

January 4, 2020

VIA Forest Service Website

(<https://cara.ecosystem-management.org/Public/CommentInput?project=46228>)

Regional Forester (Reviewing Officer)
Pacific Northwest Regional Office
Attn: 1570 Objections
P.O. Box 3623
Portland, OR 97208-3623

Re: OBJECTION to Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment

Dear Reviewing Officer:

Friends of Animals¹ submits these objections pursuant to 36 C.F.R. §218.8 to the Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment Draft Decision Notice (DDN) and Finding of No Significant Impact (FONSI).

The Forest Service's DDN proposes to amend the 1989 Ochoco Land and Resource Management Plan ("LRMP") and approve a Wild Horse Herd Management Plan that would drastically lower the Appropriate Management Level (AML) for the Ochoco wild horse herd from 60 wild horses to a range of 12-57 wild horses. The Plan would also authorize unnecessary fertility control. The Plan would place the future of these wild horses at risk and greatly reduce or eliminate the ability of the public to view them. Friends of Animals objects to the DDN and FONSI not only because they would be detrimental to wild horses, but also because they violate the Wild and Free-Roaming Horses and Burros Act (WHBA), the National Environmental Policy Act (NEPA), the National Forest Management Act, and the Forest Service's regulations.

¹ Friends of Animals is a non-profit international advocacy organization incorporated in the state of New York since 1957. Friends of Animals has nearly 200,000 members worldwide. Friends of Animals and its members seek to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals regularly advocates for the right of wild horses to live freely on public lands, and for more transparency and accountability in the U.S. Forest Service's "management" of wild horses.

These objections are timely filed. The DDN and FONSI was published in the Bulletin newspaper of Bend, Oregon on November 17, 2020. These objections are based on issues raised on previously submitted comments. Friends of Animals submitted timely and specific written comments regarding the proposed project on May 12, 2020. These objections relate to the specific comments that Friends of Animals and others submitted. Friends of Animals and others commented that the Forest Service erred in calculating the AML and failed to follow the proper procedures in the National Forest Management Act and NEPA. Friends of Animals and others notified the Forest Service that its proposed action will have a significant impact on the human environment and requires a preparation of an Environmental Impact Statement. Friends of Animals and others also notified the Forest Service that its Environmental Analysis (EA) did not take a hard look at the impact of the proposed action on wild horses or the beneficial impact of wild horses, and that the Forest Service should have considered reducing forage allocated to sheep as a reasonable alternative. These comments were not fully addressed or resolved by the Forest Service.

A. Violations of the Wild and Free-Roaming Horses and Burros Act, the National Forest Management Act, and Implementing Regulations.

In 1971, Congress passed the Wild Free-Roaming Horses and Burros Act (WHBA), 16 U.S.C. §§ 1331 et seq., finding that “wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene.” 16 U.S.C. § 1331. Upon finding this, the WHBA mandates that wild horses “shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.” *Id.* The WHBA also mandates that all wild horse management activities “shall be at the minimal feasible level.” 16 U.S.C. § 1333(a). The WHBA only authorizes the removal of wild horses in limited circumstances. *See id.* § 1333(b)(2). Before the Forest Service can remove wild horses, it must first determine that: (1) an overpopulation of wild horses exists, and (2) action is necessary. *Id.* § 1333(b)(2); *see also Colo. Wild Horse & Burro Coal., Inc. v. Salazar*, 639 F. Supp. 2d 87, 93-94 (D.D.C. 2009).

The Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment violate the WHBA in several respects.

1. The Forest Service erred in amending the LRMP and calculating the AML.

First, the Forest Service erred in calculating and defining the AML. The proposed amendment states that “[h]orses above the high AML are considered excess.” However, federal regulations already define excess animals as “wild free-roaming horses or burros (1) which have been removed from an area by the Secretary pursuant to applicable law or, (2) which **must be removed** from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area.” 16 U.S.C. § 1332(f) (emphasis added). Similarly, the Forest Service’s regulations define excess as “wild free-roaming horses and burros which have been removed by authorized personnel pursuant to applicable law or which must be removed from an area in order to preserve and maintain a thriving natural ecological balance in coordination with other resources and activities.” 36 C.F.R. § 222.60(b)(3). Decisions about what animals to remove must be based on current information that there is overpopulation of wild horses and that removal is necessary. 16 U.S.C. § 1333(b)(2); *see also Colo. Wild Horse & Burro Coal., Inc. v. Salazar*, 639 F. Supp. 2d 87, 93-94 (D.D.C. 2009). Thus, the Forest Service’s amendment redefining what horses are excess based on specific number, rather than current conditions and the need to preserve and maintain a thriving natural ecological condition violates the WHBA and its own regulations.

