

June 6, 2022

Via BLM ePlanning Portal¹

Spencer Allred, Project Manager
U.S. Bureau of Land Management

Re: Protest to BLM's Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for Wild Horse Management in the Rock Springs and Rawlins Field Offices

Dear Mr. Allred,

We are writing on behalf of our clients, the American Wild Horse Campaign, the Animal Welfare Institute, Carol Walker, and Kimerlee Curyl (collectively “the Coalition”), to protest the *Resource Management Plan Amendment and associated Environmental Impact Statement for Wild Horse Management in the Rock Springs and Rawlins Field Offices, Wyoming* (DOI-BLM-WY-D040-2013-0001-RMP-EIS). As outlined below and in the Coalition’s comments on the Draft Environmental Impact Statement (“DEIS”) for this proposal, the Bureau of Land Management’s (“BLM’s”) Resource Management Plan (“RMP”) amendments are flagrantly illegal in several different respects, and pose a threat to the health and welfare of the wild equines that Congress expressly sought to protect. BLM’s astonishing decision here to eradicate 1,200 horses and their habitat from public lands sets a dangerous precedent that would allow the agency to remove wild horses from the range whenever BLM finds it too “difficult” to comply with its statutory mandate. As such, the Coalition members hereby renew their protests to the proposed RMP amendments and BLM’s purported environmental review pursuant to 43 C.F.R. § 1610.5-2.²

INTRODUCTION

Under the “Proposed Resource Management Plan (RMP) Amendment and Final Environmental Impact Statement (EIS) for Wild Horse Management in the Rock Springs and Rawlins Field Offices,” BLM is planning an unprecedented and truly stunning reduction of long-standing wild horse herds from federal public lands in Wyoming. *See* BLM, *Wild Horse Management for the BLM Rock Springs and Rawlins Field Offices* (May 6, 2022), <https://bit.ly/3wVok6U> [hereinafter “FEIS”]. The amendment concerns four Herd Management

¹ <https://eplanning.blm.gov/eplanning-ui/project/2009946/510>

² In support of the issues raised in this protest letter, as required by BLM’s regulations, the Coalition attaches here copies “of all documents addressing the issue or issues that were submitted during the planning process by the protesting party.” 43 C.F.R. § 1610.5-2(a)(2). Those comments (and the attachments thereto), which were submitted to BLM on April 30, 2020, are incorporated in this protest letter in their entirety.

Areas (“HMAs”), i.e., areas established for the maintenance of wild horse and burro herds based on defined factors that determine their ability to sustain wild horse and burro herds. If BLM implements its proposed amendment, three of the four HMAs would lose their designations as HMAs for reasons unrelated to their suitability for wild horses. *See* FEIS at 22. In two of those HMAs, *every single* wild horse would be rounded up and removed from the range. *Id.* at 21. In another, BLM proposes to roughly halve the size of the existing HMA and reduce the number of horses below the figure considered by BLM to represent a “thriving natural ecological balance.” In all, BLM’s proposed amendments would slash the number of wild horses in the action areas from 1,481-2,065 down to just 464-836, a 60-70% reduction. Even using BLM’s larger population estimate (i.e., the high end of the proposed AML range under the Proposed RMP Alternative of 836 horses), this would leave just 0.00044 wild horses per acre of land in the action area under BLM’s jurisdiction. This proposal equates to roughly 2,297 acres of BLM-managed public lands per wild horse in these areas, through draconian measures that will impair the welfare of these majestic wild creatures, and make it far more difficult to find, photograph, and otherwise enjoy them, contrary to what Congress intended.³

While the scope of BLM’s proposed herd reductions is astonishing in its own right, it is made even more concerning by the fact that the agency lacks lawful authority to implement its proposed plan. According to BLM, the drastic wild horse reductions outlined in the amendment are meant to comply with a 2013 Consent Decree it entered into with the Rock Springs Grazing Association (“RSGA”), an organization whose members graze livestock that compete with wild horses for forage on BLM lands. Yet, as BLM concedes, the Consent Decree obligated BLM to “consider” the environmental impact of a similar plan; it did “*not* require that the BLM implement any specific action.” FEIS at 13 (emphasis added). Nor could it. Under the Wild Free-Roaming Horses and Burros Act (“Wild Horse Act”), 16 U.S.C. §§ 1331-1340, BLM may only remove wild horses from public lands once they have been labeled “excess animals”—meaning there are insufficient quantities of habitat factors, such as forage, water, cover, and space, to support the existing herd size in a “thriving natural ecological balance . . . in that area,” *id.* § 1332(f). But BLM did not make that determination here. Instead, the agency freely admits that its decision is predicated on extraneous factors that are outside BLM’s discretion to consider when managing wild horses. Thus, the proposed amendments, if implemented, are textbook arbitrary action under the Wild Horse Act and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551-559, 701-706.

Given BLM’s brazen departure from the requirements of the Wild Horse Act, it is unsurprising that its environmental impact analysis, prepared pursuant to the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4347, is also fatally flawed. For vague or unexplained reasons, the agency’s NEPA analysis rejects from detailed consideration reasonable alternatives that entail fewer environmental impacts. Likewise, the FEIS ignores several important facets of the agency’s decision, thereby concealing the full extent of environmental impacts stemming from the RMP amendments. Taken together, these fatal errors

³ *Compare* FEIS at 1 (“The BLM manages approximately 1,920,314 acres of surface estate in the planning area.”), *with id.* at 4 (noting the extant Appropriate Management Level across all four HMAs is “1,481-2,065”), *and id.* at 5 (“Total AML under [BLM’s proposed RMP amendments] would be 464 to 836 wild horses.”).

demonstrate that BLM has not used the NEPA process to inform its decision-making, but instead to justify a decision the agency already made (and has attempted unsuccessfully to implement in the past through other, related actions in these same areas of public land).

This protest letter is filed on behalf of organizations and individuals committed to safeguarding wild horses and their habitat. The American Wild Horse Campaign (“AWHC”) is a national nonprofit organization dedicated to preserving the American wild horse in viable free-roaming herds for generations to come, as part of our national heritage. Its mission is supported by a coalition of over 60 historic preservation, conservation, horse advocacy, and animal welfare organizations. AWHC’s supporters and members of its coalition enjoy viewing, studying, and photographing wild horses on public lands. As a part of its preservation mission, AWHC regularly comments on and challenges BLM actions, like this one, that will harm wild horse and burro populations on federal lands. AWHC has committed significant resources towards protecting the wild horses and burros that call the Wyoming Checkerboard home, including by challenging the very Consent Decree that is driving the proposed amendments at issue here. *See Rock Springs Grazing Ass’n v. Salazar*, 935 F. Supp. 2d 1179 (D. Wyo. 2013); *see also, e.g., Rock Springs Grazing Ass’n v. Salazar*, No. 2:11-cv-00263-NDF, 2011 WL 13162053 (D. Wyo. Nov. 2, 2011) (finding that AWHC has “a legally protectable interest in protecting the wild horses that live in [the Wyoming Checkerboard]”). AWHC submitted comments on BLM’s Draft EIS on April 30, 2020. *See* Letter Re: Rock Springs Resource Management Plan Revision, DOI-BLM-WY-D040-2011-0001-RMP-EIS from Briannah Schwartz et al., AWHC, to Kimberlee Foster, Rock Springs Field Office Manager, BLM (Apr. 30, 2020) [hereinafter “AWHC Comments”].

The Animal Welfare Institute (“AWI”) is a national, nonprofit charitable organization, founded in 1951, dedicated to alleviating the suffering inflicted on animals by humans. AWI engages policymakers, scientists, industry professionals, nongovernmental organizations, farmers, veterinarians, teachers, and the public in its broad animal protection mission. AWI works to minimize the impacts of all human actions that are detrimental to wildlife, including by mitigating the use of inhumane methods to manage free-roaming wild horses and burros on public lands. AWI has more than 220,000 members and constituents, many of whom are specifically interested in the well-being of free-roaming wild horses and burros. Moreover, AWI has devoted considerable resources fighting to protect wild horses and burros, which draws funds away from other AWI programs and organizational interests. AWI submitted comments on BLM’s Draft EIS on April 30, 2020. *See* Letter Re: Draft RMP Amendment and EIS for Wild Horse Management in the Rock Springs and Rawlins Field Offices, Wyoming, DOI-BLM-WY-D040-2011-0001-RMP-EIS from Joanna Grossman, AWI, to Kimberlee Foster, Rock Springs Field Office Manager, BLM (April 30, 2020) [hereinafter “AWI Comments”].

Carol Walker is a photographer with significant professional and personal interests in Wyoming’s wild horse herds. She has spent her career photographing wild horses, particularly horses exhibiting wild and natural behaviors on the range. She sells fine art prints, calendars, and books of her photographs of wild horses engaging in their natural behaviors. Ms. Walker has been visiting BLM lands to view wild horses all across Wyoming several times per year since 2004, including many areas within the Wyoming Checkerboard. Given her long-standing familiarity with these herds, Ms. Walker can easily identify many of these horses and has named

some of them based on repeated interactions. A book of Ms. Walker's photographs was published in France in 2014, titled *Mustang: The Heart of an American Legend*. She is also the author of the books *Wild Hoofbeats: America's Vanishing Wild Horses* and *Galloping to Freedom: Saving the Adobe Town Appaloosas*. With AWHC, Ms. Walker submitted comments on BLM's DEIS for the proposed RMP amendments on April 30, 2020. Ms. Walker is also a member of the Western Watersheds Project, which has submitted detailed comments on the DEIS for and a separate protest letter to BLM's proposed RMP amendments.

Kimerlee Curyl is a professional photographer whose work focuses on capturing the raw beauty of wild horses running free across their rugged native terrain. She has photographed wild horses extensively in Wyoming, including in the White Mountain, Little Colorado, Adobe Town, Salt Wells Creek, and Great Divide Basin HMAs. Fine art prints of her photographs have been sold in galleries throughout the nation and featured in several advertising and product branding campaigns for clients such as Carivintas Winery, 14 Hands Winery, Archer Hotels, and Road Ranger L.L.C. Some of her best-selling works were captured in the Great Divide Basin and Salt Wells HMAs. In addition to her professional interest in wild horses, Ms. Curyl derives immense personal satisfaction from viewing wild horses in the Adobe Town, Salt Wells Creek, and Great Divide Basin HMAs, which continue to be her favorite places to photograph and observe horses. Her profound desire to learn and educate others about wild horses has served as the driving force behind her work, which she uses to educate members of the public about the importance of protecting wild horses and their habitat. With AWHC, Ms. Curyl submitted comments on BLM's DEIS for the proposed RMP amendments on April 30, 2020. Ms. Curyl is also a member of the Western Watersheds Project, which has submitted detailed comments on the DEIS and a separate protest letter to BLM's proposed RMP amendments.

BACKGROUND

I. Relevant Statutory and Regulatory Framework

A. The National Environmental Policy Act

Congress enacted NEPA “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment. . . .” 42 U.S.C. § 4321. The Supreme Court has held that NEPA is “intended to reduce or eliminate environmental damage and to promote ‘the understanding of the ecological systems and natural resources important to’ the United States.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004) (quoting 42 U.S.C. § 4321). At its core, NEPA is intended to “ensure” that federal decision-makers “have detailed information concerning significant environmental impacts” and “guarantee[] that the relevant information will be made available to the larger [public] audience.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

For all major federal actions that will significantly affect the environment, NEPA requires agencies to prepare an Environmental Impact Statement (“EIS”) to evaluate the environmental effects of and alternatives to a proposed federal decision. *See* 42 U.S.C. § 4332(c). Congress designed NEPA to inject environmental considerations “in the agency

decision making process itself,” “help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Pub. Citizen*, 541 U.S. at 768-69 (quoting 40 C.F.R. § 1500.1(c)). Thus, “NEPA’s core focus [is] on improving agency decision making,” *id.* at 769 n.2, and specifically on ensuring that agencies take a “hard look” at potential environmental impacts and environmentally enhancing alternatives “as part of the agency’s process of deciding whether to pursue a particular federal action.” *Baltimore Gas and Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 100 (1983).

The alternatives analysis “is the heart” of the NEPA process. 40 C.F.R. § 1502.14. NEPA’s implementing regulations require that the decision-making agency “present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” *Id.* Importantly, the NEPA process “shall serve as the means of assessing the environmental impact of proposed agency actions, *rather than justifying decisions already made.*” 40 C.F.R. § 1502.2(g) (emphasis added); *see also Id.* § 1502.5 (requiring that NEPA review “shall be prepared early enough *so that it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made*”) (emphasis added); *Metcalf v. Daley*, 214 F.3d 1135, 1141-42 (9th Cir. 2000) (“[T]he comprehensive ‘hard look’ mandated by Congress and required by the statute must be timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.”).

B. The Wild Free-Roaming Horses and Burros Act

In 1971, Congress enacted the Wild Horse Act out of concern that wild horses were “disappearing from the American scene.” 16 U.S.C. § 1331. Declaring that “wild horses are living symbols of the historic and pioneer spirit of the West,” and “contribute to the diversity of life forms within the Nation and enrich the lives of the American people,” Congress directed that wild horses “shall be protected from capture, branding, harassment, [and] death” and “be considered in the area where presently found, as an integral part of the natural system of the public lands.” *Id.* To implement that mandate, Congress declared that BLM shall “protect and manage wild free roaming horses and burros as components of the public lands,” and provided that “[a]ll management activities shall be at the minimal feasible level.” 16 U.S.C. § 1333(a).

Under the Act, BLM manages wild horses on public lands within HMAs, which are “established for the maintenance of wild horse . . . herds,” 43 C.F.R. § 4710.3-1, in the areas they used in 1971. 43 C.F.R. § 4700.0-5(d). BLM designates HMA boundaries in RMPs, which are prepared through a land-use planning process conducted pursuant to the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701-1787. FLPMA’s implementing regulations require BLM to maintain RMPs that are “designed to guide and control future management actions” on public lands. *Id.* § 1601.0-2. Modifications to HMA boundaries may only be adopted through this land-use planning process, which requires extensive public involvement and compliance with NEPA. *See* 43 C.F.R. § 4710.1; *see also* BLM, *Wild Horses and Burros Management Handbook H-4700-1* (“*Wild Horse Handbook*”), at 8 (decisions to modify “an HMA must be made through a [land use plan] amendment, revision or new RMP”).

The Wild Horse Act further requires BLM to manage wild horses “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). To do so, for each HMA, BLM must: (1) maintain a current inventory of wild horses in each HMA, (2) “determine [the] appropriate management level”—i.e., the AML—of wild horses that the HMA can normally sustain, 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 is “expressed as a population range within which [wild horses] can be managed for the long term” in an HMA without resulting in rangeland damage. BLM, *Wild Horse Handbook*, at 17. The lower limit of the AML range is “established at a number that allows the population to grow (at the annual population growth rate) to the upper limit over a 4-5 year period, without any interim gathers.” *Id.* BLM establishes an AML for each HMA through the formal process created by FLPMA, when developing or amending the applicable RMP. *See* BLM, *Wild Horse Handbook*, at 18.

Section 3 of the Wild Horse Act grants BLM the authority to manage and protect wild horses by permanently removing “excess” horses from public lands, but only after BLM specifically determines that: (1) “an overpopulation [of wild horses] exists on a given area of the public lands,” and (2) “action is necessary to remove excess animals.” 16 U.S.C. § 1333(b)(2). An “excess” wild horse is defined as one that “must be removed from an area *in order to preserve and maintain a thriving natural ecological balance . . . in that area.*” 16 U.S.C. § 1332(f) (emphasis added). Once BLM makes a formal “excess determination,” it may remove only those “excess animals from the range so as to achieve appropriate management levels.” 16 U.S.C. § 1333(b)(2). According to BLM’s wild horse manual, “[w]ild horses or burros should generally not be removed below the AML lower limit.” BLM, *Wild Horse Manual MS-4720*, at 4 (July 7, 2010), <https://on.doi.gov/3z8FMwm>; *see also* BLM, *Wild Horse Handbook*, at 17 (wild horse removals should be conducted to “maintain population size within AML”). Removal of wild horses below the agency’s legally established AML may be warranted only “in emergency situations based on limited forage, water or other circumstances.” BLM, *Wild Horse Manual*, at 5. Before taking action to remove wild horses below AML if BLM determines that emergency circumstances exist, BLM must conduct an adequate NEPA analysis subject to public participation and provide a compelling “[r]ationale to justify a reduction below the AML lower limit.” *Id.*

In contrast to Section 3’s broad authority to permanently remove excess horses from *public* land in order to *protect* wild horse populations and other range resources, Section 4 of the Act provides BLM with the narrow authority to remove wild horses from *private* land when “the owners of such land . . . inform [BLM]” that a wild horse has “stray[ed] *from public lands onto privately owned land.*” 16 U.S.C. § 1334 (emphasis added). This narrow authority is triggered only by a “written request from the private landowner,” 43 C.F.R. § 4720.2-1, at which point BLM must “arrange to have the animals removed.” 16 U.S.C. § 1334.

II. The Wyoming Checkerboard, and the Proposed Amendments to the Green River and Rawlins RMPs

Members of the Coalition have already provided a detailed factual background on the history of the dispute over wild horses in the Wyoming Checkerboard as part of their comments on the DEIS. *See, e.g.*, AWHC Comments at 5-10. Because those comments have been incorporated in this letter by reference, the Coalition provides here only a brief summary of the relevant history to contextualize its discussion of BLM's legal violations below.

The proposed RMP amendments concern four HMAs in southern Wyoming—the White Mountain, Great Divide Basin, Salt Wells Creek, and Adobe Town HMAs. Together, these HMAs comprise roughly 2,811,401 acres, with portions of each HMA laid out in a checkerboard pattern of public and private lands. Within the 2,811,401 acres that comprise these four HMAs, approximately 1,920,314 acres (or 68%) are public land under BLM's management, including several large swaths of solid-block parcels that contain no private inholdings. The remaining acreage (32%) is privately held.

Despite not encountering similar issues with grazing leases and trespass cattle in the same area, BLM has found that managing wild horses in the Checkerboard's interface between public and private lands is "difficult." *See* FEIS at 22. Although BLM's Checkerboard management has a long and controversial history, the developments that led to the RMP amendments at issue here began in 2011; after years of disagreements with BLM about what RSGA perceived as a failure to timely remove excess wild horses from both the public and private lands within these HMAs, RSGA filed a lawsuit in 2011 to compel BLM, pursuant to Section 4 of the Wild Horse Act, to remove all of stray wild horses on private lands owned or leased by RSGA in the Checkerboard. *Rock Springs Grazing Ass'n v. Salazar*, 935 F. Supp. 2d 1179 (D. Wyo. 2013). BLM and RSGA settled that suit in 2013 by agreeing to a consent decree that required BLM, *inter alia*, to gather wild horses from private lands within Checkerboard, as required by Section 4 of the Act, "consider appropriate changes" to the HMA boundaries that included lands owned or leased by RSGA, and "consider revision of the respective numbers of wild horses as expressed by AMLs." *Id.* at 1185. For its part, RSGA agreed to allow "up to 205 to 300 wild horses" to reside on its lands within the White Mountain HMA, "subject to the BLM's agreement to institute fertility control measures and to keep the numbers to the lower range of the agreed-upon numbers." *Id.*

The RMP amendments and FEIS at issue here purport to respond to the 2013 Consent Decree. BLM released its DEIS and draft RMP amendment in January 2020. Aside from the no-action alternative, the DEIS analyzed three alternatives in detail, including BLM's "Preferred Alternative (D)," which proposed to zero-out entirely three of the four longstanding wild horse HMAs in this region (the Great Divide Basin, Salt Wells Creek, and White Mountain HMAs). BLM also proposed zeroing out certain portions of the fourth HMA, Adobe Town, while maintaining a much smaller population (AML of 259-536) in the remainder of that HMA. Remarkably, BLM's Preferred Alternative is even more draconian than RSGA's proposal in the 2013 Consent Decree, wherein RSGA stated that it had no objection to up to 450 horses in the Adobe Town HMA and up to 205 horses in the White Mountain HMA (i.e., up to 655 horses in total).

The FEIS differs only slightly from the agency’s January 2020 draft. Under Alternative B—the only alternative that contemplates any changes to the grazing regime in any of the HMAs—BLM further reduced the appropriate AML for the Adobe Town and White Mountains HMAs “to better align with the requirements of the 2013 Consent Decree.” FEIS at 18-19 (setting White Mountain HMA AML at 99-205, and Adobe Town HMA AML at 225 to 450). Under Alternative D, i.e., BLM’s proposed RMP amendment and Preferred Alternative, BLM decided to retain the HMA status for the White Mountain HMA and dispense with its earlier plan to manage the herd as a non-reproducing herd. BLM will, however, continue to “implement population growth suppression strategies to reduce the population growth rate for this herd.” *Id.* at 24.

DISCUSSION

I. The Proposed RMP Amendment Violates the APA and Wild Horse Act

BLM’s proposed amendments to the Rawlins and Green River RMPs contemplate drastic reductions in the number of wild horses that reside in the action area. However, BLM’s Preferred Alternative relies on extra-statutory factors that artificially constrain its discretion to retain a population of wild horses that is already achieving “a thriving natural ecological balance,” as required by the Wild Horse Act. BLM’s Preferred Alternative, therefore, violates the Act and the APA, as explained below.

A. BLM’s Justification for the Proposed Redesignation of HMAs and Removal of Wild Horses from the Range Exceeds the Agency’s Statutory Authority Under the Wild Horse Act

As the Coalition explained in their comments on the DEIS, BLM’s decision to eliminate and/or significantly curtail long-standing wild horse use of four HMAs based on factors unrelated to the natural ecological balance of these areas “violates the plain terms of the [Wild Horse] Act, its regulations, and BLM’s Handbook.” *E.g.*, AWHC Comments at 11-13. In the Wild Horse Act, Congress made clear that the protection of wild horses is a paramount concern, and that those herds must be managed “to achieve and maintain a thriving natural ecological balance on the public lands.” 16 U.S.C. §§ 1331, 1333(a). Throughout its administration of the Wild Horse Act, BLM has repeatedly held that “thriving natural ecological balance” (“TNEB”) is a function of rangeland environmental conditions, including whether a given parcel is, or making progress towards, “achieving the Land Health Standards” and the adequate amounts of forage, water, cover, and space. *E.g.*, *Wild Horse Handbook* at 59; *see also* FEIS at 47 (“To achieve a TNEB, the BLM establishes AMLs and manages wild horses in a manner that assures significant progress is made toward achieving the Land Health Standards for upland vegetation and riparian communities, watershed function, and habitat quality for animal populations, as well as other site-specific or landscape-level objectives.”). Similarly, BLM’s own guidance regarding the Wild Horse Act lays out a very detailed process for adjusting or eliminating AML in a given HMA, and that process is based solely on habitat factors and range conditions. *See Wild Horse Handbook* at 67-75.

Despite this, the FEIS bluntly admits that BLM did not care “whether existing range conditions reflect [TNEB] as described in the [Wild Horse Act].” FEIS at 3, 13. Instead, the agency explains that its decision is predicated on extra-statutory factors, including, specifically, the difficulty of managing wild horses in the checkerboard portion of the planning area and an ostensible need to comply with Section 4 of the Wild Horse Act. *Id.* at 22. That concession, standing alone, demonstrates that BLM has exceeded its discretion in violation of the Wild Horse Act. *Am. Wild Horse Preserv. Campaign v. Jewell*, 847 F.3d 1174, 1188 (10th Cir. 2016) (The “very practical realities [of the Checkerboard] do not provide BLM with the authority to construe the Act in a manner contrary to its plain and unambiguous terms.”); *see also Kleppe v. New Mexico*, 426 U.S. 529, 537 n.7 (1976) (“Congress expressly ordered that the animals were to be managed and protected in order ‘to achieve and maintain a thriving natural ecological balance on the public lands.’” (quoting 16 U.S.C. § 1333(a))).

The pretext driving BLM’s desire to divorce the RMP amendments from the congressionally mandated TNEB standard becomes clearer when considered alongside the agency’s evaluation of current range conditions. According to BLM, each of the four HMAs presently contain a sufficient amount of the habitat constituents (i.e., forage, water, cover, and space) to sustain a healthy wild horse herd in the long term. *See* FEIS at App’x A. The same remains true when excluding what BLM claims are the “difficult-to-manage” checkerboard portions of the Great Divide Basin and Salt Wells Creek HMAs. FEIS at 23 (“The BLM conducted a review of AML (as per [the *Wild Horse Handbook*], Appendix 3) and found that there was adequate forage, water, cover and space to sustain a wild horse herd in the solid-block portion of th[ese] HMA[s].”). Where, as here, these habitat components exist in sufficient quantities, BLM’s own *Wild Horse Handbook* implies that significant wild horse emigration is unlikely. *Cf. Wild Horse Handbook* at 12 (“A recurring pattern of WH&B movement out of the HMA to access forage, water, or thermal or hiding cover is an indication that year-long WH&B use cannot be sustained.”).

Despite the Coalition warning that “the Wild Horse Act does not authorize BLM to convert an HMA to an HA (or to reduce AML to zero) merely because some horses could stray onto private lands from a large solid public land block,” AWHC Comments at 16; AWI Comments at 6, the FEIS nevertheless rejects the option of retaining the HMA status in the large solid-block portions because, again, “it would be very difficult for BLM to prevent this herd from continually returning to private lands in the checkerboard.” FEIS at 23.

Even setting aside the utter lack of statutory authority for the agency’s position, BLM’s rationale is deeply flawed on several fronts. First, BLM’s arbitrary reason for the reductions (i.e., that “it would be very difficult for BLM to prevent this herd from continually returning to private lands in the checkerboard,” FEIS at 23), extends far beyond the boundaries of the Checkerboard itself. For instance, BLM proposes to manage the “entire Great Divide Basin” for “zero wild horses,” FEIS at 21 (emphasis added), even though only 48% of the HMA is Checkerboard land, *id.* at 48. Similarly, BLM plans to manage the Rock Springs portion of the Adobe Town HMA for zero wild horses despite the fact that only 42% of the HMA includes Checkerboard land. *Id.* at 20-21, 48. In the Rawlins portion of that same HMA, BLM justifies further AML reductions based on the presence of Checkerboard lands that amount to less than 1% of its total acreage. *Id.* at 48.

Second, the agency’s position in the FEIS is internally incoherent; while on one hand it states that a significant portion of the Adobe Town HMA, and the entire Great Divide Basin and Salt Wells Creek HMAs will “revert to HA status and be managed for zero wild horses” to “prevent wild horses who had historically utilized the checkerboard lands from drifting out of the solid-block portion of this HMA,” FEIS at 22, 23, it simultaneously concedes that implementing “population growth suppression strategies” in the White Mountain HMA—which contains 72% checkerboard land—is legally and practically sufficient to obviate any change to its HMA status. *See* FEIS at 22-24. BLM fails to reconcile these opposing positions in the FEIS.

Third, BLM’s claim that the difficulty of preventing herds from straying onto private lands in the checkerboard necessitates preemptive HA reversions (and the concomitant wild horse removals) is merely a repackaging of the logic rejected by the Tenth Circuit in *American Wild Horse Preservation Campaign v. Jewell*, 847 F.3d 1174 (10th Cir. 2016). There, BLM claimed that it was required to exercise on *public* lands its Section 4 authority to remove wild horses from *private* lands. The Court flatly disagreed. In reaching its holding, the Court explained that a concern over “stop[ping] wild horses from straying from the public land sections of the Checkerboard” is not a credible basis for preemptive removals because, in Section 4 of the Act, Congress has already provided BLM with a mechanism to address stray horses on private land. *See* 847 F.3d at 1189.

Thus, what BLM is attempting to accomplish in the proposed RMP amendments is merely a variation—albeit a much more permanent and precedential variation—on its prior unsuccessful utilization of Section 4 authority. As BLM is no doubt aware, Section 3 of the Wild Horse Act only permits BLM to permanently remove “excess animals from the range so as to achieve [AML].” 16 U.S.C. § 1333(b)(2); *see also id.* § 1332(f) (defining “excess animals” as those that “must be removed from an area in order to preserve and maintain [TNEB]”). Because, according to BLM, there are sufficient quantities of the requisite habitat components in each of the four HMAs to attain AML with the existing herds, *see* App’x A (discussing Alternative A), none of those animals are subject to Section 3’s removal provision at this time. To achieve its predetermined outcome, BLM instead invented a predicate issue—i.e., the burden/difficulty of managing *potential* straying on to private lands—to artificially constrain its discretion in setting AML. *See* FEIS at 3.

While it is almost certainly true that managing the public/private interface of the Checkerboard poses distinct challenges for BLM, the Court in *Jewell* has already explained that BLM must ask Congress to change its management obligations, as Congress is in “the best position to specifically address the seemingly unworkable requirements [imposed] upon BLM in its management of this unique area.” *Id.* at n.8. BLM’s attempt here to circumvent congressional intervention by once again attempting to read its own novel management considerations into the Wild Horse Act is unlawful.

Finally, the rationale animating the RMP amendments here sets a very dangerous precedent for wild horses. The amount of public land within action area here is more than *double* the amount of private land (i.e., 1,920,314 acres of public land versus 814, 086 acres of private land). Within the HMAs targeted for wild horse removals, the proportion of public land is even

greater: 93% of Adobe Town HMA is public land (442,428 of 476,986 acres); 72% of Great Divide Basin HMA is public land (559,398 of 776,189 acres); and 59% of Salt Wells Creek HMA is public (689,961 acres of 1,169,739 acres). If it is true that BLM may remove HMA designations, slash AMLs to zero, and thereafter remove all “excess” wild horses simply because wild horses might stray from public to private lands, the Wild Horse Act would be rendered meaningless. Virtually every HMA is surrounded by private lands or contains private inholdings, and straying onto private lands is a recurring problem in most (if not all) HMAs that BLM manages. This means that BLM’s rationale in Alternative D could be applied to essentially every single HMA throughout the country, thereby decimating wild horses on public lands. But this is not what Congress intended in the Wild Horse Act and why, instead, it required BLM’s management decision to serve TNEB by constraining the agency’s discretion to permanently remove long-standing wild horse herds only when habitat conditions in HMAs cannot be maintained or restored to promote a TNEB for long-term, sustainable wild horse use. By flouting those congressional guardrails and relying on factors that Congress chose not to include as relevant to HMA designation or AML adjustment decisions, BLM has violated the Wild Horse Act.

