



Animal Welfare Institute

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Submitted via eplanning.blm.gov

RE: Environmental Assessment for a Wild Horse Gather to Appropriate Management Levels on the Adobe Town, Salt Wells Creek, Great Divide Basin, White Mountain and Little Colorado Herd Management Areas (DOI-BLM-WY-D040-2020-0005-EA)

Dear Ms. Foster and Mr. Carpenter:

The Animal Welfare Institute (AWI) submits these comments in response to the Bureau of Land Management's Environmental Assessment (EA), DOI-BLM-WY-D040-2020-0005-EA, dated March 31, 2021, which seeks input on a proposed plan for gathering wild horses and implementing fertility control treatments in the Adobe Town, Salt Wells Creek, Great Divide Basin, White Mountain and Little Colorado Herd Management Areas (HMAs).

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.

Introduction

AWI previously submitted, and incorporates by reference, comments on the Draft Resource Management Plan (RMP) Amendment and Environmental Impact Statement (DEIS) for wild horse management in the Adobe Town, Great Divide Basin, Salt Wells Creek, and White Mountain HMAs (DOI-BLM-WY-D040-2011-0001-RMP-EIS). As the present EA notes, the proposed actions would not foreclose any of the alternatives under consideration in the ongoing

RMP amendment process (pg. 5) and, in the Draft EIS, the BLM's "preferred alternative is to permanently revert the Salt Wells Creek, Great Divide Basin, and White Mountain HMAs to Herd Areas" (i.e., managed for zero wild horses) while also reducing the Appropriate Management Level (AML) of the Adobe Town HMA (pgs. 32, 40, 46). Under the pending preferred alternative, "all wild horses would be permanently removed" from the Salt Wells Creek, Great Divide Basin, and White Mountain HMAs (pg. 46). The EA must fully analyze and disclose the significant changes that would take place under the pending DEIS/RMP wild horse amendment before proceeding with a new roundup plan. Failure to do so puts the proverbial cart before the horse; in other words, the BLM must first complete the ongoing DEIS/RMP amendment review process since this will significantly impact wild horse management actions in the checkerboard.

As previously noted, the context for the BLM considering these actions (including removing horses from the checkerboard) is 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 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 EA notes, historically the RSGA had given consent to the BLM for wild horses to utilize its parcels within the checkerboard before revoking its consent and seeking to have the BLM remove wild horses from the region (pg. 4). Under the EA, approximately 3,555 wild horses would be permanently removed (with an estimated 4,400 rounded up during the gather operation) – or 40 percent of the total population of wild horses in Wyoming.¹

Pursuing aggressive removals within the checkerboard poses serious legal concerns 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 (FLPMA), 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 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.

Although framed as a gather plan to remove horses to low AML, the overarching circumstances and context surrounding the BLM's proposed management actions in the checkerboard should not be ignored.² Such sweeping and indiscriminate roundups in the checkerboard region set a dangerous precedent since the agency appears to be removing horses due to the mere assumption and expectation that these animals may stray onto parcels of private land at some point in the future. Such an 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.

¹ Available: <https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/program-data>

² As the EA notes, following a 2013 roundup, the RSGA "notified the BLM that they believed this gather was not conducted in accordance with the Consent Decree, which they claimed required that the BLM remove all wild horses from the checkerboard lands. In response to this the BLM conducted a removal in September of 2014. This removal of all wild horses from the checkerboard was conducted under Section 4 of the WFRHBA" (pg. 4).

From a broader perspective, continuing the status quo of rounding up and removing horses, while continuing to diminish their natural habitats and range, is untenable. The EA proposes to funnel many more horses into an already unsustainable warehousing system that costs the agency approximately \$60 million a year – in recent years, total expenses related to removals and holding have amounted to roughly two-thirds of the BLM’s total Wild Horse and Burro (WHB) program budget. In the agency’s May 2020 report to Congress, *An Analysis of Achieving a Sustainable Wild Horse and Burro Program*, the BLM called for accelerated mass removals at a cost of roughly \$900 million in the first five years alone.

