

**OBJECTOR'S NOTICE OF OBJECTION, STATEMENT OF ISSUES AND LAWS,  
AND REQUESTED REMEDIES**

**NOTICE OF OBJECTION**

December 29<sup>th</sup>, 2020

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

**RE:** Blue Mountains Biodiversity Project's objection to the Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment Draft Decision Notice and Finding of No Significant Impact and Environmental Assessment

Dear Objection Reviewing Officer,

Blue Mountains Biodiversity Project (BMBP) hereby formally submits the following objections to the Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment Environmental Assessment and Draft Decision Notice and Finding of No Significant Impact. BMBP has secured the right to submit objections and thereby participate in the pre-decisional administrative review process for this project. BMBP has submitted timely written scoping comments regarding this project and extensive comments on the Environmental Assessment.

**Decision Document**

Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment Environmental Assessment and Draft Decision Notice and Finding of No Significant Impact

**Date Decision published**

November 17<sup>th</sup>, 2020

**Responsible Official**

A. Shane Jeffries, Ochoco National Forest Supervisor

**Description of the Project**

The Ochoco National Forest Service has selected a modified version of Alternative 2, not including sex ratio manipulation or sterilization of mares in the tools available for managing the herd. The modified Alternative 2 includes the following proposed management actions. Therefore, this objection focuses on Alternative 2, as specified in the Draft Decision Notice. Modified Alternative 2 includes:

- \* Establishment of an "appropriate" management level based on current conditions for the Ochoco wild horse herd of only 12 to 57 wild horses
- \*Gather (primarily through bait trapping but also with the potential use of helicopters, fixed-wing aircraft and motor vehicles) and removal of "excess" wild horses
- \*Wild horse fertility control measures, including contraception and sterilization of studs "to promote a sex ratio that favors a slower population growth" despite the Forest Service claim that sex ratio manipulation would not be included in the tools for managing the herd—see the Forest

Service letter of November 16, 2020, File Code: 1950 accompanying the Draft Decision Notice and revised Environmental Assessment (aka "EA")

- \*Potential use of "contraceptive methods that are approved in the future"

- \*Authorization of actions to improve and maintain genetic variability (defined as observed heterozygosity values for DNA-based samples), including the introduction of new mares from similar habitats and establishing baseline genetic variability by sampling a portion of the herd during gather and removal operations and subsequent "maintenance" gather operations to monitor changes in genetic variability over time

Other connected management actions include:

- \*Establishment of guidelines and adoption of best management practices

- \*Authorization of an off-range plan, so far including "some form of unique identifier for future tracking (e.g. freeze brand)", initial attempt to place "excess" wild horses in private care through adoption, sales of "excess" wild horses with and without limitations --i.e. with no monitoring of care "whereby the owner has ultimate determination of the future use of the animal" despite the enactment of riders prohibiting the BLM's and Forest Service's use of appropriated funds for the sale or slaughter of wild free-roaming horses and burros (with limitations on sales intended to prevent such scandalous inhumane treatment as the BLM in Oregon having had inside connection sales and "adoptions" to facilitate the mass slaughter of wild horses for commercial products.)

The off-range plan also includes euthanization of wild horses "for which there is no adoption or sale demand."

- \*Resource protection measures listed in the Draft Decision Notice

The Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment (aka "Wild Horse Management Plan") Draft Decision Notice and Finding of No Significant Impact (aka "Draft Decision Notice") also includes further descriptions of the selected modified Alternative 2 (aka Alt. 2), which can also be found in various sections of the Ochoco Wild Horse Herd Management Plan EA.

## **Location**

The wild horses reside on (and near) the Big Summit Wild Horse Territory (aka Big Summit Territory), which is located within Crook County, Oregon and encompasses approximately 25,434 acres (as stated in the EA, although there is some public dispute and discrepancy regarding the acreage size of the Territory) located about 25 miles east of Prineville, Oregon. The Big Summit Territory overlaps the Lookout Mountain and Paulina Ranger Districts of the Ochoco National Forest.

