaccine to release mares includes gather-related mortality of less than 1% of the captured animals, about 5% per year associated with transportation, short term holding, adoption or sale with limitations and about 8% per year associated with long-term holding. This compares with natural mortality on the range ranging from about 5-8% per year for foals (animals under age 1), about 5% per year for horses ages 1-15, and 5-100% for animals age 16 and older (Stephen Jenkins, 2002, Garrott and Taylor, 1990). In situations where forage and/or water are limited, mortality rates increase, with the greatest impact to young foals, nursing mares and older horses. Animals can experience lameness associated with trailing to/from water and forage, foals may be orphaned (left behind) if they cannot keep up with their mare, or animals may become too weak to travel. After suffering, often for an extended period, the animals may die. Before these conditions arise, the BLM generally removes the excess animals to prevent their suffering from dehydration or starvation.

While humane euthanasia and sale without limitation of healthy horses for which there is no adoption demand is authorized under the WFRHBA, Congress prohibited the use of appropriated funds between 1987 and 2004 and again in 2010 for this purpose. It is unknown if a similar limitation will be placed on the use of FY2011 appropriated funds.

The other cumulative affects which would be expected when incrementally adding either of the Action Alternatives to the CESA would include continued improvement of upland vegetation conditions, which would in turn benefit permitted livestock, native wildlife, and wild horse population as forage (habitat) quality and quantity is improved over the current level. Application of fertility control should slow population growth and result in fewer excess wild horses that need to be removed. However, return of wild horses back into the HMA could lead to increased difficulty and greater costs to gather horses in the future as released horses learn to evade the helicopter.

Cumulatively, there should be more stable wild horse populations, less competition for limited forage and water resources, healthier rangelands and wild horses, and fewer multiple use conflicts in the area over the short and long-term. Over the next 10-20 years, continuing to manage wild horses within the established AML range would achieve a thriving natural ecological balance and multiple use relationship on public lands in the area.

#### **No Action Alternative**

Under the No Action Alternative, the wild horse population could exceed 2,000 for all three HMAs including horses outside of the HMA in four years. Movement outside the HMA would be expected as greater numbers of horses search for food and water. Heavy to excessive utilization of the available forage would be expected and the water available for use could become increasingly limited.

Emergency removals could be expected in order to prevent individual animals from suffering or death as a result of insufficient forage and water. Cumulative effects would result in foregoing the opportunity to improve rangeland health and to properly manage wild horses in balance with the available forage and water and other multiple uses. Attainment of site-specific vegetation management objectives and Standards for Rangeland Health would not be achieved. AML would not be achieved and the opportunity to collect the scientific data necessary to re-evaluate AML levels, in relationship to rangeland health standards, would be foregone.

#### **5.0 Monitoring and Mitigation Measures**

The BLM COR and PIs assigned to the gather would be responsible for ensuring contract personnel abide by the contract specifications and the SOPs (Appendix B). Ongoing monitoring of forage condition and utilization, water availability, aerial population surveys, and animal health would continue. Fertility control monitoring would be conducted in accordance with the SOPs (Appendix A).

## 6.0 List of Preparers

The following list identifies the interdisciplinary team member's area of responsibility:

### Internal CCDO Review

Name	Title	Responsible for the Following Section(s) of this Document
John Axtell	Wild Horse Specialist	Project Lead/ Wild Horse
John Wilson, Pilar Ziegler	Wildlife Biologists	Wildlife, Migratory Birds, and Special Status Species
Jim deLaureal	Soil Scientist	Non-native Invasive Species Including Noxious Weeds, Soil, and Water.
Steve "Chip" Kramer, Brian Buttazoni	NEPA Coordinators	NEPA, Air Quality, Environmental Justice, Human Health and Safety
Linda Appel, Jill Deavaurs, Katrina Leavitt	Rangeland Management Specialists	Livestock Grazing
Susan McCabe, Stephen Christy	Archaeologists	Cultural Resources and Native American Religious Concerns
Dan Westermeyer	Outdoor Recreation Planner	Wilderness Study Areas

## 7.0 Consultation and Coordination

Public hearings are held annually on a state-wide basis regarding the use of motorized vehicles, including helicopters and fixed-wing aircraft, in the management of wild horses (or burros). During these meetings, the public is given the opportunity to present new information and to voice any concerns regarding the use of motorized vehicles. The Elko District Office held a state-wide public hearing on July 1, 2010; thirteen public participants attended and their comments were entered into the record for this hearing. Most were in support of the use of helicopters and the gathering of excess wild horses. Standard Operating Procedures were reviewed following this public hearing and no changes to the SOPs were indicated based on this review.

The use of helicopters and motorized vehicles has proven to be a safe, effective and practical means for the gather and removal of excess wild horses and burros from the range. Since July 2004, Nevada has gathered 26,000 animals with a mortality rate of 1.1 percent (of which 0.5 percent was gather related) which is very low when handling wild animals. BLM also avoids use of helicopters for gathering wild horses prior to and during the peak foaling period and therefore does not conduct helicopter removals of wild horses from March 1 through June 30 unless under emergency situations.

## 8.0 Public Involvement

Comments were accepted on the Clan Alpine, Pilot Mountain and Pine Nut Mountain Gather Plan Environmental Assessment DOI-BLM-NV-L030-2010-0019-EA, for a 30-day period from August 23,

2010 until September 23, 2010, although comments received in a timely manner after the date were also considered. Hard copies of the EA were available at the Carson City District Office. The EA is posted at: [http://www.blm.gov/nv/st/en/fo/carson\\_city\\_field/blm\\_programs/wild\\_horse\\_and\\_burro.html](http://www.blm.gov/nv/st/en/fo/carson_city_field/blm_programs/wild_horse_and_burro.html)

See Appendix G for Consolidated Public Comments and BLM Responses.

## 9.0 List of References

### References

BEEVER EA, AND BRUSSARD, PF (2000) Examining ecological consequences of feral horse grazing using exclosures. *Western North American Naturalist*. 60:236–254.

BEEVER EA, TAUSCH, R. J., THOGMARTIN, W. E. (2008) Multi-scale responses of vegetation to removal of horse grazing from Great Basin (USA) mountain ranges. *Plant Ecology*. 196:163–184.

Curtis, P.D., Pooler, R.L., Richmond, M.E., Miller, L.A., Mattfield, G.F., Quimby, F.W. 2002. Comparative effects of GnRH and porcine zona pellucida (PZP) immunocontraception vaccines for controlling reproduction in white-tailed deer (*Odocoileus virginianus*). *Reproduction Supplement* 60:131–141.

BLM. 2003. Nevada BLM Sensitive Species List. Unpub. Doc. Signed 7-1-03. Reno, NV.

BLM 2007a. IM-2008-050 Migratory Bird Treaty Act – Interim Guidance. Dated December 18, 2007. Unpub. Doc. CCFO files.

CONNELLY, J.W., M. A. SCHROEDER, A. R. SAND, and C. E. . BRAUN 2000, Guidelines to manage sage grouse populations and their habitats. *Wildlife Society Bulletin* 28(4):967 – 985.

GANSKOPP, D., AND M. VAVRA. 1986. Habitat use by feral horses in the northern sagebrush steppe. *Journal of Range Management* 39:207–212.

GAO-09-77. 2008. Report to the chairman, committee on natural resources, House of Representatives. Bureau of Land Management. Effective long-term options needed to manage unadoptable wild horses. 88pp.

GARROTT R .and L.TAYLOR. 1990. Dynamics of a feral horse population in Montana. *Journal of Wildlife Management* 54:603-612.

HANLEY, T.A., AND K.A. HANLEY. 1982. Food resource partitioning by sympatric ungulates on Great Basin rangeland. *Journal of Range Management* 35:152–158.

HANSEN, R.M., R.C. CLARK, LAWHORN, W. 1977. Foods of wild horses, deer, and cattle in the Douglas Mountain area, Colorado. *J. Range Manage.* 30:116-118.

Heilmann, T.J., Garrott, R.A., Caldwell, L.L., Tiller, B.L. 1998. Behavioral response of free-ranging elk treated with an immunocontraceptive vaccine. *Journal of Wildlife Management* 62:243–250.

JENKINS, S. H. 2000. Density dependence in population dynamics of feral horses. Resource Notes No.26. Bureau of Land Management, U. S. Department of the Interior, 2 pages.

JENKINS, S.H. 2002 Wild Horse Population Model version 1.4. This is a stochastic model which simulates growth of wild horse populations under various management options and is used by the Bureau of Land Management for projecting the affects of culling and fertility control on population dynamics. It is written in Visual Basic for Windows and has extensive on-line help. It is descended from versions written in 1993 in C++ and 1996 in True BASIC

KIRKPATRICK, J. F. 1995. Management of Wild Horses by Fertility Control: The Assateague Experience. National Park Service Scientific Monograph, National Park Service, Denver, CO. 60 pp.  
KIRKPATRICK, J.F., A. T., RUTBERG, and L. COATES-MARKLE, 2010. Immunoconrative control utilizing porcine zona pellucida PZP in federal wild horse populations. Editor P.M. Fazio. 42pp.

Mack, R.N. and J.N. Thompson. 1982. Evolution in steppe with few large, hoofed mammals. American Naturalist. 119:757-773

Madosky, J.M., Rubenstein, D.I., Howard, J.J., Stuska, S. In press. The effects of immunocontraception on harem fidelity in a feral horse (*Equus caballus*) population. Applied Animal Behaviour Science.

NDOW 2010 Misc. key game habitat maps – mule deer. CCDO files. Carson City, NV

NDOW 2010, Misc. key game habitat maps - bighorn. CCDO files. Carson City, NV

NDOW 2010, Misc. key game habitat maps - pronghorn. CCDO files. Carson City, NV

NDOW 2010, Misc. key habitat maps – sage-grouse. CCDO files. Carson City, NV

NDOW 2006 Nevada Wildlife Action Plan. Nevada Department of Wildlife, Reno, NV.

Nunez, C.M.V., Adelman, J.S., Mason, C., Rubenstein, D.I. 2009. Immunocontraception decreases group fidelity in a feral horse population during the non-breeding season. Applied Animal Behaviour Science 117:74–83.

Powell, D.M. 1999. Preliminary evaluation of porcine zona pellucida (PZP) immunocontraception for behavioral effects in feral horses (*Equus caballus*). Journal of Applied Animal Welfare Science 2:321–335.

Ransom, J.I., Cade, B.S., Hobbs, N.T. 2010. Influences of immunocontraception on time budgets, social behavior, and body condition in feral horses. Applied Animal Behaviour Science 124:51–60.

Shumake, S.A., Wilhelm, E.S. 1995. Comparisons of effects of four immunocontraceptive treatments on estrous cycle and rutting behavior in captive white-tailed deer. Denver Wildlife Research Center, Colorado, USA.

TURNER, J.W JR., AND M.L. MORRISON. 2001. Influence of mountain lions on numbers and survivorship of a feral horse population. *The Southwestern Naturalist*. 46:183–190.

Turner, A., Kirkpatrick, J.F. 2002. Effects of immunocontraception on population, longevity and body condition in wild mares (*Equus caballus*). *Reproduction Supplement* 60:187–195.