While we are pleased to see that the EA specifies that some horses will be treated with immunocontraceptive vaccines such as the widely supported and proven porcine zona pellucida (PZP) vaccine, other aspects of the fertility control plan raise concerns (discussed further below in subsection E). Moreover, the gather plan is consistent with the preferred alternative put forth in the aforementioned pending Draft EIS and RMP amendment, which seeks to zero out the Great Divide Basin, Salt Wells Creek, and White Mountain HMAs (a large portion of the Adobe Town HMA would be managed for zero wild horses as well), representing a staggering loss of roughly 2.5 million acres of designated wild horse habitat. The BLM would also be removing wild horses from the Pilot Butte Wild Horse Scenic Loop, a popular area for the public to view wild horses – an action that would drive down tourism and interest in the area.³

We encourage the BLM to evaluate and raise the current AML so that the agency can better fulfill its statutory mandate to protect wild horses and allow them to exist on public lands. Putting federally designated wild horse habitat on the chopping block will only result in more gathers at enormous taxpayer expense. As required by the National Environmental Policy Act (NEPA), the BLM must analyze a range of alternatives including not only adjusting the AML but managing wild horses on the range exclusively with immunocontraceptive vaccines and reducing livestock grazing to accommodate the federally protected horses that reside in these HMAs.

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

³ Under the pending DEIS’s preferred alternative, all horses from the Wild Horse Scenic Loop would be removed.

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 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 WFRHBA 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. The HMAs in question comprise 3,436,096 acres of land, of which 2,536,787 acres are federally administered public lands, while only approximately 26 percent (899,308 acres) constitute state or private lands. Under the BLM’s plan, 3,555 horses would be permanently removed, or 40 percent of the total population in Wyoming, to reach a low AML of 1,550 across the HMAs (pg. 2-3). This translates into 1 horse for every 1,600 acres. As the EA notes, animal unit months (AUMs) for livestock would not be reduced although an estimated 191,791 active livestock AUMs are currently permitted in these HMAs (conversely, the BLM estimates wild horses presently utilize 61,260 AUMs) (pg. 47). The EA acknowledges that the estimated 2021 population that the agency deems too large for the region is based on the BLM’s assumed 20 percent annual herd growth rate for the past two years – a blanket assumption that lacks context or scientific justification and fails to take into account the variable nature of population growth rates.

In its recent reporting on the BLM’s implementation of the “aggressive strategy” outlined in its May 2020 report, *E&E News* notes that “through the fiscal 2020 budget cycle and running through Feb[ruary] 26 of this year, BLM conducted roughly 60 roundups that removed nearly 15,000 wild horses and burros” and that the proposed checkerboard plan “would be by far the largest roundup of any of the previous 60 roundups.”⁴

The WFRHBA requires the BLM to manage wild horses and burros at the minimum feasible level. Such a large roundup operation will fail to meet this integral standard – something that the current EA fails to consider. Furthermore, the EA must analyze the economic impacts of increasing the off-range holding population of wild horses by thousands of additional horses. Here, and in all instances where the EA analysis is incomplete or inadequate, the BLM must fully consider the impacts of its proposed action in order to comply with NEPA and its implementing regulations.

As alluded to above, the extreme reduction of wild horses will also adversely affect the public’s ability to observe federally protected horses on public lands. These are iconic and popular herds;

⁴ *E&E News*. April 5, 2021. Available: <https://www.eenews.net/eenewspm/stories/1063729241>

the horses residing in the Wild Horse Scenic Loop offer a unique and significant tourism draw. Sweetwater County proudly touts the wild horses in this area as “proof that the American spirit still thrives here.”⁵ Indeed, their tourism and travel website (www.tourwyoming.com) notes that the Loop “offers the best chance to see the wild horses.” Given the importance of wild horses to tourism in the region, the EA must analyze reasonable alternatives to preserve wild horse habitat and ecotourism interests for the state.