## **Appellant's Interests**

Blue Mountains Biodiversity Project (BMBP) has a specific interest in this decision, which has been expressed through participation throughout the NEPA process. BMBP supporters visit much of the affected area for hiking; camping; fishing; relaxing; bird, wildlife, and wild flower viewing; wild horse viewing; photography; hunting; and more. The value of the activities engaged in by BMBP volunteers, supporters, and staff would be damaged by the implementation of this project.

BMBP is a non-profit organization that works to protect Eastern Oregon National Forests. Staff, volunteers, and supporters of BMBP live in various communities surrounding the Ochoco National Forest and use and enjoy the Forest extensively for camping; hiking; drinking water; hunting; fishing; general aesthetic enjoyment; gatherings; viewing flora and fauna; gathering forest products; viewing wild horses; and other purposes, such as solar eclipse viewing.

## **Request for meeting**

BMBP requests a meeting with the Forest Service to discuss matters in this objection and seek resolution of concerns through negotiation before the Ochoco Forest Service makes a final decision on the Wild Horse Herd Management Plan.

### **Specific issues addressed in this objection**

NEPA (National Environmental Policy Act) violations, including: proposing actions inconsistent with achieving the stated purpose and need for the project; failure to provide an adequate range of alternatives; failure to adequately analyze direct, indirect, and cumulative impacts of the management plan and the proposed Forest Plan amendment; failure to disclose methodology upon which assumptions are based; inaccurate use of the science; and failure to use the full spectrum of best available science.

Violations of the National Forest Management Act (NFMA) and the Ochoco Forest Plan, including failure to provide for population viability for the focal wild horse species and Sensitive Redband trout and Columbia spotted frog. Potential violations of the Ochoco National Forest Plan include violations of management area guidance and Forest Plan standards, including INFISH Riparian Management Objectives.

Violations of the Wild Free-Roaming Horses and Burros Act regarding failure to ensure a thriving, genetically viable wild horse population and proposed actions threatening to reduce or distort the wildness of the herd through altering wild herd social structure and behavior, such as by the use of stallion castration and fertility control affecting sexual behavior hormones.

There are also potential violations of the Clean Water Act regarding needed restoration of 303(d) listed streams. However, these violations are far more likely to have been caused and to have reached current states of degradation through livestock grazing of 2,200 sheep and legacy mis-management through past sheep grazing, logging, and road construction than from an average of 130 horses or fewer.

### ***BMBP objects to the Ochoco Wild Horse Herd Management Plan for the following reasons:***

#### **I. The Wild Horse Management Plan violates the National Environmental Policy Act**

The Ochoco Wild Horse Herd Management Plan (aka “Wild Horse Management Plan”) violates the National Environmental Policy Act in the following ways: inconsistency with the stated “purpose and need” of the plan; failure to provide an adequate range of alternatives; failure to adequately analyze direct, indirect, and cumulative impacts of the plan; failure to take the requisite “hard look” at project impacts required by NEPA; inaccurate use of the science; failure to disclose the methodology used to support assumptions; and failure to use best available science.

#### **Inconsistency with the stated purpose and need of the project**

The Wild Horse Management Plan is not consistent with all the purpose and need goals as expressed in the Environmental Assessment. The Ochoco Wild Horse Management Plan includes the following statement that constituted the purpose and need for the plan in the (Final) Environmental Assessment on p. 3:

“The purpose of the proposed action is to develop a new herd management plan to replace the 1975 plan, incorporating best available science, and to be consistent with the 1971 Wild Free

Roaming Horses and Burros Act as amended (WFRHBA), 36 CFR 222 Subpart D, Forest Service Manual 2260 and other pertinent direction. The Forest Service is mandated by the WFRHBA to ensure wild horses are managed in a thriving natural ecological balance with other uses and the productive capacity of their habitat as required. The need for a new herd management (territory) plan is demonstrated by: *An increased wild horse population above the AML established in the 1975 plan and more than double the maximum number allowed by the Ochoco Forest Plan....Better understanding of fertility control methods and better understanding of genetics, plus a desire to improve the genetic variability of the wild horse herd for long-term sustainability....The Ochoco National Forest Land and Resource Management Plan (LRMP) includes direction that is based on the 1975 herd management plan...."*

The Draft Decision Notice does not incorporate any statement of the Purpose and Need for the Wild Horse Management Plan.