B. By Prioritizing Discretionary Grazing Interests Over Mandatory Wild Horse Protections, BLM Has Acted Arbitrarily and Capriciously

In the Wild Horse Act, Congress imposed on BLM a non-discretionary duty “to protect and manage wild free-roaming horses and burros as components of the public lands.” 16 U.S.C. § 1333(a); *see also id.* § 1331 (declaring that wild horses “shall be protected from capture, branding, harassment, or death” and “considered in the area where presently found, as an integral part of the natural system of the public lands”). The Taylor-Grazing Act, by contrast, merely authorizes the use of BLM lands for livestock grazing, at the “discretion” of the Secretary of the Interior. *See* 43 U.S.C. § 315. Indeed, BLM’s own implementing regulations recognize the primacy of wild horse protection by permitting the agency to “close appropriate areas of the public lands to grazing use by all or a particular kind of livestock” whenever the agency deems such closures necessary “to protect wild horses or burros” or their habitat. 43 C.F.R. § 4710.5(a); *see also Wyoming v. United States*, 839 F.3d 938, 945 (10th Cir. 2016) (acknowledging that BLM may only remove wild horses when two specific statutory prerequisites have been satisfied, and that BLM has discretion in deciding when to make the determinations that can trigger wild horse removal).

Despite the relative weight assigned by Congress to wild horse protection versus livestock grazing, the proposed RMP amendments (and FEIS) quite clearly exacerbate BLM’s preferential treatment of livestock owners, who “graze their sheep and cattle on the Checkerboard’s public lands at rates far below market value for such forage,” *Jewell*, 847 F.3d at 1180, over the congressionally mandated preservation of wild horses. For example, although three of the four alternatives examined by BLM envision complete elimination of and/or drastic reductions to the four HMAs and their wild horse herds, only *one* of those alternatives contemplates any compromise reduction in grazing. *See* FEIS at 19-21. Even that one alternative, though, caters to livestock interests by incorporating even more drastic reductions in the wild horse AML. FEIS at App’x A (“The high end of AML for the White Mountain HMA and the AML range for the Adobe Town HMA under this alternative were established based on the terms

of the 2013 Consent Decree.”). Moreover, assuming BLM adopts its Preferred Alternative (D) by promulgating the proposed RMP amendments, the FEIS makes clear that forage “previously allocated to wild horse use may be reallocated to wildlife, *livestock* or other ecosystem functions, following an in-depth review of intensive monitoring data.” FEIS at 5 (emphasis added).

BLM’s obvious predilection for increased grazing in the FEIS here once again casts serious doubt on the integrity and soundness of the agency’s AML decisions. This is nothing new for BLM. In a 2013 independent review of BLM’s wild horse and burro program, the National Academy of Sciences’ concluded that BLM’s establishment, monitoring, and adjustment of AML “is not transparent to stakeholders, supported by scientific information, or amenable to adaptation with new information and environmental and social change.” AWHC Comments, Attach. 3 at 11. For this reason, the National Academy deemed it “necessary to develop and maintain standards for transparency, quality, and equity in AML establishment, adjustment, and monitoring.”

In its own *Wild Horse Handbook*, BLM states that an AML’s “upper limit shall be established as the maximum number of WH&B which results in a TNEB and avoids a deterioration of the range,” whereas the lower limit represents “a number that allows the population to grow (at the annual population growth rate) to the upper limit over a 4–5-year period,” *Wild Horse Handbook* at 17; *see also* FEIS at App’x A (same). Despite its long-standing past practice for setting AML (as well as its formal policy embodied in the *Wild Horse Handbook*), BLM’s AMLs for each alternative in the FEIS relies not “on analysis of utilization data and use pattern mapping,” but instead on the agency’s agreement with the RSGA. *See* FEIS at App’x A (“The current AML for this HMA was established by agreement, and was not based on analysis of utilization data and use pattern mapping. The BLM currently lacks adequate utilization and use pattern mapping data to calculate an updated proposed carrying capacity for wild horses in this area.”). Rather than collect the requisite data regarding forage production or other habitat conditions on the pertinent public lands at issue, BLM quite plainly states that it will instead set AML in the FEIS at the levels “as proposed in each alternative.” *Id.* This blatantly arbitrary, outcome-determinative analysis cannot be, and is not, what Congress envisioned in the Wild Horse Act.

In sum, BLM’s alternatives analysis and purely arbitrary AMLs—that are completely divorced from the ability of these public lands to maintain or achieve TNEB or to promote sustainable wild horse herds into the future—demonstrate that pro-grazing sentiments and its use of the 2013 Consent Decree, which merely required BLM to *consider* proposed changes to the AMLs, are driving the agency’s wild horse management on public lands. This deference to the grazing industry is not only inconsistent with the clear terms of the Consent Decree, it is also patently arbitrary under the Wild Horse Act, BLM’s implementing regulations, and policies, and the APA.

C. BLM’s Planned Utilization of Controversial and Untested Sterilization/Fertility Controls Violates the Wild Horse Act

In their comments on the DEIS, the Coalition expressed serious reservations about BLM’s planned utilization of certain population-growth suppression techniques. *See* AWHC

Comments at 16-17; AWI Comments at 10-19. To the extent that growth-suppression mechanisms are necessary, the Coalition specifically endorses the use of immunocontraceptive vaccines—especially “porcine zona pellucida” (“PZP”). These vaccines, and PZP in particular, have been well-studied and utilized for decades to curb population growth in various wildlife species, including wild horses. Notably, due to PZP’s delivery method, availability, efficacy, duration of effect, and minimal potential for side effects, it was one of the select fertility control methods endorsed by the National Academy of Sciences’ (“NAS”) 2013 report on BLM’s wild horse management program, and the only one available immediately without additional research.

Under several of the alternatives in the FEIS—including BLM’s Preferred Alternative (D)—the agency maintains that it will rely on a variety of “population management tools” “to help manage wild horse populations and reduce the frequency of gathers.” FEIS at 5. Those “population growth suppression measures include treating with immuno-contraceptives, *spaying*, *gelding*, and *other sterilization methods which may be mechanical, surgical, or chemical*.” *Id.* at 67 (emphasis added); *see also id.* at App’x B (“Impacts of Fertility Control Methods on Wild Horses”).

Although the Coalition is encouraged to see that BLM is still considering immunocontraceptive vaccines (including PZP) where population suppression is necessary, the FEIS does *not* rule out several other widely objectionable methods, including surgical sterilization techniques (i.e., gelding/spaying) and sex-ratio skewing. As the Coalition has repeatedly explained to BLM, these methods are unnecessarily harmful, entail numerous health and safety risks, and have harmful impacts on wild horses’ and burros’ natural behaviors and social organization, which impacts their “free-roaming” nature. 16 U.S.C. § 1331.

Utilizing reckless fertility controls, like surgical sterilization, chemical castration, and sex-ratio skewing, cannot pass muster under the Wild Horse Act. The Act requires that “[a]ll management activities shall be at the minimal feasible level.” 16 U.S.C. § 1333(a). Given the availability and effectiveness of less-invasive techniques, like PZP, there can be no legitimate dispute that surgical sterilization techniques fall far short of this legal requirement.

The same is true of sex-ratio skewing. As the Coalition pointed out in its comments, “sex ratio skewing—i.e., artificially manipulating the number of males and females in a population—to suppress population growth has no scientific basis,” “undermines the complex social structure of herds, and has deleterious effects on natural wild horse behaviors.” AWI Comments at 12-13. Employing this method would, therefore, be antithetical to the Wild Horse Act’s animating purpose of preserving the wild and free-roaming nature of these animals. 16 U.S.C. §§ 1331, 1333(a).

BLM’s self-serving assertion to the contrary is unavailing. The agency claims that “sterilization surgeries can be used to achieve herd management objectives with a relative minimum level of animal handling and management over the long term.” *See* FEIS at App’x C. However, because BLM asserts that its FEIS here is merely a programmatic decision, it contains no weighing of relative impacts associated with these fertility control methods, nor any discussion of which strategy will best preserve these animals’ free-roaming behaviors. *See id.* (“Analyzing detailed impacts associated with specific methods of population growth suppression

techniques in specific herds is beyond the scope of this [FEIS].”). BLM’s decision to skip that analysis—yet simultaneously commit in the FEIS to employ “population growth suppression” strategies with known effects on horses’ free-roaming behaviors—fails to satisfy the agency’s duties under both the Wild Horse Act and NEPA. *See Am. Wild Horse Preserv. Campaign v. Zinke*, 2017 WL 4349012 at *18 (D. Idaho Sept. 29, 2017) (“The BLM’s decision in this case is arbitrary and capricious because it did not consider the significant impacts its decision may have on the free-roaming nature of the herd nor explain why its decision is appropriate despite those impacts.” (citation omitted)).

Although the Coalition believes the lack of any meaningful comparative analysis of possible fertility control methods BLM might later utilize is itself a legal violation at this programmatic stage of the NEPA review process, in the event that BLM subsequently decides to implement any population control strategies, the Coalition reminds BLM that it must keep its word by “discuss[ing] the associated impacts in detail,” FEIS at App’x C, rather than merely papering over any such analysis through subsequent tiering back to this programmatic analysis that failed to address these issues in any detail. *W. Org of Res. Councils v. Zinke*, 892 F.3d 1234, 1238-39 (D.C. Cir. 2018) (Assuming a programmatic NEPA document “assesses the broad environmental consequences attendant upon a wide-ranging federal program,” later, site-specific NEPA documents must then “analyz[e] the incremental impacts of each specific action taken as part of a program.”). Otherwise, BLM will have failed to comply with the Wild Horse Act and NEPA at both the programmatic and site-specific stages.

II. The FEIS Violates NEPA

Because the proposed RMP amendments are driven by a pretextual desire to remove as many horses as possible from the range, it comes as no surprise that BLM’s FEIS also serves as a mere post hoc justification for BLM’s plan. The FEIS’s myriad shortcomings are summarized in turn below.

A. BLM’s Alternatives Analysis Remains Inadequate Under NEPA

The Coalition’s comments on the DEIS identified significant gaps in BLM’s alternatives analysis for the proposed RMP amendments. *See, e.g.,* AWHC Comments at 23-26. In particular, the Coalition noted that BLM overlooked and/or eliminated several viable alternatives that would entail fewer environmental impacts. These included: (1) an alternative in which livestock grazing is eliminated, pursuant to 43 C.F.R. § 4710.5(a)⁴, from all solid-block public land portions of the HMAs, while all wild horses would be removed from the Checkerboard portions of these HMAs; and (2) another alternative exploring “land swaps with private landowners in the Checkerboard . . . to create solid blocks of public lands within the HMAs,” AWHC Comments at 25-26.

⁴ “If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.” 43 C.F.R. § 4710.5(a).

BLM's alternatives analysis in the FEIS, however, remained essentially the same as that found in the DEIS. BLM eliminated the Coalition's proposed alternative examining potential land exchanges to consolidate public lands by stating that it "does not currently have a proposal from a willing party (or group of parties) to a land exchange involving checkerboard lands in the planning area." FEIS at 25. "Even if a proposal existed," BLM explains, such an alternative "would not respond to the purpose and need for the plan amendment, which is intended to resolve private land conflicts in the near term." *Id.* at 25.

There are several issues with BLM's rejection of this alternative. First, nowhere else in either the DEIS or FEIS does BLM claim that the purpose and need is limited to "near term" solutions. To the contrary, BLM's own alternatives analysis explicitly envisions "long term" conditions within the HMAs. *See, e.g.*, FEIS at 20, 21. BLM may not reject reasonable alternatives by inventing and imposing new restrictions on its already flawed purpose and need.

Nor can BLM credibly claim that it has not had time to consider this alternative. BLM has been on notice for over 11 years of this purported conflict in the Checkerboard—i.e., when RSGA first revoked its consent to maintain horses on its private Checkerboard lands, FEIS at 12. In 2017, moreover, AWHC specifically asked BLM to consider these land swaps as a means of addressing the land management difficulties associated with the Checkerboard. *See* Letter from AWHC re: Land Swaps in the Wyoming Checkerboard, to Michael Nedd, Acting Director, BLM (April 28, 2017).⁵ As AWHC explained there, "public-private land exchanges" have been used by BLM before "throughout the western United States . . . to consolidate certain lands and reduce user conflicts among the private and public uses of adjacent parcels within a checkerboard land pattern." *Id.* at 3 (referencing, *inter alia*, "the Utah Recreational Land Exchange that included the conveyance of more than 33,000 acres of federal public land and the acquisition of more than 25,000 acres of non-federal land by BLM"). Since then, the Coalition is not aware of any serious efforts by BLM to actually explore this workable solution.

Relatedly, BLM fails to explain in the FEIS (or elsewhere) why it was incumbent on "a willing party (or a group of parties)" to propose consolidation in the first instance. There is no non-arbitrary reason why BLM could not proactively initiate land swaps by contacting land owners within the Checkerboard to propose these exchanges. At minimum, BLM's exclusion of the land-swap alternative on this basis violates the agency's duty to "[r]igorously explore and objectively evaluate all reasonable alternatives," including "alternatives not within the jurisdiction of the lead agency." 40 C.F.R. § 1502.14(a), (c);⁶ *see also Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 184 F. Supp. 3d 861, 942-43 (D. Or. 2016) ("Because action alternatives in a NEPA analysis need not be under the jurisdiction *or control* of the lead agency, a comprehensive NEPA analysis would likely need to include such a reasonable alternative."

⁵ For BLM's convenience, the Coalition has re-attached a copy of this letter below.

⁶ Although NEPA's implementing regulations were amended in September 2020, the FEIS makes clear that "BLM is using the agency's previous NEPA procedures, in accordance with the regulations that were in place at the time the EIS Notice of Intent was published in the Federal Register." FEIS at 1.

(emphasis added)); CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981) (“An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable.”). BLM’s failure to analyze the relative environmental effects of consolidating the Checkerboard is, therefore, arbitrary.

BLM also gave short shrift to the Coalition’s proposed alternative involving cessation of grazing on the solid-block portions of the HMA. Here, BLM claimed that the Coalition’s alternative was similar to its Alternative B, and therefore removed it from further consideration. FEIS at 290, 302. Alternative B, however, envisions (at best) only a modest reduction in grazing on the solid-block portions of the HMAs, yet retains reductions in AML proportional to the respective boundary adjustments. *See* FEIS at App’x A. Moreover, BLM artificially reduced AML for both the White Mountain HMA and Adobe Town HMA in Alternative B to comply with “the terms of the 2013 Consent Decree.” *Id.* BLM’s Alternative B, therefore, does not adequately analyze the Coalition’s proposed alternative, and the agency has failed to offer a convincing reason for why it was excluded.

For all these reasons, BLM’s alternatives analysis is deficient under NEPA. Thus, BLM may not lawfully adopt its proposed RMP amendments without rectifying its deficient analysis in a new EIS that adequately examines *all* reasonable alternatives.

B. BLM Failed to Take a “Hard Look” at Several Important Aspects of the RMP Amendments’ Potential Impacts on the Environment

1. The FEIS Fails to Disclose and Evaluate the Impacts Associated with Removal

The Coalition’s comments on the DEIS requested that BLM disclose and evaluate the full spectrum of relative management costs associated with each of its proposed alternatives. AWHC Comments at 20-21; AWI Comments at 9. This includes the environmental and economic effects associated with warehousing the unprecedented number of horses removed from the range under its Preferred Alternative (D). As the Coalition explained, BLM’s proposed RMP amendments will invariably “funnel more horses into an already unsustainable warehousing system that costs the agency approximately \$50 million a year, which, in recent years, has amounted to roughly *two-thirds* of the BLM’s total Wild Horse and Burro (WHB) program budget.” AWI Comments at 2 (emphasis added). Considering the sheer number of horses that will be added to this system under the agency’s Preferred Alternative—which will further restrict BLM’s ability to allocate funding towards improvements beneficial to wild horses—it is reasonable to expect that the FEIS would have included some analysis of the relative economic impacts associated with each alternative. 40 C.F.R. § 1508.14 (“When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”).

Similarly, BLM’s practice of warehousing horses entails serious welfare consequences for those individual animals removed from the range. At least 86 horses removed from these HMAs in 2014 “died as a result of roundup-related activities and/or in post-roundup holding

facilities.” AWHC Comments at 18 n.3. Given BLM’s mandate to manage wild horses “at the minimal feasible level,” 16 U.S.C. § 1333(a), it is incumbent on the agency to examine the relative environmental effects of continuing to employ roundup/warehousing practices that kill wild horses versus additional population growth suppression strategies.

Of course, no such analysis was provided by BLM. Instead, BLM simply ignored the wild horses that died as a result of its roundup and warehousing practices. *See* FEIS at App’x C (BLM response to comment #65). And, with respect to economic costs, the agency merely asserted, without explanation, that “costs associated with the overall management of the wild horse and burro program (including costs associated with gathers, holding, etc.) are beyond the scope of this EIS.” FEIS at App’x C. This attempt to hide from public scrutiny the effects of the ballooning costs associated with BLM’s wild horse removals violates NEPA.

2. *The FEIS Fails to Fully Evaluate Which Fertility Control Strategies are Most Appropriate in the Checkerboard*

As noted above, although the FEIS indicates that BLM intends to “implement population growth suppression strategies to reduce the population growth rate” in the White Mountain and Adobe Town HMAs, it does not specify *which* strategies BLM intends to employ. FEIS at 24. This is especially concerning because, as the Coalition explained, certain strategies like surgical “[s]terilization destroys [free-roaming] aspects of wild horse behavior.” AWI Comments at 11. BLM, however, side-steps these issues all together, explaining that “[a]nalyzing detailed impacts associated with specific methods of population growth suppression techniques in specific herds is beyond the scope of [the FEIS]” because it is merely identifying which strategies are “reasonably foreseeable at the planning scale.” *Id.* at 330.

Courts have held that BLM’s decision to carry forward “population growth suppression” strategies that will negatively affect these animals’ “free-roaming” behavior, without actually analyzing those effects or whether they satisfy BLM’s duty to manage the herds “at the minimal feasible level,” 16 U.S.C. § 1333(a), is insufficient under NEPA—even at the programmatic stage. *See, e.g., Zinke*, 2017 WL 4349012 at *11 (holding that BLM violated NEPA at the programmatic stage by failing to examine a chosen alternative’s “impacts [on] the herd’s social structure, the wild horses’ behavior, and the public’s interest in preserving and observing those natural wild horse instincts and behaviors”). Here, too, “BLM failed to take a hard look at all of those significant impacts in the FEIS in violation of NEPA.” *Id.*

While BLM’s failure to engage in a comparative analysis of possible fertility control is itself a legal violation at this programmatic stage of the NEPA review process, the Coalition reminds BLM that its broad, planning-scale identification of various population growth suppression strategies is *not* a sufficient substitute for the detailed analysis and comparison of alternatives required under NEPA at the implementation stage. Thus, to the extent implementation of these strategies becomes necessary, the Coalition will expect BLM to “discuss the associated impacts *in detail*,” FEIS at App’x C (emphasis added), rather than merely tier to the FEIS by reference.

3. *The FEIS Fails to Analyze Any Meaningful Grazing Reductions*

As explained above, the entirety of BLM's environmental analysis (and rationale behind the RMP amendments) is imbued with an inappropriate deference to livestock grazing interests, as evidenced by the fact that *none* of its alternatives examines a meaningful reduction of forage allocated to livestock. Whether considered as a failure to examine an adequate scope of alternatives or a failure to fully examine grazing impacts in the RMP amendments, BLM's insistence on further tipping the scales in favor of livestock owners—at the expense of wild horses—in each of the four HMAs merits further scrutiny under NEPA. The Coalition has, therefore, requested that BLM “disclose the actual livestock use and numbers for the planning area.” AWHC Comments at 26-27. However, the agency failed to provide this data because, according to BLM's self-serving assertion, “information about existing range conditions, stocking rates, and water availability is not needed in order to analyze the effects of the four planning alternatives on wild horses” FEIS at App'x C.

This is, of course, not true. As has been discussed above and in the Coalition's comments on the DEIS, wild horses and livestock compete for the very same forage in each of the HMAs in the Checkerboard. The tension between the two is precisely why BLM has prepared this FEIS in the first place. Thus, understanding the full spectrum of relative environmental impacts across any alternative, including whether TNEB can be maintained through reductions in discretionary livestock grazing, necessarily requires BLM to disclose information to the public about the health of the range in each HMA, the relative forage made available to and actually utilized by livestock, and the relative impacts stemming from those allocations. By failing to provide this information, BLM has further demonstrated that its NEPA analysis is little more than a make-work exercise, whereby the agency is merely providing post hoc rationalizations for its decision to zero out or severely reduce AML in these HMAs to unlawfully satisfy RSGA and its demands in the 2013 Consent Decree. Using the FEIS in this way violates NEPA. 40 C.F.R. § 1502.5 (NEPA review “shall . . . serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made.”)

CONCLUSION

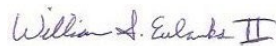
The RMP amendments proposed here would permanently eliminate over 1,000 wild horses and their long-standing habitat from America's public lands. BLM's proposal charts a disturbing course of action that disregards a clear congressional mandate to protect wild horses as “living symbols of the historic and pioneer spirit of the West.” 16 U.S.C. § 1331. Perhaps most troubling is that the purported rationale for this decision—which is unprecedented since the enactment of the Wild Horse Act more than a half-century ago—could be used to eliminate wild horses from essentially every single area of federal public lands where wild horses roam.

The unprecedented and extreme wild horse reductions that BLM proposes to pursue through amendments to the Green River and Rawlins RMPs violate the Wild Horse Act and the APA. Rather than consider the factors that Congress required under the Wild Horse Act, BLM has instead invented new ones that allow it to achieve its pretextual goal of minimizing the number of wild horses under its jurisdiction. Only Congress, not BLM, may rewrite the Wild Horse Act.

The agency's NEPA analysis is also fatally flawed. By structuring its analysis to simply justify its desired wild horse reductions, BLM has failed to take a "hard look" at the full scope environmental impacts of its proposed RMP amendments. The agency has ignored reasonable alternatives that entail fewer environmental impacts and prioritized its discretionary authority to authorize grazing on public lands over its mandatory duty to protect wild horses on these same public lands, which have long served as wild horse habitat.

For all these reasons, BLM's RMP amendments and FEIS are unlawful and should be set aside.

Respectfully submitted,



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April 30, 2020

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Submitted via eplanning and mailed USPS on April 30, 2020

Dear Ms. Foster:

These comments on the *Rock Springs Resource Management Plan Revision* (DOI-BLM-WY-D040-2011-0001-RMP-EIS) are submitted on behalf of the American Wild Horse Campaign (“AWHC”), Carol Walker, and Kimberlee Curyl.

AWHC is a national nonprofit organization dedicated to preserving the American wild horse in viable free-roaming herds for generations to come, as part of our national heritage. Our grassroots efforts are supported by a coalition of over 60 historic preservation, conservation, horse advocacy and animal welfare organizations.

I. OVERVIEW

These comments are submitted pursuant to the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370h, and the Council on Environmental Quality’s regulations that implement NEPA, 40 C.F.R. §§ 1500.1-1508.28.

The Adobe Town, Great Divide Basin, Salt Wells Creek and White Mountain Herd Management Areas (“HMAs”) are located in southwestern Wyoming, comprising 2,811,401 acres of land. Roughly 70 percent of these three HMAs (1,920,314 acres) are federally administered public lands, while only roughly 30 percent (891,087 acres) are private lands.

The *Rock Springs Resource Management Plan Revision* (DOI-BLM-WY-D040-2011-0001-RMP-EIS) analyzes proposed amendments to the Rawlins and Green River Resource Management Plans that would zero out (eradicate all wild horses from) the Great Divide Basin, Salt Wells Creek, and White Mountain HMAs and would slash the habitat size and population of wild horses in the Adobe Town HMA by 44 percent. To justify this proposed action, the BLM is using a settlement agreement it entered into with the Rock Springs Grazing Association (“RSGA”) in 2013. However, as demonstrated by these comments, that settlement agreement does not provide a legal basis or sound policy basis for this sweeping destruction of these

popular and iconic Wyoming wild horse herds and the eradication of half of the state's designated wild horse habitat.

Although the breakdown of ownership of the private land blocks in the planning area is not disclosed in the EIS (See Section VI.D.1 below), from available mapping (Attachment 1) it appears that approximately 50 percent of the private land in the four HMAs is owned by the RSGA, while the other half is owned by Occidental Petroleum, and leased by the RSGA for livestock grazing. By far the majority landowner is the American public, as the RSGA only owns approximately 16 percent of the lands in the planning area, yet the BLM is allowing the demands of this minority land owner to justify the eradication of federally protected wild horses from a land area the size of the states of Delaware and Rhode Island combined! The BLM's elevation of the narrow special interests of a handful of livestock operators over the demonstrated interests of the American public in preserving wild horses on public lands (Attachment 2) and the interests of the local tourism economy, which benefits from the presence of wild horses in this area, is both corrupt and illegal.

As described in more detail below, it is AWHC's position that:

1. The BLM's plan to remove federally protected wild horses from lands within and outside of the Adobe Town, Great Divide Basin, Salt Wells Creek, and White Mountain HMAs violates several federal laws;
2. As required by NEPA, the BLM must analyze a reasonable range of alternatives and such analysis must include the feasible and reasonable alternatives detailed by AWHC in this comment letter; and
3. BLM must take the requisite "hard look" at the environmental impacts of its action, which will result in short-term and long-term effects to federally protected wild horses, the family bands of wild horses that reside in these areas, the genetic diversity of these wild horse populations, and potential measures that could mitigate the impacts resulting from BLM's action.

For all of these reasons—as further articulated below—we strongly urge BLM to abandon the current draft EIS for this controversial precedent-setting action and to, at bare minimum, engage in a meaningful analysis of the effects of, and reasonable alternatives to, the wide-scale permanent removal from the range of the vast majority of federally protected wild horses found in the Wyoming Checkerboard.

II. LEGAL AND REGULATORY FRAMEWORK

A. NEPA

Congress enacted NEPA more than four decades ago "[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment. . . ." 42 U.S.C. § 4321. In light of this mandate, the Supreme Court has found that NEPA is "intended to reduce or

eliminate environmental damage and to promote ‘the understanding of the ecological systems and natural resources important to’ the United States.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004) (quoting 42 U.S.C. § 4321). NEPA is intended to “ensure that [federal agencies] . . . will have detailed information concerning significant environmental impacts” and “guarantee[] that the relevant information will be made available to the larger [public] audience.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

In NEPA’s implementing regulations, there are two specific mechanisms whereby federal agencies must evaluate the environmental and related impacts of a particular federal action—an EA and an EIS. See 42 U.S.C. § 4332(c). These procedural mechanisms are designed to inject environmental considerations “in the agency decision making process itself,” and to “‘help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.’” *Pub. Citizen*, 541 U.S. at 768-69 (quoting 40 C.F.R. § 1500.1(c)). Therefore, “NEPA’s core focus [is] on improving agency decision making,” *id.* at 769 n.2, and specifically on ensuring that agencies take a “hard look” at potential environmental impacts and environmentally enhancing alternatives “as part of the agency’s process of deciding whether to pursue a particular federal action.” *Baltimore Gas and Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 100 (1983). The alternatives analysis “is the heart” of the NEPA process. 40 C.F.R. § 1502.14. NEPA’s implementing regulations require that the decision-making agency “present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” *Id.* Importantly, the NEPA process “shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” 40 C.F.R. § 1502.2(g) (emphasis added); see also *Id.* § 1502.5 (requiring that NEPA review “shall be prepared early enough so that it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made”) (emphasis added), *Metcalf v. Daley*, 214 F.3d 1135, 1141-42 (9th Cir. 2000) (“the comprehensive ‘hard look’ mandated by Congress and required by the statute must be timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.”).

B. The Wild Horse Act and Federal Land Policy Management Act

In 1971, Congress enacted the Wild Horse Act out of concern that wild horses were “disappearing from the American scene.” 16 U.S.C. § 1331. Declaring that “wild horses are living symbols of the historic and pioneer spirit of the West,” and “contribute to the diversity of life forms within the Nation and enrich the lives of the American people,” Congress directed that wild horses “shall be protected from capture, branding, harassment, [and] death” and “be considered in the area where presently found, as an integral part of the natural system of the public lands.” *Id.* To implement that mandate, Congress declared that BLM shall “protect and manage wild free roaming horses and burros as components of the public lands,” and provided that “[a]ll management activities shall be at the minimal feasible level.” 16 U.S.C. § 1333(a).

Under the Act, BLM manages wild horses on public lands within HMAs, which are “established for the maintenance of wild horse . . . herds,” 43 C.F.R. § 4710.3-1, in the areas they used in 1971. 43 C.F.R. § 4700.0-5(d). BLM designates HMA boundaries in RMPs, which are prepared through a land-use planning process conducted pursuant to the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701-1787. FLPMA’s implementing regulations require BLM to maintain RMPs that are “designed to guide and control future management actions” on public lands. *Id.* § 1601.0-2. Modifications to HMA boundaries may only be adopted through this land-use planning process, which requires extensive public involvement and compliance with NEPA. *See* 43 C.F.R. § 4710.1; *see also* BLM, *Wild Horses and Burros Management Handbook H-4700-1* (“*Wild Horse Handbook*”), at 8 (decisions to modify “an HMA must be made through a [land use plan] amendment, revision or new RMP”).

The Wild Horse Act further requires BLM to manage wild horses “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). To do so, for each HMA, BLM must: (1) maintain a current inventory of wild horses in each HMA, (2) “determine [the] appropriate management level”—i.e., the AML—of wild horses that the HMA can normally sustain, 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 is “expressed as a population range within which [wild horses] can be managed for the long term” in an HMA without resulting in rangeland damage. BLM, *Wild Horse Handbook*, at 17. The lower limit of the AML range is “established at a number that allows the population to grow (at the annual population growth rate) to the upper limit over a 4-5 year period, without any interim gathers.” *Id.* BLM establishes an AML for each HMA through the formal process created by FLPMA, when developing or amending the applicable RMP. *See* BLM, *Wild Horse Handbook*, at 18.

Section 3 of the Wild Horse Act grants BLM the authority to manage and protect wild horses by permanently removing “excess” horses from public lands, but only after BLM specifically determines that: (1) “an overpopulation [of wild horses] exists on a given area of the public lands,” and (2) “action is necessary to remove excess animals.” 16 U.S.C. § 1333(b)(2). An “excess” wild horse is defined as one that “must be removed from an area *in order to preserve and maintain a thriving natural ecological balance . . . in that area.*” 16 U.S.C. § 1332(f) (emphasis added). Once BLM makes a formal “excess determination,” it may remove only those “excess animals from the range so as to achieve appropriate management levels.” 16 U.S.C. § 1333(b)(2). According to BLM’s wild horse manual, “[w]ild horses or burros should generally not be removed below the AML lower limit.” BLM, *Wild Horse Manual MS-4720*, available at

http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.27968.File.dat/MS-4720.pdf, at 4; *see also* BLM, *Wild Horse Handbook*, at 17 (wild horse removals should be conducted to “maintain population size within AML”).