USGS 2005 National Gap Analysis Program. Southwest Regional GAP Analysis Project—Land Cover Descriptions. RS/GIS Laboratory, College of Natural Resources, Utah State University. Accessed at: [http://earth.gis.usu.edu/swgap/data/atool/files/swgap\\_legend\\_desc.pdf](http://earth.gis.usu.edu/swgap/data/atool/files/swgap_legend_desc.pdf).

## **10.0 Appendices**

Appendix A - Standard Operating Procedures (Fertility Control Application and Monitoring)

Appendix B - Standard Operating Procedures (Gather Operation)

Appendix C - Win Equus Population Modeling Results

Appendix D - List of Figures - Herd Management Areas and Grazing Allotment Maps

Appendix E - List of Acronyms

Appendix F - Persons, Groups or Agencies Consulted

Appendix G - Consolidated Public Comments and BLM Responses

Appendix H - Wild Horse Gather Public Observation Protocol

## **APPENDIX A**

### **Standard Operating Procedures for Population-level Fertility Control Treatments**

#### **22-month time-release pelleted vaccine:**

1. PZP vaccine would be administered only by trained BLM personnel or collaborating research partners.
2. Mares that have never been treated would receive 0.5 cc of PZP vaccine emulsified with 0.5 cc of Freund's Modified Adjuvant (FMA). Mares identified for re-treatment receive 0.5 cc of the PZP vaccine emulsified with 0.5 cc of Freund's Incomplete Adjuvant (FIA).
3. The fertility control drug is administered with two separate injections: (1) a liquid dose of PZP is administered using an 18-gauge needle primarily by hand injection; (2) the pellets are preloaded into a 14-gauge needle. These are delivered using a modified syringe and jabstick to inject the pellets into the gluteal muscles of the mares being returned to the range. The pellets are designed to release PZP over time similar to a time-release cold capsule.
4. Delivery of the vaccine would be by intramuscular injection into the gluteal muscles while the mare is restrained in a working chute. The primer would consist of 0.5 cc of liquid PZP emulsified with 0.5 cc of Freund's Modified Adjuvant (FMA). The pellets would be loaded into the jabstick for the second injection. With each injection, the liquid or pellets would be injected into the left hind quarters of the mare, above the imaginary line that connects the point of the hip (hook bone) and the point of the buttocks (pin bone).
5. In the future, the vaccine may be administered remotely using an approved long range darting protocol and delivery system if or when that technology is developed.
6. All treated mares will be freeze-marked on the hip or neck HMA managers to positively identify the animals as treated during routine field observation and at the time of possible removal during subsequent gathers.

#### **Monitoring and Tracking of Treatments:**

1. At a minimum, estimation of population growth rates using helicopter or fixed-wing surveys will be conducted before any subsequent gather. During these surveys it is not necessary to identify which foals were born to which mares; only an estimate of population growth is needed (i.e. # of foals to # of adults).
2. Population growth rates of herds selected for intensive monitoring will be estimated every year post-treatment using helicopter or fixed-wing surveys. During these surveys it is not necessary to identify which foals were born to which mares, only an estimate of population growth is needed (i.e. # of foals to # of adults). If, during routine HMA field monitoring (on-the-ground), data describing mare to foal ratios can be collected, these data should also be shared with the NPO for possible analysis by the USGS.
3. A PZP Application Data sheet will be used by field applicators to record all pertinent data relating to identification of the mare (including photographs if mares are not freeze-marked) and date of treatment. Each applicator will submit a PZP Application Report and accompanying narrative and data sheets will be forwarded to the NPO (Reno, Nevada). A copy of the form and data sheets and any photos taken will be maintained at the field office.

4. A tracking system will be maintained by NPO detailing the quantity of PZP issued, the quantity used, disposition of any unused PZP, the number of treated mares by HMA, field office, and State along with the freeze-mark(s) applied by HMA and date.

## **APPENDIX B**

### **Standard Operating Procedures for Wild Horse (or Burro) Gathers**

Gathers are conducted by utilizing contractors from the Wild Horse (or Burros) Gathers-Western States Contract or BLM personnel. The following procedures for gathering and handling wild horses apply whether a contractor or BLM personnel conduct a gather. For helicopter gathers conducted by BLM personnel, gather operations will be conducted in conformance with the *Wild Horse Aviation Management Handbook* (January 2009).

Prior to any gathering operation, the BLM will provide for a pre-capture evaluation of existing conditions in the gather area(s). The evaluation will include animal conditions, prevailing temperatures, drought conditions, soil conditions, road conditions, and a topographic map with wilderness boundaries, the location of fences, other physical barriers, and acceptable trap locations in relation to animal distribution. The evaluation will determine whether the proposed activities will necessitate the presence of a veterinarian during operations. If it is determined that a large number of animals may need to be euthanized or capture operations could be facilitated by a veterinarian, these services would be arranged before the capture would proceed. The contractor will be apprised of all conditions and will be given instructions regarding the capture and handling of animals to ensure their health and welfare is protected.

Trap sites and temporary holding sites will be located to reduce the likelihood of injury and stress to the animals, and to minimize potential damage to the natural resources of the area. These sites would be located on or near existing roads whenever possible.

The primary capture methods used in the performance of gather operations include:

1. Helicopter Drive Trapping. This capture method involves utilizing a helicopter to herd wild horses into a temporary trap.
2. Helicopter Assisted Roping. This capture method involves utilizing a helicopter to herd wild horses or burros to ropers.
3. Bait Trapping. This capture method involves utilizing bait (e.g., water or feed) to lure wild horses into a temporary trap.

The following procedures and stipulations will be followed to ensure the welfare, safety and humane treatment of wild horses in accordance with the provisions of 43 CFR 4700.

#### **A. Capture Methods used in the Performance of Gather Contract Operations**

1. The primary concern of the contractor is the safe and humane handling of all animals captured. All capture attempts shall incorporate the following:

All trap and holding facilities locations must be approved by the Contracting Officer's Representative (COR) and/or the Project Inspector (PI) prior to construction. The Contractor may also be required to change or move trap locations as determined by the COR/PI. All traps and holding facilities not located on public land must have prior written approval of the

landowner.

2. The rate of movement and distance the animals travel shall not exceed limitations set by the COR who will consider terrain, physical barriers, access limitations, weather, extreme temperature ( high and low), condition of the animals, urgency of the operation (animals facing drought, starvation, fire rehabilitation, etc.) and other factors. In consultation with the contractor the distance the animals travel will account for the different factors listed above and concerns with each HMA.
3. 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 for horses and 60 inches for burros, and the bottom rail of which shall not be more than 12 inches from ground level. All traps and holding facilities shall be oval or round in design.
  - b. All loading chute sides shall be a minimum of 6 feet high and shall be fully covered, plywood, metal without holes larger than 2"x4".
  - c. All runways shall be a minimum of 30 feet long and a minimum of 6 feet high for horses, and 5 feet high for burros, and shall be covered with plywood, burlap, plastic snow fence or like material a minimum of 1 foot to 5 feet above ground level for burros and 1 foot to 6 feet for horses. The location of the government furnished portable fly chute to restrain, age, or provide additional care for the animals shall be placed in the runway in a manner as instructed by or in concurrence with the COR/PI.
  - d. All crowding pens including the gates leading to the runways shall be covered with a material which prevents the animals from seeing out (plywood, burlap, plastic snow fence, etc.) and shall be covered a minimum of 1 foot to 5 feet above ground level for burros and 2 feet to 6 feet for horses
  - e. All pens and runways used for the movement and handling of animals shall be connected with hinged self-locking or sliding gates.
4. No modification of existing fences will be made without authorization from the COR/PI. The Contractor shall be responsible for restoration of any fence modification which he has made.
5. When dust conditions occur within or adjacent to the trap or holding facility, the Contractor shall be required to wet down the ground with water.
6. Alternate pens, within the holding facility shall be furnished by the Contractor to separate mares or jennies with small foals, sick and injured animals, estrays or other animals the COR determines need to be housed in a separate pen 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. Under normal conditions, the government will require that animals be restrained for the purpose of determining an animal's age, sex, or other necessary procedures. In these instances, a portable restraining chute may be necessary and will be provided by the government. Alternate pens shall be furnished by the Contractor to hold animals if the specific gathering requires that animals be released back into the capture area(s). In areas requiring one or more satellite traps, and where a centralized holding facility is utilized, the contractor may be required to provide additional holding pens to segregate animals transported from remote locations so they may be returned to their traditional ranges. Either segregation or temporary marking and later segregation will be at the discretion of the COR.

7. 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. The contractor will supply certified weed free hay if required by State, County, and Federal regulation.

An animal that is held at a temporary holding facility through the night is defined as a horse/burro feed day. An animal that is held for only a portion of a day and is shipped or released does not constitute a feed day.

8. It is the responsibility of the Contractor to provide security to prevent loss, injury or death of captured animals until delivery to final destination.
9. The Contractor shall restrain sick or injured animals if treatment is necessary. The COR/PI will determine if animals must be euthanized and provide for the destruction of such animals. The Contractor may be required to humanely euthanize animals in the field and to dispose of the carcasses as directed by the COR/PI.
10. Animals shall be transported to their final destination from temporary holding facilities as quickly as possible after capture unless prior approval is granted by the COR for unusual circumstances. Animals to be released back into the HMA following gather operations may be held up to 21 days or as directed by the COR. 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 COR. The Contractor shall schedule shipments of animals to arrive at final destination between 7:00 a.m. and 4:00 p.m. No shipments shall be scheduled to arrive at final destination on Sunday and Federal holidays, unless prior approval has been obtained by the COR. Animals shall not be allowed to remain standing on trucks while not in transport for a combined period of greater than three (3) hours in any 24 hour period. Animals that are to be released back into the capture area may need to be transported back to the original trap site. This determination will be at the discretion of the COR/PI or Field Office horse specialist.

## **B. Additional Capture Methods That May Be Used in the Performance of a Gather**

1. Capture attempts may be accomplished by utilizing bait (feed, water, mineral licks) to lure animals into a temporary trap. If this capture method is selected, the following applies:
  - a. Finger gates shall not be constructed of materials such as "T" posts, sharpened willows, etc., that may be injurious to animals.
  - b. All trigger and/or trip gate devices must be approved by the COR/PI prior to capture of animals.
  - c. Traps shall be checked a minimum of once every 10 hours.
2. Capture attempts may be accomplished by utilizing a helicopter to drive animals into a temporary trap. If the contractor selects this method the following applies:
  - a. A minimum of two saddle-horses shall be immediately available at the trap site to accomplish roping if necessary. Roping shall be done as determined by the COR/PI. Under no circumstances shall animals be tied down for more than one half hour.
  - b. The contractor shall assure that foals shall not be left behind, and orphaned.
3. Capture attempts may be accomplished by utilizing a helicopter to drive animals to ropers. If the contractor, with the approval of the COR/PI, selects this method the following applies:
  - a. Under no circumstances shall animals be tied down for more than one hour.
  - b. The contractor shall assure that foals shall not be left behind, or orphaned.
  - c. The rate of movement and distance the animals travel shall not exceed limitations set by the COR/PI who will consider terrain, physical barriers, weather, condition of the animals and other factors.

