

## **The Processes**

It starts with a federal law being passed and in the case of wild horses and burros; this was the Wild Free-Roaming Horse & Burro Act in 1971. The Bureau of Land Management (BLM) is then charged with figuring out a way to bring these laws to life through their management of public resources within the budget Congress allocates to them every year.

BLM must also consider other laws in relation to the management of public lands and resources, the most significant of these are The Federal Lands Management Policy Act (FLMPA) of 1976 and The Public Range Improvement Act (PRIA) of 1978.

The Secretary of the Interior has also been given a great deal of latitude to issue policies, directions and begin legal processes to establish regulations to help fulfill those laws. Any proposals, changes or actions are legally required to be posted in the Federal Register, the official government “newspaper” of their activities and will include contact info, outlines of the proposals, comment deadlines and why the government believes these proposals are necessary.

### **General Process**

A general process is used on almost all proposals governing public lands, resource management and many government actions. These processes are as follows:

### **The Scoping Period**

The beginning of initiating a new proposal. Here the public has the greatest latitude to provide input, ideas, suggestions, concerns, recommendations, and data for BLM to consider. Sometimes BLM does “internal scoping”, which means they only talk to each other, to other federal agencies or to livestock permittees but mostly, they issue a public notice of their proposal allowing the public to respond and provide input. Public meetings may also begin to be schedule in various locations to provide opportunities for more personal interactions and feedback between the public and the agencies, depending on the content and size of the proposal.

### **The Preliminary or Draft Proposal**

This is the second step in the process and BLM will provide a range of alternatives or directions to consider, generally ranging form 2 to 5 alternatives to choose from, depending on the size of the proposal. One of these alternatives is always the No Action alternative that is usually included for comparison purposes but is rarely a legitimate option (depending on the proposal). It is included because many government agencies, including the BLM, are legally required to present this as an alternative due to mandates established through the National Environmental Protection Act (NEPA).

Sometimes other laws demand BLM carry out certain actions prohibiting them from implementing the No Action alternative (so they couldn't choose No Action even if they wanted too) and sometimes it merely means No Action will be more of the same of what they had already approved. At this stage, the public can provide support for one of the Alternatives offered as well as additional advice, suggestions, recommendations, data, or concerns.

### **The Final Proposal**

Sometimes called the Final Environmental Assessment, the Proposed Decision or the Proposed Resource Management Plan. This is supposed to be the results of BLM collecting data, information, and input from a wide range of sources from which they have then put together and what they think is best for all the different issues of concern they are charged with protecting and/or managing.

In the event that it is issued as a Proposed Decision (PD), a Protest Period of the decision goes into effect, usually of short duration for 15 days. If the proposal allows for a Protest Period, before becoming final (often used in livestock grazing authorizations) the public may offer evidence for BLM to weigh in order to determine if their decision, or parts of it, were in error. Based on the results of BLMs considerations, changes may still be made in the proposal before becoming final. In the event that no protest is received, usually the decision automatically goes into effect after the 15-day protest period.

### **The Final Decision**

Issued under a variety of titles depending on the proposal, which include the ROD (Record of Decision), the FONSI (Finding of No Significant Impact), Final Multiple Use Decision (FMUD) or just the Final Decision. At this juncture, there is no more opportunity for public input but the public may challenge the final decision through a legal appeal with the Interior Board of Land of Appeals or even directly through a federal court.

### **Full Force and Effect**

One other kind of final decision that BLM often uses specifically to wild horse and burro management (though they can use it in other decisions too) is the Full Force and Effect Decision. This means that as soon as a BLM manager signs their name to the proposal, it is instantly authorized for implementation and BLM will often use this during controversial proposals, round ups or emergency situations.

The right for BLM to issue a decision under a Full Force and Effect clause was BLMs answer to multiple lawsuits filed against their decisions to remove wild horses and burros from public lands back in the mid 90's. At that time, if a decision was accepted

for litigation, BLM could not remove any wild horses and burros until the case had been decided and this resulted in wild horses and burros remaining on the range, sometimes for several years, as the lawsuits went through the legal system.