Removal of wild horses below the agency’s legally established AML may be warranted only “in emergency situations based on limited forage, water or other circumstances.” BLM, *Wild Horse Manual*, at 5. Before taking action to remove wild horses below AML if BLM determines that emergency circumstances exist, BLM must conduct an adequate NEPA analysis subject to public participation and provide a compelling “[r]ationale to justify a reduction below the AML lower limit.” *Id.*

In contrast to Section 3’s broad authority to permanently remove excess horses from *public* land in order to *protect* wild horse populations and other range resources, Section 4 of the Act provides BLM with the narrow authority to remove wild horses from *private* land when “the owners of such land . . . inform [BLM]” that a wild horse has “stray[ed] *from public lands onto privately owned land.*” 16 U.S.C. § 1334 (emphasis added). This narrow authority is triggered only by a “written request from the private landowner,” 43 C.F.R. § 4720.2-1, at which point BLM must “arrange to have the animals removed.” 16 U.S.C. § 1334.

III. FACTUAL BACKGROUND

A. The 2013 BLM-RSGA Consent Decree

Federally protected wild horses resided in the Wyoming Checkerboard and the solid block public lands of these HMAs long before 1971 when Congress enacted the Wild Horse Act. In January 1979, RSGA—as an owner and lessee of significant private land surface use acreage in the Wyoming Checkerboard—entered into an agreement with wild horse organizations to allow 500 wild horses on the Checkerboard portions of the relevant HMAs and to allow 1,000 wild horses on the solid block public land portions to the north and south of the Wyoming Checkerboard. In response, BLM formalized these AML numbers in RMP decisions and site-specific decisions implementing the Green River RMP, setting the total AML in the Rock Springs District at 1,525 horses.

In February 2011, after years of disagreements with BLM about what RSGA perceived as a failure to timely remove excess wild horses from the public and private lands of these HMAs, RSGA sent a letter requesting that BLM remove *all* wild horses from the private lands that it owns or for which it asserts the surface use rights through leases. In July 2011, RSGA filed a lawsuit seeking an order pursuant to Section 4 of the Wild Horse Act compelling BLM to remove all of the wild horses that had strayed onto private land owned or leased by RSGA in the Wyoming Checkerboard. *Rock Springs Grazing Ass’n v. Salazar* (“RSGA Case”), No. 2:11-cv-263, ECF No. 1.

On February 12, 2013, the government and RSGA filed a Joint Motion to Dismiss and a proposed Consent Decree. *See RSGA Case*, ECF Nos. 81 & 81-1. In the Joint Motion, BLM and RSGA asserted that “the Consent Decree serve[s] the objectives of the WHA by *retaining wild horses on the public lands while reducing landowner conflict where the wild horses stray onto private lands.*” *Id.*, ECF 81 ¶ 2 (emphasis added). RSGA and the government assured the Court that the Consent Decree promoted “the public interest by providing that *future decisions concerning the wild horse areas and numbers will occur through a public process.*” *Id.* at ¶ 4 (emphasis added). The Consent Decree also asserted that “it is in the public interest to . . . enter into a stipulation with respect to the *wild horses located on private RSGA land and to initiate a process to better manage wild horses on the adjacent public lands.*” As such, the Consent Decree provided, *inter alia*, that:

- (a) BLM will “remove all wild horses located on RSGA’s **private** lands, including Wyoming Checkerboard lands,” AR467 (emphasis added), and (b) “BLM will

commit to gather and remove wild horses from Checkerboard lands within Salt Wells and Adobe Town HMAs in 2013, Divide Basin HMA in 2014, and White Mountain HMA in 2015, *with the exception of those wild horses that are allowed to remain as identified in paragraphs 1 and 4.*”

(emphasis added). BLM also agreed to “submit to the Federal Register for publication a notice of scoping under NEPA to consider . . . revising the respective [RMPs]” to reduce the Salt Wells, Great Divide Basin, and Adobe Town AMLs.

The Consent Decree contained several provisions designed to ensure BLM’s ability to comply with the Wild Horse Act. Specifically, Paragraph 17 contained the following guarantee: “Respondents are required to comply with other federal laws in conjunction with undertaking the required actions herein. *No provision of this Consent Decree shall be interpreted or constitute a commitment or requirement that the Respondents take actions in contravention of the WHA, FLPMA, NEPA, the APA.*” (Emphasis added). Paragraph 10 further explained that “[n]othing in this Consent Decree shall be construed to *limit or modify the discretion accorded to BLM by the applicable federal law and regulations . . . or general principles of administrative law with respect to the procedures to be followed in carrying out any of the activities* required herein.” (emphases added).

AWHC and Carol Walker—as intervenors in the lawsuit—objected to the Consent Decree for myriad reasons. *See RSGA Case*, ECF No. 86-1. Among their primary concerns was that, despite the language assuring compliance with all applicable federal laws, BLM had obligated itself “to remove not only all wild horses from the lands that are privately owned . . . but also wild horses that currently use the more than one million acres of *public* lands in the Wyoming Checkerboard.” *Id.* at 3. In turn, the intervenors argued that the Consent Decree essentially “require[d] the agency to remove more wild horses from the Wyoming Checkerboard than is currently permitted under the existing laws.” *Id.* Moreover, the intervenors explained that BLM cannot legally remove wild horses from *public land* without first making certain “statutorily required decisions,” which, in turn, cannot “be made without compliance with” NEPA and other laws. *Id.* at 10-14. Nor, the intervenors argued, could BLM reduce the AMLs in any of the HMA before going through a public NEPA process. *Id.* at 14-16.

In response, BLM argued that the intervenors’ objections were “based on mischaracterizations of the clear terms of the proposed Decree.” *RSGA Case*, ECF No. 88 at 7. While accusing the intervenors of focusing their objections on “how they speculate BLM will implement” the Decree, *id.*, ECF No. 89 at 15-16, RSGA assured the Court that the “Consent Decree provides for the orderly removal of wild horses **from RSGA lands**, while complying with federal laws, including NEPA, WHA, and the [APA]” and that BLM had simply agreed to “consider the option of revising the HMA boundaries and the AMLs” for the three HMAs. *Id.* at 2-3 (emphases added); *see also id.*, ECF No. 88 at 7-8 (“Under the proposed Consent Decree, the BLM *agrees only to consider*” AML modifications and “the potential environmental effect thereof *in resource management plan revisions and associated NEPA documents.*”) (emphases added).

Based on these assurances, the U.S. District Court for the District of Wyoming approved the Consent Decree, finding that it did not “on its face violate the law or public policy.” *RSGA*, 935 F. Supp. 2d at 1191. Focusing on Paragraph 10, the Court concluded that “the Consent Decree expressly prohibits any construction which would ‘limit or modify the discretion accorded to BLM by the applicable federal law and regulations.’” *Id.* at 1189. The Court noted that the AMLs for the identified HMAs “are not changed by the Consent Decree” and that the Decree specifically requires compliance with NEPA and the WHA before they could be changed. *Id.* The Court ultimately held that “whether the Consent Decree actually limits the BLM’s discretion will turn on the implementation and force of the Decree, which is unclear at this juncture” and thus, the intervenors’ objections “are not ripe for adjudication.” *Id.* at 1189-90.

B. BLM’s Implementation of the Consent Decree

In December 2013, BLM issued a scoping statement for a proposed removal in the Great Divide Basin HMA. Although BLM had permanently removed 586 excess horses in November 2013 from the Adobe Town and Salt Wells HMAs (thus bringing those herds to low AML), RSGA urged BLM to remove not only horses from the Great Divide Basin HMA, but even more horses from the Adobe Town and Salt Wells HMAs in a manner that would bring the populations below the low AML. In response to RSGA’s request, BLM “decided not to proceed with the action described in the December 2013 public scoping notice.” *Id.* Rather, BLM decided to permanently remove all horses found in the public and private Checkerboard portions of the three HMAs, without making any excess determination, conducting any NEPA review, or ensuring that the AMLs would be maintained.

AWHC, Carol Walker, and others filed a lawsuit challenging the 2014 roundup. After the district court denied their request for a preliminary injunction, BLM permanently removed 1,263 horses from the Checkerboard portions of these HMAs, thus “leaving the following estimated post-roundup populations” in late 2014: 519 horses in Adobe Town, 91 horses in Great Divide Basin, and 39 horses in Salt Wells (for a total of 649 horses, compared to a combined AML of 1,276-1,765)—i.e., leaving these areas severely below AML. In its March 2015 merits decision, this Court ruled for BLM on the Wild Horse Act and FLPMA claims, and ruled for Petitioners (e.g., AWHC and Ms. Walker) as to their NEPA claims. While the legality of BLM’s approach was pending on appeal to the Tenth Circuit, the agency announced that it would be conducting yet another roundup in the Checkerboard portion of these three HMAs on the basis of an April 2016 census survey, in which BLM acknowledged that RSGA had once again participated as a census observer.

On appeal, the Tenth Circuit reversed the district court on the Wild Horse Act and FLPMA claims. *See AWHC v. Jewell*, 847 F.3d at 1186-90. The Court of Appeals held that the Wild Horse Act “do[es] not provide BLM with the authority to construe the Act in a manner contrary to its plain and unambiguous terms.” 847 F.3d at 1188. The court concluded that “BLM violated the duties that Section 3 clearly imposes on it with respect to wild horses found on the public land sections of the Checkerboard” by failing to make an excess determination and also removing non-excess horses from the range. *Id.* at 1189. In addition, the court held that BLM violated FLPMA and the operative RMPs developed pursuant to FLPMA because BLM’s approach failed to maintain AML within these three HMAs. *Id.* at 1189-90. As a result of this

ruling, BLM cancelled its previously scheduled November 2016 wild horse roundup in these HMAs.

In March 2017—a few months after the Tenth Circuit’s ruling that BLM’s implementation of the Consent Decree was unlawful—BLM publicly issued a scoping notice acknowledging the Tenth Circuit’s ruling that BLM may not remove horses below AML, and proposing a fall 2017 roundup to “remove excess horses to the low [AML]” in these HMAs. Based on BLM’s 2016 census data adjusted to account for 2016 foals, the agency projected that “[a] total removal of 1,029 wild horses is needed to achieve the low AML in the three HMAs.” Consistent with BLM’s longstanding practice, the scoping notice did not differentiate between adult horses and foals in estimating the number of excess horses to be removed. Rather, BLM “projected” “[t]he 2017 wild horse populations” by applying an adjustment for foals, in the same manner the agency had always previously done. In response to the scoping notice, RSGA commented that BLM should “count foals” in estimating the total wild horse population, thereby (in RSGA’s view) increasing the number of excess horses that could be removed. Among other issues, many members of the public—including AWHC and Carol Walker—raised concerns with the major mathematical discrepancies in BLM’s population estimates from 2014 to 2017, especially where each census survey had utilized the same simultaneous double-count methodology and statistical error correction adjustments.

In July 2017, BLM issued a Draft EA for the fall 2017 roundup. Based on an April 2017 simultaneous double-count census that for the fourth consecutive year included an RSGA member as an observer, BLM estimated that there were 2,836 horses in these three HMAs (1,123 in Adobe Town, 976 in Salt Wells, and 737 in Great Divide Basin)—i.e., resulting in 1,560 excess animals above the low AML of 1,276 horses. AR177; AR181. Although the Draft EA clarified that the population estimate of 2,836 horses only included “adult horses” because foals had not yet been born at the time of the April 2017 census, the Draft EA did not notify the public that BLM would be engaging in a different calculation for determining the number of “excess animals” as part of the fall 2017 roundup, nor did BLM explain any rationale for this drastic change in longstanding agency practice. Rather, BLM merely inserted the word “adult” in a parenthetical as part of its excess determination: “1,560 excess (adult) wild horses need to be removed” from these HMAs. In other words, there was no indication whatsoever that BLM intended a substantial shift in approach by which it would no longer count foals as “excess animals” for purposes of making excess determinations and subsequently removing horses subject to those determinations, but instead intended to now remove an unlimited number of foals in addition to the specified number of adult excess horses.

In August 2017, BLM issued a decision authorizing the removal of “1,560 excess (adult) wild horses.” AWHC and Carol Walker immediately filed a lawsuit against BLM’s renewed attempts to implement the RSGA Consent Decree. After the district court denied AWHC’s preliminary injunction request, BLM completed its fall 2017 roundup by permanently removing 1,560 excess adult horses in addition to 408 foals. On the merits, the district court held that BLM’s 2017 roundup decision violated the law—much in the same the way BLM’s 2014 and 2016 decisions violated federal law—because the agency’s excess determination was arbitrary and capricious in light of BLM’s fundamental shift in calculating the number of excess horses in a manner that

increased the chances of taking these wild horse population below AML in violation of FLPMA. See *AWHC v. Zinke*, No. 2:17-cv-170-NDF (D. Wyo.), ECF No. 67.

In sum, since BLM entered into the Consent Decree with RSGA in 2013—which AWHC and Carol Walker immediately raised legal concerns—all three attempts by BLM (its 2014, 2016, and 2017 decisions) to implement the Consent Decree have been invalidated as unlawful by federal courts.

C. BLM's Draft RMP Amendment and Draft EIS

In January 2020, BLM issued a Draft RMP Amendment for the Green River and Rawlins RMPs, along with a Draft EIS. According to the agency's stated purpose and need for this action, BLM views the 2013 Consent Decree with RSGA as the driving factor behind RMP amendment. BLM's Draft EIS considers in detail four alternatives—a no-action alternative and three action alternatives.

Although RSGA only owns or leases private lands in Checkerboard portions of these HMAs—and *not* any lands located in the massive solid block public land portions of these HMAs—BLM's preferred alternative (Alternative D) would entirely zero out three of the four longstanding wild horse HMAs in this region (the Great Divide Basin HMA, Salt Wells Creek HMA, and White Mountain HMA). Under this alternative, BLM would also zero out certain portions of the remaining HMA (the Adobe Town HMA) while allowing a much smaller population of wild horses in a portion of the Adobe Town HMA with a new AML of 259-536 horses. Because BLM ordinarily removes excess horses down to "low AML"—i.e., the low end of the AML range—Alternative D represents a major decrease in the total number of federally protected wild horses in this four-HMA region, dropping from the current low AML of 1,481 horses to 259 horses (an 83 percent decrease). Remarkably, BLM's preferred alternative (Alternative D) is even more draconian than the proposal set forth by RSGA—which has a long history of hostility towards wild horses in these HMAs—as embodied in the 2013 Consent Decree, in which RSGA stated that it had no objection to up to 450 horses in the Adobe Town HMA and up to 205 horses in the White Mountain HMA (i.e., up to 655 horses in total).

Despite BLM's proposal to significantly curtail wild horse use of these HMAs, BLM acknowledges that all of the HMAs are *currently* meeting applicable rangeland health standards—thereby strongly suggesting that current wild horse levels are not causing range damage or contributing to any failure to achieve a thriving natural ecological balance. Moreover, BLM's analysis of the four key components necessary to sustain wild horses—forage, water, space, and cover—concluded that the habitat qualities are adequate to sustain current numbers (or reduced numbers) of wild horses in these four HMAs, thereby making clear that the decision to entirely zero out three longstanding HMAs and to significantly reduce the wild horse population in a fourth HMA is not based on habitat or biological factors.

For the Salt Wells Creek, Great Divide Basin, and White Mountain HMAs, BLM's justification for zeroing out these longstanding wild horse herds—even from the large solid public land blocks with no intermingled private lands—is that it might be difficult to prevent wild horses from straying onto private lands located outside of the large solid public land blocks. BLM

explained that there is no fence or barrier between the public land block and private lands outside that block.

As to the reduced wild horse population that BLM proposed as part of Alternative D (259-536 horses), BLM explained that it may use population management tools including the extremely controversial methods of gelding and spaying horses and returning them to the range. Appendix B to the Draft RMP Amendment/Draft EIS purports to analyze the effects to various population management tools. For example, citing the 2013 comprehensive report from the National Academy of Sciences, BLM notes in Appendix B that there is vast uncertainty about how geldings will interact on the range with intact stallions, mares, and other horses, as well as many unknowns in terms of gelding behavior and the effects of such behavior on range resources.

IV. SUMMARY OF DISCUSSION

We have grave concerns about BLM's proposal set forth in the agency's Draft RMP Amendment and Draft EIS. In our view, BLM's proposal (i.e., Alternative D) would significantly reduce the number of federally protected wild horses in this region by relying on factors other than those that Congress deemed relevant for making determinations about where, and at what levels, BLM must manage wild horses as integral components of the public lands. In addition, with respect to large solid blocks of public land, BLM's position that it can zero out wild horse herds in these areas merely because some wild horses might in the future stray on to private lands outside these large blocks of public land is arbitrary, capricious, and completely ignores the statutory mechanism set forth in Section 4 of the Wild Horse Act to address any legitimate stray horse issues that might arise in the future. To make matters worse, BLM's proposal allows the interests of a private grazing entity (RSGA)—which grazes subject to discretionary grazing permits that can be suspended or revoked at any time and which do *not* create any rights to public land or its resources—to override the important charge from Congress to safeguard wild horses on public lands, which, unlike domestic cattle, are federally protected wildlife and integral parts of these public lands. Moreover, with respect to the significantly diminished wild horse population that BLM proposes in the Adobe Town HMA, the agency has proposed implementing various forms of population management techniques, including several that have been criticized or questioned by recognized experts including a panel of experts commissioned by BLM through the National Academy of Sciences ("NAS"). These grave concerns, among many others, are highlighted below in more detail, and at minimum require BLM to completely alter its approach to this RMP Amendment and EIS process.

V. THE PROPOSED ACTION WOULD VIOLATE THE WILD HORSE ACT AND THE APA IN NUMEROUS WAYS, AND THUS BLM MUST ADOPT A DIFFERENT APPROACH

Evidently having learned nothing from its fatally flawed implementation of the 2013 Consent Decree—which resulted from decisive losses in federal court with respect to BLM's 2014, 2016, and 2017 removal decisions—BLM now proposes to undertake a more far-reaching, permanent, and illegal approach to managing federally protected wild horses in these four HMAs. For many reasons, as explained below in this non-exhaustive summary, BLM's proposed action (as set forth in Alternative D) would be arbitrary, capricious, and contrary to law.

A. BLM Has Erroneously Relied on Factors to Justify the Proposed Action that Are Not Legally Relevant to the Decisions to Convert These HMAs to HAs or to Reduce the AMLs in These HMAs to Zero

BLM's proposed action would permanently eliminate three longstanding HMAs (by converting them to HAs with no horses) and significantly curtail the amount of land available in the fourth HMA to a reduced wild horse herd. However, this proposal cannot be reconciled with the Wild Horse Act, its implementing regulations, the agency's Handbook, or the APA. As BLM knows, in 1971 Congress made clear that "wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death" and that "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 (emphasis added); *see also id.* § 1333(a) (BLM is "directed to *protect and manage* wild free-roaming horses and burros *as components of the public lands*" (emphases added)). Given the clear congressional instruction to *protect* wild horses on public lands where they were found in 1971, BLM's implementing regulations make clear that "[i]n delineating each [HMA]"—as well as when considering eliminating any HMA—BLM shall consider, *inter alia*, "the habitat requirements of the animals." 43 C.F.R. § 4710.3-1. BLM's Handbook—which guides the agency's implementation of the Wild Horse Act—further explains BLM's view that:

Habitat for [wild horses] is composed of *four essential components: forage, water, cover, and space*. These components must be present within the HMA in sufficient amounts to sustain healthy [wild horse] populations and healthy rangelands over the long term. *If they are not present in sufficient amounts, the authorized officer should consider amending or revising the [RMP] to remove the area's designation as an HMA.* If the decision is made to return a designated HMA to HA status, the total population of [wild horses] should then be gathered and removed. . . . A recurring pattern of [wild horse] movement out of the HMA to access forage, water, or thermal or hiding cover is an indication that year-long [wild horse] use cannot be sustained. *If one or more of the key habitat components is missing, the HMA should be considered as unsuitable for year-long use. In these situations, the authorized officer should consider removing the area's designation as an HMA through [RMP amendment].* An exception would be two or more HMAs which adjoin and are managed as a complex of HMAs, or HMAs which adjoin USFS WHTs that can be managed as a complex.

BLM, *Wild Horse Handbook*, at 12. The Handbook continues by providing a component-by-component description of how BLM must analyze the adequacy of forage, water, space, and cover before making a decision to convert an HMA to and HA and thus permanently zero out all wild horse use in a longstanding HMA. *Id.* at 12-13. Further, the Handbook clarifies that an RMP "may include decisions not to manage [wild horses in all or a part of an HA," including "intermingled and unfenced private lands within HAs where the landowners are unwilling to make them available for [wild horse] use," or "where essential habitat components (forage, water, cover and space) are unavailable or insufficient to sustain healthy [wild horses] and healthy rangelands over the long term." *Id.* at 8. The Handbook again notes that "[a]n area may lose its designation as an HMA when [wild horses] cause unacceptable impacts to other resource values, or conditions change and one or more of the four essential habitat components are not

present in sufficient quantities to sustain [wild horse] use over the long term.” *Id.* Finally, the Handbook provides a detailed process for analyzing whether to adjust AML—including through the conversion of an HMA to an HA (i.e., reducing the AML to zero)—and makes clear that that only factors relevant to this decision are: “whether the four essential habitat components (forage, water, cover and space) are present in sufficient amounts to sustain healthy WH&B populations and healthy rangelands over the long-term.” *Id.* at 67. Only if this “analysis determine[s] that one or more of the essential habitat components is insufficient to maintain a healthy [wild horse] population and healthy rangelands” may “the authorized officer . . . consider amending or revising the [RMP] to remove the area’s designation as an HMA.” *Id.*; *see also id.* at 67-75 (documenting thorough analysis process for reducing AML to zero and justifying HMA conversion to HA).

In stark contrast to the explicit purposes of the Wild Horse Act—i.e., to *protect* wild horses on *public lands* where they have long resided (such as the HMAs at issue)—BLM’s refusal even to allow continued wild horse use of *solid public land blocks* in the Great Divide Basin, Salt Wells Creek, and White Mountain HMAs violates the plain terms of the Act, its regulations, and BLM’s Handbook. As the Draft RMP and Draft EIS concludes after undertaking the four-factor analysis, all four habitat components (forage, water, space, and cover) are *satisfied* under *current conditions*—i.e., under the no-action alternative that would allow far more wild horses in these HMAs than BLM is proposing to implement through this decision—for all four HMAs (i.e., the Adobe Town HMA, Great Divide Basin HMA, Salt Wells Creek HMA, and White Mountain HMA). Accordingly, where these four HMAs all contain suitable forage, water, cover, and space to sustain the current numbers of wild horses—or any lower number of horses as contemplated in Alternative B (or other feasible alternatives not considered in detail by BLM)—it is patently arbitrary, capricious, and contrary to law to instead *remove* all wild horses from three of these HMAs and drastically curtail the few remaining horses in the Adobe Town HMA. Simply put, because Congress *required* BLM to manage and protect wild horses on public lands where they were found in 1971—absent a compelling justification based on the lack of suitable habitat components—the adoption of Alternative D in the face of BLM’s own findings that adequate forage, water, space, and cover exist to sustain wild horse herds on these public lands would be the antithesis of the policies embodied in the Wild Horse Act, as well as BLM’s own regulations and Handbook.

Likewise, BLM cannot convert these HMAs to HAs or reduce the AML to zero in these areas of public lands because the agency has not based its justification for this decision on any purported damage to the range caused exclusively (or even primarily) by wild horses that is causing long-term failure to achieve a thriving natural ecological balance. To the contrary, BLM’s own analysis and findings in the Draft RMP and Draft EIS indicate that most of these public lands are actually meeting rangeland health standards, and that in the rare events that such standards are not satisfied wild horses are ordinarily not “causal factors.” Thus, to the extent that BLM had authority to convert an HMA to an HA and thereby reduce its AML to zero even where there exists adequate forage, water, cover, and space, under these facts there is no legal or logical basis for eliminating all wild horse use from these HMAs because these public lands are mostly achieving rangeland health standards and wild horses are rarely contributing to any deviation from those standards, strongly suggesting that these public lands are maintaining a thriving natural ecological balance at present with an AML of 1,481-2,065.

For these reasons, BLM's Alternative D, if adopted, is not based on an analysis of the legally relevant factors, and it would be arbitrary, capricious, and contrary to law to convert an HMA to an HA and thereby reduce its AML to zero where there exist large solid blocks of public land meeting rangeland health standards and that provide adequate forage, water, cover, and space to sustain many more wild horses than BLM is proposing.

B. BLM May Not Remove Wild Horses from The Public Lands of These HMAs Because They are Not Excess Animals

For many of the same reasons, BLM may not lawfully remove horses from these HMAs, in this or any future action, so long as the populations remain within the current AMLs. Section 3 of the Wild Horse Act grants BLM the authority to manage and protect wild horses by permanently removing "excess" horses from public lands, but only after BLM specifically determines that: (1) "an overpopulation [of wild horses] exists on a given area of the public lands," and (2) "action is necessary to remove excess animals." 16 U.S.C. § 1333(b)(2). An "excess" wild horse is one that "must be removed from an area in order to preserve and maintain a thriving natural ecological balance . . . in that area." 16 U.S.C. § 1332(f).

Here, as explained, BLM has certainly *not* determined that there is an overpopulation of horses, nor has the agency determined that action is necessary to remove every single wild horse (or *any* wild horse for that matter) slated for removal under Alternative D. Indeed, further underscoring the fact that removal of these horses would be unlawful, is Congress's instruction that cannot be reconciled with BLM's explicit findings here that most of these public lands *are* meeting rangeland health standards and further, where the lands may not, wild horses are rarely a causal factor to such failure. In other words, BLM has made no argument—nor can it on this record—that these public lands are not maintaining a thriving natural ecological balance, and as a result the horses currently located on these public lands are *not* "excess animals" that "must be removed to preserve and maintain a thriving natural ecological balance." 16 U.S.C. § 1332(f). In short, BLM's preferred alternative would permanently remove non-excess horses from the range and thereby violate the Wild Horse Act, its implementing regulations, and the APA.

C. BLM's Preferred Alternative Conflates Different Statutory Mechanisms and Elevates RSGA's Private Interests in Domestic Livestock Grazing over the Public's Interest in Federally Protected Wild Horses

The Draft RMP and the Draft EIS make abundantly clear that the driving factor behind BLM's decisionmaking is pressure from RSGA, including through the Consent Decree that BLM and RSGA entered into in 2013. There are serious problems with BLM allowing RSGA to dictate public policy on millions of acres of public lands in Wyoming, including on large solid blocks of public land where RSGA owns and leases *zero* land that belongs exclusively to the American people. The following non-exhaustive list summarizes the most egregious concerns.

First, BLM's entire approach to the RMP Amendment process seriously misunderstands distinct processes set forth by the Wild Horse Act. For example, with respect to the large solid blocks of public land found in the Great Divide Basin HMA, Salt Wells Creek HMA, and White Mountain

HMA, BLM's preferred alternative explains that no wild horses would be allowed in these solid blocks of public lands merely because some horses could potentially stray from these large public land blocks to adjacent private lands found *outside* the solid public land blocks. But this explanation makes no legal or logical sense.

As a legal matter, in the event that this hypothetical scenario comes to pass—i.e., a horse or horses stray from the large solid public land block in the future onto private land (owned or leased by RSGA or some other owner or lessee)—Congress already decided how BLM must address it. Pursuant to Section 4 of the Wild Horse Act, the owners of such land may contact BLM or a Federal marshal, “who shall arrange to have the animals removed.” 16 U.S.C. § 1334; *see also* 43 C.F.R. § 4720.2-1 (same). However, neither the Wild Horse Act nor BLM's regulations authorize the agency to completely *eliminate* all wild horse use of an HMA (or to reduce its AML to zero) simply because horses *could* stray onto private lands outside of the public lands where the HMA is designated. To the contrary, the process for converting an HMA to an HA and thereby reducing its AML to zero—i.e., a very difficult burden for BLM to meet in light of the congressional directive to protect these horses as an integral part of the public lands—is to determine whether the public lands of the HMA fail to supply adequate forage, water, cover, or space (as described above). Hence, BLM is arbitrarily conflating the Section 4 process—which has *nothing* to do with making decisions about conversion of an HMA to an HA or about reducing AML in an HMA—with the regulatory process for decisions concerning HMA status and AML adjustments.¹

As a logical matter, BLM's position in the Draft RMP and Draft EIS would completely undermine the letter and spirit of the Wild Horse Act. Nearly every single wild horse HMA in the American West is surrounded by private lands, and straying is a recurring problem in many (if not all) of those HMAs. Under BLM's rationale in Alternative D, the agency could apply this reasoning to essentially every single HMA throughout the country and it would decimate wild horses on public lands in exactly the opposite manner Congress intended. Accordingly, BLM's position that the mere existence of private lands adjacent to public lands is a basis for eliminating all wild horse use from large solid blocks of public lands flouts Congress's explicit policies in the Wild Horse Act and would set a dangerous precedent that would drastically reduce wild horse populations throughout the American West.

Second, although we continue to maintain that the 2013 Consent Decree is facially unlawful—and this has been borne out to date by federal courts invalidating BLM's 2014, 2016, and 2017 attempts to implement the Consent Decree—even the Consent Decree made clear that “[n]othing in this Consent Decree shall be construed to limit or modify the discretion accorded to BLM by

¹ Although RSGA owns some private lands in the Wyoming Checkerboard, much of the land as to which it asserts surface rights are owned by other entities. Because Congress explicitly limited redress under Section 4 to “the owners of such land” who inform BLM of any straying activity, 16 U.S.C. § 1334, RSGA cannot seek removal of any horses from leased land in the absence of the landowner itself requesting that BLM remove any horses. This discussion highlights that RSGA is not the only interested party even with respect to the private Checkerboard lands, and thus underscores the arbitrary nature of BLM doing everything in its power to accede to RSGA's demands above those of other interested parties.

the applicable federal law and regulations.” However, the fact that BLM is hiding behind the Consent Decree—and using that agreement and RSGA’s desire to never see a stray horse on private land—to justify eliminating longstanding wild horse HMAs even on large solid public land blocks means that BLM views its hands as tied by the Consent Decree. As to the large public land blocks in these HMAs, BLM has not provided any coherent, non-arbitrary explanation as to why it cannot manage these public land blocks in the same manner that BLM manages every single wild horse HMA surrounded by public land throughout the American West. As a result, BLM clearly views its discretion as restricted by the Consent Decree, further reinforcing that unlawful nature of that agreement.

Third, although we do not support a non-reproducing herd in the White Mountain HMA as established by the Consent Decree, it is telling that even the Consent Decree would have permitted BLM to authorize more horses than it is currently proposing in these HMAs. In that agreement, RSGA stated that it had no objection to up to 450 horses in the Adobe Town HMA and up to 205 horses in the White Mountain HMA (i.e., up to 655 horses total), which is noticeably *more* than the total AML proposed in Alternative D of a mere 259-536 horses (all located in the Adobe Town HMA). Again, while we certainly do not support the approach embodied in the Consent Decree, this discussion highlights the absurdity of Alternative D insofar as it is objectively *worse* for horses than even the terrible agreement between RSGA and BLM contemplated, with no coherent explanation as to why BLM would authorize even less horses than what RSGA states it is willing to tolerate on these public lands.

