

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FRIENDS OF ANIMALS,

Case No. 1:18-02029 RDM

Plaintiff,

v.

UNITED STATES BUREAU
OF LAND MANAGEMENT,

Defendant.

DECLARATION OF MICHAEL D. GATES

I, Michael D. Gates, do hereby declare as follows:

1. I am employed by the Bureau of Land Management as District Manager of the BLM West Desert District (WDD). I have held this position permanently since November 2020 and in detail since August 2020. I completed two previous details as the WDD District Manager, for 120 days in 2015-2016 and for 30 days in 2018. In my job as The District Manager, my duties include functioning as the BLM's primary line officer and authorized officer for BLM administered lands in Rich, Box Elder, Tooele, Utah, Juab, and Millard counties. In this capacity, I am delegated authority from the BLM State Director to make decisions on behalf of the BLM within the District boundaries, and I administer multiple use programs, including the wild horse and burro, grazing, wildlife, mining, recreation, and wilderness. In addition, as District Manager I supervise the FFO and SLFO, a large fire program, a team of Law Enforcement Rangers, and a Support Services team.
2. The Appropriate Management Level (AML) for the Onaqui Herd Management Area (HMA) is 121 – 210 horses. BLM established this AML in 2003 based on the need for the BLM to more accurately reflect wild horse AML level based on available resources including increased available forage from vegetation type conversions due to large scale wildfire. The AML was based on science and the change was determined to have a beneficial effect on the number of horses in HMA and sustains a thriving ecological balance. The 2003 AML decision is available online on BLM's ePlanning site: <https://eplanning.blm.gov/eplanning-ui/project/90785/570>. The AML established in 2003 was an increase from 45 animals as established in the 1990 Pony Express RMP, to an AML range of 121/159/210.
3. As of March 1, 2021, the estimated population within the HMA is 474 horses. This estimate does not include any foals born in 2021. Factoring in the foals born in 2021, it is estimated that the horse population on the Onaqui HMA at the time of the gather will be approximately 500 horses. The reason the population increase, or growth rate is lower than average, is primarily due to the fertility control field darting that is occurring on the HMA.
4. BLM last gathered horses at the Onaqui HMA in September of 2019, when 241 horses were gathered and removed. This gather focused on horses that were on the edge or outside the HMA boundary and on those mares that the Bureau of Land Management (BLM) was not able to approach and administer fertility control to via remote field darting. BLM removed an additional 18 horses between October 2019 to August 2020. Those horses were also on the edge or outside of the HMA and had evaded capture during the September 2019 event. The gathers completed in 2019 and 2020 were the first initial gathers completed under the Decision Record signed December 14, 2018 towards achieving AML with the Onaqui HMA. At the completion of this gather the HMA was and is still over two times above the specified AML.

5. BLM did not collect genetic hair samples during the 2019 gather because all the horses captured were permanently removed from the range. Consistent with BLM policy, if possible (not always), genetic samples are taken primarily from animals released back to the range. BLM decided that genetic samples would be taken from horses removed and released during a later gather (2021) so the animals would be present on the HMA for future genetic comparison. BLM intends to take hair samples during the July 2021 gather.
6. According to the U.S Drought Monitor, the HMA is experiencing Exceptional Drought Conditions (the driest category of on the drought monitoring scale) and has been in this category since before December of 2020. Typically, the HMA would receive an average of 9.84 inches of precipitation during the water year (noaa.gov & usclimatedata.com). The current water year (WY) began on Oct. 1, 2021 and will end on Sept. 30, 2021. Historically, 70 percent of the precipitation within the HMA falls during the cool months (Oct. through April). This cool season dominated precipitation is critical for the growth of forage grasses in this cool season dominated vegetative community. Under normal conditions, the HMA should have received 6.9 inches (normal) of precipitation so far this WY. The precipitation totals from the Utah Climate Centers located in Grantsville, Utah (north of the HMA) is 0.32 inches (5 percent of normal) for the WY and the Vernon, Utah station (east of the HMA) is 0.292 inches (4 percent of normal) since April 2021 14. The BLM collects precipitation data at their Desert Mountain site (to the south of the HMA) where there has been a total of 0.41 inches (6 percent of normal) this WY, consistent with the precipitation totals at the climate center locations to the north..
7. During the spring of 2020, BLM observed that there were areas in the southwest portion of the HMA (near Simpson Springs) that had very little or no vegetative growth. BLM observed that the horses from this area of the HMA traveled 10 – 15 miles outside of the HMA during the winter months to find available forage. Thus far in 2021, the horses have been able to utilize dried forage from last year to meet their required health needs. During the spring of 2021, there has been little to no vegetative growth throughout the HMA creating a dire situation on the HMA for the months to come regarding the foraging needs of the horses.
8. Historically, the horses on the Onaqui HMA have maintained an average body condition score (BCS) of a 5-6 (moderate to moderately fleshy) on the Henneke body condition scoring system (BCS 1= poor and a BCS 9= extremely fat). During the summer of 2020 horses were observed to have lost 200 – 300 pounds and some were in body conditions 3-4 (thin to moderately thin). During the 2020-21 winter and early spring 2021 several horses were seen with a body condition of 2 (very thin). Often horses in this body condition have low probability of survival, especially if no outlook of improved conditions (forage and water) is on the horizon. Despite the sparse and limited vegetative growth that occurred in the spring of 2021, some horses observed in the winter as being thin have put on some weight. However, as the forage dries out during the summer and