### **C. Use of 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. The Contractor shall provide the COR/PI, if requested, with a current safety inspection (less than one year old) for all motorized equipment and tractor-trailers used to transport animals to final destination.
2. All motorized equipment, tractor-trailers, and stock trailers 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 tractor-trailers or stock trailers with a covered top shall be allowed for transporting animals from trap site(s) to temporary holding facilities, and from temporary holding facilities to final

destination(s). Sides or stock racks of all trailers used for transporting animals shall be a minimum height of 6 feet 6 inches from the floor. Single deck tractor-trailers 40 feet or longer shall have at least two (2) partition gates providing at least three (3) compartments within the trailer to separate animals. Tractor-trailers less than 40 feet shall have at least one partition gate providing at least two (2) compartments within the trailer to separate the animals. Compartments in all tractor-trailers 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 tractor-trailers is unacceptable and shall not be allowed.

4. All tractor-trailers used to transport animals to final destination(s) shall be equipped with at least one (1) door at the rear end of the trailer which is capable of sliding either horizontally or vertically. The rear door(s) of tractor-trailers and stock trailers must be capable of opening the full width of the trailer. 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 all trailers must be strong enough so that the animals cannot push their hooves through the side. Final approval of tractor-trailers and stock trailers used to transport animals shall be held by the COR/PI.
5. Floors of tractor-trailers, stock trailers and loading chutes shall be covered and maintained with wood shavings to prevent the animals from slipping as much as possible during transport.
6. Animals to be loaded and transported in any trailer shall be as directed by the COR/PI and may include limitations on numbers according to age, size, sex, temperament and animal condition. The following minimum square feet per animal shall be allowed in all trailers:
  - 11 square feet per adult horse (1.4 linear foot in an 8 foot wide trailer);
  - 8 square feet per adult burro (1.0 linear foot in an 8 foot wide trailer);
  - 6 square feet per horse foal (.75 linear foot in an 8 foot wide trailer);
  - 4 square feet per burro foal (.50 linear feet in an 8 foot wide trailer).
7. The COR/PI shall consider the condition and size of the animals, weather conditions, distance to be transported, or other factors when planning for the movement of captured animals. The COR/PI shall provide for any brand and/or inspection services required for the captured animals.
8. If the COR/PI determines that dust conditions are such that the animals could be endangered during transportation, the Contractor will be instructed to adjust speed.

#### **D. Safety and Communications**

1. The Contractor shall have the means to communicate with the COR/PI and all contractor personnel engaged in the capture of wild horses utilizing a VHF/FM Transceiver or VHF/FM portable Two-Way radio. If communications are ineffective the government will take steps necessary to protect the welfare of the animals.
  - a. The proper operation, service and maintenance of all contractor furnished property are the responsibility of the Contractor. The BLM reserves the right to remove from service any

contractor personnel or contractor furnished equipment which, in the opinion of the contracting officer or COR/PI violate contract rules, are unsafe or otherwise unsatisfactory. In this event, the Contractor will be notified in writing to furnish replacement personnel or equipment within 48 hours of notification. All such replacements must be approved in advance of operation by the Contracting Officer or his/her representative.

- b. The Contractor shall obtain the necessary FCC licenses for the radio system
- c. All accidents occurring during the performance of any task order shall be immediately reported to the COR/PI.

2. Should the contractor choose to utilize a helicopter the following will apply:

- a. 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 in which the gather is located.
- b. Fueling operations shall not take place within 1,000 feet of animals.

#### **G. Site Clearances**

No personnel working at gather sites may excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage or otherwise alter or deface any archaeological resource located on public lands or Indian lands.

Prior to setting up a trap or temporary holding facility, BLM will conduct all necessary clearances (archaeological, T&E, etc). All proposed site(s) must be inspected by a government archaeologist. Once archaeological clearance has been obtained, the trap or temporary holding facility may be set up. Said clearance shall be arranged for by the COR, PI, or other BLM employees.

Gather sites and temporary holding facilities would not be constructed on wetlands or riparian zones.

#### **H. Animal Characteristics and Behavior**

Releases of wild horses would be near available water when possible. If the area is new to them, a short-term adjustment period may be required while the wild horses become familiar with the new area.

## **I. Public Participation**

Opportunities for public viewing (i.e. media, interested public) of gather operations will be made available to the extent possible; however, the primary considerations will be to protect the health, safety and welfare of the animals being gathered and the personnel involved. The public must adhere to guidance from the on-site BLM representative. It is BLM policy that the public will not be allowed to come into direct contact with wild horses or burros being held in BLM facilities. Only authorized BLM personnel or contractors may enter the corrals or directly handle the animals. The general public may not enter the corrals or directly handle the animals at anytime or for any reason during BLM operations.

## **J. Responsibility and Lines of Communication**

### **Contracting Officer's Representative/Project Inspector**

John Axtell

Alan Shepherd

The Contracting Officer's Representatives (CORs) and the project inspectors (PIs) have the direct responsibility to ensure the Contractor's compliance with the contract stipulations. The Stillwater and Sierra Front Assistant Field Managers for Resources and Stillwater and Sierra Front Field Managers will take an active role to ensure the appropriate lines of communication are established between the field, Field Offices, State Office, National Program Office, and BLM Holding Facility 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 Assistant Field Managers for Renewable Resources and Field Office Public Affairs. These individuals will be the primary contact and will coordinate with the COR/PI on any inquiries.

The COR will coordinate with the contractor and the BLM 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 vigorously enforced.

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

## APPENDIX C

### WinEquus Population Modeling Results

#### Clan Alpine HMA:

Clan Alpine Growth Rate, No Action  
Average Growth Rate in 10 Years

Lowest Trial	12.5
10th Percentile	17.0
25th Percentile	18.1
Median Trial	19.3
75th Percentile	20.6
90th Percentile	22.2
Highest Trial	23.3

Clan Alpine Population Sizes in 11 Years\*. No Action Alternative

	Minimum	Average	Maximum
Lowest Trial	717	1503	2614
10th Percentile	743	1858	3750
25th Percentile	754	2060	4158
Median Trial	773	2236	4620
75th Percentile	824	2472	5340
90th Percentile	878	2766	6082
Highest Trial	1145	3411	7251

\* 0 to 20+ year-old horses

Clan Alpine Average Growth Rate with Fertility Control  
Average Growth Rate in 10 Years

Lowest Trial	-4.8
10th Percentile	3.1
25th Percentile	5.1
Median Trial	6.8
75th Percentile	8.1
90th Percentile	9.0
Highest Trial	9.9

Clan Alpine Population Size with Fertility Control over 10 years  
Population Sizes in 11 Years\*

	Minimum	Average	Maximum
Lowest Trial	270	746	891
10th Percentile	603	866	1139
25th Percentile	681	902	1176
Median Trial	742	953	1235
75th Percentile	770	1001	1318
90th Percentile	808	1042	1393
Highest Trial	842	1107	1466

\* 0 to 20+ year-old horses

Clan Alpine number of horses removed with fertility control  
Totals in 11 Years\*

	Gathered	Removed	Treated
Lowest Trial	2219	0	764
10th Percentile	2630	0	900
25th Percentile	2748	468	955
Median Trial	2880	522	1012
75th Percentile	3018	588	1084
90th Percentile	3190	630	1184
Highest Trial	3361	954	1432

\* 0 to 20+ year-old horses

Female foals, (fillies) would not be treated.

**Pilot Mountain HMA:**

Pilot Mountain No Action Alternative  
Average Growth Rate in 10 Years,

Lowest Trial	15.7
10th Percentile	17.3
25th Percentile	18.2
Median Trial	19.7
75th Percentile	20.9
90th Percentile	22.0
Highest Trial	23.5

Pilot Mountain No Action Alternative Population Sizes in 11 Years\*

	Minimum	Average	Maximum
Lowest Trial	304	657	1338
10th Percentile	310	781	1570
25th Percentile	315	878	1791
Median Trial	325	942	2036
75th Percentile	348	1035	2274
90th Percentile	368	1111	2413
Highest Trial	401	1247	2883

\* 0 to 20+ year-old horses

Pilot Mountain Fertility Control  
Average Growth Rate in 10 Years

Lowest Trial	2.7
10th Percentile	4.4
25th Percentile	5.6
Median Trial	6.7
75th Percentile	7.8
90th Percentile	8.7
Highest Trial	11.1

Pilot Mountain Fertility Control  
Population Sizes in 11 Years\*

	Minimum	Average	Maximum
Lowest Trial	303	368	444
10th Percentile	309	420	521
25th Percentile	315	444	570
Median Trial	324	481	644
75th Percentile	346	524	718
90th Percentile	365	553	785
Highest Trial	393	616	911

\* 0 to 20+ year-old horses

Pilot Mountain Fertility Control, Number Gathered, Removed and Treated  
Totals in 11 Years\*

	Gathered	Removed	Treated
Lowest Trial	1068	0	434
10th Percentile	1226	0	534
25th Percentile	1296	0	561
Median Trial	1390	0	604
75th Percentile	1500	0	642
90th Percentile	1580	0	696
Highest Trial	1816	0	745

\* 0 to 20+ year-old horses. Female foals, (fillies) would not be treated.

**Pine Nut HMA:**

Pine Nut HMA No Action Alternative  
Average Growth Rate in 10 Years

Lowest Trial	12.5
10th Percentile	16.6
25th Percentile	17.8
Median Trial	19.2
75th Percentile	21.0
90th Percentile	22.1
Highest Trial	23.4

Pine Nut HMA, No Action Alternative  
Population Sizes in 11 Years\*

	Minimum	Average	Maximum
Lowest Trial	149	330	566
10th Percentile	154	390	742
25th Percentile	157	430	864
Median Trial	164	475	981
75th Percentile	174	507	1101
90th Percentile	183	561	1244
Highest Trial	233	739	1588

\* 0 to 20+ year-old horses

Pine Nut HMA Fertility Control  
Average Growth Rate in 10 Years

Lowest Trial	0.1
10th Percentile	3.8
25th Percentile	5.3
Median Trial	7.1
75th Percentile	8.5
90th Percentile	10.1
Highest Trial	13.3

Pine Nut HMA Fertility Control  
Population Sizes in 11 Years\*

	Minimum	Average	Maximum
Lowest Trial	94	142	184
10th Percentile	125	167	210
25th Percentile	133	175	219
Median Trial	140	180	229
75th Percentile	146	189	242
90th Percentile	154	195	262
Highest Trial	165	213	303

\* 0 to 20+ year-old horses

Pine Nut HMA Gathered Removed and Treated Fertility Control  
Totals in 11 Years\*