To the extent that high (i.e., 20 percent) population growth rates exist among herds, the National Academy of Sciences (NAS) unequivocally concluded that the BLM’s gather-dependent management practices facilitate high growth rates through compensatory reproduction, as discussed in its comprehensive 2013 report (commissioned by the BLM) on wild horse and burro management (pg. 5, 190).⁶ In other words, a management strategy premised on mass removals will ultimately backfire by perpetuating a costly cycle that fails to stabilize populations on the range. The widespread administration of fertility control offers a proactive, rather than reactive, approach to wild horse management (discussed below in subsection F), but the BLM spends less than 1 percent of its WHB program budget on fertility control methods that could effectively and humanely manage herds.

It is worth noting that the RSGA, which revoked its consent to allow wild horses on private land that it manages, owns only a minority portion of the checkerboard lands in the HMAs. Moreover, the 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.” *American Wild Horse Preservation Campaign v. Jewell*, 847 F.3d 1180 (10th Cir. 2016) (quotation omitted).

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 checkerboard 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” *Id.* at 1188.

The EA specifies that the purpose of the proposed action is to address an “overpopulation” of wild horses and “to remove wild horses from private lands at the landowner’s request” (pg. 5). This justification is problematic for a number of reasons, including the lack of analysis as to whether the BLM’s proposed action could, in fact, take the population below the legally required limits of low AML. 43 C.F.R. § 4720.2-1 specifies that the request for removal must entail a “written request” that “indicate[s] the numbers of wild horses or burros” that have strayed onto private lands. The EA fails to include relevant information about such a legally required formal request; rather, the BLM appears to be taking an extreme carte blanche approach – based on

⁵ Available: <https://www.tourwyoming.com/explore/sightseeing-and-attractions/guide-to-viewing-the-wild-horses>

⁶ National Research Council 2013. *Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward*. Washington, DC: The National Academies Press.

incomplete population data – to removing wild horses from public and private lands, and from inside and outside the HMA boundaries.

B. Livestock Use

Reducing livestock grazing permits within these HMAs should be prioritized as this would help improve rangeland health and allow the agency to maintain the wild horse population as free-roaming in its natural habitat. However, the EA specifically states that the BLM will not consider this option (pg. 9), relying on circular reasoning that reducing livestock “does not meet the purpose and need for the action” (pg. 18).

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 Tenth Circuit ruling in *Wyoming v. United States*, 839 F.3d 938 (10th Cir. 2016) affirms the BLM’s discretion to implement this alternative.

As alluded to above, a considerable amount of livestock grazing is occurring in these HMAs. According to the pending DEIS, in the vast majority of allotments within the planning area, 100 percent or slightly under 100 percent of the allotments are being used for livestock grazing (pg. 53 of DEIS). That tensions might arise due to the mere presence of wild horses is hardly surprising given the rather stark prioritization of livestock interests in the area. It is worth emphasizing, however, that private entities such as the RSGA graze livestock subject to discretionary permits that can be suspended or revoked and which do not confer a right to graze public lands.

C. 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 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.

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 the NAS identified hinders sound management decisions that can be scrutinized and understood by the public – something evident from the BLM’s statement in the Draft EIS for the checkerboard that AMLs could be lowered without requiring a Land Use Plan amendment under its preferred alternative (pg. 63 of the DEIS).

With the roundup proposal at issue in the EA, the agency would further balloon the population of warehoused wild horses despite the exorbitant costs associated with continuing this trajectory. Ironically, the EA casually notes that “nationally, there is a shortage of off range corrals and off range pastures”– a tacit recognition that inadequate options exist for horses pulled off the range (pg. 6). However, both the EA and the previously released DEIS (which would lower AMLs) for the checkerboard fail to consider the costs of removing such a large number of horses. Also troubling is the BLM’s concession in the DEIS that 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).

Importantly, without accurate population data the BLM risks violating federal law by potentially taking the populations below the minimum AML. The EA itself provides no guarantees that the agency will not go below AML. The EA should include all census data pertaining to the wild horse populations in these HMAs going back at least ten years to better understand how levels have fluctuated over time. Again, relying on an arbitrary 20 percent growth rate for the past two years does not provide an accurate record upon which the BLM can base sweeping removal decisions.