D. BLM’s Refusal to Construct Fences (If Appropriate) Is Arbitrary and Capricious

We do not think that BLM must construct fences or other barriers to avoid potential straying from large solid public land blocks to private lands adjacent to these public lands blocks. Again, our view is that Congress already long ago addressed that matter and explained in Section 4 of the Wild Horse Act how BLM must resolve any straying issues in the event they come to pass.

Nevertheless, BLM’s Alternative D explains that there is no fence or other barrier that would separate solid public lands blocks in the Great Divide Basin HMA or the Salt Wells Creek HMA from private lands outside those blocks. BLM supplied a similar explanation as to why it could not manage the solid public land block of the White Mountain HMA with the adjoining solid public land block of the Little Colorado HMA. But for all of these HMAs, assuming BLM legitimately believes that fencing would reduce conflicts under Section 4 of the Wild Horse Act, it would be far more harmonious with the Act’s language to examine in detail the construction of fences or similar barriers, rather than merely stating that a fence would be needed without explaining why the routine matter of constructing a fence is not feasible under the circumstances. In fact, in other places in the Draft RMP Amendment and Draft EIS, BLM explicitly notes that there have been “[n]umerous range improvements (such as fences or water developments)” making clear that fence construction is a regular occurrence in these areas.²

² It is also arbitrary and capricious that BLM is *not* considering wild horse use in the Little Colorado HMA in this RMP Amendment process, because according to BLM “it does not contain any checkerboard land.” But the Little Colorado HMA is located immediately north of

In any event, the Wild Horse Act does not authorize BLM to convert an HMA to an HA (or to reduce AML to zero) merely because some horses could stray onto private lands from a large solid public land block. Nor does the Act allow BLM to discard longstanding HMAs and wild horse use of those public lands merely because a fence or similar barrier would assist the agency (from an administrative convenience standpoint) in reducing or eliminating conflicts with nearby landowners). Nonetheless, if BLM deems a fence to be helpful in any of these HMAs, then it should consider such options in detail to determine whether to build any fences.

E. BLM's Proposal to Geld, Spay, and Otherwise Sterilize Wild Horses Using Controversial, Unknown, and Uncertain Techniques Violates the Letter and Spirit of the Wild Horse Act

In the draft EIS, BLM also proposes the implementation of controversial surgical sterilization techniques as management tools for use on wild horses in the project area. There is robust scientific and professional dispute regarding surgical sterilization procedures' impacts and applicability to wild horses. Many scientists and veterinarians have repeatedly opposed BLM's various attempts to implement surgical sterilization practices as management tools. In 2013, even the NAS responded to a commission by the BLM to study important scientific issues related to the agency's wild horse program, including fertility control by concluding that "[t]he most promising fertility-control methods for application to free-roaming horses and burros are porcine zona pellucida (PZP) vaccines, GonaCon vaccine, and chemical vasectomy." (Attachment 3, at 6).

BLM's proposed implementation of surgical sterilization techniques is a serious violation of the WHA. As described above, one of Congress's primary goals in enacting the WHA was to protect wild horses from various types of adverse impacts, including those that harm their wild and free-roaming behaviors. 16 U.S.C. § 1331. There can be no legitimate dispute that surgical sterilization risks serious adverse impacts to the wild and free-roaming behaviors of individual horses and the herds to which they belong. Additionally, the WHA mandates that "[a]ll management activities shall be at the minimal feasible level." 16 U.S.C. § 1333(a). Surgical sterilization techniques are far more invasive, inhumane, and risky than other non-surgical methods of fertility control such as PZP. Because surgical techniques are far more invasive and inhumane than other methods of fertility control, it cannot be said to constitute the minimal feasible level of management in accordance with a statute that aims to protect wild horses. Thus, the consideration of such tools is inherently inconsistent with the fundamental Congressional intent in the WHA to "protect" wild horses. See 16 U.S.C. § 1333(a). Accordingly, for various reasons, this experiment threatens a violation of the WHA.

the White Mountain HMA (which is at issue here), and it is subject to the same Green River RMP that BLM seeks to revise here. The omission of the Little Colorado HMA as part of this RMP Amendment process makes clear that BLM's goal in this decisionmaking is not to objectively address wild horse issues in the region and to reach a reasoned outcome about wild horse management, but instead to cater to the desires of RSGA as a major owner/lessee in the Checkerboard by permanently eliminating as many wild horses as possible from the areas that RSGA covets for grazing its domesticated livestock.

In order to best illustrate our concerns with BLM's implementation of these techniques, we attach and incorporate by reference previous comments submitted to other BLM offices that cover our concerns on the same techniques BLM is proposing to adopt in this EIS. (Attachments 4 and 5).

F. The BLM's decision to pursue Land Use Plan amendments to implement the sweeping changes under the proposed action instead of as part of the overall RMP revision process underway for the Green River (Rock Springs) RMP is a violation of law.

The vast majority of land within the EIS planning area falls within the BLM Rock Springs Field Office (RSFO) and uses therein are guided by the Green River RMP.

The current Green River RMP sets the following objectives for the management of five HMAs (Little Colorado, White Mountain, Divide Basin, Salt Wells Creek and a portion of Adobe Town):

1. Protect, maintain and control viable, healthy herds of wild horses while maintaining their free-roaming behavior;
2. Provide adequate habitat for wild horses consistent with principles of multiple use and environmental protection;
3. Provide opportunity for the public to view wild horses.

These objectives are inconsistent with the Proposed Action, which will eliminate 70 percent of the currently designated habitat within the EIS planning area, including eradicating all wild horses from four of the five HMAs under the BLM Rock Springs' jurisdiction and permanently closing these areas to wild horse use. This includes the elimination of the highly accessible Pilot Butte Wild Horse Viewing loop and limiting wild horse viewing opportunities to more remote areas.

The land use plan amendments proposed in the EIS, which would eradicate wild horses from four of five HMAs within the RSFO and permanently close these areas as habitat for federally-protected wild horses, cannot be considered in isolation outside the overall Rock Springs RMP revision process, since the RMP revision is the planning vehicle for evaluating livestock grazing, wild horse use, available AUMs and overall goals for multiple uses, including recreational uses of the public lands within the RSFO.

VI. THE DRAFT EIS ALSO VIOLATES NEPA IN A MYRIAD WAYS

In addition to the numerous violations of federal law addressed above, the Draft EIS fails NEPA's hard look standing in many ways.

A. The BLM Must Adequately Analyze the Impacts of the Proposed Action

- 1. The Proposed Action Negatively Impacts Wild Horses Both Locally and the Overall Wyoming Population**

Under this proposed analysis, the BLM is proposing to zero out three HMAs, substantially reduce wild horse habitat, roundup and remove more than 3,000 wild horses, potentially “spay” and/or apply GonaCon or PZP to mares, geld stallions, and skew sex ratios in remaining horses of the Adobe Town HMA. Thus, this analysis will be problematic on many fronts. As such the final EIS must better analyze the impacts of BLM’s proposed action on the wild horses themselves, including but not limited to consideration for loss of habitat, AUM/forage allocation, genetic viability, and the significant mortality rate of horses held in short-term and long-term holding that results from traumatic injury, complications from surgical sterilization procedures and other roundup-related factors. Indeed, records obtained by AWHC show dozens of horses perishing in holding facilities in the months immediately following the last checkerboard roundup. BLM must analyze the roundup-related impacts to these horses and the post-roundup effects of placing them in holding facilities.³

Further, BLM must analyze the full effects of its action (namely the reduction of these wild horse populations far below their current AMLs) and, in turn, assess reasonable measures to mitigate those effects. Historically, federal courts have instructed BLM to not only fully analyze the *impacts* of its decisions for wild horses in this region, but to also then evaluate all reasonable efforts that BLM can (and should) take to mitigate the harm caused to these wild horses by BLM’s reduction of these populations far below a viable AML. Thus, BLM must do so in this EIS, in order to comply with NEPA, its regulations, and previous court orders requiring consideration of mitigation measures that would inure to the benefit of the horses that are set be removed from these *public* lands under the preferred alternative in a manner that is inconsistent with the WHA.

Therefore, the BLM must properly analyze the effects of the current proposed action, with mass roundup and removal, habitat loss, sterilization procedures, non-reproducing herd management strategies, skewing of sex ratios, and potential application of GonaCon. Such an analysis will show that the BLM cannot proceed with the preferred alternative, and must instead analyze the proposed alternatives such as those AWHC has laid out for implementation; which suggest, among other things, managing the wild horses at the current population, on all public lands, and with the only scientifically proven option that the BLM has available now—the PZP fertility control vaccine.

a. Removal of Wild Horses and HMAs

Specifically, AWHC asks that the mass roundup and removal of more than 3,000 wild horses from the Checkerboard, and the zeroing out of three HMAs and elimination of wild horse habitat, be eliminated from consideration in this EIS. However, if the BLM moves forward with its analysis of a roundup and removal action, the agency must note that the WHA requires the

³ According to *BLM’s* own records obtained by AWHC through the Freedom of Information Act, as of July 2015 at least 86 wild horses that were removed from these HMAs in 2014 had already died as a result of roundup-related activities and/or in post-roundup holding facilities. That high mortality rate is not even mentioned—let alone analyzed—in BLM’s Draft EIS, nor are alternatives (such as returning some of these horses to the HMAs) explored that might mitigate this high mortality rate.

BLM to manage wild horses and burros at the minimum feasible level. Such a large roundup and removal operation will fail to meet that standard. Instead, the proposed action will continue the BLM's business as usual approach to "management" by helicopter drive trapping and stockpiling more wild horses in off-range holding facilities.

As such, the EIS must further analyze the risks of helicopter drive trapping to the environment and the horses as well as the economic and welfare concerns related to increasing the off-range holding population of wild horses by more than 3,000 horses. In any subsequent NEPA actions, such as a roundup plan, the BLM must explicitly state for the public where the horses will be transferred and how the agency plans to ensure their safety after removal.

b. Management Tools

As noted in the proposed alternatives raised by AWHC, we support consideration of PZP to manage wild horses in these HMAs. The BLM must consider the possibility of implementing this option at current population levels utilizing Catch Treat and Release ("CTR") methods for the vaccination of all mares over 1 year of age with the PZP-22 or native PZP fertility control vaccine. The use of PZP fertility control is scientifically established, cost-effective and widely accepted in the mainstream wild horse advocacy and scientific communities. (Attachment 3, p. 99-112). Ultimately, the use of PZP within the four HMAs is the most economical and humane option for the BLM. It will preserve the natural behaviors that distinguish wild-free roaming horses from domestic horses and are protected under federal law and stabilize populations within the HMAs. Therefore, AWHC strongly urges the BLM to analyze the implementation of a comprehensive PZP fertility control program as an alternative in the analysis for the four HMAs.

AWHC asks that the BLM eliminate surgical sterilization of mares and stallions, sex skewing and GonaCon from consideration in the EIS. However, if the BLM moves forward with its analysis of this method, the agency must note that the WHA requires the BLM to manage wild horses and burros in a manner that protects their wild and free-roaming behavior. While Section 3(b)(1) as modified by the Public Rangelands Improvement Act of 1978 does specify options for population management that include sterilization, it states that such determinations must be made in conjunction with other wildlife agencies and experts independent of government, such as those recommended by the NAS. AWHC, and our coalition partners, have detailed the substantial health and behavioral concerns of spaying mares in its comments (and attachments) on the BLM's multiple EAs for the Mare Sterilization Research Project, which was supposed to take place at the Hines Corrals in Oregon. We incorporate those comments and relevant attachments by reference here and are including those comments at Attachment 4. Additionally, AWHC includes its comments on the proposed gelding of wild stallions as a management tool for use in the Antelope and Triple B Complexes in Nevada here at Attachment 5.

2. The Proposed Action Negatively Impacts Ecotourism, the Local Economy, and Wild Horse Viewers and Photographers

Sweetwater County, Wyoming is home to the Pilot Butte Wild Horse Scenic Loop which tourwyoming.com notes, “offers the best chance to see the wild horses.” The county relies on wild horses in this area for ecotourism; made evident by the fact that the home page predominantly features wild horses and that the county has created information specifically to promote the self-guided tour of this 24-mile Loop.⁴ The Loop is the easiest area for the public to view wild horses in southwest Wyoming because part of the road is paved, it is well marked, there are interpretive signs, and visitors can observe the horses in the southern area of the White Mountain HMA, which is closest to Route 80. Visitors to the Loop are only 14 miles outside town, with good cell service, so if they were to get into trouble it is easy to call for help. Every time Carol Walker, a wild horse photographer who frequently photographs the horses in this region, visits the loop she has seen other people, tourists and locals driving around and watching and/or photographing the horses. Multiple travel national and international travel sites promote the Pilot Butte Wild Horse Viewing Loop as an excellent place to see wild horses.

Currently, the proposed action would remove all wild horses from the Loop, even though it is clear that the Loop is an integral part of tourism in Wyoming and that the wild horses in the White Mountain HMA (in and around the Loop) are iconic and popular herds to the American public. The 1997 Green River RMP spent time analyzing the visual resource management of the public lands in the area. The BLM explicitly provided for 500 acres of public land as “wild horse viewing area,” allocated with a half mile buffer. The RMP notes that wild horse herd viewing areas would be closed to long-term or permanent intrusions and surface disturbing activities that could interfere with opportunities to view horses. However, the current RMP Amendment spends no time analyzing the impacts that removing wild horses from the wild horse viewing loop would have on the visual resource management of the project area, or the public’s ability to view horses in the wild as was clearly an intent of the original RMP.

As such, AWHC objects to the BLM’s plan to remove the majority of horses in this region and destroy the public’s ability to observe the horses on public lands. Instead, the BLM should analyze reasonable alternatives to preserve wild horse habitat and ecotourism interests for the state. Such alternatives would replace the BLM’s assertion that the public’s ability to see wild horses is preserved under the proposed action by the ability for the public to visit BLM corrals and instead give adequate consideration to the preservation of important tourism and observation opportunities for the public to see wild horses free-roaming on public lands.

3. The Economic and Social Impacts of the Proposed Action Negatively Impact Taxpayers

According to the CEQ, under NEPA, “agencies are required to determine if their proposed actions have significant environmental effects and to consider the environmental and related social and economic effects of their proposed actions.” The BLM is facing an escalating fiscal crisis off-the-range as a result of the mass removal of wild horses from the range and the stockpiling of captured mustangs in government holding facilities. The removal of more than 3,000 horses from the four HMAs will add wild horses to taxpayer-funded holding facilities. These factors must be disclosed and analyzed in the EIS.

⁴ https://www.tourwyoming.com/resources/media/files/Wild_Horses.pdf

The importance of these factors was highlighted in a 1982 National Research Council report on the BLM's wild horse and burro program (Attachment 6):

Attitudes and values that influence and direct public priorities regarding the size, distribution, and condition of horse herds, as well as their accessibility to public viewing and study, must be an important factor in the determination of what constitutes excess numbers of animals in any area. . . [A]n otherwise satisfactory population level may be controversial or unacceptable if the strategy for achieving it is not appropriately responsive to public attitudes and values. . . .

Biologically, the area may be able to support 500 cattle and 500 horses, and may be carrying them. But if the weight of public opinion calls for 1,000 horses, the area can be said in this context to have an excess of 500 cattle. For these reasons, the term excess has both biological and social components. In the above example, biological excess constitutes any number of animals, regardless of which class above 1,000. Social excess depends on management policies, legal issues, and prevailing public preference..."

BLM must also evaluate how utilizing PZP fertility control in this area as a means of controlling wild horse population numbers without perpetual roundups, which are costly to American taxpayers and the horses themselves, will decrease unnecessary and wasteful spending of taxpayer funds. The cost savings of comprehensive PZP use is substantial. For example, an economic model published in a peer review article predicted that BLM could attain its population goals and save \$8 million in one HMA by using PZP fertility control and reducing and eventually eliminating removals. (Attachment 7). As such, the use of PZP to manage these HMAs is clearly a viable and economically responsible management choice.

Finally, the BLM must analyze the impacts to the local tourism economy caused by the elimination of wild horses from accessible viewing areas, including the Pilot Butte Wild Horse Viewing Loop.

4. The EIS Must Fully Analyze an Adaptive Management Strategy

Interior Secretary order No. 3270 issued March 9, 2007 established agency policy to incorporate Adaptive Management into agency management programs. Under this policy, land use decisions can be adjusted in order to meet environmental, social and economic goals; to increase scientific knowledge; and to decrease tensions among stakeholders. There are numerous reasons why the BLM should apply its adaptive management policy to the management of the HMAs in the project area.

- The BLM understands the high economic costs associated with the proposal to removal horses from the range and keep them in short-/long-term government holding facilities. Indeed, the BLM has repeatedly emphasized that the agency practice of rounding up and warehousing wild horses is not fiscally sustainable.
- The BLM must consider and analyze the societal opposition to the removal of horses. Over the past few years, the BLM has received hundreds of thousands of letters from

American citizens opposing roundups and in favor of reform of the Wild Horse and Burro Program, including a shift away from roundup and removal toward on-the-range management of wild horses, as well as in favor of re-slicing the resource allocation pie to give horses a fairer share of resources by decreasing or eliminating livestock grazing in HMAs.

In sum, AWHC requests that the BLM include the additional analysis in the final EIS as explained above.

B. The EIS Must Analyze Reasonably Foreseeable Actions that Impact the Proposed Action

1. Occidental Land Sale

BLM must analyze reasonably foreseeable actions to the proposed action in the EIS because a “viable but unexamined alternative renders [the] environmental impact statement inadequate.” *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 814 (9th Cir. 1999) quoting *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir.1985). A significant portion of land within the planning area is owned by the Anadarko Land Corporation, which was purchased last year by Occidental Petroleum. Occidental has since placed the land up for sale and the State of Wyoming is considering its purchase.⁵ It is clear that any future sale by Occidental to the State of Wyoming or BLM will impact the planning area and BLM’s claim that private landowners in the Checkerboard demand the removal of the horses. The pending sale of this land could change the landscape of the Checkerboard and alter the fundamental justification for the BLM’s proposed elimination of wild horses from this area. Therefore the pending land sale must be analyzed as part of the EIS as a reasonably foreseeable action and applied to the proposed alternatives in the EIS.

2. The Wyoming Pipeline Corridor Initiative

On April 17, 2020 the BLM released the *Draft Resource Management Plan Amendments/Environmental Impact Statement Wyoming Pipeline Corridor Initiative* (DOI-BLM-WY-0000-2020-0001-RMP-EIS). This project proposes to allow for pipeline corridors through 15 HMAs within the state of Wyoming, including HMAs within the project area of this RMP Amendment. However, the BLM made no mention of this proposed project in the RMP Amendment itself. AWHC requests that the BLM add additional consideration in the proposed Wild Horse Amendment that will discuss and disclose the effects that any pipeline activity will have on wild horse management in the project area and within the four HMAs affected by the Amendment.

In sum, AWHC requests that the BLM include the additional analysis in the final EIS as explained above and completely analyze how these future actions will impact wild horse management in the project area.

⁵ *State could spend hundreds of millions on Occidental land*, Andrew Graham, *WyoFile*, <https://www.wyofile.com/state-could-spend-hundreds-of-millions-on-occidental-land/> (Feb. 20, 2020).

C. The EIS Must Properly Analyze Alternatives to the Proposed Action

BLM must take more seriously its obligation to make the NEPA process meaningful since the Draft EIS's alternatives exclude evaluation of several obvious additional points to the proposed action. Such gaps raise grave questions as to whether BLM is merely using this remanded process not to genuinely consider alternatives to the action but instead to justify the decision BLM has already attempted to implement time and time again, to remove all wild horses from the Checkerboard without even considering creative solutions to manage the wild horse population on the existing solid public land blocks. As the NEPA regulations make clear, utilizing the NEPA process as nothing more than a ruse to justify or rationalize a decision already made is a patent violation of the letter and spirit of NEPA. See, e.g., 40 C.F.R. § 1502.2(g) (explaining that the NEPA process "shall serve as the means of assessing the environmental impact of proposed agency actions, *rather than justifying decisions already made.*") (emphasis added); see also id. § 1502.5 (requiring that NEPA review "shall be prepared *early enough so that it can serve practically as an important contribution to the decisionmaking process* and ***will not be used to rationalize or justify decisions already made***") (emphases added). Thus, BLM must consider the several additional, obvious alternative points to the proposed action in the EIS.

AWHC does not support the zeroing out of the HMAs in the planning area with Checkerboard lands. However, at minimum, the EIS must adequately analyze alternatives that seek to mitigate the impacts of the proposed land use amendments on the federally protected wild horses in the Adobe Town, Salt Wells Creek, White Mountain and Great Divide Basin HMAs. Part of this analysis must include the consideration of all HMAs in the region in order for the BLM to develop a truly sustainable wild horse management plan for the region. Of note, the Little Colorado HMA must be among the HMAs that are analyzed in the EIS due to the HMA's location within the Rock Springs Field Office's jurisdiction and guided by the Green River RMP which is being amended via this LUP/EIS process.

There is a total of 2.8 million acres in the planning area, 1.9 million acres (68 percent) of which is owned by the American taxpayers, the remainder is private land. With its proposed action to zero out the Salt Wells Creek, White Mountain and Great Divide Basin HMAs and to reduce the size of the Adobe Town HMA, and the wild horse population that lives within it, the BLM is allowing the RSGA, a minority landowner owning approximately 16 percent of the land in the project area, to dictate the management of wild horses in the entire 2.8 million acre area. The alternatives below must be analyzed in the final EIS, particularly since they are consistent with the wishes of 80 percent of Americans who want to see them managed humanely and given their fair share of the resource. (Attachment 2).

AWHC reminds the BLM that under the requirements of NEPA, the agency must consider reasonable alternatives to the proposed action. The following alternatives focus on maintaining, and potentially increasing, the wild horse AML in the project area. The BLM should:

- Eliminate livestock grazing and increase wild horse AMLs in the public land block portions of the HMAs pursuant to 43 CFR § 4710.5⁶;
- Eliminate wild horse use and maintain livestock grazing leases on the Checkerboard portions of the HMAs;
- Evaluate fencing and other range management measures to keep wild horses on the public land block portions of the HMAs; and
- Work with RSGA to execute a series of land swaps within the White Mountain HMA in order to preserve the Pilot Butte Wild Horse Viewing Loop and support the local Wyoming ecotourism interests.

Impacts to the wild horse population would be mitigated under these alternatives by decreasing livestock grazing on public lands and increasing the wild horse AML in all four currently considered HMAs, and the non-Checkerboard lands in the Little Colorado HMA. As noted above, the Little Colorado HMA is governed by the Green River RMP, proposed amendments to which the BLM has analyzed in this EIS. As such, the Little Colorado HMA should be analyzed as part of this NEPA action as well. The BLM cannot exclude the HMA from analysis simply because it is comprised entirely of public land and does not hold any Checkerboard lands which are driving this action. Instead, the public lands of the Little Colorado HMA, and all surrounding HMAs, should be analyzed in conjunction with the other four HMAs in the current EIS so that the BLM can create a truly sustainable management plan for the region.

After these boundaries are secured for wild horses as described above, the BLM will conduct rangeland condition assessments of the land before setting the AML for all five HMAs. All wild horses would be managed with PZP fertility control vaccine given to a sufficient number of mares in the HMAs to ensure effective population growth suppression. It is estimated that 80 to 85 percent of the mares should be treated in order to achieve population growth suppression. In addition, the BLM must outline future plans to continue the PZP fertility control program in order to continue the population growth suppression and forgo removals. AWHC runs a large, successful PZP program on state land in Nevada and is willing to work with the BLM to establish a successful PZP program in the five HMAs as well.

1. Eliminate Livestock Grazing in the Public Land Portions of the HMAs

⁶ 43 CFR § 4710.5 provides:

- (a)** If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.
- (b)** All public lands inhabited by wild horses or burros shall be closed to grazing under permit or lease by domestic horses and burros.
- (c)** Closure may be temporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

AWHC asks that the BLM go further than the intention of Alternative B, proposing to favor wild horse use in the project area, and consider how the current wild horse population should be maintained without removals by implementing elimination of livestock grazing pursuant to 43 C.F.R. 4710.5(a). The BLM has a statutory mandate to protect wild horses, while livestock grazing is permitted only at the discretion of the Interior Department. Livestock grazing is not required to fulfill the agency's "multiple use" mandate. It is also far more cost effective to curtail taxpayer-subsidized commercial livestock grazing in this area than it is to permanently remove wild horses from the range. The recent Tenth Circuit ruling in *Wyo. v. U.S.*, 839 F.3d 938 (2016) affirms the BLM's discretion to implement this alternative, and the NAS report, in its recommendations, supports this option as "a more affordable option than continuing to remove horses to long-term holding facilities." Further, as explained at length above, the interests of discretionary grazing permit holders cannot supersede the required protections for federally protected wild horses on public lands.

Note: 43 CFR § 4710.5 authorizes BLM to "close appropriate areas of the public lands to grazing use by all or a particular kind of livestock...[i]f necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury." BLM typically states that the agency utilizes this regulation only in cases of emergency, but nothing in the text of the rule indicates that its applicability is limited to emergency situations. Further, a fiscal emergency does exist due to the fact that wild horse holding facilities are at capacity and consuming the majority of the BLM's wild horse and burro program budget. Leaving horses on the range and making downward adjustments to taxpayer-subsidized livestock grazing levels, by implementing options such as grazing buyouts, is clearly the most cost-effective option.

The Checkerboard pattern of landownership has led to repeated conflicts between ranchers and the vastly larger number of Americans with an interest in conserving wildlife, including wild horses. However, those that have the privilege of grazing on public land blocks should tolerate wild horses on private lands in exchange for this privilege. Thus, the clearest and simplest way for BLM to resolve this dispute is to close the *public* land blocks in these HMAs to livestock grazing, which is permissible under the Federal Lands Policy and Management Act, the Taylor Grazing Act, and BLM's regulations implementing the WHA.

2. Implement Land Swaps to Create Contiguous Land Blocks in HMAs

Under this alternative, the BLM would focus on executing land swaps with private landowners in the Checkerboard pattern portions of the HMAs in order to create solid blocks of public lands within the HMAs and to exclude private landownership from the HMAs.⁷ The checkerboard pattern of the land in this area can make the management of wild horses difficult to enforce, but according to the ruling by the Tenth Circuit Court of Appeals in *American Wild Horse Preservation Campaign v. Jewell*, No. 15-8033 (10th Cir. 2016), the BLM cannot manage public lands as private lands and seek to proactively remove horses from public lands that may or may not stray onto private lands. As such, an alternative that would create solid blocks of public lands

⁷ This alternative will also preserve public land habitat for the wild horses in the Wild Horse Viewing Loop and the surrounding wild horse habitat area.

for wild horse management will only help the BLM to effectively manage wild horses within their habitat on *public* lands.

This alternative will remove wild horses from RSGA owned and leased lands in the Checkerboard pattern and thus comply with RSGA's demands and intolerance of wild horses on its privately-owned lands within this area. Thus, instead of seeking to zero out three HMAs in the project area under the proposed alternative, the BLM must create public land blocks and manage wild horses within those lands of the HMAs. This alternative will protect and preserve the interests of the wild horses while meeting the demands of private landowners, and specifically RSGA, in the project area.

Once the land swaps are complete, horses outside of the now completely public land HMAs should be relocated within the new boundaries of the HMAs. Even though wild horses are free-roaming, meaning that they do not recognize boundaries on open lands, the land swaps and relocation efforts will be a step in the right direction for meeting the needs of all land users in these HMAs – including the horses. If horses continue to wander off of the new public land blocks, the BLM should analyze mitigating measures, including the potential implementation of fencing, to keep wild horses on public lands and preserve the wild horses' rights to the resource.

In sum, AWHC requests that the BLM include the additional analysis in the final EIS as explained above and completely analyze how these reasonable alternatives will impact wild horse management in the project area.

D. The EIS Must Fully Disclose All Necessary Information to Fully Understand and Analyze the Proposed Action

1. The EIS Must Disclose the Ownership and Exact Acreage of Private Lands in the Checkerboard

As mentioned above, the impetus behind the BLM's sweeping plan to eliminate 2.5 million acres of designated habitat and remove 40 percent of Wyoming's current wild horse population is a demand by the RSGA, which is actually only a minority landowner in the project area. (See Attachment 1). However, the EIS fails to provide any breakdown of ownership of the private land blocks in the planning area which would disclose this fact. It is crucial that the final EIS fully describe the land ownership within each HMA, the percent of private land owned by each owner, and analyze any future actions such as potential land sales in order to portray a full and accurate picture of the land users in the project area.

2. The EIS Must Disclose Actual Livestock Use and Numbers

The checkerboard pattern of landownership in the planning area has led to repeated conflicts between ranchers and the vastly larger number of Americans with an interest in conserving wildlife, including wild horses. In order for the public to meaningfully provide public comment on the proposed RMP Amendment, the BLM must disclose the actual livestock use and numbers for the planning area. This includes, but is not limited to, such information as:

- A complete breakdown of livestock grazing in each of the HMAs, including active and actual Animal Unit Month (“AUM”) allocations for each of the past five years;
- All rangeland health assessments for grazing allotments in each of the HMAs. All monitoring data for each area should also be included and the BLM should clearly describe the data delineating the separate impacts of livestock use versus wild horse use; and
- A detailed map of all water sources and fencing within each of the HMAs, and disclosure of water allocations for all uses in the HMAs, as well as an explanation of how fencing and engineering of wells and springs for livestock grazing has affected water availability for wild horses and other wildlife species.

The most efficient way for the BLM to completely disclose this information would be by attaching the Actual Use Grazing Report Forms⁸ for all allotments within or overlapping the HMAs as an appendix to the EIS. These forms contain the name of the BLM Field Office that authorizes the grazing use, the Allotment name and number, the pasture name and number, the kind or class of livestock, the dates and number of head (animals) turned into pasture and the dates and number of head (animals) taken off the pasture, the name of the Permittee/Lessee and the date of the report, and the BLM's calculations of the percentage of PL (public land), and the AUM 's (the forage used, known as Animal Units per Month). The second page of the report includes a record of livestock losses, including reasons for loss, number and kind or class of livestock, and the date.⁹ Further, in the interest of transparency and clarity, the BLM should also compile and disclose charts that directly compare livestock use and wild horse use in the HMAs.¹⁰ Such transparency is necessary for the public to fully understand the users of public lands in the project area.

Thus, AWHC requests that the BLM disclose this information that is required for the public to provide meaningful comment on the proposed action.