with the exceptional drought conditions in this area, the horses will begin to decline again in body condition.

9. Based on the most recent observations (June 2021) by the BLM field specialist, horses within the Onaqui HMA have an overall average body condition score of a 4 which, coupled with the poor range condition and lack of forage, puts them at risk of a potentially rapid deterioration in body condition as the summer progresses. This will result in suffering and, for some individual animals, death. If the July gather does not proceed as planned, it is likely that BLM employees, in accordance with BLM Policy (Permanent Instruction Memorandum 2021-007), will need to euthanize the animals as an act of mercy if an animal is suffering from “Sickness, failing health, or an infirmity, disease, injury, lameness, or serious physical condition or defect that has a poor prognosis for improvement or little chance of recovery.” Attached as Attachment A to this declaration is a true and correct copy of BLM Permanent Instruction Memorandum 2021-007.
10. Along with the concern of the health of individual horses within the Onaqui HMA, BLM is concerned with the long-term health and condition of the rangelands, and the overall land health of the ecological region, particularly if the July gather does not proceed as planned. The continued drought and yearlong grazing of excessive wild horse numbers is putting the region at ecological risk. As described in the 2018 Onaqui Mountain environmental assessment (DOI-BLM-UT-W010-2017-0009-EA): “Removing excess wild horses would make progress towards achieving a natural ecological balance. Implementation of the proposed action would bring the wild horse population within the HMA to AML. It would reduce current impacts to soil resources resulting from an overpopulation of wild horses in the HMA. Rangeland health and soil resources would improve in the long-term with management of wild horses at AML.” Ongoing periods of drought add additional stressors to the environment due to the lack of water availability that plants need to sustain life. Ongoing drought also limits water availability animals rely on, further constraining the animals to a smaller area as they tend to focus on live water which is mostly found in riparian areas. Without the July gather, the vegetation will be grazed heavily to a point where it may not recover, particularly with the additional stressors caused by drought, and BLM expects to see an increase in soil compaction around the water sources that will also be detrimental to riparian health. As the drought continues, little to no vegetative growth would occur and further impact the health of the rangelands. BLM is already seeing this impact on the sage-grouse and its habitat as discussed in paragraphs number 23-25 below.
11. BLM-Utah was originally not planning to gather at the Onaqui HMA until summer 2022. However, due to the declining wild horse body condition, deterioration of the range, and ongoing drought conditions within the Onaqui HMA, in early January 2021 BLM Utah placed the Onaqui gather on its list of priority gathers for the summer of 2021. BLM Utah’s summer 2021 gather request, along with all other requests from other BLM States

and regions, was then sent up to BLM Headquarters for allocation of funding. Headquarters emailed BLM Utah that it had allocated funding for the 2021 Onaqui gather on February 19, 2021. The 2021 gather schedule was posted on the BLM website on February 26, 2021. In early March of 2021 there were many members of the public posting comments about the July 2021 gather at Onaqui, including Craig Downer (who has submitted a declaration in favor of the Plaintiffs), and social media posts from individuals who claim to be affiliated with the Plaintiffs. Attached as Attachment B to this declaration is a true and correct copy of a March 3, 2021 letter from Craig Downer to BLM opposing the July 2021 gather. As outlined on the BLM website and national gather page, the current plans for the 2021 Onaqui gather is to: gather approximately 400 horses, remove 296, release or return to the HMA 104 (treating and releasing 52 mares with fertility control vaccine and 52 or an equal number of stallions). These numbers are all approximate pending success of the gather, body condition and perceived survivability of the horses, and availability of forage and water on the HMA at the time of release.