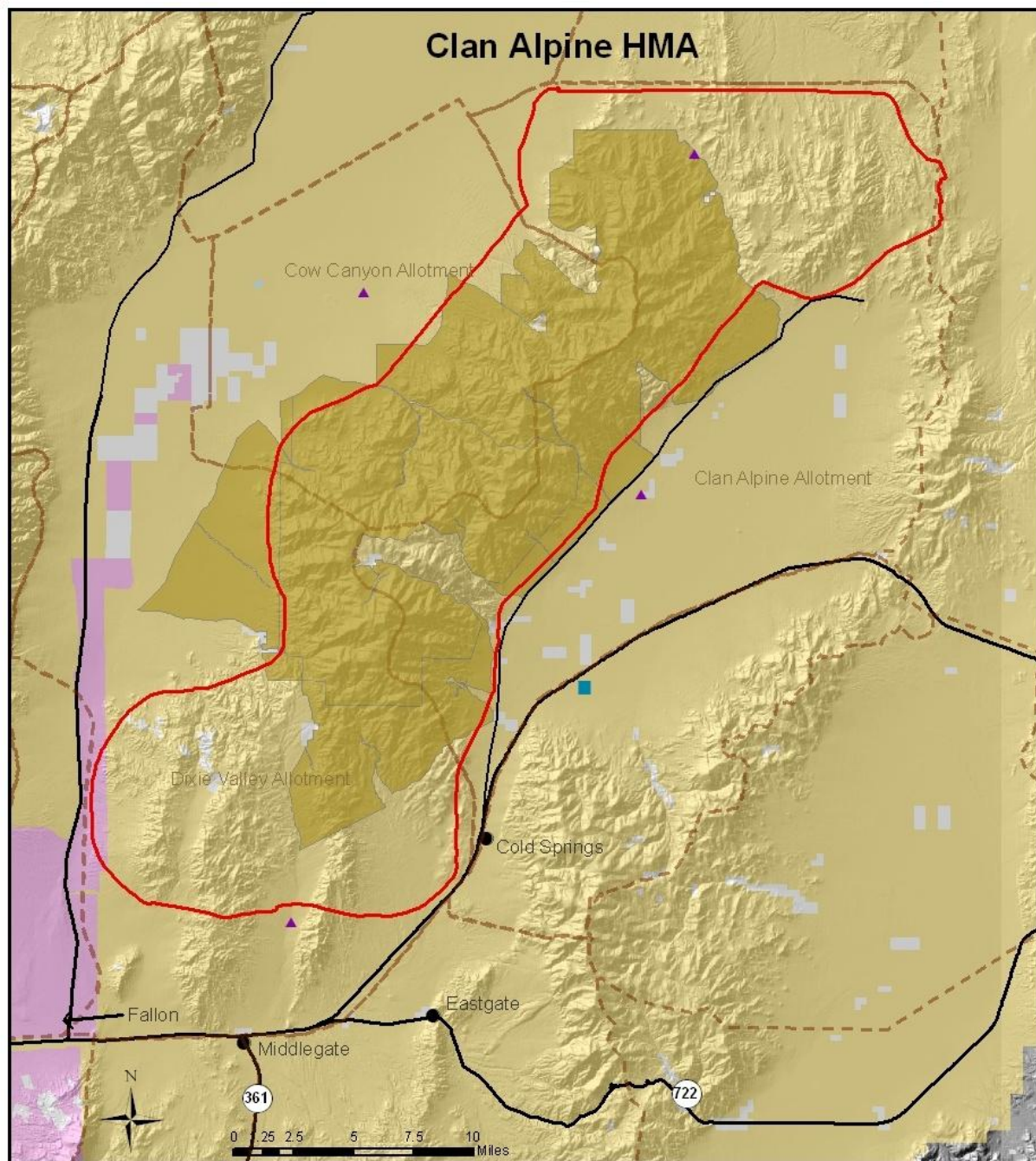
	Gathered	Removed	Treated
Lowest Trial	446	0	145
10th Percentile	508	75	163
25th Percentile	529	87	173
Median Trial	552	99	186
75th Percentile	580	128	200
90th Percentile	607	194	216
Highest Trial	699	259	240

\* 0 to 20+ year-old horses

Female foals, (fillies) would not be treated.

## **APPENDIX D**

### **Herd Management Areas and Grazing Allotments – Maps**

**Legend**

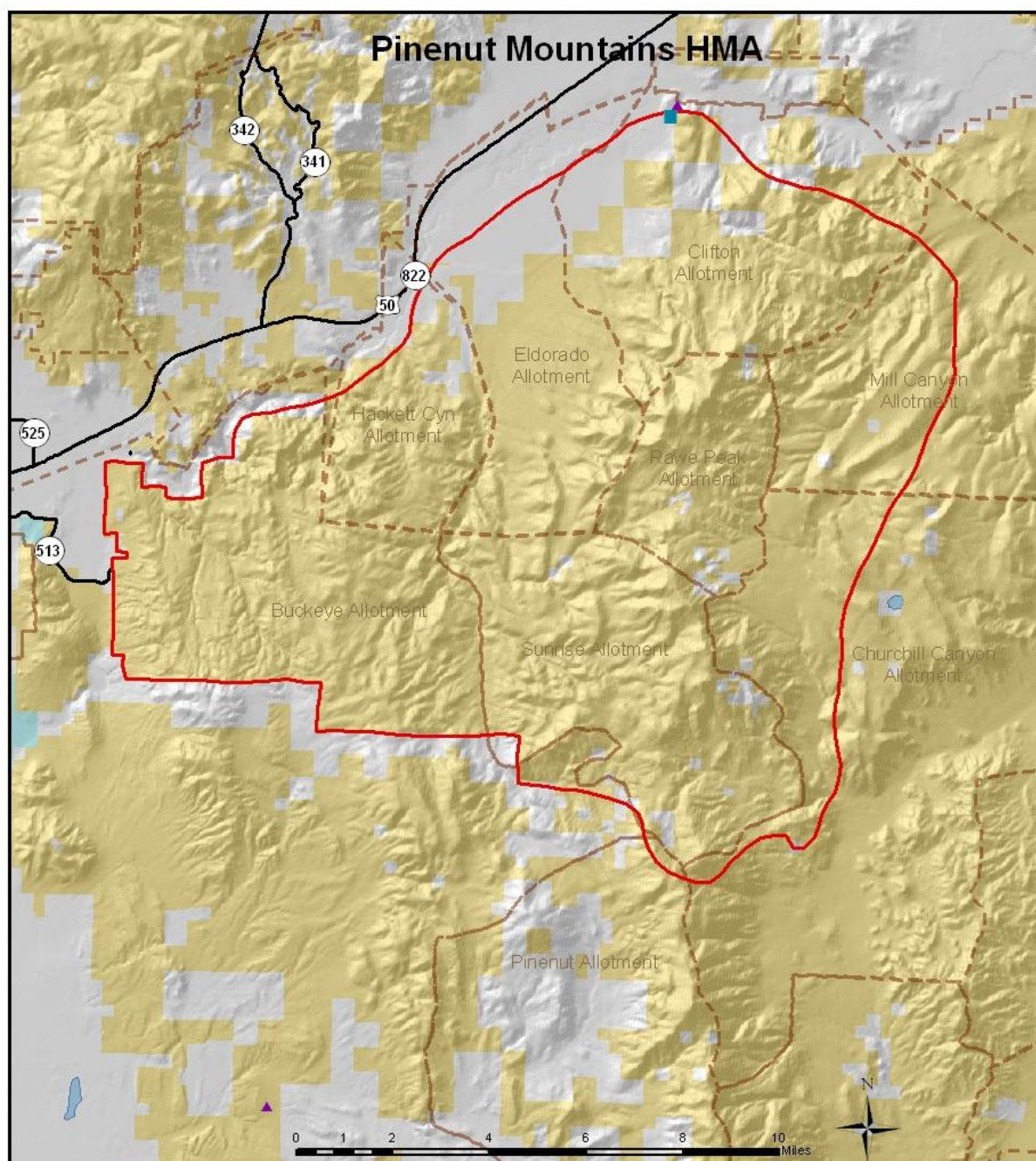
- Clan Alpine HMA
- ▲ Trap Site
- Holding Corral
- CCDO Allotments
- Bureau of Land Management
- Department of Defense
- Private
- Water
- Clan Alpine WSA

**Carson City District****Clan Alpine HMA Location Map**

United States Department of the Interior  
Bureau of Land Management  
Carson City District Office  
5665 Morgan Mill Rd.  
Carson City, NV. 89701  
(775) 885-6000

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

CD 08 1 120 10

**Legend**

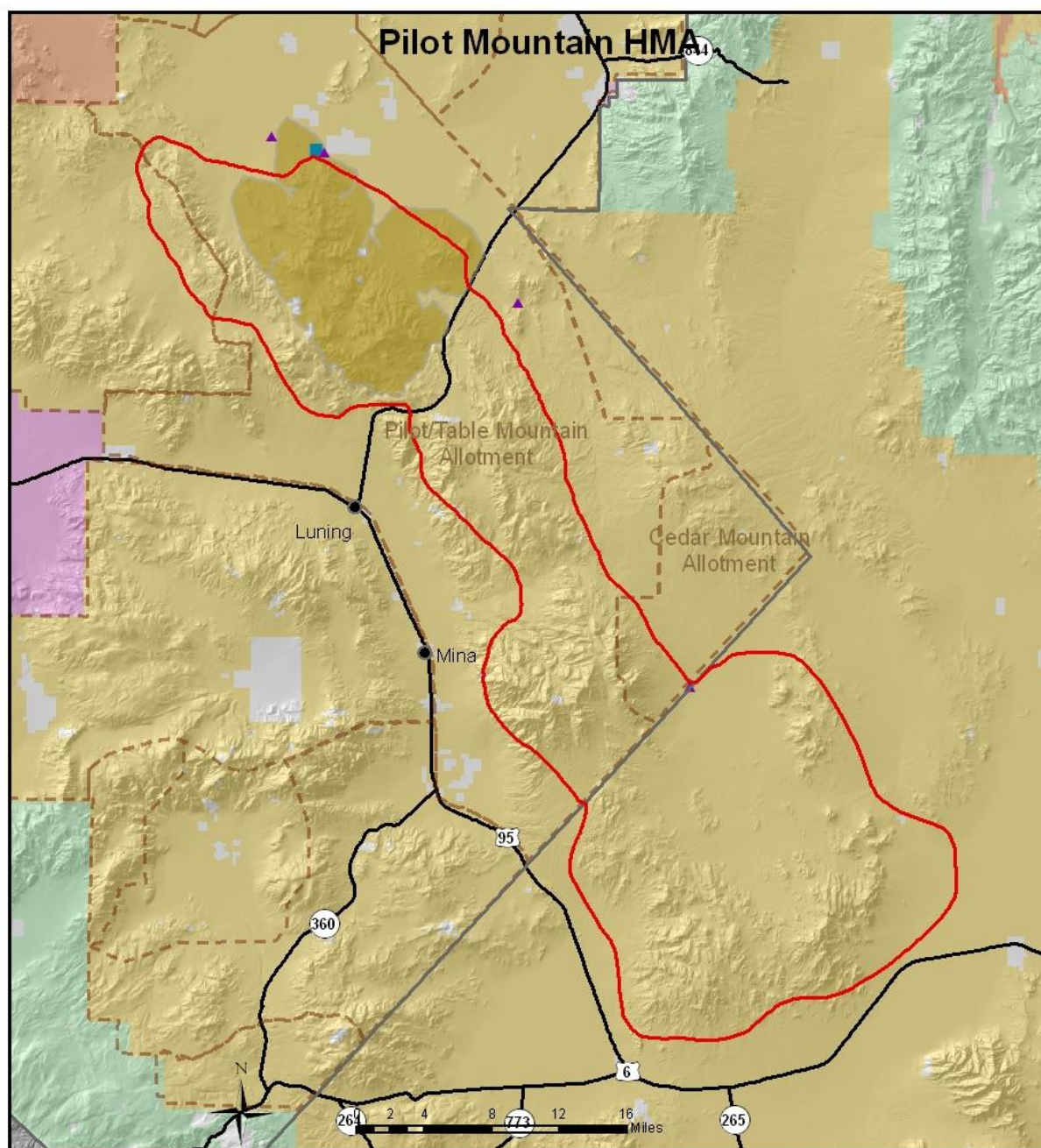
- ▲ Trap Site
- Holding Corral
- ▭ Pine Nut Mountains
- ▭ CCDO Allotments
- ▭ Bureau of Land Management
- ▭ Nevada State
- ▭ Private
- ▭ Water