3. The Final EIS must provide a full and accurate accounting of public comments submitted on the draft EIS.

This accounting must include what positions and/or recommendations were presented in them, including how many comments were received in opposition to and in favor of the Proposed Action and alternatives as the agency is legally required to do under the National Environmental

⁸ Here is a link to the BLM's current online Actual Use Grazing Report form. This is Form 4130-5 (January 2018): <https://www.blm.gov/sites/blm.gov/files/4130-005.pdf>.

⁹ AWHC submitted a Freedom of Information Act request on February 27, 2020 (2020-00470) seeking the actual grazing reports for “all grazing allotments that are partially within or wholly within, each BLM wild horse Herd Management Area (HMA) in Wyoming.” Demonstrating that this information is not publicly available for consideration by the public in the context of analyzing the impacts of this EIS.

¹⁰ See examples compiled from BLM's publicly available information here:

<https://www.wildhoofbeats.com/blog/please-comment-now-to-stop-blms-plans-to-wipe-out-40-of-wyomings-wild-horses>.

Policy Act. The BLM cannot dismiss form comments as they represent the opinions of the individual citizens submitting them, and both NEPA and the National Academy of Sciences affirm the importance of social preference in BLM policymaking. Since this is an amendment to an RMP as opposed to a “gather” decision, social preference is clearly relevant and the final EIS must fully detail the social preferences expressed in the comments.

E. The BLM Must Properly Calculate AML for this Area and the Final EIS Must Detail and Analyze the Proper AML Calculation.

Aside from the legal issues with the BLM’s attempt to change the AMLs in the four HMAs as explained above, there are also flaws in the three-tier process BLM attempted to use in Appendix A to the EIS.¹¹ Instead of properly adhering to the tiered process, the BLM has clearly analyzed the AMLs based on the restrictions set forth in each pre-determined alternative instead of analyzing the project area free of restrictions from the proposed alternatives. The latter would determine the factually accurate carrying capacity of the land from which the BLM could *then* create alternatives that would allow for the scientifically supported AML of wild horses to remain.

Further, a careful review of the second-tier analysis demonstrates that the BLM has no more scientific information than it did when AMLs were originally set solely by agreement. The EIS notes that the Tier 2 Analysis in Appendix A

determines the amount of sustainable forage available for wild horse use. The current AML for this HMA was established by agreement, and was not based on analysis of utilization data and use pattern mapping. ***The BLM currently lacks adequate utilization and use pattern mapping data to calculate an updated proposed carrying capacity for wild horses in this area.*** Therefore, the analysis in this appendix will focus on forage needs as proposed in each alternative, and their anticipated stocking rate relative to the types of vegetation communities found within the HMA.

Thus, the AML analysis provided in the EIS for this RMP amendment is inadequate and once again demonstrates that BLM only creates an AML based on the number of wild horses the BLM has decided to allow to live in the HMA after allocating the lion’s share of forage to private livestock. As the NAS concluded:

¹¹ BLM’s Wild Horses and Burros Management Handbook (H-4700-1) outlines a three-tiered analysis for establishing and adjusting the AML for an HMA. Tier 1 determines whether the four essential habitat components are present in sufficient amounts to sustain healthy wild horse populations and healthy rangelands over the long-term. Tier 2 determines the amount of sustainable forage available for wild horse use. Tier 3 determines whether or not the projected wild horse herd size is sufficient to maintain genetically diverse wild horse populations. (Appendix A, EIS p. 126).

How Appropriate Management Levels (AMLs) are established, monitored, and adjusted is not transparent to stakeholders, supported by scientific information, or amenable to adaptation with new information and environmental and social change....standards for transparency, quality and equity [are needed in] establishment, adjustment, and monitoring [of AMLs].

(Attachment 3, p. 11). The BLM should adhere to NAS recommendations for “transparency, quality and equity” in setting and implementing AML. This must include basing decisions on sound environmental monitoring data, a complex understanding of herd dynamics and genetic viability needs, as well as equity in resource distribution in the territory—all of which is lacking in the draft EIS. As such, it is clear that the BLM cannot move forward with the proposed AMLs as set in this draft EIS unless and until the agency is able to compile *all* of the proper scientific monitoring information required for making transparent and accurate AMLs for the HMAs in the project area and the legal inefficiencies explained above are remedied.

Finally, the final EIS must disclose a list of groups that the BLM consulted with when setting the AMLs for the four HMAs and the current census data indicating the wild horse populations not only on the Checkerboard lands, but also those found in the solid public land blocks within each of the HMAs, including the Little Colorado HMA. Even though the RMP is meant to convey wild horse management for the next ten to twenty years, and actual population numbers will vary over that time, setting the population limits in these HMAs requires an in-depth analysis and scientific review of all available information, including current population, in order to be set AML accurately. Thus, the BLM must also include current and accurate population survey information in the final EIS as part of the AML calculations.

In sum, AWHC requests that the BLM include the additional analysis in the final EIS as explained above and move forward with a final action that protects the interests of free-roaming wild horses across the five HMAs in this project area.

VI. CONCLUSION

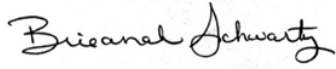
As detailed above, the BLM’s plan to remove federally protected wild horses from lands within and outside of the Adobe Town, Great Divide Basin, Salt Wells Creek, and White Mountain HMAs violates several federal laws and illegally elevates the interests of the Rock Springs Grazing Association over the interests of the American public which strongly supports wild horse protection. The EIS fails to analyze a reasonable range of alternatives and fails to adequately analyze the environmental impacts of its proposed action, including the negative impacts to federally protected wild horses, to recreational users of the public lands who enjoy viewing and photographing wild horses, and to the local economy which benefits from the ecotourism dollars the wild horses of this area attract.

For all of these reasons—as articulated in detail above—we strongly urge BLM to abandon the current draft EIS for this controversial precedent-setting action and to, at bare minimum, engage in a meaningful analysis of the effects of, and reasonable alternatives to, the wide-scale permanent removal from the range of the vast majority of federally protected wild horses found in the Wyoming Checkerboard. We hope that BLM will seriously consider the foregoing

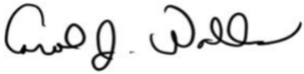
comments, as well as those in the attached letter signed by 12,000 American taxpayers (Attachment 8), when preparing the final EIS.

Thank you for your consideration.

Sincerely,



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Attachments:

Attachment 1: Map of Private Landownership in the HMAs in the Project Area

Attachment 2: Public Policy Polling

Attachment 3: "Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward," National Academy of Sciences, June 2013.

Attachment 4: AWHC's Comments Submitted to BLM Oregon in Response to the BLM's Last Proposed Surgical Spay Experiment Plan

Attachment 5: AWHC's Comments Submitted to BLM Nevada in Response to the BLM's Proposal to Implement Gelding as a Management Tool in the Antelope and Triple B Complexes

Attachment 6: 1982 National Resource Council Report

Attachment 7: *An Economic Model Demonstrating the Long-Term Cost Benefits of Incorporating Fertility Control into Wild Horse (*Equus Caballus*) Management Programs on Public Lands in the United States*, Charles W. de Seve, Ph.D., and Stephanie L. Boyles Griffin, M.S., Journal of Zoo and Wildlife Medicine, 2013.

Attachment 8: AWHC's Petition and Signatures on the Draft Rock Springs Resource Management Plan Revision



Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003

April 30, 2020

Kimberlee Foster
Rock Springs Field Office Manager
BLM Rock Springs Field Office
280 Highway 191 North
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Submitted via eplanning.blm.gov

RE: Draft RMP Amendment and EIS for Wild Horse Management in the Rock Springs and Rawlins Field Offices, Wyoming, DOI-BLM-WY-D040-2011-0001-RMP-EIS

Dear Ms. Foster:

The Animal Welfare Institute (AWI) submits these comments in response to the Bureau of Land Management's Draft resource management plan (RMP) amendment and environmental impact statement (EIS), NEPA # DOI-BLM-WY-D040-2011-0001-RMP-EIS, dated January 31, 2020, which seeks input on a proposed management plan for wild horses in the following Herd Management Areas (HMAs) in Wyoming: Adobe Town, Great Divide Basin, Salt Wells Creek, and White Mountain.

AWI is a national, nonprofit charitable organization founded in 1951, dedicated to alleviating the suffering inflicted on animals by humans. AWI engages policymakers, scientists, industry professionals, non-governmental organizations, farmers, veterinarians, teachers, and the public in its broad animal protection mission. AWI works to minimize the impacts of all human actions that are detrimental to wildlife, including by mitigating the use of inhumane methods to manage free-roaming wild horses and burros.

I. Introduction

While we understand that the Bureau of Land Management (BLM) must meet its obligations under the 2013 Consent Decree resulting from the Rock Springs Grazing Association (RSGA) lawsuit, *Rock Springs Grazing Association v. Salazar*, No. 11-CV-00263-NDF (D. Wyo. 2011), the agency is not required to adopt the actions listed in its preferred alternative (Alternative D) in order to comply with the terms of the Consent Decree. The Consent Decree requires only that the BLM consider and analyze certain actions, but in no way obligates the agency to implement any specific action (EIS pg. 9); *see also* Consent Decree at ¶ 6. For example, under the Consent Decree, the BLM must analyze the potential modification of Herd Management Areas (HMAs) and Appropriate Management Levels (AMLs), *see* Consent Decree at ¶ 6, but is not required to manage any of these HMAs below the currently operative AMLs, or eliminate HMAs altogether.

It is unfortunate that RSGA's withdrawal of consent to allow wild horses on privately-owned portions of the "checkerboard" terrain has put the BLM in a more challenging position. As the EIS notes, historically the RSGA had given consent to the BLM for wild horses to utilize its parcels within the checkerboard. But pursuing aggressive removals within the checkerboard in response to RSGA's actions is not a viable solution as a federal court has made clear. In 2016, the Tenth Circuit Court of Appeals ruled that the BLM's 2014 roundup of wild horses in the checkerboard region was illegal, finding that the agency violated both the Wild Free-Roaming Horses and Burros Act (WFRHBA), 16 U.S.C. §§ 1331-1340, and the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1787. *American Wild Horse Preservation Campaign v. Jewell*, 847 F.3d 1174, 1188 (10th Cir. 2016). The Court held that the BLM may only remove wild horses from public lands after it determines that overpopulations exist, and that action is necessary to remove excess animals to achieve appropriate management levels. *Id.* at 1187-1188. The BLM may not, in effect, treat public land as private land by conducting a "Section 4 gather on the public land sections of the Checkerboard" in order to "attempt[] to stop wild horses from straying from the public land sections of the Checkerboard to the private lands sections of the Checkerboard." *Id.* at 1189. Should the BLM pursue the aggressive actions outlined in Alternative D of the draft RMP amendment and EIS – as further outlined and described in these comments (e.g., mass removals of wild horses, elimination of HMAs) – the agency may risk violating federal law.

While Section 4 of the WFRHBA grants a narrow and limited authority for the agency to remove wild horses at the request of private landowners, the scope of the preferred action far exceeds the law's purpose. The BLM's plan would set a dangerous precedent since the agency would be removing wild horses due to the mere assumption and expectation that these animals may stray onto parcels of private land at some point in the future. This novel interpretation presents a radical departure from how the BLM has managed wild horses in the past and offers a troubling – and flawed – interpretation of the WFRHBA.

Broadly speaking, the "challenges due to private land conflicts" that the BLM identifies as being the root of the need for this the new draft RMP amendment and EIS only underscore the importance and necessity of implementing scientifically proven fertility control methods that are available now to effectively and humanely manage wild horse populations – namely, immunocontraceptive vaccines such as porcine zona pellucida (PZP). Continuing the status quo of rounding up and removing horses, while continuing to diminish their natural habitats and range, is untenable. The EIS proposes to funnel more horses into an already unsustainable warehousing system that costs the agency approximately \$50 million a year, which, in recent years, has amounted to roughly two-thirds of the BLM's total Wild Horse and Burro (WHB) program budget.

We encourage the BLM to evaluate and raise the current AML, given that the planning area consists of federally designated wild horse habitat and the agency should aim to fulfill its statutory mandate to protect wild horses and allow them to exist on public lands. But of the four alternatives proposed in the EIS, AWI would prefer that the BLM pursue Alternative A (no action) – specifically maintaining a total AML for the HMAs included in this planning area (Adobe Town, Great Divide Basin, Salt Wells Creek, and White Mountain) of 1,481 to 2,065 horses across 2,811,401 acres of land.

II. Legal Background

A. Federal Land Policy Management Act

The Federal Land Policy Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1787, requires that certain public lands and their resources be “periodically and systematically inventoried and their present and future use [] projected through a land use planning process.” *Id.* § 1701(a)(2). FLPMA further mandates that “public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.” *Id.* § 1701(a)(8). FLPMA requires the public lands to be administered for “multiple-use,” which Congress defined as “the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people...with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” *Id.* § 1702(c).

FLPMA’s implementing regulations require the BLM to periodically develop, maintain, and revise “resource management plans” (RMPs) – written documents “designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.” 43 C.F.R. § 1601.0-2. Modifications to RMPs – including modifications to HMAs, their boundaries, or the AMLs that apply to a particular herd – may only be adopted through a formal amendment to or revision of the applicable RMP through FLPMA’s land-use planning process subject to public comment and NEPA review. See 43 C.F.R. § 4710.1. Accordingly, Congress created a formal two-step process in the FLPMA that requires the BLM to first issue a programmatic plan (i.e., a RMP) that sets overarching policies and management goals for the next few decades subject to NEPA compliance in an EIS, and then second issue site-specific decisions (themselves subject to NEPA review in either an EIS or EA) to actually implement on-the-ground actions consistent with the policies and management objectives identified in the programmatic plan. At both steps of this process, the public is allowed to meaningfully participate through the FLPMA and NEPA process.

B. National Environmental Policy Act

Congress enacted the National Environmental Policy Act (NEPA) more than four decades ago “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment...” 42 U.S.C. § 4321. In light of this mandate, the Supreme Court has found that NEPA is “intended to reduce or eliminate environmental damage and to promote ‘the understanding of the ecological systems and natural resources important to’ the United States.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004) (quoting 42 U.S.C. § 4321). NEPA is intended to “ensure[] that [federal agencies]... will carefully consider, detailed information concerning significant environmental impacts” and “also guarantees that the relevant information

will be made available to the larger [public] audience.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

In NEPA’s implementing regulations, there are two specific mechanisms whereby federal agencies must evaluate the environmental and related impacts of a particular federal action – an EA and an EIS. *See* 42 U.S.C. § 4332(c). These procedural mechanisms are designed to inject environmental considerations “in the agency decisionmaking process itself,” and to “help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Pub. Citizen*, 541 U.S. at 768-69 (emphasis added) (quoting 40 C.F.R. § 1500.1(c)). Therefore, “NEPA’s core focus [is] on improving agency decisionmaking,” *Pub. Citizen*, 541 U.S. at 769 n.2, and specifically on ensuring that agencies take a “hard look” at potential environmental impacts and environmentally enhancing alternatives “as part of the agency’s process of deciding whether to pursue a particular federal action.” *Baltimore Gas and Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 100 (1983). The alternatives analysis “is the heart” of the NEPA process. 40 C.F.R. § 1502.14. NEPA’s implementing regulations require that the decision-making agency “present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” *Id.* Importantly, the NEPA process “shall serve as the means of assessing the environmental impact of proposed agency actions, *rather than justifying decisions already made.*” 40 C.F.R. § 1502.2(g) (emphasis added); *see also Id.* § 1502.5 (requiring that NEPA review “shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made”) (emphasis added), *Forest Guardians v. U.S. Fish and Wildlife*, 611 F.3d 692, 712 (10th Cir. 2010) (However, “the comprehensive ‘hard look’ mandated by Congress and required by [NEPA] must be timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.” *Metcalf v. Daley*, 214 F.3d 1135, 1141-42 (9th Cir. 2000)).

C. Wild Free-Roaming Horses and Burros Act

In 1971, Congress enacted the Wild Free-Roaming Horses and Burros Act out of concern that wild horses were “disappearing from the American scene.” 16 U.S.C. § 1331. Declaring that “wild horses are living symbols of the historic and pioneer spirit of the West,” and “contribute to the diversity of life forms within the Nation and enrich the lives of the American people,” Congress directed that wild horses “shall be protected from capture, branding, harassment, [and] death” and “be considered in the area where presently found, as an integral part of the natural system of the public lands.” *Id.* To implement that mandate, Congress declared that BLM shall “protect and manage wild free-roaming horses and burros as components of the public lands,” and provided that “[a]ll management activities shall be at the minimal feasible level.” 16 U.S.C. § 1333(a).

Under the Act, BLM manages wild horses on public lands within HMAs, which are “established for the maintenance of wild horse...herds,” 43 C.F.R. § 4710.3-1, in the areas they used in 1971. 43 C.F.R. § 4700.0-5(d). The WFRHBA further requires the BLM to manage wild horses “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). To do so, for each HMA, the BLM must: (1) maintain a current inventory of wild horses in each HMA, (2) “determine [the] appropriate management level” – i.e.,

the AML – of wild horses that the HMA can normally sustain, 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 is “expressed as a population range within which [wild horses] can be managed for the long term” in an HMA without resulting in rangeland damage. BLM, *Wild Horse Handbook*, at 17. The lower limit of the AML range is “established at a number that allows the population to grow (at the annual population growth rate) to the upper limit over a 4 to 5 year period, without any interim gathers.” *Id.*

Section 3 of the Wild Horse Act grants the BLM the authority to manage and protect wild horses by permanently removing “excess” horses from public lands, but only after the BLM specifically determines that: (1) “an overpopulation [of wild horses] exists on a given area of the public lands,” and (2) “action is necessary to remove excess animals.” 16 U.S.C. § 1333(b)(2). An “excess” wild horse is defined as one that “must be removed from an area *in order to preserve and maintain a thriving natural ecological balance...in that area.*” 16 U.S.C. § 1332(f) (emphasis added). Once the BLM makes a formal “excess determination,” it may remove only those “excess animals from the range so as to achieve appropriate management levels.” 16 U.S.C. § 1333(b)(2). According to the BLM’s wild horse manual, “[w]ild horses or burros should generally not be removed below the AML lower limit.” BLM, *Wild Horse Manual MS-4720*, at 4; *see also* BLM, *Wild Horse Handbook*, at 17 (wild horse removals should be conducted to “maintain population size within AML”); *see also American Wild Horse Preservation Campaign v. Jewell*, 847 F.3d 1174 (10th Cir. 2016). Removal of wild horses below the agency’s legally established AML may be warranted only “in emergency situations based on limited forage, water or other circumstances.” BLM, *Wild Horse Manual*, at 5. Before taking action to remove wild horses below AML if the agency determines that emergency circumstances exist, the BLM must conduct an adequate NEPA analysis subject to public participation and provide a compelling “[r]ationale to justify a reduction below the AML lower limit.” *Id.*

III. Discussion

A. Wild Horse Reductions

We have grave concerns about the proposed dramatic wild horse reductions. Under the BLM’s preferred alternative, the total AML would be 259 to 536 horses across 1,920,314 acres of BLM lands, or 1 horse for every 7,414.339 acres (excluding the additional 891,087 acres of non BLM-managed land in the planning area) (pg. 41). This proposed action represents a sweeping 74% reduction in the number of permitted wild horses (pg. 5). As the BLM notes, animal unit months (AUMs) “previously allocated to wild horse use may be reallocated to wildlife, livestock” and other functions (pg. 5).

Under the BLM’s plan, all checkerboard lands within the HMAs would be managed for zero wild horses; as a result, the entire Great Divide Basin HMA, the entire Salt Wells Creek HMA, the entire White Mountain HMA, and a large portion of the Adobe Town HMA would be managed for zero wild horses and revert to Herd Area (HA) status (i.e., cease to exist as HMAs). An estimated 3,000 would be permanently removed from the range and a staggering 2.5 million acres would no longer be allocated for wild horses, which represents an 87% reduction in the total acreage allocated for wild horse use under the BLM’s estimation (pg. 63). The estimation is based

on the March 2019 census (which contains the most recent publicly available data) since the EIS does not disclose current population numbers or include an approximate tally of how many individual animals the BLM is seeking to remove from the region.

These actions represent a stark and devastating loss that the agency is unable to justify, providing instead speculative rationales, without evidence, to support its claims – for example, that the preferred alternative would “result in fewer conflicts between wildlife and wild horses” (pg. 5). This is unacceptable under NEPA.

In a particularly shocking move, the BLM intends to remove all horses from the Wild Horse Scenic Loop, a popular area for the public to view wild horses. The agency’s proposed action would likely reduce tourism and interest; the EIS notes that visitors would have to drive further from larger population areas in order to view wild horses and that the increased travel time could deter visitors (pg. 90-91). The EIS cursorily acknowledges the negative ramifications, but fails to adequately consider the impacts of removing all wild horses from the viewing loop area. The BLM acknowledges that wild horses offer unique recreational and sightseeing experiences for visitors to these HMAs; however the EIS does not analyze how increasing livestock use could further reduce recreational and sightseeing opportunities (pg. 89).

At a minimum, the BLM should consider an alternative that allows wild horses to exist on solid block portions of public lands – for instance, as the BLM notes, over half of the portion of the Adobe Town HMA that would revert to HA status and be managed for zero wild horses exists outside of the checkerboard land pattern, meaning a solid block could be designated (pg. 17, pg. 41). Similarly, over half of the Great Divide Basin lies outside of the checkerboard land pattern, but here again the BLM has opted not to pursue creating contiguous portions to allow horses to reside in these HMAs. Moreover, the BLM could look to areas excluded from analysis in the EIS, namely the adjoining Little Colorado HMA, which consists wholly of public land; we urge the BLM to return to the drawing board to create contiguous areas of public lands for wild horses to inhabit rather than pursue costly, irresponsible, and potentially illegal mass removals.

Regarding the difficulties of ensuring that horses stay only on public lands, courts have held that the BLM is not required to prevent wild horses from straying onto private lands. *Fallini v. Hodel*, 783 F.2d 1343, 1345 (9th Cir. 1986) (cited with approval by *American Wild Horse Preservation Campaign v. Jewell*, 847 F.3d 1174, 1189 (10th Cir. 2016)). Indeed, the Tenth Circuit ruling in *American Wild Horse Preservation Campaign v. Jewell* regarding checkboard roundups emphasized that the practical realities of the unusual land ownership pattern “do not provide BLM with the authority to construe the [WFRHBA] in a manner contrary to its plain and unambiguous terms” by responding to a “removal request by treating public lands as private lands” 847 F.3d at 1188.

It is worth noting that RSGA, which revoked its consent to allow wild horses on private land that it manages, owns only 14% of the checkerboard lands in the HMAs. Given the land pattern, RSGA “manages its private lands in concert with the unfenced public lands” such that RSGA’s own livestock “roam freely on property owned by [RSGA] and on the alternate sections of land owned by the federal government.” *Id.* at 1180 (quotation omitted). The BLM fails to adequately address this point in the current EIS and fails to fully disclose the exact amount of land at issue given that

the majority private landowner in the checkerboard is Anadarko Petroleum, owned by Occidental. The EIS simply notes that “RSGA owns numerous private land sections within each of these HMAs” without getting into specifics or the implications of prioritizing RSGA’s livestock grazing interests over the interests of the federally protected horses in the planning area (pg. 40).

This is especially troubling since, as has been widely reported in the media, the state of Wyoming is seeking to purchase Occidental’s lands in the checkerboard, meaning the supposed rationale of needing to prevent wild horses from venturing into private lands seems even less tenable. The EIS fails to disclose that the majority private landowner is considering selling lands within the checkerboard. The potential sale and purchase of these lands must be analyzed in the final EIS, including possibilities such as whether the BLM can work with the state to preserve habitat for wild horses, including in and around the Wild Horse Scenic Loop, which is vital to Wyoming tourism.

B. Appropriate Management Levels

Regarding the BLM’s designations of AMLs more generally – which play such a central role in the agency’s decision-making – the National Academy of Sciences (NAS) has raised concerns that the limits imposed by AMLs inadequately reflect the reality of wild horse populations on the range, and that the process for making these determinations is largely opaque, as discussed in its comprehensive 2013 report (commissioned by the BLM) on wild horse and burro management:¹

How AMLs are established, monitored, and adjusted is not transparent to stakeholders, supported by scientific information, or amenable to adaptation with new information and environmental and social change. (pg. 11)

At best, AMLs appear to be set arbitrarily; at worst, the opacity that NAS identified hinders sound management decisions that can be scrutinized and understood by the public – something evident from the BLM’s statement that AMLs could be adjusted without requiring a Land Use Plan amendment under its preferred alternative (pg. 63).

With this proposal, the agency would further balloon the population of warehoused wild horses despite the exorbitant costs associated with continuing this trajectory. The proportionally smaller AMLs and adjustments made under Alternative D simply shift wild horses from the range to short and long-term holding facilities. The EIS fails to consider the costs of removing such a large number of horses – information that needs to be explained in a future NEPA action before any roundups can occur.

Moreover, the preferred alternative proposes to “supplement herds with additional wild horses from other HMAs to help maintain AMLs following natural attrition or to help preserve *adequate* genetic diversity” [emphasis added] (pg. 59). The goal should not be to arrive at a point where the BLM has to bring in outside horses to prevent the myriad problems associated with inbreeding. The “zeroing out” of several HMAs renders the question of genetic diversity moot only insofar as whole herds are being eliminated.

¹ National Research Council 2013. *Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward*. Washington, DC: The National Academies Press.

The BLM is putting the cart before the horse in its “analysis” of maintaining genetic diversity, essentially making its decision before any analysis has been conducted. Statements in the EIS such as the following do not constitute satisfactory analysis under the BLM’s own tiered approach for adjusting AMLs, which includes assessing genetic viability (rather such “findings” offer little more than circular reasoning): “Under this alternative, the Salt Wells Creek HMA would revert to HA status and be managed for zero wild horses. As a result, there is no AML analysis associated with this alternative” (Appendix A).

The same problem is evident in the BLM’s analysis of the amount of sustainable forage available for wild horse use. Here again, the AML appears to be pre-determined based on how many horses the BLM wants to allow in conjunction with livestock grazing (with the supposed rationale shaped accordingly to fit the desired number). The BLM concedes it lacks current data and information to make accurate AML determinations: “The BLM currently lacks adequate utilization and use pattern mapping data to calculate an updated proposed carrying capacity for wild horses in this area” (Appendix A). Statements elsewhere in the EIS suggest the carrying capacity of the land is more than sufficient for the wild horse populations that currently exist.

C. Livestock Use

Reducing livestock grazing permits within these HMAs should be prioritized as this would help improve rangeland health. Under the agency’s preferred alternative, AUMs “previously allocated to wild horse use” may be allocated to livestock (exact allocations to be determined by BLM at a future date) (pg. 17). The lack of transparency and specificity on this point is troubling.

That said, reducing livestock grazing is not presented as a viable option in the EIS even though such a course of action should be considered as an alternative – specifically, maintaining the wild horse population as free-roaming and natural (as opposed to non-reproducing through permanent sterilization) by implementing reductions in livestock grazing. 43 CFR § 4710.5 authorizes the BLM to “close appropriate areas of the public lands to grazing use by all or a particular kind of livestock...[i]f necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment, or injury.” Livestock grazing is not required to fulfill the agency’s “multiple use” mandate. Furthermore, it is far more cost effective to curtail taxpayer-subsidized commercial livestock grazing in this area than it is to permanently remove wild horses from the range. The recent Tenth Circuit ruling in *Wyoming v. United States*, 839 F.3d 938 (10th Cir. 2016) affirms the BLM’s discretion to implement this alternative.

There is a considerable amount of livestock grazing occurring in these HMAs – in the vast majority of allotments within the planning area, 100% or slightly under 100% of the allotments are actively being used for livestock grazing (pg. 53). It is not surprising that tensions might arise due to the mere presence of wild horses given the rather stark prioritization of livestock interests.

The EIS fails to adequately consider alternative viewpoints on this matter, instead emphasizing how “some livestock users within the planning area have reduced their use levels in recent years as a result of wild horse populations exceeding AML, which can negatively impact livestock

operations” (pg. 54). Again, such statements present a tacit recognition that private livestock operations take precedence regarding the use of public lands and habitats that were specifically designated for wild horses.

As noted, approximately 2,466,118 acres would no longer be allocated for wild horse use, presenting an 87% reduction in the total acreage allocated for wild horse use (pg. 63). Essentially the BLM is proposing to nullify HMAs and zero out herds not because of factors such as a lack of forage or other resources, but simply because of an ongoing conflict with certain livestock interests. The agency’s preferred course of action is extreme and particularly inappropriate considering the imbalance that exists even in the “no action” (Alternative A) proposal. Under Alternative A, wild horses utilize an estimated 24,780 AUMs at high AML while livestock use an estimated 146,787 AUMs (pg. 67). As the EIS recognizes, there is sufficient water, forage, space, and cover to sustain the wild horse herds under the no action alternative even with the amount of livestock grazing that is allowed.

D. Proposed Gathers

The EIS does not consider the best scientific information available on the impact of gathers, including NAS’s findings that “removals are likely to keep the population at a size that maximizes population growth rate, which in turn maximizes the number of animals that must be removed and processed through holding facilities” (pg. 81). Put differently, mass removals would likely exacerbate the supposed problem the BLM is trying to solve in its mission to manage horses at sustainable levels across the west.

Should the agency round up and remove wild horses from any of these HMAs, we would urge the BLM to rely on water and bait trap gathers to avoid the stresses, injuries, and fatalities associated with helicopter roundups. As agency officials noted during the BLM’s National Wild Horse & Burro Advisory Board meeting in October 2019, the bait and water method does not cost more than using helicopters, so expense would likely not be a relevant justification for choosing helicopter roundups over more humane water and bait trap methods. Any subsequent NEPA actions should include an evaluation of the costs of this method compared to the use of helicopters or motorized vehicles.

It is disappointing that the BLM appears to have already decided to use the helicopter chase approach without regard for public concern (noting, for example, the need to bring animals in at a speed that avoids heat stress and fatigue, among other harmful effects). In Appendix B, the BLM states that gather efficiency “may be less with bait and water trapping” but this pronouncement is purely speculative and no evidence is provided to support the claim (pg. 4). The BLM should analyze the use of bait and water trapping for any proposed removals as part of its plan in the checkerboard.