Moreover, the DDN is flawed because the Forest Service failed to properly calculate the AML or consider other reasonable actions to maintain and preserve a thriving natural ecological balance. As an initial matter, the Forest Service based the AML of 12 to 57 wild horses on flawed data that only considers the winter range of the wild horses to be approximately 4,900 acres out of the over 25,000 acres in the Big Summit Wild Horse Territory. The Forest Service claims that that AML was determined through an in-depth analysis and considered criteria from the Bureau of Land Management (BLM) Wild Horse and Burros Management Handbook (4700-1). However, the Forest Service failed to follow the recommendations and procedures outlined in the BLM handbook. For example, the handbook states that a minimum of three to five years of data should be used to calculate the AML. The Forest Service did not follow this directive and instead based the AML on two years of data for the winter range. Moreover, the Forest Service’s calculation was based on surveys that were neither definitive nor comprehensive. In fact, the Forest Service admits that its calculation “is not intended to represent the only places that a horse will ever occupy or cross during an above average snowfall winter.” EA at 241. Moreover, the Forest Service ignored data that demonstrate wild horses have a larger winter range. Thus, it was arbitrary for the Forest Service to use this as an estimate for forage calculations and limit the AML.

In addition, the Forest Service's AML calculation ignored the BLM handbook's directive that the lower AML should be set at a number that allows the population to grow to the upper limit over a 4-5 year period, without any interim gathers to remove excess wild horses. Instead, the Forest Service used an extremely low population number, 12 wild horses, for the low AML. The low number could essentially wipe out the wild horse herd altogether, disrupt the social structure of the herd, and make it very difficult or impossible for members of the public and Friends of Animals to observe wild horses in the Big Summit Wild Horse Territory. Given the herd's low population growth rate, there is no justification for such a low AML.

Next, the Forest Service erred by basing the lower AML range on forage availability for wild horses and other grazing animals in the winter range during years with above average snowfall. However, other grazing wildlife, such as elk and deer, utilize other areas during winters with above average snowfall. Thus, there was no reasonable basis for the Forest Service to reduce the AML based on the need to provide forage for other animals.

Finally, the Forest Service erred in assuming that the wild horse population needs to be reduced to meet allowable use standards and LRMP goals and objectives in the Big Summit Territory. In making this conclusion, the Forest Service fails to consider baseline information about how other uses and historical uses of the area are contributing to conditions in the area. Without this information, the Forest cannot conclude that the wild horse population should be reduced to preserve or maintain a thriving natural ecological balance. The Forest Service also utilized a 30% riparian zone calculation to account for transitional areas between dry land and bodies of water, despite only 4% of the winter range actually designated as "riparian." The Forest Service failed to consider whether it could reduce sheep grazing, particularly in the winter range, in order to meet land use standards. This would be consistent with existing land use plans and should be considered along with the proposed amendment. There is nothing prohibiting the Forest Service from adjusting the amount of forage allocated to sheep. Rather, the LRMP and WHBA indicate that wild horses should be considered an integral part of public lands. Thus, the Forest Service should consider reducing or eliminating other uses in some areas to ensure the protection of wild horses rather than nearly eliminate wild horses for livestock that are not legally designated as an integral part of public lands.

The Forest Service appears to ignore important data demonstrating that the Wild Horse Territory, set aside for the protection of wild horses, has the forage and other natural resources to support an AML of 150 to 200 wild horses. Not only does this violate the WHBA, but it also violates the National Forest Management Act which mandates that the Forest Service use the best available scientific information in amending a land use plan. 36 C.F.R. §219.3.

2. The Wild Horse Herd Management Plan and Forest Plan Amendment violate the requirement that wild horses be managed at the minimal feasible level.