In order to address this delay, BLM then created the right to issue a decision under the Full Force and Effect clause allowing for immediate removals even if the decision was legally challenged or appealed. When it was initially introduced, BLM stated it would only be utilized under emergency conditions to protect the range. Today, many decisions affecting wild horses and burros are automatically issued under this authority with several cases of round ups beginning the day after managers sign the decision and it no longer matters if it is controversial or considered an emergency situation.

### **Specific Proposals**

The processes outlined above generally apply to all of the following kinds of proposals and actions BLM is involved with. These include but are not limited to:

#### **Land Use Plans (LUPs) or Resource Management Plans (RMPs)**

Extremely large documents that will guide and lay the legal foundation for the management of all resources in the area for next 10-30 years. These documents can cover over 1,000 pages; include maps, detailed analysis of resources and extensive lists of areas being considered for management under BLMs umbrella of stewardship. The time frame for the process of establishing a new LUP/RMP can span 2-5 years.

LUPs or RMPs often provide general directions only and authorizations for use and management of public resources that span livestock grazing allocations, wild horses and burros, mining, timber, recreation uses, special habitat designations, wildlife, threatened or endangered species, various federal and state treaties or mandates regarding wildlife protections, how the water will be protected, distributed and handled if there are no state water right laws involved, rehabilitation plans for wildfire damage or mining recovery, issues of concern such as invasive weeds or species, culture resource inventories and preservation, Indian tribe considerations, right of ways, land use designations such as establishing Areas of Critical Environmental Concern (ACEC), disposal areas of public lands (usually sales), as well as establishing a framework of where they want to eventually go for the area in the future, such as “increase big game habitat in such and such” or perhaps, “eventually authorize livestock for X amount of forage allocations”, etc.

The only place BLM can change a wild horse or burro area is in a LUP or RMP, not in any other document. Even though Herd Areas were suppose to be “preserved in perpetuity” as habitat for wild horse and burro preservation when Congress enacted the law, the land use planning process can get around this.

Only here can BLM decide if the area is not suitable at all for wild horse or burro use and zero it out completely. If BLM decides to zero a herd out, the Herd Area acreage still remains “on the books”, so to speak and contributes towards BLM counting that acreage as part of the wild horse and burro program but wild horses/burros are eventually removed once a LUP or RMP has approved of a Final Decision to zero them out.

BLM can also decide that only a small portion of the original Herd Area can sustain wild horses and burros through the LUP/RMP process. They can redraw the boundaries into a smaller area and deem it a Herd Management Area (they can also declare the entire original Herd Area suitable for Herd Management Area status as well). If BLM approves of drawing a smaller HMA area in the LUP/RMP, they can then legally remove wild horses and burros that roam outside these new boundaries, even if they are still living in their “originally protected” Herd Area habitat.

Furthermore, BLM also has reserved the right to declare an area suitable for wild horse and burro use by granting it “HMA Status” (this means they are legally granted and re-affirmed the right to live there) but BLM can later revoke this HMA status in new land use plans. It is called “losing their HMA Status” and reverting back to a Herd Area that will no longer be “managed”. Usually all wild populations are then removed once an HMA status is lost. The most prominent reason a HMA status has been revoked in the past is due to the presence of a threatened or endangered species such as the Desert Tortoise.

There are also known instances where BLM or other agencies went back and added Land Use Plan or Resource Management Plan Amendments, amending the original plans – wild horses, burros and their habitat can be zeroed out in these documents as well.

Finally, because BLM has no legal authority to zero out wild horse and burro populations in any other document, they can get around this by writing a proposal that approves of a population of one (that’s 1 wild horse or burro) for the Allowable Management Level (AML) for the HMA. This allows them to legally remove every horse but one until they can write a new LUP/RMP that makes their elimination permanent and zeroing out the area for future wild horse and burro use can become legally compliant.