The EIS emphasizes that using helicopters and motorized vehicles to round up horses is both “safe and effective” (pg. 57) despite acknowledging the numerous types of injuries that can and do occur directly as a result of these gather methods – from spontaneous abortions to broken limbs and even fatalities. The EIS notes that the BLM regards these as rare occurrences, but observers of recent roundups have identified and/or documented many such troubling instances – e.g., horses suffering

broken necks during recent operations in Nevada², helicopters running horses into barbed wire in Utah³, foals dying from “capture myopathy” (i.e., being run to death) during an Oregon roundup⁴, a wild mare either giving birth or miscarrying while being run in Nevada.⁵ We would be remiss not to observe that the 2014 checkerboard roundup resulted in several “acute” deaths – i.e., fatalities caused as a result of the gather and removal process – including multiple instances where horses broke their necks after running into panels.⁶

Regarding the proposed gather component, the BLM must take a hard look and fully analyze the deaths and injuries resulting from removals during roundup activities, and integrate specific data from such operations in recent years (while also analyzing the injuries and deaths resulting from transport to initial holding facilities, in short-term holding facilities, and in long-term holding facilities). The BLM must also consider how proposed gathers may disrupt other wildlife species, and harm sensitive sagebrush, grasslands, and riparian habitat areas. Should the BLM proceed with roundups, we request that real-time cameras be installed on all helicopters used in these operations and that video be live streamed online. Real-time cameras should also be installed in the trap, corral, and temporary holding pens so that BLM personnel, the public, and the media can monitor the entire roundup operation. Such technology would vastly improve the transparency of roundup operations and ensure that any welfare violations can be properly documented and addressed.

E. Non-Reproducing Herds

The 2013 Consent Decree requires that the BLM consider managing the White Mountain HMA as a non-reproducing herd. Consent Decree at ¶ 6(d). Adopting this “management” approach, however, would be of questionable legality because it would eliminate the ability of these federally protected wild horses to exhibit natural behaviors and thrive in their natural habitats.

In *American Wild Horse Preservation Campaign v. Zinke*, the court struck down the approach of creating sterile herds of wild horses in part because the agency failed to consider and analyze “the significant impacts of the chosen action alternative on the wild horse herd as discussed in the NAS Report[,]” which the court found to be relevant to BLM’s decision-making process. No. 1:16-cv-00001-EJL, at *17-18 (D. Idaho Sept. 29, 2017). Among other issues, the court found that sterilization removes an animal’s ability to be wild:

[P]reventing births and reproductive capacity of the horses alters wild horse behaviors and the social structure of the herd... The NAS Report concluded that

² Available: <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada/2020-eagle-complex-wild-horse-gather>

³ Available: <https://www.slttrib.com/news/environment/2018/08/09/deadly-aerial-roundup-ran/>

⁴ Available: <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/oregon/2018-warm-springs-wild-horse-gather>. See also, complaint letter jointly submitted by the Animal Welfare Institute and the American Wild Horse Campaign on potential violations of the BLM’s Comprehensive Animal Welfare Policy dated October 8, 2018.

⁵ Available: <https://returntofreedom.org/eagle-roundup-update/>

⁶ Available: <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/wyoming/2014-Checkerboard-Wild-Horse-Gather>

‘absence of young horses itself would alter the age structure of the population and could thereby affect harem dynamics.’ *Id.* at *20.

The BLM failed to consider the impacts of maintaining the herd as non-reproducing and whether those impacts were consistent with the requirement that the herd maintains its free-roaming behavior. *Id.* at *40.

To its credit, the BLM does note in the EIS that it has rejected the possibility of managing the Adobe Town HMA as entirely non-reproducing, although the sole justification appears to be predicated purely on expected interchange (i.e., wild horses entering from other areas) (pg. 19). Even so, throughout the EIS, the BLM is weighing options heavily skewed towards sterilization as the primary means of managing remaining horses under the preferred alternative.

The WFRHBA’s implementing regulations require that “wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat” (43 C.F.R. § 4700.0-6(a)). Additionally, “activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior” (*Id.* at § 4700.0-6(c)). Sterilization destroys those aspects of wild horse behavior, developed over millions of years of evolutionary history in North America, and as such does not meet the bar set forth by these implementing regulations.

F. PZP Vaccine

AWI strongly supports the use of immunocontraceptive vaccines – especially PZP – as a fertility control method to safely and humanely manage wild horse populations. PZP in particular is well-tested and has been used successfully for years to curb population growth in numerous herds. As a fertility control option, PZP enjoys broad support in both the wild horse advocacy and scientific communities. Currently, the BLM expends less than 1 percent of its Wild Horse and Burro Program budget on PZP. However, as an additional \$21 million was appropriated for the BLM’s WHB program in Fiscal Year 2020 (pending the submission of a report and comprehensive management plan to Congress), the agency now has an ideal opportunity to use this funding to implement a robust PZP program across these and other HMAs.

In a recent bipartisan letter from federal lawmakers to the BLM, Member of Congress stated their hope that “the BLM’s management report will contain significant support for effective, reversible fertility control techniques, which are key scientifically proven tools for the management of equine populations” (Attachment 1). The letter also underscored some of the inadequacies of the BLM’s current approach to fertility control (or lack thereof): “In FY 2018, the BLM reported administering only 580 doses of PZP and 110 doses of PZP-22, and only on 16 [HMAs.]” AWI urges the BLM to use the additional allocation for the implementation of a comprehensive PZP fertility control program in the checkerboard and in other HMAs across the west. Moreover, we ask that as part of any NEPA action, the BLM analyze and explain why the agency has failed to utilize PZP in a manner and at a level that will impact population rates in the HMAs.

The benefits of PZP, which has been available for decades, are myriad and clear: it is safe, effective, and non-invasive – and as such, amply meets the “minimal feasible level” threshold of

the WFRHBA, which most of the other options outlined in the EIS do not. Importantly, of the select fertility control methods recommended by the NAS, only PZP is available now without further research. The NAS recommended PZP based on criteria such as delivery method, availability, efficacy, duration of effect, and potential for side effects (pg. 97).

Moreover, an economic model published in a peer-reviewed article predicted that the BLM could attain its population goals and save \$8 million in one HMA by using PZP fertility control and reducing and eventually eliminating removals.⁷ With the influx of funding for Fiscal Year 2020, pursuing PZP on a broad scale is clearly viable and the long-term cost-savings would almost certainly be significant.

Unfortunately, the EIS indicates that once again, the agency is failing to prioritize PZP use: “Population management tools could include gelding, spaying, sex ratio skewing, or other population growth suppression methods” (pg. 5, pg. 17). PZP is not listed as a priority option or tool, instead being lumped into the “other” category. It is unclear why the BLM seems bent on pursuing options that would disrupt social bands or otherwise undermine natural behaviors (while also threatening the very viability and existence of these herds) when its own discussion of PZP in the appendix outlines the numerous advantages to its use (e.g., PZP can be administered safely to pregnant mares, its use preserves herd genetics) – benefits that an endless cycle of roundups or sterilization methods simply cannot provide (Appendix B pgs. 3-8).

In terms of fertility control, the BLM should be focusing exclusively on PZP for its management of wild horses in the checkerboard. While we understand that the BLM has ongoing concerns about administering PZP due to variables such as terrain and the approachability of some herds, the BLM acknowledges that darting can be implemented when animals are gathered into corrals (as in bait and water trapping) or opportunistically by applicators near water sources or along main wild horse and burro trails (Appendix B pg. 3)

Ultimately, the use of PZP within these HMAs is the most economical and humane option for the BLM. It will preserve the natural behaviors that distinguish wild and free-roaming horses from domestic horses and stabilize populations within the HMA. We support the BLM’s consideration of PZP to manage these horses and request that the BLM implement a vigorous PZP program at current population levels utilizing Catch Treat and Release methods for the vaccination of all mares over 1 year of age with the PZP-22 or native PZP fertility control vaccine.

G. Sex Ratio Skewing

Sex ratio skewing comes up at several points in the EIS so we want to include some of our concerns with this controversial approach. The use of sex ratio skewing – i.e., artificially manipulating the number of males and females in a population – to suppress population growth has no scientific basis and therefore will not serve to accomplish the agency’s goals. Indeed sex ratio skewing undermines the complex social structure of herds and has deleterious effects on natural wild horse behaviors. Moreover, it creates aggression among males competing for an unnaturally low number

⁷ “An Economic Model Demonstrating the Long-Term Cost Benefits of Incorporating Fertility Control into Wild Horse (*Equus Caballus*) Management Programs on Public Lands in the United States.” *Journal of Zoo and Wildlife Medicine*. 44(4S): S34–S37, 2013.

of females. In addition to increased competition and aggression among males for limited females, sex ratio adjustments favoring stallions could lead to mares breeding an earlier age, thereby increasing reproductive rates.⁸ Sex ratio skewing also fails to manage population growth given that effective wildlife population control must be female-directed. The agency fails to take a hard look at the direct, indirect, and cumulative impacts that use of this method will have on the behavior and physiology of wild horses and herd dynamics and the environment of the HMAs at issue.

The BLM should reject sex ratio skewing, but to the extent that sex ratio adjustment is contemplated as part of any management plan, the EIS must provide scientific documentation that the practice does not cause increased aggression among stallions, cause mares to reproduce at younger ages, create undue stress on females, and actually reduces population growth.

As it stands, the EIS myopically assumes and asserts that the sweeping reduction in horses from roundups would result in decreased “fighting among stud horses” – and accordingly, “injuries associated with [such] fighting” would decrease – without any evidence to support such a claim and while ignoring the obvious problems that sex ratio skewing could engender (pg. 58).

H. Ovariectomy (“Spaying” Mares)

AWI asks that spaying mares be eliminated from consideration in this proposal. The agency fails to take a hard look at the direct, indirect, and cumulative impacts that use of this method will have on the behavior and physiology of wild horses and herd dynamics and the environment of the HMAs at issue. As written, the EIS does not adequately consider the risks and detrimental effects that many of the proposed procedures could have on wild horses, particularly the use of ovariectomy via colpotomy. We incorporate by reference previous comments submitted to the BLM on past proposals that included surgical sterilizations (e.g., the proposed spay experiments in Oregon) and which detail numerous animal welfare concerns that are currently absent from the EIS.⁹

⁸ The BLM itself has acknowledged the adverse effects of sex ratio skewing – see, for example, “The following affects would be expected from successive removals causing shifts in sex ratios away from normal ranges are. If selection criteria leave more studs than mares, band size would be expected to decrease, competition for mares would be expected to increase, recruitment age for reproduction among mares would be expected to decline, and size and number of bachelor bands would be expected to increase” (EA# DOI-BLM-OR-L050-2009-0066-EA). Also: “Skewing the sex ratio of stallions v. mares would result in a destabilization of the band (stallion, mare and foal)... Social band structure will be lost resulting in combative turmoil as surplus stallions attack a band stallion trying to capture his mare. This could result in the foal being either killed or lost. The mare and foal will not be allowed to feed or water naturally as the stallion tries to keep them away from the bachelor bands of stallions, resulting in stress to the mare during her lactation condition” (DOI-BLM-OR-B060-2010-0005-EA). Additionally, “Wild horse populations will produce roughly equal numbers of males and females over time (H-4700-1, 4.4.1). Garrett (1991b) found that for a 12-year period 65 of 74 (88 percent) herds sampled in Nevada, Oregon, and Wyoming had a foal sex ratio that did not differ from 50:50 (Roelle and Oyler-McCance 2015). Re-establishing a 50/50 male to female sex ratio is also expected to avoid consequences found to be caused by skewing the ratio in either direction. In the Pryor Mountain Wild Horse Range, Singer and Schoeneker (2000) found that increases in the number of males on this HMA lowered the breeding male age but did not alter the birth rate. In addition, bachelor males will likely continue to seek matings, thus increasing the overall level of male-male aggression (Rubenstein 1986)” (DOI-BLM-ORWA-B050-2017-0002-EA).

⁹ We incorporate by reference comments that AWI submitted in response to the Swasey HMA Horse Gather EA (DOI-BLM-UT-W020-2020-0002-EA), Warm Springs HMA Spay Feasibility and On-Range Outcomes EA (DOI-

The WFRHBA requires the BLM to manage wild horses and burros in a manner that protects their wild and free-roaming behavior. While Section 3(b)(1) as modified by the Public Rangelands Improvement Act of 1978 does specify options for population management that include sterilization, it states that such determinations must be made in conjunction with other wildlife agencies and experts independent of government, such as those recommended by the NAS.

Additionally, the WFRHBA mandates that “[a]ll management activities shall be at the minimal feasible level” 16 U.S.C. § 1333(a). Surgical sterilization, including ovariectomy via colpotomy, falls far short of this legal requirement. Such procedures are far more invasive, inhumane, and risky than other non-surgical methods of fertility control such as PZP.

The BLM cannot simply assert, as it does in the EIS, that surgical sterilizations can be achieved “with a relative minimum level of animal handling” (Appendix B pg. 18) – with the erroneous implication that this assumption (if accurate) would satisfy the legal threshold for what constitutes proper management at the “minimal feasible level.” The EIS does not explain how the agency weighs a presumed one-time gather for invasive surgeries that necessitate ample recovery time and post-operative care versus non-invasive and well-tested options like PZP that can be administered remotely.

The BLM has made clear through a series of EAs for the experimentation on wild mares in Oregon that the agency would prefer to utilize the method ovariectomy via colpotomy. The NAS directly advised the BLM not to employ this procedure due to the risk of trauma and infection. In its 2013 report on wild horse management, the NAS concluded:

The possibility that ovariectomy may be followed by prolonged bleeding or peritoneal infection makes it inadvisable for field application. (pg. 130)

and

Surgical ovariectomy and ovariectomy are commonly used in domestic species, such as cats and dogs (including feral cats and dogs), but seldom applied to other free-ranging species. (pg. 98)

In addition, a 2015 National Research Council Review, also commissioned by the BLM, found:

Domestic mares are typically cross-tied (after ovariectomy via colpotomy) to keep them standing for 48 hours post-surgery to prevent evisceration through the unclosed incision in the anterior vagina. That protocol would not be possible in free-roaming mares because they cannot be held still for so long. Therefore, there is some concern that the investigator may see more fatalities after surgery than the 1% quoted in the protocol, based on domestic mares.

Despite the scientific recommendation from the NAS against ovariectomy as a method to control population growth, despite the public urging the BLM not to pursue spaying mares, despite litigation, and despite the overwhelming scientific controversy and public opposition, the BLM is nevertheless continuing to pursue a dangerous, precedent-setting, and extreme plan to sterilize wild mares.

As the BLM is aware, two major academic institutions (Oregon State University and Colorado State University) terminated partnerships with the BLM to oversee research experiments to assess the safety, efficacy, and complications, including mortality rates, from ovariectomizing wild mares. It is unclear what has changed in the agency's opinion if it is now seeking to bypass the research/study route altogether (originally intended to gauge the efficacy of utilizing these surgeries on mares in the wild) and instead start integrating spaying directly into its management plans.

Regarding past litigation on this subject, in November of 2018, a federal court enjoined the BLM from proceeding with its proposal to spay mares. *Kathrens v. Bernhardt*, Case No. 18-cv-1691 (D. Or. 2018). When issuing the preliminary injunction halting the spay experiments for the Warm Springs HMA, the court held that Plaintiffs were likely to succeed in proving that: (1) the agency's restrictions on public observation of the surgeries violated the plaintiffs' First Amendment rights; and (2) the BLM's lack of inquiry into whether the sterilization procedure was "socially acceptable" was arbitrary and capricious. *Id.* at *1-2. The ruling also noted that plaintiffs raised valid concerns regarding the BLM's abandonment of experimental protocols for monitoring the welfare of the horses. The Interior Board of Land Appeals formally vacated the Decision Record later that month. A similar 2016 BLM proposal to spay mares in the Warm Springs HMA (DOI-BLM-OR-B000-2015-0055-EA) also faced legal action and significant public opposition, leading the agency to vacate that Decision Record as well. *Cloud Foundation v. Jewell*, Case No. 16-cv-01650 (D. Or. 2016).

Use of ovariectomy via colpotomy has raised particular alarm among Members of Congress. Lawmakers in both the House and Senate have expressly criticized the BLM for pursuing this method, noting that the agency appears to recognize "the risky nature of the procedure, but is nevertheless aiming to quantify precisely how dangerous it is using federally protected animals," and that the BLM should instead "pursue humane and scientifically supported fertility control projects, such as the [PZP] vaccine" (Attachments 2 and 3). To that end, the Senate Appropriations Committee approved language in the Fiscal Year 2020 Interior report specifically delineating that "any population growth suppression strategies" employed by the BLM "must be proven, safe, and humane" (S. Rept. 116-123). Spaying mares would almost certainly fail to meet that bar.

Furthermore, an October 2019 letter to the Department of Interior, as well as a November 2019 letter to House and Senate lawmakers, signed by dozens of veterinarians from across the country, also expressed strong concerns about the BLM's proposed use of ovariectomy via colpotomy (Attachments 4 and 5). As the veterinarians noted in the former document, ovariectomy via colpotomy "is a painful surgical procedure" that "can be dangerous when performed on domestic horses, let alone [on] wild horses whose response to sedatives and analgesics is much less predictable." The letter also stated that "even in a controlled setting, this procedure can be accompanied by a high rate of complications...including risks of infection, trauma, post-operative

pain, hemorrhage, abdominal adhesions, evisceration, abscess formation, abortion, neuropathies, and even death.”

BLM’s wholesale failure to consider the social acceptability of surgically sterilizing wild mares, which was at issue in both the 2016 and 2018 lawsuits described above, or to collect data on mares’ post-surgical welfare, or to guarantee meaningful independent public observation, threaten a significant violation of the WHA. Congress enacted the WFRHBA precisely because of the social and cultural importance of wild horses. *See* 16 U.S.C. § 1331.

BLM has twice commissioned the NAS to issue comprehensive reports on the BLM’s program of wild horse management, and both times the NAS has affirmed the critical importance of considering the social acceptability of the agency’s methods for managing wild horse populations. “In 1982, the National Research Council noted that public opinion was the ‘major motivation behind the wild horse and burro protection program and a primary criterion of management success’” (pg. 239). In the 2013 report, the NAS reiterated its 1982 finding and noted that this “suggest[s] that control strategies must be responsive to public attitudes and preferences” (Ibid.).

The EIS does not adequately factor in social acceptability for any of the population control methods under consideration – from rounding up large numbers of horses (including in areas of particular interest to the public) to relying on surgical procedures that an overwhelming majority of Americans oppose. An October 2019 national survey conducted by The Harris Poll found that 77% of Americans opposed the BLM’s proposed use of ovariectomy via colpotomy to spay wild mares.¹⁰ Likewise, a separate October 2019 survey, conducted by Public Policy Polling, found that 79% of respondents opposed the surgical sterilization of wild mares. Not surprisingly, the agency has received thousands of comments to date objecting to its various proposals to ovariectomize wild horses. As mentioned above, the failure to account for social acceptability formed part of the court’s judgment when granting a PI against the BLM from proceeding with ovariectomies in the Warm Springs HMA.

As AWI was a plaintiff in the Warm Springs spay experiment litigation, this issue is of particular importance to the organization and our efforts to ensure that wild equines are managed humanely. AWI has detailed the health and behavioral concerns of spaying mares in past comments on the BLM’s EAs for the Mare Sterilization Research Project, which was supposed to take place at the Hines Corrals in Oregon (as well as more recently in comments responding to the EA for the Swasey HMA in Utah). We include some of the comments from veterinary professionals experienced with spaying procedures here again for reference as the agency considers whether to employ this method in Wyoming and in other parts of the country.

In “TheHorse.com,” Dr. Michael Ball describes the risks of ovariectomy in domestic horses:¹¹

Regardless of the method used for ovariectomy, this procedure is generally a painful one and the use of peri-operative analgesics is important. The horses often are hospitalized for 3-7 days and very carefully monitored in the immediate post-

¹⁰ Available: <https://awionline.org/pressreleases/new-poll-americans-overwhelmingly-oppose-risky-sterilization-experiments-wild-horses>

¹¹ Available: <https://thehorse.com/14853/ovariectomy/>

operative period for any signs of hemorrhage, which is a serious complication that can occur.

Dr. Robin Kelly, whose northern California-based equine veterinary practice includes the care of 245 wild horses and burros at the Montgomery Creek Ranch sanctuary in Elk Creek, reviewed the BLM's past research proposal and provided a statement with her concerns about the BLM's inability to provide post-operative care to ovariectomized wild mares (Attachment 6):

The postoperative management proposed for these [BLM] mares is minimal compared to significant postoperative recommendations for domesticated mares. These recommendations include keeping mares tied in a tie stall/tie line to prevent them from laying down/rolling to reduce risk of postoperative hemorrhage or herniation of bowel thru that must be left open to second intention healing. These measures are advised since extensive post-operative hemorrhage or herniation of bowel through incisions would not be survivable.

Domesticated mares would be treated with a more aggressive antibiotic choice for 7-10 days post operatively (monitoring daily for complications). Insufficient antimicrobials could result in peritonitis (also likely not survivable)...The wild mares will not be provided with post-surgical pain relief, according to the study description, and presumably [will be] turned out in a communal paddock with no restraint.

Dr. Kelly also wrote in a statement her concerns regarding the surgical procedures the BLM has proposed (Attachment 6):

Some of the other surgical ovariectomy procedures raise similar concerns regarding ability to adequately sedate wild horses and the abdominal compression of squeeze chutes that will be always necessary when working with wild horses.

Standing Laparotomy procedures through the flank to ovariectomize would still require complete draping of the wild horse's back end and the obvious issues of potential contamination of the surgical site would be easy to imagine since all hydraulic chute are in outside dusty BLM gather yards or outside facilities at ranches...The presumption that these wild horses could be led into a sterile veterinary clinic and be brought to stand in a stock is also an impossibility when they have never been handled.

Surgical procedures such as flank incisions also raise questions about the ability to provide sterile surgical fields, as do procedures that utilize general anesthesia to lay down horses to perform very invasive abdominal surgeries or flank incisions that would attempt to remove both ovaries from horses laying down on one side.

My concern with performing flank or abdominal incisions on wild horses in the open environment is that avoiding contamination of the surgical site would be quite difficult to prevent.

All of these surgical procedures are time consuming, expensive and carry high risks of contamination complications in wild horses. They are impractical and inadvisable for use in wild horses, particularly when non-surgical safer alternatives such as immunocontraception, are available.

The BLM must adequately analyze the feasibility of invasive surgical procedures for use on wild mares in the wild (and specifically in non-sterile conditions, as the agency admitted would be the case with the Warm Springs HMA proposal). The required confinement for safe recovery from this invasive surgical procedure is not possible in free-roaming mares, raising the risk of fatality. The BLM must analyze and consider how the agency plans to provide the mares with any of the required follow-up care after this procedure, including stall confinement, a period on crossties to prevent lying down or rolling, careful monitoring for hemorrhage, pain relief, and antibiotic treatment. The BLM must also be fully transparent about costs associated with carrying out these surgeries and whether it has enough veterinarians skilled in this relatively rare procedure to perform ovariectomies on wild horses en masse.

The proposed analysis must also analyze the current body of research available on the effects of spaying horses and the impacts they have on horse behaviors. The primary reason domestic mares are spayed is specifically to alter behaviors. Such alteration of behaviors would be in direct violation of the WFRHBA, which aims to protect wild, free-roaming horses. The BLM analysis must include available research on this subject that outlines how ovariectomies, or spaying, may result in problems pertaining to estrus-associated behaviors.

While reactions depend on the individual, this procedure will likely result in one of three behavioral changes: the mare will not experience estrus at all; she will continue to experience estrus irregularly; or she will “appear to be permanently in estrus.”¹² Any one of these changes are sure to change the dynamics of the herd, since the success of the stallion’s invitation to breed is dictated by the estrus-pattern of mares. If a mare shows no sign of estrus behavior, she will likely not be receptive to the stallion’s breeding invitation, possibly resulting in frustration of both the stallion and the mare. On the other hand, mares that end up sterilized, but in permanent estrus tend to be bred continuously by stallions. Repetitive breeding can lead to physical damage, re-opening the vaginal incision, and introducing infection, hemorrhage and/or evisceration – risks that would be exacerbated if mares are released back into the wild within a relatively short period after surgery.

To our knowledge the BLM has never intended to refrain from using ovariectomies on pregnant wild mares even though the agency admits ovariectomy via colpotomy has normally been limited to non-pregnant domestic mares (Appendix B pg. 19). In a particularly gruesome component of previous BLM proposals, the agency sought to quantify the number of aborted fetuses from testing the procedure on pregnant mares. Unfortunately, the risks to the welfare of pregnant mares and mares nursing foals has not been adequately considered in this EIS.

¹² University of Florida College of Veterinary Medicine, Large Animal Hospital. Available: <https://largeanimal.vethospitals.ufl.edu/hospital-services/surgery/ovariectomy/>. See also, “Can ovariectomy be justified on grounds of behaviour?” *Equine Veterinary Education*. 28 (1) 58-59, 2016.

Ultimately, the BLM should drop plans to surgically sterilize federally protected wild mares and focus instead on non-surgical methods of fertility control that preserve the natural behaviors that distinguish wild-free roaming horses from domestic horses. Should the BLM move forward with any surgical sterilization procedures, AWI requests that an independent veterinary observer be allowed to attend and observe the procedures. This individual should be able to document the procedures and provide timely reports to the public. As with roundups, we also request that small unobtrusive cameras be positioned to record the surgeries and the mares in recovery. Small unobtrusive cameras would help the public and veterinary professionals to better understand the procedures and assess whether such methods are appropriate for use on wild horses.

III. Conclusion

We sincerely hope that the BLM will provide a more comprehensive analysis and fully account for the key omissions outlined throughout these comments – such details are necessary for informed decision-making and sound management plans that appropriately consider public input, as well as the input of outside experts. As it stands, the agency’s preferred course of action for wild horses in the checkerboard has little, if anything, to do with what is best for the animals themselves, let alone with following the BLM’s mandate under the WFRHBA. Indeed, The BLM’s proposed actions here are at odds with its obligations under the WFRHBA to preserve wild horses “as an integral part of the natural system of the public lands” 16 U.S.C. § 1331, to manage them in a manner that is “designed to achieve and maintain a thriving natural ecological balance” 16 U.S.C. § 1333(a), and to employ management activities “at the minimal feasible level[.]” *Id.*

As the BLM admits, these wild horses are in good health (pg. 41); this is not a situation where the agency could possibly justify its radical removal plan by citing drought, lack of forage, or other adverse conditions undermining the horses’ welfare. Instead, the BLM is seeking to appease specific stakeholders by eliminating several HMAs and drastically slashing the number of wild horses in the region. The various components of the proposal would push these wild horse populations to the brink, such that they may cease to exist as natural free-roaming and self-sustaining herds.

Thank you for your consideration of these comments.

Sincerely,



Joanna Grossman, PhD
Equine Program Manager
Animal Welfare Institute
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Washington, DC 20003
202-446-2143
joanna@awionline.org



Congress of the United States

House of Representatives

Washington, DC 20515

March 5, 2020

William Perry Pendley
Deputy Director, Policy and Programs
Bureau of Land Management
1849 C St NW # 5665
Washington, DC 20240

Dear Deputy Director Pendley,

We write regarding the Bureau of Land Management's (BLM) efforts to manage wild horse and burro populations on public lands. As supporters of reversible fertility control as an essential population management tool, we believe implementation of a large-scale reversible fertility control program is vital to the success of a long-term strategy for managing wild populations in a safe, effective, and cost-efficient manner for the animals and the rangeland.

In the FY 20 budget, Congress provided BLM with a \$21 million funding increase for the management of wild horses and burros. Part of that funding was restricted contingent upon BLM providing Congress a report on their management plan for wild horse and burro populations. As Congressional supporters of our free-roaming wild horses and burros, we hope to see this plan turned over expeditiously to the appropriate Congressional Committees. We also hope that BLM's management report will contain significant support for effective, reversible fertility control techniques, which are key scientifically proven tools for the management of equine populations.

BLM has supported research on contraceptive vaccines for wild horses since 1992. For example, BLM's research developed the Porcine Zona Pellucida (PZP) vaccine, which comes in two forms – one of which must be administered every year, Zonastat-H, and a longer lasting form, PZP-22, which could last up to two years. Further, GonaCon™ is a GnRH-based immunocontraception vaccine shown to induce infertility for two or more years with a single administration in wild horses, and the reimmunization of previously treated mares resulted in significant reduction in fertility for three or more consecutive years. More testing is needed to demonstrate long-term safety and efficacy in all of these areas. It is well known that to implement an effective fertility control program, the agency must administer vaccines to at least 80 percent of mares to see a population stabilize. Yet in FY 2018, the BLM reported administering only 580 doses of PZP and 110 doses of PZP-22, and only on 16 Herd Management Areas. This level of PZP administration will not help curb national population growth for the more than 80,000 animals currently on the range.

Long-term management of free-roaming wild horses on public lands as prescribed in the 1971 Free-Roaming Wild Horse and Burro Act requires a modern approach. While we support further research into reversible contraceptive vaccines that can be incorporated into BLM's long-term management plans, alternatives to ZonaStat-H, PZP-22 and GonaCon will require years of ongoing testing to be fully evaluated for management usage. Current practices of mass roundup and removal have resulted in compensatory reproduction year after year; BLM must instead start effectively producing and using current fertility control vaccines to better curb population growth.

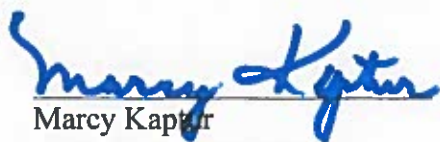
In order to better understand BLM's management approach for our wild horses and burros, we seek additional information on BLM's intentions for a population control strategy that involves contraceptive vaccines:

1. What was BLM's justification to stop execution and funding of ongoing contracts regarding production of reversible fertility control vaccines, such as the 2017 three-year PZP-22 production agreement with the University of Toledo?
2. What is BLM's justification to not approve funding for PZP-22 production, or ongoing projects associated with PZP-22, given its effectiveness?^[1]
3. What BLM initiatives exist to support research and development of other contraceptives such as GonaCon?
4. How much money, in the past five fiscal years, did BLM invest in studies of irreversible fertility control strategies such as sterilization?
5. How much money, in the past five fiscal years, did BLM spend on reversible fertility control tools such as PZP, PZP-22 and GonaCon?
6. Please provide a detailed plan of how BLM plans to use the \$101,555,000 appropriated for the Wild Horse and Burro Management program in the FY 2020 budget agreement to address the growing number of wild horses and burros on and off the range including details on planned spending for holding facilities and permanent sterilization if possible?

Our united goal, to curb population growth of wild horses and burros through large-scale fertility control program, is the humane approach to animal management and stewardship of our lands. It is imperative we work together to prevent further drastic spikes in populations, and mind common sense fiscal responsibility. Continuing the status quo is not acceptable.

Thank you in advance for your attention to this issue and your ongoing collaboration to find the best solutions to manage wild horse and burro populations moving forward.