12. BLM has no written policy or requirement regarding the distribution of any news and/or press releases relating to upcoming gathers or removals. The usual practice for BLM-Utah is to issue a press release approximately two weeks before a gather is conducted, when the start date is more definitive, and often another release when the gather is completed. BLM-Utah is planning to continue with this practice for the upcoming Onaqui gather scheduled for July of 2021.
13. If the gather scheduled to begin July 11, 2021 is postponed, BLM expects the horses' body condition will continue to decline, as forage and water become less available during the hot months, leading to the animals becoming compromised in overall health and in their long-term prognosis for survivability. When the horses' body condition is low, the chance of the horses becoming sick or injured is increased and it can take longer for them to recover from ailments or from the effects of inadequate forage and water, even if they are gathered and removed from the HMA and cared for in a corral setting. Some may even need to be euthanized due to poor body condition. BLM policy (PIM 2021-007) states that animals are to be humanely euthanized if the Henneke body condition score is less than three with a poor prognosis for improvement. Without adequate forage across the HMA, horses will not be able to improve in body condition.
14. There is a high probability that the wild horses on the Onaqui HMA could face a dire situation at the current overpopulation if the scheduled gather is cancelled or even postponed. There is not the prior year's forage production leftover to help carry the horses through the summer months of 2021 like there was in 2020. The number of horses has increased, and they require more resources for their survival than are available.
15. If the scheduled gather is cancelled or postponed it likely will be very difficult to reschedule due to the other areas across the west which are also dealing with drought impacted conditions. The HMA is within a military airspace operating area, and it can

take weeks or months to get clearance to operate in that area. The current military schedules are very busy since trainings were put on hold last year due to COVID-19 delays. The national gather schedule is also full and there will be emergencies added to it due to the severe drought conditions in the West. If cancelled or postponed, BLM may be unable to get Onaqui back on the gather schedule even if the situation develops into an emergency, which could result in the suffering and death of individual animals in the HMA. Additionally, necessary contractors may become unavailable as other gathers get awarded. BLM has allocated a considerable amount of time, resources, and expenses in planning for the upcoming 2021 Onaqui Mountain gather. These expenses include but are not limited to: (a) contractor solicitation, site visits, award, and coordination, (b) personnel coordination, travel planning, and temporary detail authorizations, (c) outreach with media, potential visitors, and other interested parties, and (d) internal BLM incident command gather team planning, scheduling, and coordination meetings.

16. Bringing feed to the Onaqui HMA to prevent wild horse suffering and death is not a viable alternative to removing excess animals. As required in 43 CFR 4710.4, management shall be at the minimum level necessary to attain the objectives identified in approved Land Use Plans and Herd Management Area Plans. BLM policy as outlined in Handbook 4700-1 states that “It is not consistent with management at the minimal level to provide supplemental feed or rely on water developments that require frequent maintenance. It may, however, be appropriate to provide water in temporary emergency situations.” The feeding of wild horses on the range is outside normal BLM policy and could lead to further degradation of the rangelands as the estimated 500 wild horses at Onaqui would congregate at feeding locations, creating soil compaction. The horses would make use of the supplemental feed but would continue to seek out and consume the vegetation on the rangelands further adding to the unsustainable forage conditions. There is also the potential that supplemental feed brought onto the HMA would contain noxious weed seed. The introduction of noxious weed seed would allow for proliferation of the noxious weed as it would be able to establish on the feedlot-like disturbance that would be created by the supplemental feeding of the wild horses on the range. There is also the issue that the wild horses would become accustomed to being fed and could lose the wild nature many Americans have grown to love.
17. The livestock grazing allotments within the Onaqui HMA are grazed by both sheep and cattle with the majority of the sheep grazing permits in the HMA being located in the southwest corner, and along the northwestern edge of the HMA. Currently within the boundaries of the Onaqui HMA there are 24,982 animal unit months (AUM) allocated to livestock and 1,908 AUMs allocated to wild horses. BLM defines AUMs as the amount of forage necessary to sustain 1 cow (or its equivalent) for a period of 1 month. The equivalent is 1 horse, 1 burro, 1 bull, 5 sheep, or 5 goats. BLM established the multiple-use allocations within the Onaqui HMA through the land use planning process, which is consistent with BLM’s responsibilities under the Taylor Grazing Act and the Federal Land Management Policy Act. In 2021, livestock AUMs have been reduced due to

drought, with grazing anticipated at only around 43 percent of permitted use. These reductions were taken voluntarily by the grazing permit holders. AUMs for sheep total 11,684. However, this year, less than 1,000 AUMs were actually used by sheep. It is expected that as the drought conditions continue throughout Utah, including within the Onaqui HMA, that further reductions in livestock grazing use will be taken in the fall of 2021 (when most of the permittees bring their livestock back onto the allotments). The anticipated excess population of wild horses (estimated to be over 500 horses in 2021) would need approximately 6,000 AUMs annually to support their dietary needs. This excess population of wild horses is 238 percent over what has been established in the land use management plans, where it is estimated that the wild horse population would be consuming between 1,452 and 2,520 AUMs annually.