### **Environmental Impact Statements (EIS)**

These are generally issued in conjunction with or as a Resource Management Plan. Also very large documents, BLM is required by law to provide an in depth, detailed accounting of water quality and sources, forage, soil, cultural issues, mining, oil and

gas, etc. and examine the projected impacts to resources from their alternatives, management strategies and proposals.

Generally, when BLM issues a proposal, they are required to decide if the proposal is significant enough to warrant a document as large and comprehensive as an EIS or if it is small enough to only issue an Environmental Assessment (EA). BLM generally does not like to have to go through an EIS process due to its size and detailed analysis, preferring to just use the EA process instead as it is smaller, less detailed and shorter in duration before approval. However, the public has the right to urge BLM to complete an EIS if they believe the proposal covers a significant amount of public land, resources or concerns that require a more detailed analysis than an EA will provide.

Like other proposals, an EIS is first issued as a Preliminary or Draft EIS and then as a Final EIS. Once a Final decision has been issued on an EIS, the BLM maintains the public cannot Protest the decision, in whole or in part, if they were never involved in the prior planning processes. BLM also maintains the public can only protest the points raised through their input and comments and no new point can be introduced. Though BLMs assertion that public involvement is limited by these two things in Protesting the Final EIS, many are questioning the legal validity of this as an actual fact.

Based on BLMs interpretation of the law, the public can only provide input during the scoping period, which requires the public to enter into the public record ideas, comments, suggestions, etc. on their own with no knowledge of what BLM may be planning for the area and then the Preliminary or Draft EIS's is issued, which is generally the publics first opportunity to review the issues, concerns and proposed alternatives for management directions.

As a result of this process, the Draft EIS is the single largest opportunity for the public to access what BLM is planning and comment on their directions and proposals and generally only comes around once every 10-30 years.

Once a Final EIS is issued, there is no opportunity for any further public comment or input even though BLM can issue a Final EIS with alternatives and proposals that are very different than what they proposed and presented to the public in the Draft EIS. A Final EIS is only open for a Protest Period, which, as stated before, can only address and Protest the issues brought up during prior points in the process, even if BLM makes major changes or introduces new issues themselves.

Once the Protest Period is over, BLM issues a Final Decision or Record of Decision and there is no legal right to appeal the document as a whole. Only when the BLM initiates a specific proposal or management action does the public again have the right to appeal,

protest or provide input on that specific proposal, which is based on the newly approved directions of the Resource Management Plan /FEIS.

Sometimes the time between the approval of the new RMP and when BLM initiates action through a site-specific proposal can span years and requires the public to follow BLMs actions throughout these same time frames if they wish to challenge BLMs decisions.

### **Rangeland Health Assessments (RHA)**

In Nevada, the BLM uses a process called the Rangeland Health Assessment to report on the condition of the soil, forage, water and other public lands uses. These too can be very large documents numbering in the hundreds of pages but not as large as the EISs. Other states may use processes similar to this and these become the basis for determining if changes in management are needed for different areas or different resources.

Sometimes these assessments are issued as just an informational document only, providing the results of BLMs monitoring and data collected from an area and sometimes they are combined with changes in management that can include changing livestock authorizations, fencing of springs, creating or recreating new pastures, setting wild horse and burro allowable management levels, and allocating forage to big game species. The RHAs are generally limited to authorizing public resources for different rangeland users in the proposal area.

The time frame for responding to proposals that is not informational only but proposes changes in resource allocations or management for the area range from 15 to 30 days, depending on what BLM allows the public. There is no legally established time requirement for public review.

### **Multiple Use Decision (MUDs) and Final Multiple Use Decisions (FMUDs)**

These are issued in Nevada and are often issued shortly after BLM releases a Rangeland Health Assessment if BLM did not propose any changes in the RHA. MUDs and FMUDs are also released in two stages, the MUD and the Final MUD and generally follow the 30-day public comment period each.