^[1] United States Department of Interior, Bureau of Land Management. 2019. *Science and Research*. <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/science-and-research>



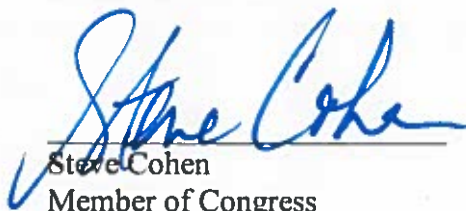
Marcy Kaptur
Member of Congress



Dina Titus
Member of Congress



Chris Stewart
Member of Congress



Steve Cohen
Member of Congress



Grace Napolitano
Member of Congress



Congress of the United States
House of Representatives
Washington, DC 20515

June 21, 2019

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Secretary Bernhardt:

We write today to express our concern with the Bureau of Land Management's (BLM) proposed surgical sterilization experiment to be conducted on wild horses in the Warm Springs Herd Management Area in Oregon (DOI-BLM-ORWA-B 050-2019-0013-EA (Spay Feasibility and On-Range Outcomes Environmental Assessment)).

While we understand the BLM's need to manage populations of wild horses, we are concerned about the rationale behind the decision to employ the "ovariectomy via colpotomy" method as a means of mass sterilization and are seeking clarification as to whether the agency has taken into account some of the unusual circumstances and disconcerting factors surrounding this project. In light of the November 2018 federal court ruling against the BLM, effectively blocking the agency from conducting the prior iteration of these experiments due to concerns over potential First Amendment public observation rights violations and because certain changes to the experimental protocol appeared arbitrary and capricious^[1], we would urge the BLM to abandon plans to pursue these experiments.

In its comprehensive 2013 report outlining strategies for improving wild horse management in the United States, the National Academy of Sciences (NAS) explicitly warned against employing ovariectomy via colpotomy on wild horses, noting that the "possibility that ovariectomy may be followed by prolonged bleeding or peritoneal infection makes it inadvisable for field application."^[2] In 2015, a NAS panel charged with considering various research proposals recommended against funding an ovariectomy via colpotomy project, noting that the procedure did not warrant further research, while also indicating that complication rates may be higher than expected.

It is our understanding the current proposal is substantially similar to, and indeed attempts to revive portions of, the discarded 2016 (DOI-BLM-OR-B000-2015-0055-EA) and 2018 (DOI-

BLM-ORWA-B050-2018-0016-EA) proposals on which the BLM sought to partner first with Oregon State University (OSU) and then with Colorado State University (CSU) in conducting and overseeing surgical sterilization experiments on wild horses.

In 2016, OSU withdrew from this project, leading the BLM to find a new academic institution – Colorado State University – to partner with for the 2018 proposal. CSU's experts were slated to monitor the procedure and provide follow-up welfare assessments of the horses that underwent the surgery. However, on August 8, 2018, CSU terminated its partnership with the BLM in conducting the ovariectomy research study such that the university would no longer be involved in any capacity. On August 22, 2018, the BLM announced it would move forward with the project regardless, dropping plans to partner with an academic institution to help oversee and carry out the experiment and issuing a revised Environmental Assessment without the CSU components. On November 13, 2018, a U.S. District Court granted a preliminary injunction halting the project for the aforementioned reasons, and later that month the Interior Board of Land Appeals formally vacated the Decision Record authorizing the experiments. Indeed, in a positive turn of events, the BLM announced in February of 2019 that it planned to return some of the rounded-up horses to the range and administer scientifically-proven immunocontraceptive vaccines to stabilize population growth.

We ask that you shed light on the BLM's reversal and new decision to push forward with the ovariectomy project – after three failed attempts to undertake the surgical sterilization experiments – as well as the decision to forgo working closely with an academic institution for the purposes of conducting this type of research study. At what stage did the BLM decide that identifying an academic partner that would provide expertise in equine veterinary medicine and welfare was no longer necessary to the project?

It is especially perplexing that in the new 2019 EA, as well as in the 2018 revised EA, the BLM continues to rely on CSU's Institutional Animal Care and Use Committee (IACUC) approval as a justification for continuing the project, despite CSU's withdrawal. The IACUC's approval was premised on CSU's participation and ability to provide oversight; the proposed experiment fundamentally changed at the point where CSU removed itself (and its team of veterinary and behavioral experts) from the project – most notably, through the absence of the welfare observations, which formed a crux of the proposal published on June 29, 2018, but are no longer a component of the project the BLM is attempting to yet again undertake.

The BLM received thousands of comments in opposition to the experiment. However, the current and previous proposals do not appear to incorporate any substantive revisions based on public input. Again, we would ask that the agency refrain from implementing this controversial mass surgical sterilization project given the agency's statutory mandate to uphold the welfare of these animals and the serious constitutional concerns that have been raised.

The BLM is charged with protecting wild horses under the landmark 1971 Wild and Free-Roaming Horses and Burros Act.^[3] From a welfare perspective, the "spay" experiment raises serious concerns. Ovariectomy via colpotomy (where a rod and chain is inserted blindly in order to sever the ovaries) carries risks of infection, trauma, hemorrhage, evisceration, and even death. Indeed, part of the stated experimental goal is to quantify morbidity and mortality (the 2018 EA

also considered factors such as the incidence of aborted foals resulting from ovariectomizing pregnant mares). It seems that the agency understands the risky nature of the procedure but is nevertheless aiming to quantify precisely how dangerous it is using federally-protected animals. This is especially disconcerting given the BLM's pronouncement that no post-operative antibiotics will be administered and that no veterinary interventions will be undertaken for any recovering horses returned to the range. The risk of infection or other complications is exacerbated by the fact that, by the agency's own admission, the surgeries will be conducted in an operating space that "may not be entirely sterile".[4]

At an absolute minimum, independent veterinary and welfare oversight (not unlike what we presume the BLM was hoping to achieve through partnerships with CSU and, before that, OSU) is necessary if a project of this type is to move forward in any respect. From a broader perspective, we would urge the BLM to drop this controversial plan and instead actively pursue humane and scientifically-supported fertility control projects (e.g., the Porcine Zona Pullucida vaccine) that enjoy broad support among key stakeholders and the public at large and that pose fewer harms to the welfare of federally protected wild horses.

Thank you for your consideration.

Sincerely,



Earl Blumenauer
Member of Congress



Ro Khanna
Member of Congress



Andy Levin
Member of Congress



Ann McLane Kuster
Member of Congress

[1] *Ginger Kathrens, et al. v. Ryan Zinke, et al.*, Case No. 18-cv-1691.

[2] National Research Council. 2013. *Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/13511>.

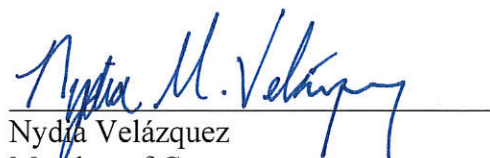
[3] The Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195). See "Section 1333. Powers and duties of the Secretary": "The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands ..."

[4] DOI-BLM-ORWA-B050-2019-0013-EA, "Spay Feasibility and On-Range Outcomes", Page 30.


Brian K. Fitzpatrick
Member of Congress

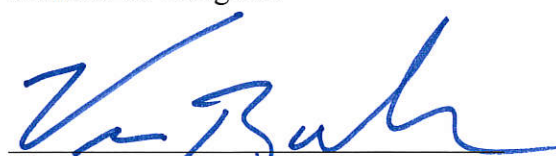

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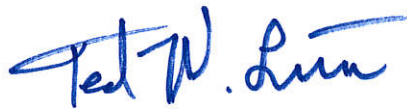

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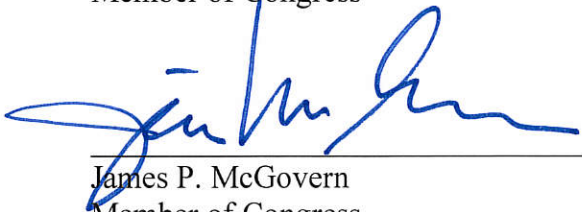

Barbara Lee
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John Yarmuth
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Ted Lieu
Member of Congress



James P. McGovern
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Mark DeSaulnier
Member of Congress



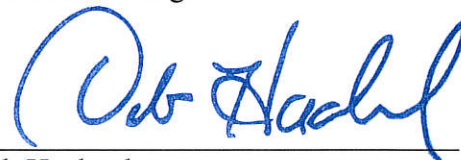
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Katie Porter
Member of Congress



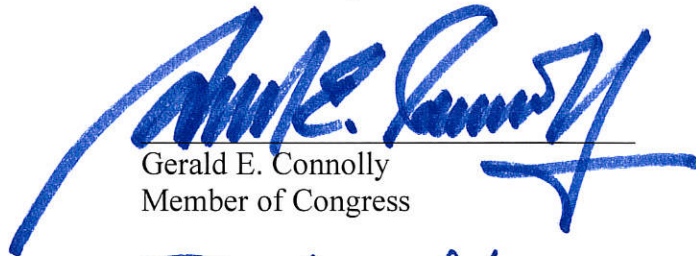
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Member of Congress



Deb Haaland
Member of Congress



Julia Brownley
Member of Congress



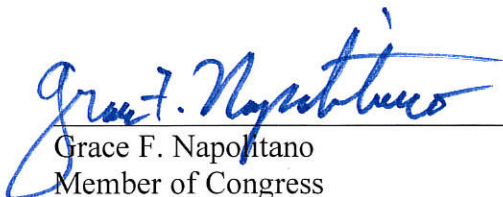
Gerald E. Connolly
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Joe Neguse
Member of Congress



Raúl M. Grijalva
Member of Congress



Grace F. Napolitano
Member of Congress



Matt Gaetz
Member of Congress

United States Senate

WASHINGTON, DC 20510

July 17, 2019

The Honorable David Bernhardt
Secretary, U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Bernhardt:

We are writing to express our concern with the Bureau of Land Management's current proposal to test a controversial surgical sterilization method known as "ovariectomy via colpotomy" on federally protected horses in the Warm Springs Herd Management Area (DOI-BLM-ORWA-B 050-2019-0013-EA).

The proposal, which was released earlier this summer, marks the agency's fourth attempt to proceed with these surgical sterilization experiments, despite two major academic institutions withdrawing their support from previous iterations of the project, significant public opposition to implementing this plan, and a federal court ruling enjoining the BLM from conducting the experiments.¹

The specific surgical procedure in question involves the manual insertion of a metal rod to blindly locate and sever the ovaries of wild mares. The surgeries – with as many as 25 being performed per day – would be performed at a holding facility and corral, which by the BLM's own admission may not provide aseptic operating conditions (thus further exacerbating the potential for complications to arise). Horses would remain conscious during the procedure and would receive minimal post-operative care.

In the National Academy of Sciences' "Using Science to Improve the BLM Wild Horse and Burro Program" – the comprehensive report on management strategies commissioned by the BLM – experts directly advised against employing the "ovariectomy via colpotomy" method. As the NAS noted, "the possibility that ovariectomy may be followed by prolonged bleeding or Peritoneal infection makes it inadvisable for field application." Indeed, numerous equine veterinarians have criticized the procedure given the risks of pain to the horses subjected to these ovariectomies, the need for lengthy and careful post-operative monitoring, the possibility of severing other organs due to the blind nature of the insertion, and the subsequent risks of infection, trauma, or death.

To this last point, the BLM's stated experimental goal is to quantify the rate of mortality and morbidity from conducting these surgeries on wild horses – an apparent recognition of the significant welfare risks to these federally protected animals. The 2018 iteration of the

¹ *Ginger Kathrens, et al. v. Ryan Zinke, et al.*, Case No. 18-cv-1691.

experiments – which a federal court blocked from proceeding – also sought to quantify the incidence of aborted foals after performing ovariectomies on pregnant mares.

From a broader perspective, the rather troubling and usual history of the ovariectomy experiments raises serious questions about the validity and merit of pursuing this project. Both Oregon State University and Colorado State University terminated partnerships with the BLM in helping to conduct and oversee the experiments, thereby removing any outside and independent veterinary oversight. A federal court ruled against the BLM in the 2018 proposal in part because of the lack of meaningful independent observation. Once OSU and CSU dropped out, rather than seek another research institution with experts in equine behavior and veterinary care, the BLM unilaterally decided to proceed alone, essentially asking the public to take the agency's word for it that it would provide an unbiased assessment of the outcome.

The BLM has received thousands of comments opposing the surgical sterilization experiments – many of which have called for the agency to implement fertility control options that enjoy broad support. As recently as February of 2019, the BLM announced that it would implement an immunocontraceptive vaccine program to manage the Warm Springs HMA horses – an encouraging development given the scientific consensus that such vaccines are safe, appropriate, and practical. We would ask the BLM to explain its decision to backtrack on this decision to implement a far more widely supported and humane fertility control strategy.

Wild horses are of course protected under the landmark Wild and Free-Roaming Horses and Burros Act and the BLM must take seriously its charge to protect these icons from “harassment or death.” That the agency would attempt to expend taxpayer dollars pushing through a highly controversial project that could result in injuries and infections to, or even the death of, horses under its authority may ultimately contravene its mandate under the law.

We urge the BLM to drop this controversial plan and instead actively pursue humane and scientifically-supported fertility control projects, such as the Porcine Zona Pellucida vaccine, that enjoy broad support and pose significantly less risk of harm to the welfare of federally protected wild horses. At a minimum, independent veterinary and welfare oversight is necessary if this project is to move forward.

Thank you for your prompt attention to this matter and we look forward to your response.

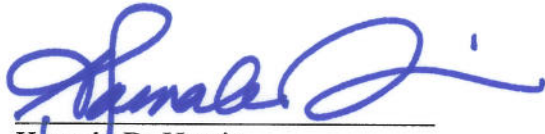
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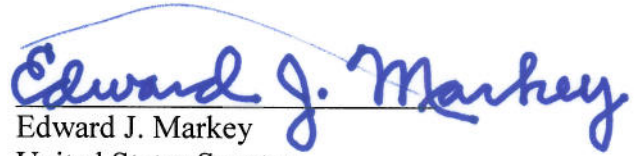
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United States Senator



Tom Udall
United States Senator



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United States Senator



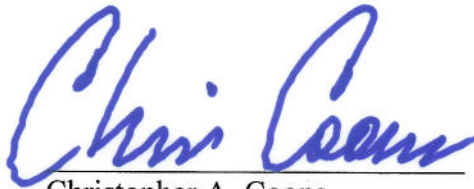
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United States Senator



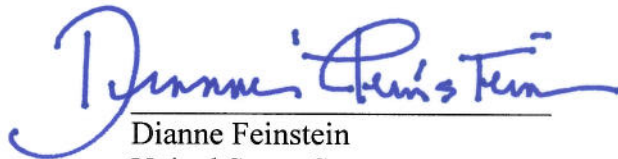
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October 28, 2019

The Honorable David Bernhardt
Secretary, U.S. Department of Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Bernhardt,

We, the undersigned veterinarians, write today to express our concern with the Bureau of Land Management's (BLM) continued interest in pursuing the study of the surgical sterilization procedure known as "ovariectomy via colpotomy" on wild horses. While we understand the BLM's need to manage populations of wild horses, we are concerned about the agency's chosen method for study when more humane methods are already available. As such, we urge the BLM to abandon any future plans to pursue the experimental study of this procedure on wild mares.

Not only is ovariectomy via colpotomy far more invasive, inhumane, and risky than other non-surgical methods of fertility control, it is also more invasive and inhumane than the techniques that veterinarians use on domestic horses in the rare circumstances where some form of ovariectomy is clinically necessary.

The BLM's continued focus on conducting experiments studying ovariectomy via colpotomy raises serious concerns. Ovariectomy via colpotomy is a painful surgical procedure done blindly through an incision in the vagina, allowing access into the abdominal cavity for a rod-like tool, called an ecrasure, to sever and remove the ovaries. This procedure can be dangerous when performed on domestic horses, let alone wild horses whose response to sedatives and analgesics is much less predictable. Even in a controlled setting, this procedure can be accompanied by a high rate of complications, sometimes as high as 4 percent, including risks of infection, trauma, post-operative pain, hemorrhage, abdominal adhesions, evisceration, abscess formation, abortion, neuropathies, and even death. Indeed, part of BLM's own experimental goals include seeking to quantify morbidity and mortality.

The use of this procedure, in the manner that the BLM has proposed to study its efficacy and safety since 2016, is especially disconcerting given that the BLM does not intend to provide postoperative antibiotics and has stated that no veterinary interventions will be undertaken for any recovering horses once returned to the range. The associated risks are exacerbated by the fact that, by the agency's own admission, the surgeries will be conducted in an operating space that "may not be entirely sterile" at the agency's corrals. Following the experiments, the BLM intends to conduct the procedure on mares held in trap sites on the range, under conditions that are even less controlled and sterile than in the holding pens.

The National Academy of Sciences (NAS), in a 2013 report commissioned by the BLM, explicitly warned the agency against employing ovariectomy via colpotomy on wild horses. As stated in the report, "the possibility that ovariectomy may be followed by prolonged bleeding or

peritoneal infection makes it inadvisable for field application.” Similarly, in 2015, an NAS research review panel warned that conducting the procedure on wild (vs. domestic) horses could cause the “mortality rate to be higher than the 1% reported in the published literature” and stated that proposals for less invasive sterilization methods “would be safer – with less risk of hemorrhage and evisceration – and probably less painful.”

Further, the American College of Veterinary Surgeons (ACVS) describes laparoscopic surgery as the best method for ovariectomy, noting that “with the advent of laparoscopic (keyhole) surgery, all other techniques have become relatively dated.” The ACVS explains that laparoscopic surgery provides far greater “visualization and access” and is “minimally invasive,” especially in comparison to ovariectomy via colpotomy, which involves removing the ovaries “with a crushing-type instrument.” Put plainly, more humane surgical options exist (to say nothing of non-invasive immunocontraceptive vaccines or new research into intrauterine devices) that the BLM could consider for study.

Finally, two major academic institutions, Oregon State University (OSU) and Colorado State University (CSU), terminated partnerships with the BLM to provide veterinary observation and minimal welfare oversight for past iterations of the ovariectomy experiments. Yet, the BLM continues to pursue research proposals to study this procedure even in the absence of such outside veterinary and behavioral expertise. As federal lawmakers noted earlier this year when criticizing the BLM’s aggressive plan to move forward with the ovariectomy experiments, “at an absolute minimum, independent veterinary and welfare oversight (not unlike what we presume the BLM was hoping to achieve through partnerships with CSU, and before that, OSU) is necessary if a project of this type is to move forward in any respect.”

We hope the BLM will reconsider this misguided plan and ultimately stop any future pursuit of this archaic and inhumane procedure. As veterinarians, we swore an oath to uphold the welfare of all animals and work to prevent needless suffering. For the reasons discussed above, we call upon you to reevaluate the proposed surgery in light of the inability to provide wild horses with the required aftercare, pain management, and sterile conditions necessary to ensure their health and wellbeing. We urge you to direct the BLM to drop any further consideration of ovariectomy via colpotomy procedures for wild horses on the range.

Thank you for your consideration.

Sincerely,

Arlo Andersen, DVM
Massachusetts

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Illinois

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Alaska

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Illinois

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Gary Block, DVM
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November 13, 2019

The Honorable Richard Shelby
Chairman
U.S. Senate Committee on
Appropriations
Washington, DC 20510

The Honorable Patrick Leahy
Vice Chairman
U.S. Senate Committee on
Appropriations
Washington, DC 20510

The Honorable Nita Lowey
Chairwoman
U.S. House Committee on
Appropriations
Washington, DC 20510

The Honorable Kay Granger
Ranking Member
U.S. House Committee on
Appropriations
Washington, DC 20510

Dear Chairman Shelby, Chairwoman Lowey, Vice Chairman Leahy, and Ranking Member Granger:

On behalf of the undersigned veterinarian professionals, we encourage additional funds to be allocated in FY20 for the Bureau of Land Management (BLM) Wild Horse and Burro Program to implement a large-scale fertility control program based on technologies already available, instead of resources being squandered on research into surgical sterilization of mares.

We appreciate the BLM's interest in exploring non-lethal, on-range solutions for the management of wild horses and burros, but we are especially concerned about the agency's continued research into sterilization methods like ovariectomy via colpotomy. Ovariectomy via colpotomy, the surgical removal of both ovaries through incision in the vaginal canal, comes with potential complications including hemorrhage, shock, post-operative colic, peritonitis, intra-abdominal adhesions, accidental trauma to intestine or other soft tissues, abscessation or hematoma formation at the surgery site, and seroma formation at or dehiscence of incisional closures.¹ The procedure has been noted to be generally painful² with a high frequency of perioperative complications – some of which can be life-threatening.³ Furthermore, care requirements typically followed to lower such complication rates, such as tying the mare for several days post-procedure to prevent eventration through the incision, will not be feasible in free-ranging, wild mares. As such, fatality rates may be higher than what has been observed in domestic mares.⁴

Ovariectomy via colpotomy can result in serious complications specific to pregnant mares. Effects of ovary removal on a pregnancy at 90-120 days are

¹ Santschi EM, Troedsson MHT: How to perform bilateral ovariectomy in the mare through two paramedian incisions. AAEP Proceedings 47 (2001): 420-422; Rodgerson DH, Belknap JK, Wilson DA: Laparoscopic ovariectomy using sequential electrocoagulation and sharp transection of the equine mesovarium. Vet Surg 30 (2001): 572-579.

² See <https://thehorse.com/14853/ovariectomy/>

³ See <https://www.vetstream.com/treat/equis/technique/ovary-colpotomy>

⁴ Mare Sterilization Research Environmental Assessment, DOI-BLM-OR-B000-2015-0055-EA, January 5, 2016 ("2016 Oregon EA") 105.



unpredictable and can include the reabsorption or abortion of the foal.⁵ Performing the procedure on mares late in gestation can be challenging due to lack of access to the ovaries.⁶ As many mares gathered from Herd Management Areas (HMAs) are pregnant when gathered, it makes little sense to pursue a tool that is inhumane and impractical in these on-range circumstances.

In addition to the high complication rates associated with the ovariectomy via colpotomy procedure, we have further concerns given that there are few veterinarians trained in the procedure on domestic, let alone wild, mares. Furthermore, in the past five years, two universities have pulled their support for this research, and the BLM has been unable to secure additional support from the academic community.

Instead of pouring resources into research of an inhumane, high-risk, inviable, and unsupported procedure, the BLM should focus on increased implementation of currently available, safe and humane fertility control. The Porcine Zona Pellucida (PZP) immunocontraceptive has a long history of field testing and efficacy on wild horse populations. The BLM currently uses PZP to manage wild horse populations on several HMAs and should continue this work by identifying other HMAs where ground darting programs can be used to stabilize and lower population growth rates. In addition to PZP, two long-acting contraceptives, PZP-22⁷ and the USDA vaccine GonaCon™⁸, are available now and have been shown to produce 5-7 years of reduced fertility in free-roaming wild horses with one initial treatment and a single booster two to three years later. While in many cases, these tools will necessarily be coupled with removals to achieve sufficient results to stabilize populations, these tools can and should be applied now on a large scale in accordance with the BLM's Comprehensive Animal Welfare Program.

As veterinarians and veterinary professionals, we have a vested interest in the wellbeing of animals, including America's wild horses and burros. We remain concerned about the BLM's research into surgical sterilization and we firmly believe that the agency must implement a large-scale program using currently available, proven and safe alternative – immunocontraception. The BLM should focus its efforts on scaling up the use of fertility control as a part of a long-term management plan in order to be able to manage wild horse and burro populations humanely and for the long-term. As the appropriations process moves forward, we encourage increase funding be given to the BLM to implement such a large-scale fertility control program using current

⁵ 2016 Oregon EA, pg 105.

⁶ Assessment at 3.

⁷ Rutberg Allen, Grams Kayla, Turner John W., Hopkins Heidi (2017) Contraceptive efficacy of priming and boosting doses of controlled-release PZP in wild horses. *Wildlife Research* **44**, 174-181.

⁸ Killian, G., Thain, D., Diehl, N. K., Rhyon, J., and Miller, L. (2008). Four-year contraception rates of mares treated with single-injection porcine zona pellucida and GnRH vaccines and intrauterine devices. *Wildlife Research* **35**, 531-539.

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technologies, instead of using resources to research surgical sterilization of mares.

Sincerely,

Katie Bahr, DVM, Oregon

Michael Blackwell, DVM, MPH, Tennessee

Gary Block, DVM, MS, DACVIM, Rhode Island

Holly Cheever, DVM, New York

Anna Delabar, DVM, Missouri

Nicholas Dodman, BVMS, DACVB, DACVAA, Massachusetts

Jon Geller, DVM, DABVP, Colorado

Nellie Goetz, DVM, MPH, Arizona

Lori Gossard, DVM, North Dakota

Pamela Greenwald, DVM, MS, Michigan

Gail Hansen, DVM, MPH, District of Columbia

Karen Hill Sheppard, DVM, Alabama

Barbara Hodges, DVM, MBA, California

Eric Jayne, DVM, Arkansas

Eileen Jefferson, DVM, New York

Barry Kellogg, DVM, Massachusetts

Paula Kislak, DVM, California

Joann Lindenmayer, DVM, MPH, Massachusetts

Gwendolen Reyes-Illg, DVM, Oregon

Josette Richmond, DVM, Virginia

Meredith Rives, DVM, Illinois

Christine Schlupf, DVM, Massachusetts

Lee Schrader, DVM, DACVIM, Ohio

Melissa Shapiro, DVM, Connecticut

David Stansfield, BVSc, MRCVS, North Carolina

Sy Woon, DVM, Florida

Patricia Zinna, DVM, New Jersey

February 1, 2016

To Whom It May Concern:

I graduated from Veterinary School at the University of California, Davis (UCD) in 1983 and completed a three-year Surgical Residency at UCD in 1997. I have spent 33 years in solo and joint practices in northern California. My Sonoma-based solo practice includes a mix of concentrated barn show horses (hunter jumper, eventing, western and endurance disciplines), rural ranch horses, ranches that have mustangs (adopted from BLM), quarter Horses used for trail riding and a varied group of owners with geriatric and mini horses.

In 2012, I became the attending veterinarian for Montgomery Creek Ranch (MCR), a 2000-acre sanctuary that is home to 245 wild horses and burros. Only 45 horses at the ranch are being gentled/trained with the majority of the herd remaining wild.

Over the last three years, I set up a deworming/vaccination protocol for MCR, managed many emergencies involving complex lacerations (some standing/ some under injectable anesthesia), colics/chokes (combining NGT/laxatives/ fluids and IV fluids when necessary), septic foal management/plasma transfusions, angular limb splinting and prolonged care, splint fracture/club foot referrals of young horses for surgery, internal abscess diagnosis/prolonged antibiotic care, respiratory issues, radiographic evaluation of limb trauma/bone sequestra, performed dental care, complex management of a pregnant mare with Purpura Hemorrhagica/Strangles that resulted in abortion of the foal (due to the necessary treatment) and repeated uterine flushes to remove the retained placenta (the mare did survive), Ocular injuries, sedation for complex foot trims on some of the wild foals with conformational abnormalities and unfortunately managing the occasional septic joint/tendon sheath, extensive small colon impaction requiring euthanasia (surgical referral would have been impossible). And of course, I have performed many castrations of wild colts, stallions and burros.

None of these procedures could have been performed without a hydraulic chute as all the procedures required IV sedation and safe accessibility to the horses. My varied and extensive experience working on wild horses in a hydraulic chute has helped me become acutely aware of the benefits but limitations of this apparatus which is similar to the versions used at BLM facilities.

Because of the above experiences and particularly considering the complex sedation or anesthetic requirements of the wild horses I have treated, I can say without hesitation the mare sterilization research plan proposed by the BLM poses significant risk to the welfare, health and survivability of the mares used in this study. The proposed BLM project includes 225 mares being sterilized with one of three interventional procedures, the most concerning of which (Standing Colpotomy) will render mares Ovariectomized.

In domestic mares, this standing procedure has widely recognized, significant risks and has been replaced by Laparoscopy (though Ovariectomies are not a common surgery in domesticated mares). The risks associated with Colpotomies performed in wild mares are likely to be magnified to potentially life-threatening levels for multiple reasons.

Colpotomies are rarely performed in horses today. (The last and only one I witnessed was 35 years ago at UCD performed by a reproduction specialist). In 33 years of practice, I have referred two domesticated mares for unilateral ovariectomies done as flank procedures. During my surgical residency at UCD ('94-'97), I never performed or witnessed Colpotomies despite UCD's extensive caseload in the surgery department.

Historically, Colpotomies were occasionally done in some practices to manage adverse behaviors of mares, small tumors or to produce "jump mares" for breeding programs. With less invasive surgical procedures currently available and pharmaceutical options for behavioral issues (Altrenogest and Regumate), surgical management via Colpotomy is rarely considered in domestic mares.

Currently, when ovariectomies need to be done (to manage granulosa cell tumors for example), Laparoscopy is the procedure of choice unless the tumor is too large, in which case a ventral midline or flank approach (Laparoscopy site could be enlarged for smaller tumors) would be chosen. Only the affected ovary would be removed unless concern with the other. Incisions with Laparoscopy are small and external. Compared to Colpotomies, surgical prep is much less complex, visualization of the procedure is constant (not blind), surgical ligation is much safer (with Colpotomies, the ecraseur hopefully crushes the ovarian pedicle vessels adequately) and the risk of complications/peritoneal contamination/bleeding are much lower with ligation of the pedicle.

My specific concerns regarding the safety of the BLM's research project, as described in the "Mare Sterilization Research EA" include:

- 1). Sedative levels required to perform a painful, standing surgical procedure vary greatly in wild horses (often requiring 2-3 times (or more) doses used in domesticated horses). With painful stimuli or over/under sedation levels, some wild horses sit or lay down in the chute (very dangerous if the procedure is underway). Other horses tend to "explode" in the chute regardless of the "squeeze" being implemented and heavy sedation on board. In either case, if the ecraseur was being "crimped" and the mare reacted adversely resulting in dislodgement of the ecraseur, excessive/life threatening hemorrhage could result. The operator's arm could also be at risk of serious injury if the mare's position within the chute cannot be maintained.
(Adding an abdominal strap to hold the mare up would potentially compress the abdominal contents/pregnancy and make surgical approach even more difficult/more risky that abdominal contents (bowel) would be forced up in abnormal positions.

2). The success and safety of Colpotomies is partially dependent on the extensive surgical experience of the operator. Every board certified surgeon I spoke with expressed concern over Colpotomies being performed on these wild mares and in the proposed setting (BLM facilities) instead of in a surgical facility. Each of these surgeons reported experience with or anecdotal reports of complications to mares during and after Colpotomies. Each questioned the validity of using this procedure when less invasive, less painful, safer procedures could be chosen for these mares in this study.

(The validity of sterilizing mares in wild herds is another concern altogether and will be dealt with below.)

3). The post operative care/management proposed for these mares is minimal compared to the significant post operative recommendations for domesticated mares. These recommendations include keeping mares tied in a tie stall/tie line to prevent them from laying down/rolling to reduce risk of post operative hemorrhage or herniation of bowel thru the vaginal incisions that must be left open for second intention healing. These measures are advised since excessive post-operative hemorrhage or herniation of bowel thru the vaginal incisions would not be survivable.