**Carson City District****Pinenut Mountains HMA Location Map**

United States Department of the Interior  
Bureau of Land Management  
Carson City District Office  
5665 Morgan Mill Rd.  
Carson City, NV 89701  
(775) 885-6000

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

CD 00 1220 10

**Legend**

- CCDO Boundary
- ▲ Trap Site
- Holding Corral
- Pilot Mountain HMA
- Bureau of Indian Affairs
- Bureau of Land Management
- Department of Defense
- Forest Service
- Private
- Pilot Mountain WSA

**Carson City District****Pilot Mountain HMA Location Map**

United States Department of the Interior  
Bureau of Land Management  
Carson City District Office  
5665 Morgan Mill Rd.  
Carson City, NV 89701  
(775) 885-6000

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

CD 00 1220 10

## **APPENDIX E**

### **List of Acronyms**

AML	Appropriate Management Level
APHIS	Animal and Plant Inspection Service
AUM	Animal Unit Month
AVMA	American Veterinary Medical Association
BCS	Body Condition Score
BLM	Bureau of Land Management
CCDO	Carson City District Office
CFR	Code of Federal Regulations
COR	Contracting Officers Representative
CRMP	Carson City Field Office Consolidated Resource Management Plan
CESA	Cumulative Effect Study Area
DR	Decision Record
EA	Environmental Assessment
EIS	Environmental Impact Statement
EO	Executive Order
FCC	Federal Communications Commission
FLPMA	Federal Land Policy and Management Act
FMA	Freund's Modified Adjuvant
FMI	Freund's Incomplete Adjuvant
FMUD	Final Multiple Use Decision
FONSI	Finding of No Significant Impact
FY	Fiscal Year
GAO	Government Accountability Office
HA	Herd Area
HMA	Herd Management Area
HMAP	Herd Management Area Plan
ID	Interdisciplinary Team
IM	Instructional Memorandum
KFPM	Range Utilization Key Forage Plant Method
LTH	Long Term Holding
LTP	Long Term Pastures
MBTA	Migratory Bird Treaty Act
MFP	Management Framework Plan
MUD	Multiple Use Decision
NDOW	Nevada Department of Wildlife
NEPA	National Environmental Policy Act
NPO	National Program Office
PI	Project Inspector
PMU	Population Management Unit
PZP-22	Porcine Zone Pellucida
RFS	Reasonably Foreseeable Future Action
RMP	Resource Management Plan

S&G	Standards for Rangeland Health and Guidelines
SFFO	Sierra Front Field Office
SFO	Stillwater Field Office
SOP	Standard Operating Procedures
STH	Short Term Holding
SWReGAP	Southwest Regional GAP Analysis Project
T&E	Threatened and Endangered
TNR	Temporary Non-Renewable
USGS	United States Geological Service
WFRHBA	Wild Free-Roaming Horse and Burro Act

## **APPENDIX F**

### **Persons, Groups, or Agencies Consulted**

American Horse Protection Assoc.  
Andrea Lococo  
Animal Welfare Institute  
Barbara Warner  
Betty Kelly  
Bonnie Matton  
Bently Family Limited  
Carson City Board of Supervisors (Mayor Bob Crowell Chairman)  
David & Jackie Holmgren  
Don & Mary Shullanberger  
Ed Goedhart (NV Assembly Dist. 36)  
Elaine Brooks  
Elnoma Reeves  
Fallon Paiute-Shoshone Tribe  
Gwen Washburn, Churchill County Commissioners, District 2  
Jo Ann Hana  
Joannem@  
Joe Dahl  
Joe Mortensen – Chair – District 4, Lyon County Commissioners  
Katie Fite  
Linebah@  
Mark E. Amodei (State Senator)  
Mandy McNitt  
Micheal A. Olson, Chairman, Douglas County Commissioners  
Micheal Brown Douglas County Manager  
Mick & Claudia Casey  
Mike McGinness (State Senate)  
Mustang1@  
Mustangs@  
Nevada Cattlemen's Association  
Nevada Commission for the Preservation of Wild Horses  
Nevada Department of Wildlife, Region I  
Nevada Humane Society  
Nevada State Division of Agriculture  
Nevada State Clearinghouse  
Nevada State Grazing Board  
Office of Congressman Dean Heller  
Office of Sen. Ensign  
Office of Sen. Reid  
Paul Plouviez  
Paul Spitler

Peadams0933@  
Pete Goicoechea (NV Assembly Dist. 35)  
Ray Cormack  
Rebecca Kunow  
Resource Concepts Inc  
Ricci Family LTD  
Richard Bryant, Chairman, Mineral County Commissioners  
Richard Huntsberger  
Roberta Royle  
The Mule Deer Foundation  
Tom J Grady (NV Assembly Dist. 38)  
U.S. Fish and Wildlife Service  
Vicki Cohen  
Walker River Paiute Tribe  
Washoe Tribe of Nevada and California  
Wild Horses Forever  
Wild Horse Organized Assistance  
wildhorsedefenders@  
Wildquest@  
Yerington Paiute Tribe

## APPENDIX G

### Consolidated Public Comments and BLM Responses for the Environmental Assessment /Clan Alpine, Pilot Mountain and Pine Nut Herd Management Ares Gather Plan 2010.

No.	Comment	Response
1.	...“No scientific support to continue fertility control program at this time.”	Of the three HMA’s only mares within the Clan Alpine HMA have been previously treated with PZP (96 mares, in 2000). Treating mares with a two year fertility control vaccine will assist in maintaining the Appropriate Management Level. The ultimate goal with fertility control treatments is to balance natural mortality with recruitment so as to maintain the wild horse populations in balance with the natural resources and minimize the number of excess wild horses that have to be removed from the range.
2.	The BLM did not adequately consider alternatives that would negate the need to remove wild horses, such as amending Herd Area Management Plans, or eliminating livestock grazing.	<p>The AMLs established for the HMAs were established through Final Multiple Use Decisions following the completion of an in-depth analysis of habitat suitability, resource monitoring and population inventory data. The current monitoring data indicates that the Appropriate Management Levels are still valid and if wild horse populations are managed at those levels, a thriving natural ecological balance and multiple use relationship will also be maintained.</p> <p>Elimination of livestock grazing would not be in conformance with the existing land use plan and the BLM’s multiple use mission as outlined in the 1976 Federal Land Policy and Management Act (FLPMA).</p> <p>The Public Rangelands Improvement Act of 1978 (Pub. L. 95-514, Sec. 4, Oct. 25, 1978, 92 Stat. 1805.) reaffirms livestock grazing as a multiple use and requires the removal of excess wild horses from the rangelands.</p> <p>The Wild Free-Roaming Horse and Burros Act of 1971 (Public Law 92-195 as amended by Congress) 1332. Definitions (c) “‘Range’ means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping</p>

		<p>with the multiple-use management concept for the public lands;”</p> <p>One hundred and seventy one of the 224 excess wild horses to be removed have established home ranges outside of Herd Management Areas that are managed for wild horses and must therefore be removed consistent with federal law.</p>
3.	<p>The AML’s are not based on science and must be reevaluated and the acreages within the HMA’s can support greater numbers of horses.</p> <p>.</p>	<p>Current monitoring data including Rangeland Health Assessments indicate that the AML’s still represent the wild horse populations at which a thriving natural ecological balance can be maintained in balance with other multiple uses by wildlife such as bighorn sheep, pronghorn, deer, and by livestock. Wild horse and burro AMLs are established consistent with allocations between different multiple uses, as determined through the land-use planning process.</p> <p>The AMLs for the HMAs were established through the allotment evaluation and Final Multiple Use Decision (FMUD) process, which included public input into the decision-making process. Monitoring studies are summarized in the EA.</p>
4.	<p>The Clan Alpine 2010 inventory only showed an increase of five horses over the 2007 inventory. Disease and predation could be the reason for the low inventory.</p>	<p>The Clan Alpine HMA is difficult to inventory because of substantial tree cover and broken terrain. The Clan Alpine HMA is best inventoried in the winter when the majority of the horses move to lower elevation and relatively more open areas in response to snow cover. This year, it was not possible to inventory in the winter so the inventory was conducted in June 2010. The same BLM observer and pilot were used during both inventories and the observer felt that up to 200 horses could easily have been missed during the June inventory.</p> <p>Monitoring of this HMA does not suggest an increase in predation or disease.</p>

5.	<p>The previously vaccinated mares may have reacted more strongly to the vaccine than anticipated. Were fillies younger than two years vaccinated with the fertility control PZP? If given for more than five consecutive years the mares will become sterile. Were the mares receiving it in excellent health and condition?</p>	<p>96 mares were vaccinated with PZP in the Clan Alpine HMA in February, 2000. The mares were in fair to poor condition. The younger mares were removed and placed in the adoption program and the 96 older vaccinated mares were released back into the HMA. This is the only time wild horses have been treated with PZP within the Clan Alpine HMA.</p> <p>Detailed procedures to be followed for the implementation of fertility control are in Appendix A of the EA. PZP is relatively inexpensive, meets BLM requirements for safety to mares and environment, and can easily be administered in the field. Additionally, PZP contraceptive appears to be completely reversible. The vaccine has also proven to have no apparent effect on pregnancies in progress, the health of offspring, or the behavior of treated mares (Turner, 1997). Mares would foal normally in 2011 (Year 1). Based on behavioral studies PZP-22 does not cause significant changes in behavior at the individual or herd levels (USGS).</p> <p>Although BLM currently intends to return to the areas in 2-3 years in order to maintain the population control protocols by gathering and re-treating the mares, future gathers will be subject to a separate NEPA analysis and decision-making process .</p>
6.	<p>AMLs are not supposed to include foals but BLM intends to include them.</p>	<p>The proposed gathers are scheduled for November and February when the majority of the foals will be of sufficient age to be weaned by their mares.</p>