The Wild Horse Herd Management Plan and Forest Plan Amendment also violate the WHBA mandate that wild horses be managed at the minimal feasible level. The Environmental Assessment (EA) for this action acknowledges that the wild horse population in the Big Summit Wild Horse Territory has stabilized without any roundups or removals. However, the Forest Service states that under the Herd Management Plan it could conduct roundups annually in order to maintain the population at the artificially low AML. There is no evidence that intensive management proposed in the Plan will lead to meeting the goals in the LRMP or maintaining a thriving natural ecological balance in the area. To the contrary, it will throw off the balance and result in unnecessary over-management of wild horses. As explained in the EA, the removal of wild horses in 2010 led to a rapid increase in population. The 2013 National Academy of Science Report cited in the EA also found, that management practices such as this are facilitating high rates of population growth.² There is no need or reason to continue this type of mismanagement. In the Big Summit Wild Horse Territory, after removals stopped the population plateaued and the population shows a decreasing trend since 2015.³

The Forest Plan Amendment and Herd Management Plan call for aggressive roundups and removals to maintain an unjustifiably low AML. This is both short-sighted and in violation of the WHBA's mandate that management be at the minimal feasible level.

A. The Forest Service Decision Violates the National Environmental Policy Act.

1. The proposed action meets the level of significance that triggers preparation of an Environmental Impact Statement.

The National Environmental Policy Act (NEPA) requires an acting agency to prepare a detailed environmental impact statement (EIS) for federal actions that significantly affect the quality of the human environment. The EIS should include "(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action." 42 U.S.C. § 4332(2)(C).

The proposed action would result in major environmental impacts and thus warrants preparation of an EIS. The Forest Service failed to provide a convincing statement of

² National Research Council, *Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward*. Washington, DC: The National Academies Press, 2013, 5.

³ See EA at 63, Figure 26.

reasons explaining why the Amendment and Wild Horse Herd Management Plan would not have a significant impact.⁴ First, many people in the region and across the nation enjoy viewing the wild horses in the Ochoco National Forest. As Congress found and declared, wild horses “are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people . . .” 16 U.S.C. § 1331.

Second, the intensity of the proposed action also indicates that the action necessitates further review in an EIS. This action significantly reduces the number of wild horses in the area and may lead to their complete eradication in and around the Big Summit Territory.

Third, the effects of the proposed action and alternatives are highly controversial and involve unique and unknown risks. For example, the impacts of significantly reducing the wild horse herd and relying on vague plans to introduce mares from other areas involves unique risks and unknown risks and is highly controversial.

2. The Forest Service failed to take a hard look at the impacts of the proposed action and alternatives.

As discussed above, the proposed action warrants an EIS. However, regardless of whether the Forest Service prepares an EA or an EIS it must take a “hard look” at the impacts of an action prior to making an irreversible and irretrievable commitment of resources.

Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, 462 U.S. 87, 97-98 (1983). NEPA requires the Forest Service to adequately evaluate all potential environmental impacts of proposed actions. *See* 42 U.S.C. § 4332(2)(C). To meet this obligation, the Forest Service must identify and disclose to the public all foreseeable impacts of the proposed action, including direct, indirect, and cumulative impacts. *See* 42 U.S.C. § 4332(2); *see also* 40 C.F.R. §§ 1508.7-1508.8.

Additional NEPA analysis is needed on the following: (1) the impact of the proposed action and alternatives on the genetic viability of the wild horse population in the Ochoco National Forest; (2) the impacts of fertility control measures; (3) the positive impacts of wild horses on the environment and actual cause of damage to the range; and (4) the behavioral and physiological impacts of the proposed action and alternatives on wild horses.

⁴ The Council on Environmental Quality issued new NEPA regulations, effective to all process begun after September 14, 2020. Agencies have discretion on whether to apply these regulations to ongoing actions started before that date. Here, it appears that the Forest Service applied the regulations in existence when it started the NEPA process. Thus, this comment analyzes the action under regulations previously in effect.

a. The Forest Service failed to take a hard look at the proposed action's impact on the health, viability, and sustainability of the wild horses in the Ochoco National Forest.

Both the WHBA and Forest Service's regulations mandate that the Forest Service protect wild horses. *See* 16 U.S.C. §§ 1331, 1333; 36 C.F.R. § 222.60. However, the Forest Service failed to fully consider whether the wild horse herd in Ochoco National Forest is unique and how the proposed Amendment and Plan will impact wild horses.