\*Note: The Forest Service staff apparently completely ignored most of our comments and failed to cite them in the final EA Response to Comments. This may represent negligence in not reading our hand-written comments (as opposed to our typed condensed summary of our comments) even though we mailed these comments in before the comment deadline with certified receipt requested. So some of the quoted and cited comments by Blue Mountains Biodiversity Project below, in various sections of the objection, do not appear and are not acknowledged in the final EA's response to comments section. Thus the Response to Comments understates the volume and scope of our comments on the EA, failing to cite the assigned number (#14) of our comments even where the wording of our comments appears and when we submitted very similar comments to those recognized for other groups by citation of their assigned comment number. We object to not all of our comments being acknowledged and to the lack of Forest Service response to some of our comments as a consequence.

\*Note: Our comments written on pages of the EA usually refer to EA discussions or tables on that page. Thus the context for our individual comments can generally be found on the page on which our comment appears. When variants of a comment theme keep coming up in different comments written on different EA pages, that indicates that there is a recurrent problem that persists through various parts of the EA analysis, such as omission of critical information or continued use of flawed assumptions based on little or no evidence biasing the analysis findings.

Examples of our comments on the inconsistency of proposed management actions with the stated purpose and need for the Wild Horse Management Plan:

"While the EA occasionally admits that historic livestock grazing, logging, and wildfire suppression practices directed by the Forest Service resulted in the existing conditions, such as badly degraded riparian areas and declining forage levels (as on EA p. 42, first sentence)[on p. 41, first two sentences of the final EA], the bulk of the EA goes on to imply that wild horses are exclusively to blame for these conditions—especially in the designated winter range—and uses this false premise to justify maintaining wild horse herds at non-viable low numbers through killing them, sterilizing them, using contraceptives, etc. with the end result foreseeably being driving wild horses to extirpation within the Big Summit territory, which violates the Wild Free-Roaming Horses and Burros Act and even the stated purpose and need for this herd management plan." (comment written on EA p. 42)

"None of the alternatives would implement needed active riparian restoration, including exclusion fencing (for sheep and horses) for the most damaged riparian segments even though this is a reasonable and common sense approach for more rapidly improving riparian conditions, which is

part of the purpose and need for the project. Minimum feasible management of the wild horses themselves does not preclude riparian restoration.” (comment written on EA p. 56)

“So given the evidence of recent high use of riparian forage by wild horses (e.g. the Canyon Creek pasture in 2018) [assuming this riparian damage was only from the wild horses, which is not demonstrated], why aren’t specific problematic areas targeted for riparian restoration, including enclosure fencing, as would usually be suggested for livestock over-use? Instead, the Forest Service plans extirpation of the wild horses through reducing by killing, sterilization, etc.) to unviable herd numbers with no chance to recover genetic diversity, which violates the WFRHB Act and the stated purpose and need for this wild horse management plan.” (comment on EA p. 72

“The EA admits (p. 55) that: “Utilization monitoring data in three sites in the winter range prior to 2010 when horse numbers were within the AML range [55-65] has been consistently been [sic] below 30% utilization with one exception.” The Forest Plan allowable use level for forage in the winter range area for providing for the needs of all wildlife species is 30%. This means that wild horse numbers up to at least 65 are compatible with total winter range forage use below the Forest Plan 30% utilization standard for average winter conditions. Thus there is no reason to drive wild horse numbers down to only a 12 to 57 wild horse AML range, as in the Forest Service’s preferred alternative, which would virtually guarantee eventual extirpation of the wild horse population in the Big Summit Territory. A dozen or more wild horses could easily perish in one severe winter or one extreme drought year and larger numbers of wild horses are needed for long-term genetic variability and associated horse health. The proposed action alternative is inconsistent with the purpose and need of improving wild horse genetic diversity and ensuring the health and fitness of the wild horse herds into the future and would violate the Wild Free-Roaming Horse and Burro Act and the Forest Plan, including with regard to wild horses being part of the multiple uses of the Forest to be protected. It is not honoring and maintaining the wildness of the wild horse herds to remove so many wild horses that the population is no longer viable (as under alternatives 1 and 2) and by transforming most of the wild horses into tame or dead horses.” (from our typed comment summary, p. 4)

An additional comment on inconsistency between the stated purpose and need and proposed management actions can be found written on EA p. 4.