D. Proposed Gathers

The EA does not take into account the best scientific information available on the impact of gathers, including the 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). As noted, mass removals of the nature that the BLM is proposing to undertake in the checkerboard will exacerbate the supposed problem the BLM is trying to solve in its mission to manage horses at sustainable levels across the west.

We strongly 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.

It is disappointing that the BLM has already decided to use the helicopter chase approach without regard for public concern or adequate weight given to the impacts on the welfare of the horses. The EA maintains that injuries and deaths are statistically rare occurrences (pg. 34), but observers of recent roundups have identified and/or documented many such troubling instances – e.g., horses suffering broken necks during recent operations in Nevada⁷, helicopters running horses into barbed wire in Utah⁸, foals dying from “capture myopathy” (i.e., being run to death)

⁷ Available: <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada/2020-eagle-complex-wild-horse-gather>

⁸ Available: <https://www.sltrib.com/news/environment/2018/08/09/deadly-aerial-roundup-ran/>

during an Oregon roundup⁹, a wild mare either giving birth or miscarrying while being run in Nevada.¹⁰ 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.¹¹

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 livestreamed 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.

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 WHB program budget on PZP (a disconcerting trend that has persisted for many years despite significant increases to the BLM’s WHB program budget).¹² Indeed, a recent bipartisan letter from federal lawmakers to the BLM underscored some of the inadequacies of the BLM’s current approach to fertility control (or lack thereof) – e.g., “In [fiscal year] 2018, the BLM reported administering only 580 doses of PZP and 110 doses of PZP-22, and only on 16 [HMAs.]”¹³

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. 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.¹⁴ With the recent increases to the BLM’s WHB

⁹ 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.

¹⁰ Available: <https://returntofreedom.org/eagle-roundup-update>

¹¹ Available: <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/wyoming/2014-Checkerboard-Wild-Horse-Gather>

¹² In Fiscal Year 2021 BLM received an additional \$14,190,000 in funding for the management of wild horses and burros on public lands.

¹³ Available: <https://awionline.org/sites/default/files/uploads/documents/March-2020-letter-to-BLM-PZP.pdf>

¹⁴ “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.

program budget, pursuing PZP on a broad scale is clearly viable and the long-term cost-savings would almost certainly be significant.

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 aspect of the EA focused on treating horses with immunocontraceptive vaccines and encourage the BLM to employ PZP in particular given its long history of safe and efficacious use. That said, we do wish to note our concerns that the agency would evidently only begin implementing fertility control after low AML is achieved. Additionally, we would prefer to see the BLM focus exclusively on administering PZP or PZP-22 to a high proportion of breeding mares rather than pursue its current plan to only treat an estimated 420 mares (pg. 11). Finally, the EA should address key details needed to ensure the successful implementation of fertility control efforts – e.g., an explanation of what database or tracking system will be used for documenting mares that receive vaccine and booster treatments and related records for identifying horses.

E. IUDs

The EA specifies that intrauterine devices will be inserted into an estimated 290 mares. Use of IUDs has not been studied in wild horses on the range. Indeed, in the EA, the BLM relies on anecdotal and unpublished information in an attempt to justify using IUDs as a management tool for a sizeable number of horses. Simply put, much remains unknown about the long-term safety and efficacy of IUDs on wild horses.

While use of IUDs has shown promise in domestic mares in highly controlled settings, conditions on the range present a host of challenges to their successful use. The BLM admits in the EA that their use (and by implication the agency's understanding of their effects) in wild horses is in its "early stages" (pg. 24) and notes that risks include pain, infection, perforation of the uterus, endometritis, uterine edema, and pyometra (pg. 25).

Puzzlingly, the EA states that the 290 mares in question will receive both an immunocontraceptive vaccine (unspecified) and an IUD. PZP on its own is at least 90 percent effective in the first year (as the BLM itself has noted); concerted efforts to administer PZP alone will significantly affect fertility rates when applied systematically to herds. Employing an experimental combination of fertility control methods – when one method on its own is largely untested on wild horses – is an illogical course for treating these mares. Use of two methods simultaneously will confound any data that might be obtained.