18. Grazing management – AUM allocation needs to factor in the most challenging of circumstances like drought, distribution, and water reliability/accessibility. Livestock are easier to manage when drought conditions arise. The BLM on a regular basis asks the livestock permittees or the permittee to voluntarily destock in times of drought. Wild horses are more challenging because of the difficulty in destocking. Due to a number of factors including: the conducting of a gather is expensive, it is often difficult to find space for the horses to be removed to off-range facilities and leaving the horses un-managed during droughts leave the horses subject to the environmental elements – and potentially die offs that have been documented to happen during these challenging times.
19. Unlike wild horses, permitted livestock can be managed and can be herded to different areas of the HMA within the respective allotment. If an area is being overutilized by livestock, BLM Range Specialists ask permittees to move the livestock or reduce their numbers. Both have been done by BLM on the allotments that overlap the Onaqui HMA almost every year for the past twenty years. Livestock, particularly sheep, use different aspects of the rangeland than horses. Horses focus on grass as forage; sheep utilize browse species.
20. BLM does not and cannot actively herd wild horses like permittees can with livestock. The HMA is not homogeneous and flat. Due to natural distribution habits, the horses occupy smaller areas of the HMA. This leads to higher impacts associated with densely undistributed wild horses near water locations. Western Tooele County is very diverse in vegetation and in topography. This leads to distribution challenges with the horses and carrying capacity issues for both forage and water.
21. BLM disputes Mr. Downer's assertion that there were "hoards of sheep" on the range this year. There were a few isolated herds using the livestock trail to get to areas outside the HMA. AUMs for sheep total 11,684. This year (2021), less than 1,000 AUMs were actually utilized by sheep. Also, the photo listed as attachment 3 in Mr. Downer's

declaration is a facility located approximately 5 miles to the west, southwest of the HMA and outside of the Onaqui herd management area.

22. Off-highway-vehicle (OHV) users are authorized to use existing routes within the HMA. Off-route cross country travel is not authorized. BLM actively enforces unauthorized off-road OHV use, including by writing tickets and assessing fines. BLM also tries to rehabilitate unauthorized routes created by recreating public. Large scale resource damage within the HMA is not being caused by illegal OHV use. The photograph of the OHV attached to Mr. Downer's Declaration (ECF No. 62-1, Attachment 6) shows OHV use on a County class B road. This use is authorized and encouraged by the BLM under its multiple use and sustained yield mandate. The pictured OHV is staying on an existing route and is not different from the use by the vehicle Mr. Downer used to travel to take the photo. BLM has no data that indicates that dust created by OHV travel on existing authorized routes has any detrimental effect on wild horses or adjacent vegetation.
23. The Sheeprock Greater Sage-Grouse population overlaps with the Onaqui HMA. The 2015 Greater Sage-Grouse Approved Resource Management Plan Amendment (ARMPA) identifies Greater Sage-Grouse conservation objectives and adaptive management triggers which identify immediate actions necessary to stop deviation from those conservation objectives. In 2016, a technical sage-grouse team reviewed the population data for the Sheeprock population area and found that one of the adaptive management population triggers had been met. A population trigger represents a threshold in either habitat loss or population decline which indicate immediate actions are necessary. Specifically, the data from 2007-2016 showed that the population declined in 8 out of 10 years. On March 31, 2017, the BLM Utah State Director issued Informational Bulletin No. UT 2017-010 which declared that the Sheeprock population had met one of the population hard triggers. Attached as Attachment C to this declaration is a true and correct copy of a March 31, 2017 Memorandum from Utah State BLM Director Regarding Implementing BLM Utah's Greater Sage-Grouse Adaptive Management Triggers.
24. Because of the decrease in population numbers, the Utah ARMPA adaptive management responses require BLM to: "Initiate emergency gathers to reduce wild horse and burro populations within affected area to low end of AML, subject to funding and holding space availability. If the population is within AML and the area does not meet GRSG habitat objectives, reduce AML for the HMA within the affected area up to 25 percent to facilitate meeting habitat objectives." (USDI, 2015)(BLM 2015. ARMPA, Appendix I, Table I.1). The 25 percent reduction in AML is not warranted at this time, but for the purpose of protecting Sage-Grouse habitat the excess wild horses need to be gathered and removed to within AML numbers.
25. An interagency team of BLM, Utah Division of Wildlife Resources, and U.S. Forest Service biologists completed a Causal Factor Analysis for the Sheeprock population and

found that the wild horse populations above AML to be a moderate contributing factor to the population decline. The biologists also concluded that proper livestock grazing was not a contributing factor to the population decline.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Salt Lake City, Utah, this 24th day of June 2021.

A handwritten signature in blue ink, appearing to read "Michael D. Gates", written over a horizontal line.

Michael D. Gates

Works Cited

- USDA. (2021, 06 14). *Custom Soil Resource Report for Tooele Area, Utah - Tooele County and Parts of Box Elder, Davis and Juab Counties*. United States Department of Agricultural, Natural Resource Conservation Service.
- USDI. (2015). *Utah Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement*. Bureau of Land Management, United States Department of the Interior, Washington, D.C.