### Resolution

BMBP has supported its objection to the Ochoco National Forest’s Wild Horse Management Plan proposed action being inconsistent with the purpose and need for the Plan in comments (see quotes and citations above.) Another of our comments on this objection include a handwritten comment on EA p. 4.

Potential partial remedies to the problem of inconsistency between the proposed action and the purpose and need stated for the wild horse management plan include the following:

- \*Writing and publishing a full Environmental Impact Statement that corrects this inconsistency with detailed analysis and changes in the proposed alternative to allow for a higher number of wild horses in the Big Summit Territory

- \*Correcting the inconsistency by choosing a modified alternative that allows for the current stabilized population of 130 wild horses to persist with some allowance for fluctuation above that level before any control measures are taken

- \*Correcting the inconsistency on the ground by reducing grazing by sheep to allow for the existing number of wild horses (up to 135) in accordance with the WFRHBA prioritization of wild horse use as follows:

“Given the need for wild horses and elk and deer to use the winter range area for forage during winters, the permitted sheep should not be allowed to use the winter range area, as this could reduce forage at least by 13% and sheep do not need to be allowed to use the winter range area.” (from p. 4 of our typed summary of comments)

### **Failure to provide an adequate range of alternatives**

The Ochoco Wild Horse Management Plan Environmental Assessment presented an inadequate range of alternatives. Our EA comments were clear in recommending a viable modified action alternative, which the Forest Service did not analyze in depth, or adoption of a modified version of alternative 3. Examples of our comments supporting this objection include the following:

“There is an inadequate range of alternatives in that none of the alternatives strikes a balance between maintaining a genetically diverse, viable, and healthy wild horse population and significantly improving highly degraded riparian conditions within a reasonable amount of time. Alternative 1 (No Action) has failed to accomplish either so far; Alternative 2 would sacrifice genetic diversity and long-term viability of the wild horse population through very low population numbers; and Alternative 3 does not allow for increasing genetic diversity in the wild horse population through introduction of some wild mares from other herds and, based on the analysis, would further degrade, rather than improve riparian and forage conditions due to the higher number of wild horses at 150-200 animals. None of the alternatives offered would implement needed active riparian restoration...even though this is a reasonable, widely practiced, and common sense approach for more rapidly improving riparian conditions, which is emphasized in the EA as part of the need for reducing the number of wild horses. Minimum feasible management of the wild horses themselves (as intended by the Wild Horses and Burros Act) does not preclude riparian restoration, especially as this is a multiple use area also subject to livestock grazing and has legacy impacts from past mismanagement that may not be repairable without active restoration measures. (from our comments on our typed comment summary pages 4-5—part of these comments is also handwritten on EA p.56)

The Forest Service admits that Alternative 3 would better represent the minimum feasible management of the wild horses intended by the Wild Free-Roaming Horses and Burros Act than their proposed Alternative 2: “Based on the current inventory (Owyhee Aerial Research Inc., 2018) of 135 horses, under Alternative 3 current horse numbers are below the AML and no capture and removal or fertility control measures would be necessary until horse numbers approach the high end of the AML. In fact, with the use of fertility control and the potential for the Big Summit Territory herd to self-limit during winters of above average snowfall, the need for capture and removal of excess horses could be very minimal, potentially generating very few to no effects associated with the gather and removal of horses from the Territory.” (EA p. 66)