Regarding IUDs specifically, adverse reactions could occur once horses are released back onto the HMAs – side effects and complications that are nonexistent with PZP. Use of IUDs is further complicated by the fact that the BLM would only insert the devices when mares are not pregnant – again, a challenge not associated with PZP, which (among numerous other benefits) can be administered to open and non-open mares.

In comparing the use of fertility control methods, the NAS found that "the discomfort of injections and darting is transitory and is not generally considered unacceptable... That IUDs

may provoke undue uterine inflammation warrants caution and would require further testing before application in the field could be considered. In addition, evidence concerning loss rates of IUDs, especially during copulation, would be needed” (pg. 130).

Unfortunately, the EA’s proposed action amounts to a de facto research experiment on federally protected horses. If it is believed that consideration of IUDs as a possible tool is truly worthwhile, then the BLM would need to pursue research into IUDs as part of a well-designed, rigorously controlled, and documented study in conjunction with a reputable scientific institution (with approval from an Institutional Animal Care and Use Committee). Such research would fall under the Animal Welfare Act’s provisions, which explicitly cover the use of horses “for research purposes.” 7 U.S.C. § 2132(g)

As it stands, the EA lacks even clear and precise protocols for implementation of IUDs. Without clear protocols for use and lack of scientific data, neither the agency nor the public can properly analyze and consider the use of IUDs on wild mares.

F. Surgical Sterilizations

As a final note on the fertility control aspects of the proposed plan, we are pleased to see that this EA appears to walk back plans floated in the DEIS and ongoing RMP amendment process to surgically sterilize wild horses in the checkerboard. We hope this signals a sea change in the BLM, which has for the past several years aggressively pursued attempts to ovariectomize wild horses despite an injunction from a federal court, as well as opposition from federal lawmakers, veterinarians, the American public, and the NAS.¹⁵

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 the numerous animal welfare concerns associated with ovariectomies – particularly since the DEIS for the checkerboard is still pending and the preferred alternative would potentially result in wild horses being ovariectomized. In November of 2020, a bipartisan coalition of Members of Congress again urged the BLM to abandon its ovariectomy plans and “instead pursue scientifically supported fertility control projects, *namely the use of humane immunocontraceptive vaccines*” [emphasis added].¹⁶ The lawmakers further noted that for fiscal year 2021, the House of Representatives overwhelmingly passed an amendment directing the BLM to spend a significant portion of its funding on PZP and that the final fiscal year 2021 appropriations package included language delineating that “any population growth suppression strategies” employed by the BLM “must be proven, safe, and humane” (S. Rept. 116-123).

IV. Conclusion

Again, we are gravely disappointed by the BLM’s decision to decimate the wild horse population in this region and hope the BLM will reconsider given the sweeping scope of the gather plan. The mix of public and privately owned parcels in the checkerboard presents some distinct

¹⁵ *Kathrens v. Bernhardt*, Case No. 18-cv-1691 (D. Or. 2018).

¹⁶ Available: <https://awionline.org/sites/default/files/uploads/documents/WA-wild-horses-Letter-to-Bernhardt-re-Confusion-HMA.pdf>

challenges for wild horse management, but the BLM cannot in effect treat public lands as private in order to satisfy landowner requests to remove horses.

In this instance, the BLM's proposed gather actions would be 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 and to employ management activities "at the minimal feasible level" 16 U.S.C. § 1333(a).

As the BLM acknowledged in the DEIS for the checkerboard, these wild horses are in good health (pg. 41 of the DEIS); this is not a situation where the agency could justify a radical removal plan that would reduce the state's population by citing drought, lack of forage, or other adverse conditions undermining the horses' welfare. Drastically slashing the number of wild horses in the region will ultimately only balloon the population in short- and long-term holding facilities, as well as the already exorbitant costs associated with off-range holding.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'JG', is positioned above the typed name and contact information.

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