The most recent genetic report stated that the herd has serious variability reduction, and that more information is needed before specific steps could be recommended.⁵ It also stated that the herd likely has some Spanish heritage and that a larger sample size should be considered.⁶ However, there is nothing in the EA that indicates that the Forest Service followed this recommendation. The EA did not consider that wild horses may have Spanish heritage or provide any follow-up since 2011, as needed to determine the health of this herd and how the proposed Plan would impact wild horses and those that enjoy viewing them. The Forest Service must take a hard look at baseline data of the wild horses' current health, viability, and genetic diversity. This is necessary to analyze how the proposed action will impact the wild horses in the Ochoco National Forest.

Not only did the Forest Service fail to take a hard look at how the proposed action would impact wild horses, but it also failed to disclose any enforceable plan to protect the health, viability, and sustainability of these wild horses. The Forest Service's vague statements that it may introduce mares from other areas is not sufficient to show how the proposed Plan will protect wild horses and ensure they are not eradicated from the area. Nor did the Forest Service indicate whether introducing mares will preserve the herds Spanish heritage. The public cannot meaningfully participate and comment on the proposed decision unless the Forest Service includes sufficient detail about how a viable herd will be maintained and how and when additional horses may be introduced.

The Forest Service cannot avoid its duties under NEPA with the vague claims that it may introduce other wild horses if needed based on future recommendations, especially when it ignores current recommendations. If an agency could "paper over flaws" in its analysis with assurance that its "mitigation team will implement, monitor, and adjust mitigation techniques" it would "effectively gut the environmental safeguards that Congress enacted in . . . NEPA." *Env'tl. Def. v. U.S. Army Corps of Eng'rs*, 515 F. Supp. 2d 69, 84-85 (D.D.C. 2007).

⁵ Cothran, G. (2011) Genetic Analysis of the Big Summit HMA, OR, Department of Veterinary Integrative Bioscience Texas A&M University College.

⁶ *Id.*

The Forest Service should circulate a new NEPA analysis that provides sufficient detail to constitute an enforceable commitment and provide an opportunity for the public to comment on that plan

b. The Forest Service failed to take a hard look at the positive impacts of wild horses and how the proposed amendment would impact ecological stability, including opportunities to restore fire adapted ecosystems.

Forest Service does not take a hard look at the benefits of wild horses, and instead unfairly attributes any natural resource issues to wild horses. The Forest Service cannot base its wild horse decisions on incomplete information. Analyses must include the positive benefits of wild horses and must honestly analyze the harm caused by over 100 years of logging activity and livestock grazing, as well as recent ATV use. The EA merely indicates that a larger number of wild horses will have a negative impact on riparian areas. However, it fails to consider the positive impact of wild horses and how the stable population in the Ochoco National Forest is impacting the environment.

Studies demonstrate that wild horses support healthy ecosystems on public land if given sufficient habitat and left alone.⁷ For example, wild horses help spread plant seeds over large areas where they roam. Wild horses do not decompose the vegetation they ingest as thoroughly as ruminant grazers, such as cattle or sheep, which allows the seeds of many plant species to pass through their digestive tract intact into the soil that the wild horses fertilize by their droppings. Wild horses also help to prevent catastrophic fires and help to build more moisture-retaining soils. Soil moisture dampens out incipient fires and makes the air coating the earth moister.⁸ “Horses and burros are much better equipped for this increasingly important service to all the life community, including man, than ruminant grazers, particularly domesticated ones. Indeed, these equids refill a significant empty niche within the North American ecosystem.”⁹

⁷ See Downer, C. C. (2014). The horse and burro as positively contributing returned natives in North America. *American Journal of Life Sciences*, 2(1), 5-23 (attached); see also Lundgren, E. J., Ramp, D., Ripple, W. J., & Wallach, A. D. (2018). Introduced megafauna are rewilding the Anthropocene. *Ecography*, 41(6), 857-866 (attached to Friends of Animals comment).

⁸ Downer, C. C. (2014). *The horse and burro as positively contributing returned natives in North America. American Journal of Life Sciences*, 2(1), 14; see also Ripple, W. J., et al. (2015). Collapse of the world's largest herbivores. *Science advances*, 1(4), e1400103; Wild Horse Fire Brigade - Rebalancing North American Ecosystems, available at <https://grazelife.com/blog/wild-horse-fire-brigade-lessons-in-rebalancing-north-american-ecosystems-by-rewilding-equids/>.