7.	BLM is removing 224 wild horses from their HMAs.	BLM is proposing to remove 53 excess wild horses from within the Pilot Mt. HMA. The remainder of the excess wild horses (171) have established home ranges outside of Pine Nut Mountain and Pilot Mountain HMAs, (table 1EA.) and are therefore residing in areas that are not designated for management of wild horses and some of these excess horses are located in non-HMA areas where they currently pose a public safety hazard.
8.	Harmful effects of social disruption have not been adequately addressed and deaths have been downplayed.	Potential mortality and impacts to social structure and wild horse mortality predictions resulting from the Proposed action are addressed in the EA section 4.2 Predicted Effects of Alternatives, 4.2.1 Wild Horses, Direct and Indirect Gather Impacts, Transport, Short Term Holding, and Adoption (or Sale)Preparation, Adoption or Sale with Limitations , and Long Term Pastures, Euthanasia and Sale without Limitation, 4.3.1 Past and Present Actions, 4.3.2 Reasonably foreseeable Future Actions and 4.4 Summary of Past, Present, and Reasonably Foreseeable Future Actions.
9.	The Gather Plan and EA does not reconsider alternatives to helicopter roundup techniques which often result in trauma, injury and death.	<p>The EA states: “The use of helicopters and motorized vehicles has proven to be a safe, effective and practical means for gather and removal of excess wild horses and burros from the range. Since July 2004, Nevada has gathered over 26,000 animals with a mortality rate of 1.1 percent (of which 0.5 percent was gather related) which is very low when handling wild animals. BLM also avoids use of helicopters for gathering wild horses prior to and during the peak foaling period and therefore does not conduct helicopter removals of wild horses from March 1 through June 30 unless under emergency situations.”</p> <p>Additional Alternatives considered but dismissed from detailed Analysis in the EA included (1) Use of Bait and /or water Trapping and (2) Remove or reduce livestock within the HMAs.</p>

10.	Don't send them to slaughter.	<p>BLM does not send or sell any animals to slaughter. While humane euthanasia and sale without limitation of healthy horses for which there is no adoption demand is authorized under the WFRHBA, BLM's policy is not to euthanize or sell healthy wild horses for slaughter. In addition, Congress has prohibited the use of appropriated funds between 1987 and 2004 and again in 2010 for this purpose. Sale with limitations (which requires assurances that the wild horses will not be sent for slaughter) has been used by the BLM since 2005 when the Act was amended.</p> <p>The EA describes how the excess horses are placed. Generally the younger horses are placed into the adoption program and the older horses are placed in long-term holding pastures.</p>
11.	Designate these HMAs as Wild Horse and Burro Ranges.	Wild Horse and Burro Ranges require a Secretarial designation which is beyond the scope of this EA.
12.	Lack of current census data.	Inventory data for the Pilot Mt. HMA was collected in 2008 and is therefore two years old. The estimated wild horse population in this HMA uses the 2008 inventory date and assumes an annual population growth rate of 10% in 2009 and again in 2010. More recent inventory data collected in 2010 is available for the Clan Alpine and Pine Nut HMAs.
13.	The Wild Horse and Burro Act devoted HMAs principally to wild horses; therefore the HMAs should not be multiple use areas.	The failure to manage HMAs for multiple uses would not be in conformance with the existing land use plans, is contrary to the BLM's multiple-use mission as outlined in the 1976 Federal Land Policy and Management Act (FLPMA), and would also be inconsistent with the WFRHBA, which directs the Secretary to manage wild horses "in keeping with the multiple-use management concept for the public lands" and to immediately remove excess wild horses.

14.	Build a fence to provide for public safety.	<p>The WFRHBA limits wild horse distribution to areas where they were found in 1971.</p> <p>The horses that utilize the area south and west of Walker Lake are approximately 18 miles outside of the HMA.</p> <p>The horses south of Walker Lake were not present in this location in 1971. These horses were first observed by the BLM in the 1990's. The current population of horses in this area resulted when horses moved outside of the Pilot Mt. HMA.</p>
15.	Long term holding is fiscally irresponsible.	<p>One of the primary purposes of the Proposed Action is to apply a contraceptive to a sufficient portion of the mares within the HMAs so as to minimize or possibly eliminate the need to send excess wild horses to long term holding pastures. Additionally there are an estimated 53 excess wild horses in the Pilot Mt. HMA and 171 that have established home ranges outside of the HMA that need to be removed in order to maintain a thriving natural ecological balance and multiple use relationship, to prevent wild horses from degrading public lands that are not designated for wild horse management, and to address a known public safety threat from the presence of wild horses along a public highway.</p>

16.	The average growth rate shown on page 34 is 10% while the average growth rate shown in appendix C is 20%.	<p>Over the long term the growth rate for the three HMA's has averaged 10% annually. The discrepancy between the annual rates of increase is explained in the EA—"Results of Wild Equus Population Modeling".</p> <p>The ultimate goal of contraceptive use would be to balance the recruitment of new horses into the population with natural deaths. The use of contraceptives (PZP-22) would likely result in an annual rate of increase of 5% because some mares evade capture and some treated mares still conceive and deliver foals. This would be half the projected wild horse population growth rate under the Proposed Action, as compared to a more conservative 10% rate of increase for the No Action alternative, and require removal of fewer excess wild horses over the next 10 years.</p>
17.	Move the 104 horses along highway 95 back into the Pilot Mountain HMA.	<p>Past gather experiences have shown that once they get established, horses tend to return to their current ranges; therefore moving the wild horses back into the Pilot Mt. HMA would likely only result in the horses returning to the areas south and west of Walker Lake after release.</p> <p>Furthermore, as the EA proposes removing 53 excess wild horses from inside the Pilot Mt. HMA,. Thus returning the outside excess wild horses to the HMA would mean that additional wild horses would still have to be removed from within the HMA to achieve the targeted post-gather HMA population practical option.</p>

18.	The BLM is going to stampede horses and recently born foals for miles in extreme summer heat.	<p>The Proposed Action is to gather the three HMAs during the period of November, 2010 through February, 2011 and therefore there will be no extreme summer heat. The gather would occur well past the foaling period so there will be few “recently born foals”. Wild horses and burros, during high temperatures, are not “driven” or “stampeded” during the helicopter gather or upon reaching the capture corrals. Instead the pilot allows the horses to travel at their own pace. Experience has proven over the last 30 years of anticipated. Due to timing of the gathers it is likely that helicopters provide an effective, safe and humane method of gathering wild horses and this is done by having the helicopter bring the animals to the capture corrals slowly, very few young foals will be gathered.</p>
19.	The AML set for the Pine Nut Mountain HMA is too low to guarantee genetic viability.	<p>The following NEPA analysis was incorporated by reference in the EA. The Pine Nut Mountain Herd Management Capture Plan /EA June 2003, states “In harem breeding animals such as horses, an “effective” population may be much smaller than the census population. Since matings are generally random and relatively few dominant males are responsible for the majority of matings which results in free roaming horses generally exhibiting greater genetic diversity than most domestic horse breeds. There is little imminent risk of inbreeding since most wild horse herds sampled have large amounts of genetic heterozygosis. Genetic resources are lost slowly over periods of many generations. As wild horses are long lived with long generation intervals, there is little imminent risk of inbreeding or population extinction.</p> <p>Hair and blood samples will be collected during the gather in order to monitor and ensure continued genetic diversity.</p>

20.	Consider using other contraceptives.	The Bureau is looking into the use of other contraceptives but at this time PZP-22 is the only contraceptive that has been tested in wild horses.
21.	Follow up monitoring of vaccinated mares is needed.	The Bureau plans on conducting population inventories of the three HMAs in two years, which will allow for a HMA wide assessment on the rate of increase for the populations. Reference Appendix A Standard Operating Procedures for Population-level Fertility control Treatments in the EA. Also the Bureau has cooperative agreements in place with the Humane Society of the United States and the U.S. Geological Survey for studying/monitoring the efficacy of PZP-22.
22.	The implementation of the infertility drug, PZP is having negative effects on herd behavior. The mares cycle continuously and don't settle. There is intense competition for mares by the stallions. Observers are witnessing more violence than they have ever seen. When stallions battle, there is great risk to the foals as well as the mares. The mares are bred repeatedly by the stallions.	Based on behavioral studies completed by the USGS, PZP-22 does not cause significant changes in behavior at the individual or herd level.
23.	"You've put the information [regarding the proposed removal from near Walker Lake] in the Mason Valley News and the Lahontan Valley news but not the Mineral County Independent News?"	The BLM Public Affairs Officer sent a press release to all of the media outlets via email on August 23. Later it was discovered that the Mineral County Independent News did not receive the email and it was resent and subsequently published.

## **APPENDIX H**

### **Wild Horse Gather Public Observation Protocol**

**These rules were created to ensure the safety of both the humans and the animals at the gather site(s).**

The Bureau of Land Management (BLM) will schedule observation days for each heard area to be gathered and observation will be by appointment only to provide the media and public opportunities to view activities during the wild horse gathers.

To provide a safe environment for the animals, BLM staff, contractors and members of the public/media, requests will be accepted on a first come, first served basis and be limited to 10 people per observation day.

Contact the BLM at (775) 885-6000 to schedule an appointment to participate in an observation day.

The BLM recommends all appointments be made as far in advance as possible in order to help us schedule and confirm your request, and will make every reasonable effort to accommodate the public.

Observation days and gather operations may be suspended if bad weather conditions create unsafe flying conditions.

The BLM will notify observers as soon as possible if an observation day is canceled due to bad weather.

The BLM will rendezvous with interested members of the public at a convent area a reasonable distance to the trap sites, and caravan to the gather site.

Observers must provide their own 4-wheel drive high clearance vehicle, appropriate shoes, clothing, food, and water.

Observers are prohibited from riding in government and contractor vehicles and equipment.

Visitors arriving at the rendezvous site without an appointment will not be allowed to participate in the observation day.

The BLM law enforcement will escort non-scheduled visitors to a designated area.

BLM representatives will escort visitors to and from the gather and/or temporary holding facility.

Visitors will be assigned to a specific BLM representative and must stay with that person at all times.

## **Non-Observation Days**

BLM recognizes and respects the right of interested members of the public and the press to observe the. At the same time, BLM must insure the health and safety of the public, BLM's employees and contractors, and America's wild horses. Accordingly, BLM developed these rules to maximize the opportunity for reasonable public access to the gather while insuring that BLM's health and safety responsibilities are fulfilled. Failure to maintain safe distances from operations at the gather and temporary holding sites could result in members of the public inadvertently getting in the path of the wild horses or gather personnel, thereby placing themselves and others at risk, or causing stress and potential injury to the wild horses.

- BLM will establish one or more observation areas, in the immediate area of the gather and holding sites, to which individuals will be directed. These areas will be placed so as to maximize the opportunity for public observation while providing for a safe and effective horse gather. The utilization of such observation areas is necessary due to the use and presence of heavy equipment and aircraft in the gather operation and the critical need to allow BLM personnel and contractors to fully focus on attending to the needs of the wild horses while maintaining a safe environment for all involved. In addition, observation areas will be sited so as to protect the wild horses from being spooked, startled or impacted in a manner that results in increased stress.
- BLM will delineate observation areas with yellow caution tape (or a similar type of tape or ribbon) that will be held on the ground using stones or held in position using stakes.
- When BLM is using a helicopter or other heavy equipment in close proximity to a designated observation area, members of the public may be asked to stay by their vehicle for some time before being directed to an observation area once the use of the helicopter or the heavy machinery is complete.
- Individuals will be directed to the designated observation area by BLM personnel and informed of behavioral rules (such as remaining quiet and still to ensure a safe and effective gather operation).
- Individuals attempting to move outside a designated observation area will be requested to move back to the designated area or to leave the site. Failure to do so may result in citation or arrest. It is important to stay within the designated observation area to safely observe the wild horse gather.
- BLM reserves the right to alter these rules based on changes in circumstances that may pose a risk to health, public safety or the safety of wild horses (such as weather, lightening, wildfire, etc.).