The study proposed by the BLM includes one dose of Excede and a tetanus vaccine. I have concerns this antibiotic choice/protocol may be very insufficient to protect these mares post-operatively with the level of potential contamination likely with this procedure. Domesticated mares would be treated with a more aggressive antibiotic choice for 7-10 days post operatively (monitoring daily for complications). Insufficient antimicrobials could result in peritonitis (also not likely survivable). NSAIDs post-op are used to a limited degree for pain management since they can influence clot formation initially (since NSAIDs affect platelet function). The wild mares will not be provided with post-surgical pain relief, according to the study description and presumably turned out in a communal paddock with no restraint.

4). According to the description, Colpotomies will be performed on 100 mares, 75 of whom will be at various stages of pregnancy.

I have consulted with Dr. Mary Scott (a Diplomate with the American College of Theriogenologists) who also expressed experienced concern with the safety, efficacy and need of this procedure proposed in this projected study and setting. She confirmed that ovariectomy performed before 50 days of gestation will cause pregnancy loss. If Ovariectomy occurs between days 50 and 70 of gestation, many mares will abort. By 100 + days of gestation, the feto-placental unit is providing significant hormonal support of the pregnancy and by that stage the ovaries are not essential to maintain a pregnancy. Research mares ovariectomized at 140-210 days of gestation did not abort. However, in a wild mare, the stress of surgery (particularly a painful, standing procedure) and potential for post-op infection are significant risks to

the maintenance of the pregnancy. Either or both could precipitate an abortion. Abortion in later stages of pregnancy can have its own set of complications.

The BLM has not addressed this risk or considered how post-procedure abortions/retained placentas resulting in complex care complications from retained placenta (necessitating uterine lavages to remove retained placenta remnants) or the management of compromised foals born prematurely... would be cared for.

5). Lastly I am concerned about the use of this procedure in the wild, due to the concerning potential disruption of the normal social behaviors of post ovariectomized mares and how this will affect their role within the herd once they return to their families.

According to Dr. Mary Scott: As described in a recent article in the Journal Equine Veterinary Education: following ovariectomy, the majority of mares will show heat (receptivity to the stallion) for prolonged periods of time. Dr. Scott explained that this has been shown to be due to secretion of hormones from the adrenal gland. Importantly, removal of the ovaries takes away the primary tissue that is capable of producing enough progesterone to completely block receptive behavior. The degree of receptivity can vary and an ovariectomized mare might initiate the social contact but not allow mating and this could result in aggression, chasing and injury for either the mare(s) or the stallion. It is my understanding that in a typical wild herd, the mares are bred by the stallion, become pregnant and the stallion and his band of pregnant mares coexist without sexual tension. I would be concerned if many mares in the herd were showing persistent receptivity, it would cause social havoc, including the potential for the OVX mares to migrate to other bands... with a re-occurring issue resulting in subsequent bands they attempt to join.

To summarize: introduction of ovariectomized mares to wild herds could be very damaging to the normal behavioral socialization/structure and healthy interactions of the bands.

Dr Scott's additional thoughts were:

"My opinion is that the predominating concern with the proposed study is the significant risk of Colpotomy to the health/life of the mares during the surgery and post operatively, because they are wild animals and cannot be handled or treated in the same manner as domesticated mares. To reduce the risk of evisceration of bowel through the Colpotomy incision, it is recommended that mares should be maintained in a tie stall for up to 7 days and then restricted to a small paddock turn out for 2 weeks following the surgical procedure. These guidelines were developed because the risk of post operative hemorrhage or evisceration are real".

6) I (Dr. Kelly) seriously question the validity or need for this procedure, given its risks and associated concerns. I understand that this project has been proposed to manage "overpopulation" in the wild herds in the US. I believe (from what I have heard) the PZP immunocontraceptive vaccine is a much safer, more cost-effective tool for

achieving this goal. Whether done yearly, every other year or even annually on partial herds in the West, population growth reduction will be achieved through rendering vaccinated mares infertile for a period of time. A benefit of PZP is that it can be applied via remote darting or hand injection, and has minimal impacts on behavior - horses retain their female/mare behavioral status in the herds/families in which they live. If mares are "spayed" they likely will not.

In conclusion, I believe that the BLM's plan to conduct ovariectomy via in particular Colpotomy on wild mares is inappropriate and inhumane because: 1) the BLM is subjecting open and pregnant mares to a barbaric surgical procedure most DVM's prefer to no longer use (because of the significant risks of life threatening complications of the procedure intra-operatively and inherent post op complication risks; 2) the BLM cannot provide wild mares with the very necessary post-operative management, a fact that will place the mares at higher risk of fatality post operatively than domestic mares; 3) the majority of mares in the study will be pregnant and will be at risk of abortion due to severe stress and significant physical compromise they will experience during the procedure. For these reasons, I do not believe that the BLM should proceed with this experiment. Much safer and less invasive options are available that maintain the normal herd behaviors and social interaction.

While the other proposed procedures - tubal ligation and hysteroscopically-guided laser ablation - hold greater promise because they are less invasive and do not involve removal of the ovaries, issues regarding monitoring, post-operative care and inappropriateness for pregnant mares remain. In addition, these procedures have never been performed in wild horses previously. As a result, they should be attempted on domestic mares first in order to evaluate any adverse effects post-procedure. In addition, currently the BLM intends to utilize as many as 125 horses in these procedures, however, the BLM could assess the potential for these procedures with a much smaller number of horses and still gain valid scientific results.

Thank you for your consideration.

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BLM proposed Spay project: 2/19/20

I have been an equine dedicated Veterinarian for 36 years, had the opportunity to have additional Veterinary training with a 3-year surgical Residency program at UC Davis during these years and have had extensive experience (which most equine Veterinarians haven't) working with a large wild horse preserve (2000 + horses/burros) managing all the care needed for a number of years.

Additionally, many of my clients over the years have also chosen to adopt BLM wild horses and burros (which also added to my experiential knowledge of the complexity of working with wild [not feral] horses).

I feel it is also very important to bring to the forefront some of the historical and potentially ethical issues of dealing with population growth and management of wild equine herds and would like to explain some of my concerns. In the late 1970's... in my early years as a young pre-vet, my "married" family owned a large ranch in Montana additionally leasing large sections of BLM land to graze their cattle. Many DVM's may not be aware what the historical issue has been generationally with the BLM "managing" wild horses. The BLM is also leasing land to ranchers who are limited contractually by the BLM in the number of cow/calf units per acre and therefore ranchers are obviously concerned with any competition for the coveted grass they need to forage their herds on this leased land. IT IS an obvious conflict of interest for the BLM to lease the land to ranchers and also be managing the habitat of the wild horses they (and the ranchers) feel are competitors for forage. This conflict is at the root of my concerns with "ethical management of the wild horse herds" proposed by the ... and should be of concern to the larger Veterinary community as well. Unfortunately, the wild horses have been the historical scapegoat.

To be clear, wild horses are not the only opportunistic competitors for grassland since many Elk, moose, deer (mule and white tailed), big horn sheep, pronghorn antelope, bison, wild rabbits and other herbivores are major competitors too (not to mention the fact the large cattle herds ranchers own and put out on the leased land are grazing too !) ... How does one determine which species is eating how much ?

It's difficult to logically assert that elk, deer, sheep or wild horses are over eating grass land with a large 5,000 cow/calf herd grazing for at least six months a year on the same 60,000 acre pasture.

Much of this leased land is fenced, often very mountainous range...and frankly the wild horse herds (with mothers/babies) don't have the jumping range elk and deer have... so in many cases... the claim that wild horse herds are a competitive issue for grazing in large ranch land well monitored by ranchers and the BLM is a myth.

Many of these issues have been raised for years generationally .. since many ranchers have maintained these BLM leases for decades. When my ex-husband and I checked the fences of the BLM land, I don't recall ever seeing or hearing about any wild horses on part of the 60,000 acres of the leased pasture. (The only concern I heard was that the elk were over grazing and also attacking the hay stacks on the hay fields below the mountain pastures.)So the labeling of any mammal competing for grassland as a threat (including wild horses at the top of the list) is a misnomer that has been passed on for generations by BLM and many ranchers. There has been a debate whether the wild horse or bison is the oldest evolutionarily... but likely the oldest fossil remains in North America are actually of an equine (preceding the BLM, ranchers and other competitor grazing mammals by millions of years).

Turning to the current project the BLM is proposing for population management of the wild horses...

In 2016, I provided an oppositional letter for the AWHC to provide to the BLM detailing the reasons pursuing a Colpotomy project in wild mares for population control was very concerning. I recruited Dr. Mary Scott's expertise (a board certified equine reproduction specialist) to provide her opinion of the post colpotomy medical complications and behavioral shifts that would result post colpotomy in mares that were pregnant (the original project design).

Between 2016 and 2018, the BLM had proposed working with several university Veterinary clinics to provide surgical guidance and oversight of this colpotomy project (OSU, CSU) who subsequently chose to decline involvement likely after they reviewed the project design, extensive objections provided by the AWHC (and other organizations).

Currently the BLM has abandoned the research aspect of this project and is currently analyzing it as a management tool for use in the Swasey HMA wild horse population in Utah ... and has enlisted the opinions of some reproductive specialists around the country on the viability of this plan. One group reported they had performed colopotomies successfully on a "feral herd" of mares.

However, experience in a "feral" herd is not akin to experience in truly wild horses. For example, a simple internet search of this herd at the University of Pennsylvania reveals that it has been the subject of various research projects over the years, meaning that the ponies are at least accustomed to some level of human presence and handling (for blood draws, etc.) Information on the colpotomy procedure performed in these ponies is not provided. Were they, for example performed in simple stocks (that don't compress or restrict the body of a horse in any way)?

Again, feral ponies are-not synonymous at all behaviorally to the wild horses I have worked extensively with and for whom I feel this spay project is very likely to result in potential post operative complications and the risk of loss of some of these wild mares... because of the difficulty of performing this procedure safely for a number of reasons noted below.

The project design states the horses will be colpotomized in either "stocks" or a squeeze chute. Having worked on thousands of wild horses over my 36 years as a Veterinarian, there is NO WAY a wild horse could be haltered and "lead" into a stock and made to voluntarily stand in the stock for all of the details of this complex and very painful procedure. I've had the experiential background of working on thousands of wild horses with a hydraulic squeeze chute.. which restrained the horses as they were squeezed from the sides and rolled over horizontally for foot trimming, X-rays or other procedures on at least distal limbs, when needed.

I performed many standing surgical procedures on wild horses in this hydraulic squeeze chute (mostly standing) and anesthesia initiated for castrations or other anesthetic needs (started in the chute....but the wild horses released into the corral for castration/other procedures once down). To be very clear... the complexity of sedating wild horses can require repeated sedative levels beyond what domesticated horses require. Sometimes these wild horses would start to "sink" in the hydraulic squeeze chute... and end up on the floor... so we would need to open up the sides of the chute to encourage the horse to get back up.

Sometimes this would take a bit of time to accomplish. These experiences taught me how critical it was to accurately get the sedative dose completely in the vein (impt with all horses of course !). Wild horses tend to tense their necks and the jugular is easily compressed.. so inexperienced people working with wild horses will require a "learning curve" to safely get catheters into these wild horses and determine the doses needed to not under or overdose wild horses. "Explosions" behaviorally of wild horses is the norm in these chutes (hydraulic or lesser chutes).

Additionally, the main concern I voiced in 2016 was that colpotomies performed in domesticated mares are usually done after a fasting period. This is a very important detail... because in order to make incisions in the cranial aspect of the vagina to enter the peritoneal cavity safely... will require their abdomens to be relatively empty (with the intestinal tract clearly ventral of the incisions, not near the locations, to avoid lacerating bowel).

The obvious problem with wild mares (as I said in 2016) is that sedation alone will not keep these mares standing and quiet (in fact they may sink in the chute) ... so intense abdominal compression (side chute compression) is necessary (along with likely a tail rope or sometimes a belly band too) to keep them standing. All of these measures of side restraint will make even performing a rectal a challenge. A belly band (to keep the mares standing) will incrementally increase the abdominal compression as well.

As an example: I cared for a wild pregnant mare who aborted after being treated for a very severe case of Purpura Hemorrhagica. After the abortion, attempting to empty her rectum, flush her uterus to remove the retained fetal membranes and perform repeated uterine lavages was extremely difficult considering the significant external abdominal compression from the squeeze chute ... ie: Everything abdominally was "squished" together. As I wrote in 2016, attempting to make incisions in the cranial vaginal vault with significant abdominal compression will make it very difficult to avoid lacerating bowel along with the peritoneum.

Additionally... attempting to enter those incisions into the peritoneal cavity with a syringe to block the ovarian pedicle is immensely difficult too. (When you depend on some "free space" in the dorsal abdomen to discern the appropriate structures to locate and "block" the pedicle.). I'm sure NO surgeon, reproductive specialists, or BLM DVM's would want to harm any of these mares... but unfortunately the project design in wild mares will result in some unfortunate complications: excessive bleeding, peritoneal contamination, bowel laceration-peritonitis all of which could result in excessive abdominal discomfort/colic symptoms/sepsis that will be very difficult to manage in wild horses. With all of

these complications.... loss of the mare is certainly possible.

Many years ago (1970's) when colpotomies were performed at times at the Veterinary School I graduated from, they were preferentially done by the reproductive specialists. These days, these procedures when occasionally done are often performed by surgeons laparoscopically since domesticated mares are often valued by their owners... and comfort vs cost is usually preferred by the surgeons and owners. The fact the panel reviewing the current BLM project stated in their view that reproductive specialists would be advised over surgeons to perform these colpotomies (since most surgeons have never done a colpotomy when more humane and safer surgical / laparoscopic procedures exist) also aligns with my 2016 concern when the BLM originally planned to have BLM field DVM's (very inexperienced with surgical procedures) perform these colpotomies. (This was the reason the BLM wanted several university veterinary oversight providers to assist with the original project oversight of the BLM veterinarians. As stated above, both Universities eventually chose to decline involvement.

Though the current design may utilize reproductively experienced reproductive experts or surgeons, they likely will lack real wild horse experience potentially and may not have the more sophisticated hydraulic squeeze chutes that are infinitely safer to manage wild horses. Though as noted above... utilizing squeeze chutes will make performing colpotomies immensely more difficult... and may result in dire consequences for some of these mares too.

Additionally, the original design of this BLM project also proposed performing colpotomies on pregnant mares. Abdominal compression in these mares (in squeeze/hydraulic chutes) would provide even more complexity to safely perform this procedure with a fetus in utero. Many of these mares will also have foals by their side... who would be separated.. and potentially weaned early (which the BLM tends to do)... which is also risky with wild horses.... when wild herds are used to having equine families stay together for prolonged periods of time. BLM gather yards are NOT safe places for young foals to be weaned in.

Putting wild mares through this BLM spay project, which is likely to be ethically inappropriate even in the hands of well-intentioned veterinarians, WILL result potentially in days of discomfort post operatively and the potential loss of some of these wild mares.

Some of the other surgical ovariectomy procedures raise similar concerns regarding ability to adequately sedate wild horses and the abdominal compression of squeeze chutes that will be always necessary when working with wild horses. Standing Laparotomy procedures through the flank to ovariectomize would still require complete draping of the wild horse's back end and the obvious issues of potential contamination of the surgical site would be easy to imagine since all hydraulic chutes are in outside dusty BLM gather yards or outside facilities at ranches. Hydraulic squeeze chutes are also only open on one side (usually on the L side). So it is only possible to access the L side and back end of the horse (the entire R side is not accessible). The presumption that these wild horses could be lead into a sterile Veterinary clinic and be brought to stand in a stock is also an impossibility when they have never been handled. (UC Davis has already set a firm boundary of not allowing completely wild horses to be brought to the large animal clinic because of obvious liability risks). Surgical procedures such as flank incisions also raise questions about the ability to provide sterile surgical fields, as do procedures that utilize general anesthesia to lay down horses to perform very invasive abdominal surgeries or flank incisions that would attempt to remove both ovaries from horses laying down on one side. The ONLY way any of these procedures could be done... would be by running all the mares through a chute and then individually into a squeeze chute... (for the initial sedatives to be administered). When I had to perform anesthesia with wild horses for castrations or joint taps/surgical debridement of wounds for example... I would get the horse initially sedated in the squeeze chute with Xylazine.... once I was comfortable the wild horse was adequately sedated... I would administer Ketamine... and we would immediately release the horse into the large paddock adjacent to the chute until they fell down... at which point we would commence with the procedure toping off anesthetics as needed thru a catheter. My concern with performing flank or abdominal incisions on wild horses in the open environment is that avoiding

contamination of the surgical site would be quite difficult to prevent. Obviously this was performed in outdoor conditions... so dust, wind and other contaminants were an obvious concern... so I would need to drape off the area to attempt to protect the wound/surgical site from contamination (which of course in the middle of nowhere... was quite difficult to do).

All of these surgical procedures are time consuming, expensive and carry high risks of contamination complications in wild horses. They are impractical and inadvisable for use in wild horses, particularly when non-surgical safer alternatives such as immunocontraception, are available.

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VIA E-MAIL

April 28, 2017

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RE: FORMAL REQUEST THAT BLM CONSIDER AND ANALYZE A LAND SWAP TO RESOLVE LONGSTANDING LAND MANAGEMENT ISSUES AND USER CONFLICTS IN THE WYOMING CHECKERBOARD

Dear Mr. Nedd, Mr. Bolstad, Mr. Carpenter, and Ms. Foster,

On behalf of the American Wild Horse Campaign, Return to Freedom, and The Cloud Foundation—as well as the millions of American citizens represented by these nonprofit organizations—I submit the following formal proposal requesting that the Bureau of Land Management (“BLM”) consider and analyze a public-private land exchange to resolve longstanding land management issues and user conflicts in the Wyoming Checkerboard. As explained in more detail below, a land swap is the most efficient and effective way of resolving



these problems and equitably allocating the resources and uses of BLM's public lands among the many stakeholders who utilize these lands for recreational, aesthetic, scientific, ranching, and other purposes. Absent a land exchange, these user conflicts will continue into the foreseeable future, worsening the already strained relations between BLM, private landowners and leaseholders, and the many members of the public routinely using these lands.

LEGAL BACKGROUND

BLM and other land management agencies within the Department of the Interior frequently consider and implement public-private land exchanges to further the goals and objectives of both the agency (on behalf of the public) and private landowners in an effort to alleviate management constraints. BLM ordinarily delegates the task of analyzing the suitability of lands for a public-private exchange to the Department of Interior's Office of Valuation Services, which specializes in determining the fair market value of land, minerals, or other assets found on or underneath the land at issue.

The process governing appraisals for land exchange proposals is outlined in the Federal Land and Policy Management Act ("FLPMA"). Under FLPMA, BLM must appraise any lands before agreeing to a land exchange. See 43 U.S.C. § 1716(d)(1). This appraisal must set forth an opinion regarding the market value of the lands "supported by the presentation and analysis of relevant market information." 43 C.F.R. § 2200.0-5(c). Market value "means the most probable price . . . that lands or interests in lands should bring in a competitive and open market . . . where the buyer and seller each acts prudently and knowledgeably." 43 C.F.R. § 2200.0-5(n). "In estimating market value, the appraiser shall: (1) determine the highest and best use of the property to be appraised"; and "(2) estimate the value of the lands and interests as if in private ownership and available for sale in the open market." 43 C.F.R. § 2201.3-2(a)(1)-(2). "Highest and best use means the most probable legal use of a property, based on market evidence as of the date of valuation, expressed in an appraiser's supported opinion." 43 C.F.R. § 2200.0-5(k).

The appraisal process must also comply, to the extent appropriate, with the separate requirements of the Uniform Appraisal Standards for Federal Land Acquisitions. See 43 C.F.R. § 2201.3. Under the Uniform Appraisal Standards definition, highest and best use is "[t]he highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future." The Appraisal Institute, *Uniform Appraisal Standards for Federal Land Acquisitions* 34 (quoting *Olson v. United States*, 292 U.S. 246, 255 (1934)). While Department of Interior regulations define highest and best use as the "most probable" use of land, the Uniform Standards only require "reasonable probability" of a given use. Uniform Standards at 34. Under the Uniform Standards, the highest and best use must also be: (1) physically possible; (2) legally permissible; (3) financially feasible; and (4) must result in the highest value. See Uniform Standards at 17.

Applying these principles and standards, BLM and other land management agencies regularly analyze and execute public-private land exchanges when such actions are consistent with the agencies' objectives. For example, the National Park Service has appraised and then acquired many large private tracts of land to create or expand national park units and historic battlefields, such as Big Cypress National Preserve in Florida in which the Collier family gave

the Park Service title to hundreds of thousands of acres in exchange for equivalent lands in Arizona. Likewise, the U.S. Fish and Wildlife Service has appraised and acquired private holdings to create or expand national wildlife refuges as large as 450,000 acres in a single transaction.

These types of public-private land exchanges have also frequently extended to “checkerboard” land management schemes throughout the western United States, in an effort to consolidate certain lands and reduce user conflicts among the private and public uses of adjacent parcels within a checkerboard land pattern. For example, in 2014, BLM executed a Record of Decision authorizing the Utah Recreational Land Exchange that included the conveyance of more than 33,000 acres of federal public land and the acquisition of more than 25,000 acres of non-federal land by BLM. See <http://www.martenlaw.com/newsletter/20140425-utah-recreational-land-exchange>. BLM is currently engaged in similar negotiations to appraise and acquire a significant amount of private acreage in another region of Utah where the “lands are isolated parcels, scattered among federal, private, and other state land in a checkerboard pattern of land ownership that can make it difficult to manage,” i.e., a land exchange action by BLM which is “intended to alleviate checkerboard ownership patterns . . . and improve BLM management. See <https://www.congress.gov/congressional-report/114th-congress/house-report/857/1>. Thus, as BLM is well aware, a land exchange is an important tool to ensure better management of complicated checkerboard land patterns, while making those lands more productive and useful for all stakeholders with an interest in using those lands.

FACTUAL BACKGROUND

In 1862, Congress created the Wyoming Checkerboard to facilitate the construction of a transcontinental railroad. See *Rock Springs Grazing Ass’n v. Salazar*, 935 F. Supp. 2d 1179, 1182 (D. Wyo. 2013). Today, the Wyoming Checkerboard still consists of one-mile-by-one-mile squares of federally administered public land alternating with one-mile-by-one-mile squares of private land, forming a checkerboard pattern “encompassing an area roughly 40 miles wide and 80 miles long and containing slightly more than two million acres.” *Id.* At present, there are many varied uses on the public lands of the Wyoming Checkerboard, including habitat for federally protected wild horses and endangered and threatened species (e.g., the Greater sage grouse); private livestock grazing on public allotments; oil, gas, and other exploration and extraction activities; and hiking, off-road vehicle use, and other recreational pursuits.¹

¹ Soon after Congress created the Wyoming Checkerboard, ranchers began to fence in and exclude access to the public land portions of the Checkerboard in order to graze their privately owned livestock there. See *Leo Sheep Co. v. United States*, 440 U.S. 668, 683-684 (1979) (noting that one “exclusionary technique was the illegal fencing of public lands” as a “product of the checkerboard pattern”). Congress responded to this illegal fencing by enacting the 1885 Unlawful Inclosures Act, 43 U.S.C. §§ 1061-1066. That law prohibits the physical enclosure of public lands and any “assertion of a right to the exclusive use and occupancy of any part of the public lands.” 43 U.S.C. § 1061. Nevertheless, enterprising ranchers strategically placed fences on privately owned land in the Checkerboard in order to fence in public land for private use, which the Supreme Court held was a violation of federal law. See *Camfield v. United States*, 167

Under FLPMA, BLM manages the Wyoming Checkerboard through several resource management plans (“RMP”) governing discrete areas of public lands within the Checkerboard. For example, BLM’s 1997 Green River RMP governs the public land parcels of the Wyoming Checkerboard in the following wild horse herd management areas (“HMA”): Great Divide Basin HMA (415-600 wild horse AML), White Mountain HMA (205-300 wild horse AML), Salt Wells Creek HMA (251-365 wild horse AML), and Little Colorado HMA (69-100 wild horse AML). See BLM, Green River RMP at 73 (1997), available at <https://eplanning.blm.gov/epl-front-office/projects/lup/63096/75581/83689/greenriver-rmp.pdf>. Likewise, BLM’s 2008 Rawlins RMP governs the public land parcels of the Wyoming Checkerboard in the Adobe Town HMA (610-800 wild horse AML). Accordingly, pursuant to these two RMPs, BLM must manage for a total population of wild horses in these five HMAs of 1,550-2,165 animals. Of course, many of these federally protected wild horses are *not* located within the Checkerboard portion of these HMAs since large swaths of these HMAs consist of solid contiguous blocks of federal public lands; indeed, for example, only 8% of the Adobe Town HMA consists of private lands (i.e., the remaining 92% of that HMA is composed of federal public lands).

Due to the general difficulties inherent in managing checkerboard land patterns and BLM’s specific inability to equitably allocate resources and uses of the public lands in the Wyoming Checkerboard, there have been many legal challenges seeking to resolve these issues. For example, in 1981, a federal district court ordered BLM to promptly remove all wild horses from private lands of the Checkerboard to accommodate requests by those landowners, and separately required BLM to ensure compliance with then-current wild horse AMLs on the public portions of the HMAs involved. See *Rock Springs Grazing Ass’n*, 935 F. Supp. 2d at 1183 (describing the 1981 order). In 2013, a federal district court approved a consent decree between BLM and the Rock Springs Grazing Association requiring BLM to take certain actions in the HMAs identified above on specific timelines. *Id.* at 1191-96. Most recently, in 2016, the U.S. Court of Appeals for the Tenth Circuit invalidated BLM’s attempts to permanently remove federally protected wild horses from the public lands of several of these HMAs without complying with the statutory procedures under the Wild Free-Roaming Horses and Burros Act of 1971 that plainly apply to all removals of wild horses from public lands throughout the country. See *Am. Wild Horse Preservation Campaign v. Jewell*, 847 F.3d 1174 (10th Cir. 2016). In that decision, the Tenth Circuit made clear that BLM may not rely upon any consent decree with private parties to “override the clear and unambiguous language of” the statute, *id.* at 1188-89, and also indicated that BLM should consider novel solutions to address “the unique geographic and ownership features of the Checkerboard itself that give rise to the problem” of managing public and private uses on adjacent parcels. *Id.* at 1188.

BLM has announced that it will be revising both the Green River RMP and Rawlins RMP in the foreseeable future. See <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=13853>. These

U.S. 518, 522, (1897); see also *id.* at 528 (explaining that landowners cannot “build[] a fence which . . . can only have been intended to inclose the lands of the Government”). Thus, on the Checkerboard, ranchers cannot fence in or assert a right to public land for their own private use, but they can fence in their individual parcel of private land, although few do given their interest in grazing livestock freely between public and private parcels.

planning processes—and their accompanying environmental reviews under the National Environmental Policy Act (“NEPA”)—provide an excellent opportunity for BLM to publicly and transparently explore the common-sense approach of a land exchange in the Wyoming Checkerboard (perhaps even a phased land exchange approach staggering the acquisitions among HMAs over a certain time period to reduce costs and complexity), which would serve as the best method of alleviating the longstanding challenges in managing the Checkerboard and ensure an equitable allocation of resources among diverse users of the public lands found therein.

DISCUSSION

BLM faces intractable land management difficulties in implementing its myriad statutory objectives in the Wyoming Checkerboard. These complexities have led to various legal challenges and court orders that reduce the agency’s budget, as well as foment distrust and skepticism among the many stakeholders that routinely use the public lands of the Wyoming Checkerboard. Nevertheless, the organizations submitting this letter are optimistic because there is one path forward that, if implemented correctly, would undoubtedly resolve these longstanding controversies and management problems while simultaneously ensuring harmony among the competing users of the Wyoming Checkerboard. Although the effort necessary to accomplish this goal may take time and resources on the part of BLM and the public, the solution itself is easy: BLM should (indeed, must) consider and ultimately implement a land exchange within the Wyoming Checkerboard.

As described above, public-private land swaps are not new; rather, federal land management agencies frequently appraise and acquire private or other non-federal parcels in order to create or expand existing federal land holdings. In addition, as BLM is well aware, BLM and other land management agencies have utilized land exchanges specifically to address the difficult land management issues that are unique to checkerboard land patterns. Although the Wyoming Checkerboard is relatively large in size, there is nothing unique or special about the parcels located within this checkerboard land pattern that would differentiate it from other similar land patterns for which land swaps have proved invaluable to resolving longstanding management concerns for both the federal agency and the local stakeholders involved.

The forthcoming RMP revision processes for both the Green River RMP and the Rawlins RMP—and the accompanying NEPA reviews—present a rare opportunity for BLM to consider in depth various land exchange alternatives (and the environmental and social impacts of each alternative) that could resolve the decades-old issues that continue to recur absent a land swap. BLM’s consideration of land exchange alternatives may well examine the prospect of executing a land exchange for the Wyoming Checkerboard all at one time if there are efficiencies to be gained from such an approach, but should also consider a phased approach under which BLM strategically identifies smaller land exchanges within the Wyoming Checkerboard and sets deadlines by which each phase (i.e., a discrete land exchange) must be completed before proceeding to the next phase. In either case, BLM should rely upon the experts at the Department of Interior’s Office of Valuation Services to determine the fair market value of land, minerals, and other assets on the public and private lands being considered for any land swap, which should reduce the amount of time and effort that BLM itself must expend calculating the economic and social costs of such a land exchange.

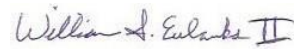
In our view, a land exchange is not simply the most sensible approach to addressing these issues, but likely the *only* approach that can adequately respond to the longstanding management concerns facing BLM and assure a harmonious and amicable future for the many users of the Wyoming Checkerboard.

CONCLUSION

We remain committed to assisting BLM in proposing pragmatic solutions to the longstanding problems in the Wyoming Checkerboard concerning land management and user conflicts. In light of BLM's failed efforts to date using less comprehensive means of addressing these growing concerns, we strongly urge BLM to consider and evaluate, as part of the revision processes for the Green River and Rawlins RMPs, the proven method of a public-private land exchange to better protect the natural resources of the public lands entrusted to BLM in Wyoming while also facilitating equity and consensus in allocating those resources to the various users of these public lands. Even if practical realities prevent BLM from undertaking a land exchange for the entire Wyoming Checkerboard in a single transaction, we request that BLM at least consider a phased approach in which smaller land exchange transactions are made within the Checkerboard to begin facilitating a broader process for making these federal lands more accessible to the American public.

Please include this letter in any administrative record for these RMP revision processes, and please let me know if you would like to schedule a conference call or in-person meeting with my clients to further flesh out the land exchange proposals identified above.

Respectfully,


William S. Eubanks II