⁹ Downer, C. C. (2014). The horse and burro as positively contributing returned natives in North America. *American Journal of Life Sciences*, 2(1), 12.

Unlike livestock, wild horses do not stay at water sources, but rather move after drinking and will travel long distances from water.¹⁰

Wild horses select preferred grasses, sedges, and herbs, including coarse, highly abrasive grasses, creating a mosaic of high and low vegetation that creates a more diverse habitat for invertebrates, small vertebrates and herbaceous plants.¹¹

The Forest Service merely dismissed this evidence and claimed that horses' ability to reduce catastrophic wildfires was outside the scope of its analysis. This is not the hard look required by NEPA. Moreover, this is certainly an impact on the human environment that should be considered in the process of amending a land use plan and approving a wild horse herd management plan. The Forest Service has an obligation to consider how adjusting the AML for the Big Summit Territory will impact the environment.

3. The Forest Service should have considered reducing or eliminating forage allocated for grazing private sheep in the Big Summit Territory.

Modifying livestock grazing practices could improve the overall ecological stability of the area and increase forage for wild horses and other wildlife.¹² The Forest Service should not place the needs of livestock and ranchers above the needs of wild horses. The Forest Service should consider an alternative that promotes the survival of this federally protected wild horse herd rather than choose a cruel and unnecessary alternative that will do nothing other than reduce, and possibly eliminate, the number of wild horses in favor of livestock interests.

In sum, Friends of Animals urges the Forest Service to reconsider this proposal, and rather than obliterating this already at-risk population of wild horses, to instead protect what remains of this beloved population.

¹⁰ Ganskopp, D., & Vavra, M. (1986). Habitat use by feral horses in the northern sagebrush steppe. *Journal of Range Management*, 207-212.

¹¹ Naundrup, P. J., & Svenning, J. C. (2015). A geographic assessment of the global scope for rewilding with wild-living horses (*Equus ferus*). *PloS one*, 10(7), e0132359.

¹² See *REPORT ON FIVE WILD HORSE HERDS AND HERD MANAGEMENT AREAS (HMA) IN OREGON, WITH RESULTS OF DETAILED ECOLOGICAL EVALUATIONS ON TWO HMAs CONDUCTED IN 2017*, April 2018, available at https://thewildhorseconspiracy.org/wp-content/uploads/2018/04/REPORT-ON-OREGON-WILD-HORSE-HERDS-AND-HABITATS-ON-THEIR-LEGAL-BLM-AND-USFS-AREAS-Table-of-Contents-version-of-4-6-18_r.pdf. This was submitted with Friends of Animals comment.

B. Suggested Remedies

Friends of Animals suggests that the Forest Service reevaluate the AML. This would include considering additional data about the winter range, potentially reducing the forage allocated to sheep, and clarifying that wild horses can only be removed after the Forest Service has made a determination based on current information that removal of horses is necessary to maintain and preserve a thriving, natural ecological balance in the area. Thus, wild horses should not be removed, or considered excess, merely because they are above the AML. This is consistent with the longstanding guidance in BLM's handbook, which states that removing horses based solely on the AML is not acceptable.¹³

Friends of Animals further suggests that the Forest Service circulate an Environmental Impact Statement that takes a hard look at the Forest Plan Amendment and Wild Horse Herd Management Plan. This should include additionally analysis on the current genetic viability of the herd, its unique ancestry and how to preserve it as healthy and viable herd. If the introduction of additional wild horses is necessary, then the Forest Service should clearly outline the enforceable procedures for how that will occur. The Forest should also fully consider the positive impacts of wild horses and the reduction of livestock grazing in the Big Summit Territory.

Friends of Animals is happy to discuss potential resolution of issues raised in this objection. We hope that the Forest Service will use the objection process as an opportunity to engage with stakeholders, including us, to develop a project that is legally and ecologically sound.

Sincerely,



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¹³ BLM, Wild Horse and Burros Management Handbook (4700-1) at 47 ("Justifying a removal based on nothing more than the established AML is not acceptable.")

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