**ATTACHMENT D**

**Worksheet**  
**Determination of NEPA Adequacy (DNA)**  
**U.S. Department of the Interior**  
**Bureau of Land Management**

---

**Project Lead:** John Axtell  
**Field Office:** Sierra Front Field Office  
**Lead Office:** Sierra Front Field Office  
**Case File/Project Number:** N/A  
**NEPA NUMBER:** DOI-BLM-NV-C020-2015-0013-DNA  
**Project Name:** Pine Nut Wild Horse Gather  
**Applicant Name:** BLM  
**Project Location:** Carson City, Douglas County, Lyon County Nevada  
T 10 N through T 17 N; R 20 E through R 25 E.

**A. Description of the Proposed Action and any applicable mitigation measures:**

The Proposed Action is to gather up to approximately 332 wild horses and remove approximately 200 excess wild horses from outside and inside the Pine Nut Herd Management Area (HMA). Approximately 132 wild horses would be released back into the HMA after fertility treatment, after all mares one-year of age and older receive a contraceptive, porcine zona pellucide (PZP). These numbers assume a 100% gather efficacy based on the estimated current population; however, gather efficacy usually does not exceed 80% – 90% of the wild horse population (e.g., due to wild horses that are able to evade capture, that are located in areas where they cannot be readily spotted, etc.), so the exact number of horses removed, treated and released would depend upon conditions at the time of gather.

The combined appropriate management level (AML) for this HMA is 119 to 179. The AML was set through multiple use decisions for each of the nine grazing allotments within the HMA, so that the wild horse population would be maintained at a level compatible with the capability of HMA to produce forage grasses to sustain multiple use grazing and thus maintain a thriving natural ecological balance and avoid a deterioration of the range. The AMLs for each allotment were set as a range, where wild horse numbers would be reduced down to the lower range allowing gather intervals of four to five years until the wild horse population reaches or exceeds the high end of AML. Removal of all of the excess wild horses would bring the wild horse population to the lower end of the AML. However, at this time there is only enough capacity in holding facilities to remove 200 excess wild horses from this area. If there are fewer wild horses than estimated, then the lower end of the AML may be reached (119 animals).

Wild horse impacts are most severe in parts of the HMA within the Clifton and El Dorado Canyon grazing allotments. In some areas of these allotments, most of the key forage grasses have been eliminated by overgrazing attributable to excess wild horses, resulting in less productive and less desirable grass species replacing the key forage grass species. Livestock have not grazed the Clifton Allotment for at least 20 years and possibly for as much as 30 years. The only livestock use for the last 20 years within the El Dorado Canyon Allotment has been sheep trailing through the area for two to three days a year.

Most of the riparian areas in the Clifton Allotment are non-functional as a result of over use by excess wild horses, which has resulted in loss of wildlife habitat and possible diminished flows from the springs. The flows from many of the springs in the Clifton Allotment have diminished substantially. This was occurring even before the current drought. The cause is unknown though it may have resulted from excessive compaction of the water sources by wild horses, a general dewatering of the area, or a combination of the two. During the warmer months some bands of wild horses spend up to six hours at the sources to obtain enough water to survive, which is stressful to the horses especially the foals. This prolonged use prevents other species of wildlife from obtaining water. Deer, pronghorn, bobcats, and many other species of wildlife would not water at these springs while horses are present.

Because of the exceptional resource damage occurring in the Clifton Allotment, the wild horse population in Clifton and El Dorado Canyon grazing allotments would be reduced to the lower end of the AML for those allotments.

The last gather occurred in November 2010, in which 46 excess wild horses were removed from outside of the HMA and 43 mares were treated with PZP and released back into the HMA leaving an estimated 182 wild horses. Excess wild horses were to be removed from areas south of the HMA, but the contractor was unable to locate these animals.

The number of excess wild horses on public lands in the Western States exceeds the current adoption demand or capacity to maintain them in existing holding facilities. This HMA is a priority for gather and removal of excess wild horses due to the resource damage occurring, because the current population exceeds the AMLs, and because of the adverse impacts from excess wild horses to Bi-State sage-grouse habitat. On October 28, 2013, the U.S. Fish and Wildlife Service (USFWS) proposed to list the Bi-State distinct population segment (DPS) of greater sage-grouse (*Centrocercus urophasianus*) as threatened and designate critical habitat under the Endangered Species Act (ESA). The proposed critical habitat identified by the USFWS includes areas within the HMA and much of the area outside of the HMA currently being used and degraded by excess wild horses. Since residual grass cover is essential for nesting success of sage-grouse and year-long grazing is most detrimental to native bunch grass species, all of the excess wild horses need to be removed from areas outside of the HMA, which are not designated for management of wild horses. The wild horse population within Bi-State sage-grouse habitat needs to be brought to as close to the lower end of the AML range as gather efficiencies permit, so as to allow the native grasses to recover from years of overgrazing.

Excessive grazing from wild horses has not only degraded sage-grouse habitat, but has also removed and reduced the number of native grass plants in areas of the HMA, which impacts the overall availability of forage grasses and has reduced the number of wild horses that can be supported by current range conditions within the HMA.

The gather is expected to last up to 10 days during late January or early February 2015. Work would occur prior to the sage-grouse breeding season, which generally begins March 1. It is anticipated that four or five temporary trap sites would be required for the gather and one temporary holding corral. Trap sites are roughly ½ acre and corrals are roughly one acre. All sites would be cleared by an archeologist prior to approval. If cultural resources cannot be

avoided, different sites would be selected. Some of these sites would likely be in proposed sage-grouse critical habitat. These sites would be located on disturbed areas more than three miles from known active leks and in areas where sage-grouse use is minimal during the month of January or February. Trap sites are located along roads of sufficient size and condition to allow access by horse trailers. Areas of concentrated use by sage-grouse would be avoided. The Bureau of Land Management (BLM) has coordinated with the USFWS on potential effects to sage-grouse.

The temporary holding corral would likely be located at either T 16 N; R21 E; Sec 24, or T 16 N; R 25 E; Sec 6. Depending on road conditions and animal locations, the temporary trap sites would likely be located at four or five of the six following locations: T 13N; R 21 E; Sec 19, T 15 N; R 22E; Sec 5, T 14 N; R 22 E; Sec 28, T 13 N; R 23 E; Sec 28, T 15 N; R 24 E; Sec 31, or T 16 N; R 22 E; Sec 16. The potential gather area and trap locations are shown on Figure 1.

During gather operations, motorized vehicles would remain on existing roads. Off-road use of motorized vehicles on public lands would not be permitted.

Mitigation measure. BLM representatives would be on site during all phases of the capture, sorting and release of animals to assure that the animals are treated humanely (in accordance with Instruction Memorandum No. 2013-059, Wild Horse and Burro Gathers: Comprehensive Animal Welfare Policy) at all times and that the health and safety of wild horses is not jeopardized.

#### **B. Land Use Plan (LUP) Conformance**

This action is in conformance with the Carson City Field Office Consolidated Resource Management Plan under the following sections:

- WHB-1, objective 1: “Protect, manage, and control wild horses and burros on public lands as an integral part of the public land’s ecosystem.”

#### **C. Identify applicable National Environmental Policy Act (NEPA) documents and other related documents that cover the proposed action.**

*Pine Nut Herd Management Areas Gather Plan Environmental Assessment* (EA) (DOI-BLM-NV-C020-2010-0019-EA), Finding of No Significant Impact and Decision Record were approved on October 20, 2010. These documents are hereby incorporated by reference.

#### **D. NEPA Adequacy Criteria**

**1. Is the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?**

Yes, this proposed action is the same as described in the final EA in Sections 2.2.1 and 4.2.1. The analysis was for the same geographic area as the new proposed action, including areas within and adjacent to the Pine Nut HMA.

**2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given current environmental concerns, interests, and resource values?**

Yes, the range of alternatives analyzed in the existing NEPA document remains appropriate to the new proposed action. The existing NEPA document lists over-utilization of grasses as a result of an over-population of wild horses as a threat to sage-grouse habitat. Removing wild horses from areas outside of the HMA and managing the population within the AML ranges inside the HMA would improve habitat conditions that over time would benefit sage-grouse. Temporary trap sites are small at ½ acre in size and would be located in disturbed areas away from concentrations of sage-grouse and active lek areas. Trap sites are located along roads of sufficient size and condition to allow access by horse trailers. During gather operations, motorized vehicles would remain on existing roads. Off-road use of motorized vehicles would not be permitted.

**3. Is the existing analysis valid in light of any new information or circumstances (such as, range- land health standard assessment, recent endangered species listings, updated lists of BLM-sensitive species)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the new proposed action?**

The existing analysis remains valid even in light of new information and circumstances, specifically the USFWS proposed listing of Bi-State sage- grouse as a threatened species and proposed designation of critical habitat because sage-grouse were a BLM sensitive species in 2010 and were considered in the existing NEPA document. The new proposed action is the same as the proposed action analyzed in the existing NEPA document. Effects of a wild horse gather, removing wild horses from areas outside of the HMA and maintaining the wild horse population within the AML range inside of the HMA, were analyzed in the existing NEPA document, which states that sage-grouse require grass cover and that over-utilization of grasses by wild horses can negatively affect sage-grouse habitat. Per BLM Manual 6840 - Special Status Species Management and BLM Instruction Memorandum No. NV-2014-008, the BLM competed coordination with the USFWS on potential effects to sage-grouse due to their change in status from a BLM sensitive species to a proposed species.

**4. Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?**

The direct, indirect, and cumulative effects from the administration of PZP was analyzed in the existing EA. This action is the same as described in the final EA in Sections 2.2.1 and 4.2.1.

**5. Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?**

Yes. On August 23, 2010 the BLM provided a 30-day public comment period on the *Clan Alpine, Pilot Mountain, Pine Nut Herd Management Areas Gather Plan Environmental Assessment* (EA) (DOI-BLM-NV-C020-2010-0019-EA). A dear reader notification letter was sent to 61 individuals, organizations, and agencies on the project mailing list, including the Nevada State Clearinghouse. A news release was issued; articles appeared in the *Lahontan Valley News*, *My News 3\**, *My News 4\**, *Reno Gazette-Journal* (\*web versions) and the *Mineral*

*County Independent.* The comment period closed on September 23, 2010. A summary of the comments received on the 2010 EA can be found in Appendix G of the Final EA. On October 20, 2010 the BLM signed a Finding of No Significant Impact and Decision Record, which is hereby incorporated by reference.

**E. Persons/Agencies/BLM Staff Consulted**

<u>Name</u>	<u>Title</u>	<u>Resource/Agency Represented</u>
Rachel Crews	Archaeologist	BLM
Pilar Ziegler	Wildlife Biologist	BLM
Steve Abele	Wildlife Biologist	USFWS
Katrina Leavitt	Range Land Management Spec.	BLM

Note: Refer to the final EA for a complete list of the team members participating in the preparation of the original environmental analysis or planning documents.

**Conclusion:** Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitutes BLM's compliance with the requirements of the NEPA.