These documents are released to use the information BLM gained during the RHA and make changes to their management strategies if necessary. Here BLM authorizes livestock grazing, sets wild horse and burro allowable management levels, and sometimes set asides resources for big game wildlife species such as elk, bighorn sheep, pronghorn antelope and mule deer.

It is important to note that BLM does NOT manage wildlife populations as those go under the jurisdiction of state Fish & Game Departments but BLM IS responsible for making sure the habitat is healthy and can support and sustain these populations.

Unfortunately, while BLM must maintain habitat for wildlife species and often include the argument in their proposals that certain actions are necessary to protect wildlife or their habitat, they are not required to provide any information on the wildlife species in the area such as population levels or goals.

Unlike wild horses and burros, these species can continue to expand in an area without BLM having any authorization to limit or control them. If wildlife species are declining in an area, especially important hunting species, usually state Fish & Game departments are heavily involved in the proposals and demand BLM make changes to reverse the downward trends to wildlife populations.

### **Environmental Assessments (EAs)**

Assessments issued based on the framework of the land use plans but focused on site specific proposals such as grazing re-authorizations or reductions, transferring grazing rights to other parties, mining, oil and gas development, recreation uses such as Off Highway Vehicles (OHV), fencing proposals, wildfire damage rehabilitation, invasive species management such as weed control, setting the population levels for wild horses and burros in the Herd Management Areas as well as authorizing round ups for their removals when they exceed those population levels.

Generally, the Preliminary and Final Environmental Assessments are issued with a 30-day comment period but BLM is not required by law to provide the full 30 days and can offer comment periods of shorter durations (occasionally they offer longer ones or extend comment periods too).

### **Categorical Exclusions (CX)**

A management option that BLM has been recently mandated to use more of, it is designed to speed up the prior processes described above to allow BLM to authorize proposals quickly without having to go through the time consuming or more informative process of the EAs.

It is up to BLM managers to decide if certain actions require an EA process or qualifies for Categorical Exclusion. Some wildlife introductions to an area have been cited by BLM as CX's, therefore do not require public notice or an examination of the impacts bringing these new species to an area will have. However, the most likely use of the CX will be to re-authorize the same amount of livestock grazing in an allotment.

In order for BLM to use this option on livestock authorizations, an EA must have been issued before a CX can be used and then BLM can state that due to no changes in the existing use of the area, there is no need to re-write and re-evaluate the same proposal.

The inherent danger to the public with this system is no access to information and data about the proposal area as often times, requesting a copy of the last EA or other relevant documents can take more time than it will take BLM to issue a final decision. Some BLM offices are very strict about providing documents relating to their proposals and will only release those documents if the public demands access to the information by submitting a FOIA request.

Also, in theory, BLM can approve of CXs for many years after the original EA was written and therefore prevent any examination, analysis or current data to be available for public review.

### **Freedom of Information Act (FOIA)**

Despite its name, in many instances, information is not free and BLM has used this to charge large amounts of money to the public to access these documents. While certain fees are set that BLM has no control over, other areas such as estimated research time at hourly rates are completely up to their discretion. The general cut off for “free information” to the public is if the document costs \$14.00 or less to provide.

Media, educational requests and requests for information by 501c organizations are allowed access to a great deal more information for free than the general public but even then, FOIA Officers can decide “who and what” qualifies and may still charge a fee, depending on the amount of material requested.

The length of time to provide documents or information through a FOIA request is usually at least 30 days, though sometimes it is quicker, but may also stretch into years or an occasion, is never supplied. In the event government agencies (not just BLM) stalls and refuses public access to these records, the public has the right to initiate a lawsuit to demand a release of this information.

If the need for information was necessary to examine in conjunction with a new proposal, the opportunity to review this information in a timely manner that will help those interested in evaluating BLMs proposal is lost. While it may eventually show up, whether through normal channels or the results of a lawsuit, it no longer has any relevance to the decision.