  
\_\_\_\_\_  
Signature of Project Lead

  
\_\_\_\_\_  
Signature of NEPA Coordinator

  
\_\_\_\_\_  
Leon Thomas  
Field Manager  
Sierra Front Field Office

DEC 19 2014

Note: The signed Conclusion on this Worksheet is part of an interim step in the BLM's internal decision process and does not constitute an appealable decision. See attached Decision Record for appeal information.

## **ATTACHMENT E**

# Pine Nut Wild Horse Gather

## Decision Record

DOI-BLM-NV-C020-2015-0013-DNA

December 2014



## **Introduction**

The Proposed Action is to gather up to approximately 332 wild horses and remove approximately 200 excess wild horses from outside and inside the Pine Nut Herd Management Area (HMA). Approximately 132 wild horses would be released back into the HMA after fertility treatment, after all mares one-year of age and older receive a contraceptive, porcine zona pellucide (PZP). These numbers assume a 100% gather efficacy based on the estimated current population; however, gather efficacy usually does not exceed 80% – 90% of the wild horse population (e.g., due to wild horses that are able to evade capture, that are located in areas where they cannot be readily spotted, etc.), so the exact number of horses removed, treated and released would depend upon conditions at the time of gather.

The combined appropriate management level (AML) for this HMA is 119 to 179. The AML was set through multiple use decisions for each of the nine grazing allotment within the HMA, so that the wild horse population would be maintained at a level compatible with the capability of HMA to produce forage grasses to sustain multiple use grazing and thus maintain a thriving natural ecological balance and avoid a deterioration of the range. The AMLs for each allotment were set as a range, where wild horse numbers would be reduced down to the lower range allowing gather intervals of four to five years until the wild horse population reaches or exceeds the high end of AML. Removal of all of the excess wild horses would bring the wild horse population to the lower end of the AML. However, at this time there is only enough capacity in holding facilities to remove 200 excess wild horses from this area. If there are fewer wild horses than estimated, then the lower end of the AML may be reached (119 animals).

Wild horse impacts are most severe in parts of the HMA within the Clifton and El Dorado Canyon grazing allotments. In some areas of these allotments, most of the key forage grasses have been eliminated by overgrazing attributable to excess wild horses, resulting in less productive and less desirable grass species replacing the key forage grass species. Livestock have not grazed the Clifton Allotment for at least 20 years and possibly for as much as 30 years. The only livestock use for the last 20 years within the El Dorado Canyon Allotment has been sheep trailing through the area for two to three days a year.

Most of the riparian areas in the Clifton Allotment are non-functional as a result of over use by excess wild horses, which has resulted in loss of wildlife habitat and possible diminished flows from the springs. The flows from many of the springs in the Clifton Allotment have diminished substantially. This was occurring even before the current drought. The cause is unknown though it may have resulted from excessive compaction of the water sources by wild horses, a general dewatering of the area, or a combination of the two. During the warmer months some bands of wild horses spend up to six hours at the sources to obtain enough water to survive, which is stressful to the horses especially to the foals. This prolonged use prevents other species of wildlife from obtaining water. Deer, pronghorn, bobcats, and many other species of wildlife would not water at these springs while horses are present.

Because of the exceptional resource damage occurring in the Clifton Allotment, the wild horse population in Clifton and El Dorado Canyon grazing allotments would be reduced to the lower end of the AML for those allotments.

The last gather occurred in November 2010, in which 46 excess wild horses were removed from outside of the HMA and 43 mares were treated with PZP and released back into the HMA, leaving an estimated 182 wild horses. Excess wild horses were to be removed from areas south of the HMA, however, the contractor was unable to locate these animals.

The number of excess wild horses on public lands in the Western States exceeds the current adoption demand or capacity to maintain them in existing holding facilities. This HMA is a priority for gather and removal of excess wild horses due to the resource damage occurring, because the current population exceeds the AMLs, and because of the adverse impacts from excess wild horses to Bi-State sage-grouse habitat. On October 28, 2013, the U.S. Fish and Wildlife Service (USFWS) proposed to list the Bi-State distinct population segment (DPS) of greater sage-grouse (*Centrocercus urophasianus*) as threatened and designate critical habitat under the Endangered Species Act (ESA). The proposed critical habitat identified by the USFWS includes areas within the HMA and much of the area outside of the HMA currently being used and degraded by excess wild horses. Since residual grass cover is essential for nesting success of sage-grouse and year-long grazing is most detrimental to native bunch grass species, all of the excess wild horses need to be removed from areas outside of the HMA, which are not designated for management of wild horses. The wild horse population within Bi-State sage-grouse habitat needs to be brought to as close to the lower end of the AML range as gather efficiencies permit, so as to allow the native grasses to recover from years of overgrazing.

Excessive grazing from wild horses has not only degraded the sage-grouse habitat, but has also removed and reduced the number of native grass plants in areas of the HMA, which impacts the overall availability of forage grasses within the HMA and has reduced the number of wild horses that can be supported by current range conditions within the HMA.

The gather is expected to last up to 10 days during late January or early February 2015. Work would occur prior to the sage-grouse breeding season, which generally begins March 1. It is anticipated that four or five temporary trap sites would be required for the gather and one temporary holding corral. Trap sites are roughly ½ acre and corrals are roughly one acre. All sites would be cleared by an archeologist prior to approval. If cultural resources cannot be avoided, different sites would be selected. Some of these sites would likely be in proposed sage-grouse critical habitat. These sites would be located on disturbed areas more than three miles from known active leks and in areas where sage-grouse use is minimal during the month of January or February. Trap sites are located along roads of sufficient size and condition to allow access by horse trailers. Areas of concentrated use by sage-grouse would be avoided. The Bureau of Land Management (BLM) has coordinated with the USFWS on potential effects to sage-grouse.

The temporary holding corral would likely be located at either T 16 N; R 21 E; Sec 24, or T 16 N; R 25 E; Sec 6. Depending on road conditions and animal locations, the temporary trap sites would likely be located at four or five of the six following locations: T 13N; R 21 E; Sec 19, T 15 N; R 22E; Sec 5, T 14 N; R 22 E; Sec 28, T 13 N; R 23 E; Sec 28, T 15 N; R 24 E; Sec 31, or T 16 N; R 22 E; Sec 16. The potential gather area and trap locations are shown on Figure 1.

During gather operations, motorized vehicles would remain on existing roads. Off-road use of motorized vehicles on public lands would not be permitted.

Mitigation measure. BLM representatives would be on site during all phases of the capture, sorting and release of animals to ensure that the animals are treated humanely (in accordance with Instruction Memorandum No. 2013-059, Wild Horse and Burro Gathers: Comprehensive Animal Welfare Policy) at all times and that the health and safety of wild horses is not jeopardized.

### **Incorporation by Reference**

The *Pine Nut Herd Management Areas Gather Plan Environmental Assessment* issued on October 20, 2010, analyzed the environmental impacts of the same activities that would be implemented for the proposed gather. A Determination of NEPA Adequacy (DOI-BLM-NV-C020-2015-0013-DNA) documents BLM's NEPA compliance. The final EA, Finding of No Significant Impact and Decision Record (DOI-BLM-NV-C020-2010-0019-EA), approved on October 20, 2010 are hereby incorporated by reference.

### **Public Involvement**

On August 23, 2010 the BLM provided a 30-day public comment period on the Clan Alpine, Pilot Mountain, *Pine Nut Herd Management Areas Gather Plan Environmental Assessment* (EA) (DOI-BLM-NV-C020-2010-0019-EA). A dear reader notification letter was sent to 61 individuals, organizations, and agencies on the project mailing list, including the Nevada State Clearinghouse. A news release was issued; articles appeared in the *Lahontan Valley News*, *My News 3\**, *My News 4\**, *Reno Gazette-Journal* (\*web versions) and the *Mineral County Independent*. The comment period closed on September 23, 2010. A summary of the comments received on the 2010 EA can be found in Appendix G of the Final EA. On October 20, 2010 the BLM signed a Finding of No Significant Impact and Decision Record, which is hereby incorporated by reference.

### **Land Use Conformance**

This action is in conformance with the Carson City Field Office Consolidated Resource Management Plan (CRMP) under the following section:

- WHB-1, objective 1: "Protect, manage, and control wild horses and burros on public lands as an integral part of the public land's ecosystem."

### **Authority**

Implementation of the Proposed Action is consistent with the Federal Land Policy and Management Act of 1976 and the Wild Free Roaming Horses and Burros Act of 1971. Specific regulations that allow for the gather and use of PZP are covered by the following regulations:

- 43 CFR 4700.0-6 (a): "Wild horses shall be managed as self-sustaining populations of healthy animals in balance with other uses and productive capacity of their habitat."

- 43 CFR 4710.4 Constraints on management. "Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas."
- 43 CFR 4720.1 "Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately..."
- 43 CFR 4770.3 (c) "[T]he 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."

### **Rationale**

The BLM is required to manage for multiple uses on Public Lands in a manner that avoids degradation of the rangelands; maintains a thriving natural ecological balance between wild horses, wildlife including Bi-State sage-grouse, livestock; and resolves public health and safety concerns. The gather and removal of excess wild horses and treatment of mares with PZP prior to release would achieve the wild horse management objectives identified in the CRMP. The gather is necessary to remove excess wild horses from within the HMA and from non-HMA areas to prevent on-going degradation of range resources and adverse impacts on proposed critical habitat, to bring the wild horse population back to AML, and to allow BLM to achieve and maintain a thriving natural ecological balance and multiple use relationship within the gather area.

### **Decision**

My Decision is to authorize the gather and removal of approximately 200 excess wild horses and the treatment of mares to be released back into the HMA with PZP to reduce wild horse population growth. I have determined that the existing environmental analysis is sufficient for this action and that this action is in conformance with the existing land use plan.

The Pine Nut Wild Horse Gather is approved for implementation immediately, and the gather is approved to begin on or about late-January through mid-February 2015 and is projected to take approximately 10 days to complete. This Decision is effective upon issuances in accordance with Title 43 of the Code of Federal Regulations (CFR) at 4770.3 (c) because removal of excess wild horses is necessary to protect animal health, prevent further deterioration of rangeland resources, and to allow for recovery of rangeland health.



Leon Thomas  
Field Manager  
Sierra Front Field Office

**DEC 19 2014**

## **APPEAL PROCEDURES**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR Part 4. If you appeal, your appeal must also be filed with the Bureau of Land Management at the following address:

Leon Thomas  
Field Manager  
BLM, Sierra Front Field Office  
5665 Morgan Mill Road  
Carson City, NV 89701

Your appeal must be filed within thirty (30) days from receipt or issuance of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4942, January 19, 1993) for a stay (suspension) of the decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to:

Board of Land Appeals  
Dockets Attorney  
801 N. Quincy Street, Suite 300  
Arlington, VA 22203

A copy must also be sent to the appropriate Office of the Solicitor at the same time the original documents are filed with the above office.

U.S. Department of the Interior  
Office of the Regional Solicitor  
Pacific Southwest Region  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay is required to 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 appellants' success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

The Office of Hearings and Appeals regulations do not provide for electronic filing of appeals. Electronically filed appeals will therefore not be accepted.