“We suggest adopting an alternative with the minimum AML being the Alternative 1 numbers (status quo—about 135 horses) or more and the maximum lower than the upper limit of Alt. 3 due to ecological constraints, allowing the use of horse contraceptives [which we are now re-considering based on information provided by people commenting on the risks to the horses of both proposed contraceptives—information that was missing in the EA] and bait trapping [but not with helicopters] but not permanent sterilization, [possibly] including the introduction of new mares from other wild horse populations to improve genetic variability [also questioned by new information brought to light by commenters.] [This proposed alternative would incorporate] implementation of active riparian restoration, including temporary exclusion fencing and native shrub planting in the most damaged riparian areas. [This alternative would prohibit] permitted

sheep use of the winter range and consideration of reducing sheep numbers in the next allotment renewal. [This proposed alternative would require] monitoring of euthanasia decisions by a wild horse supportive group such as the Central Oregon Wild Horse Protection group to ensure that only wild horses not likely to survive on their own due to debilitating disease or injury are euthanized, not just on the basis of old age, teeth-wearing, or behavior. Some wild horse mortality in the wild should be acceptable as these wild horses are protected as wild populations, not as intensively managed tame livestock. Euthanasia should really be the last resort and local adoption of “excess” horses prioritized.” (comments written on p. 57 of the EA and modified [within brackets] to eliminate run-on sentences and qualify our proposed alternative based on new information provided by other public commenters, as recorded in the FEA response to comments) However we are open to considering a higher number of wild horses for the upper AML range (up to 200 as proposed for Alt. 3) since we consider most of the riparian damage and forage scarcity to be due to legacy effects and ongoing sheep grazing and possible ATV abuse, not the wild horses. A 200 horse upper AML range would be more reasonable if sheep were prohibited from using the winter range and/or their numbers reduced or season of use shortened to allow more early Spring growth and fall forage for deer, elk, and wild horses. Riparian damage should be addressed with active riparian restoration and exclusion fencing for the most damaged creek segments.

“Since the methods of wild horse population control are controversial among the public, based on comments, it is an inadequate range of alternatives not to consider the varying effects of different population controls to wild horse genetics, population size, and humane treatment of the horses through different alternatives using different population control methods. These are key issues for analysis.” (comment written on EA p. 8) Public concerns should be given priority in Forest Service consideration as: “Under the WFRHB Act, wild free-roaming horses and burros were described as living symbols of the historic and pioneer spirit of the west [and hopefully of the indigenous peoples’ culture in the west], contributing to diversity of life forms in the United States and enriching the lives of American people.” (EA p. 11)

“The Forest Service has the latitude to reduce livestock numbers as livestock use is a privilege, not a right, but not to start exterminating wildlife or wild horses. However, the Forest Service could use exclusion fencing in the most damaged riparian areas to divert wild horses and livestock from the most damaged riparian reaches to allow for riparian rest and active restoration. Why is this not part of an action alternative?” (comment written on p. 46 of the EA)

“At 2,200 sheep in the Territory, sheep numbers are adjustable, whereas wildlife numbers can’t be controlled and wild horse numbers must at least allow for a viable population (65 is barely or not viable.)” (comment written on EA p. 53)

“Sterilization could have much more of a negative impact to herd social behavior than temporary contraceptives. Apparently the GonaCon drug could also interfere more with herd social behavior, which is part of the herd’s wild character. With the current range of alternatives offered, the public is given no choice between temporary contraceptive use and permanent sterilization as both are included with the only alternative that includes fertility control.” (comment written on EA p. 60)

Another of our comments on an inadequate range of alternatives in the EIS can be found written on EA page 65.

BMBP has commented on its objection to the Ochoco National Forest’s (ONF) inadequate range of alternatives in the Wild Horse Management Plan and requested a broader range of alternatives in our comments. See our comments quoted and cited above.

## Resolution

To remedy this problem, the Forest Service would either have to reissue a new Environmental Impact Statement offering a full range of alternatives as required by NEPA for public review and comment, or better meet our concerns expressed in our related comments above by designing a modified proposed alternative that would both retain a large enough number of wild horses for the AML (at least up to 135) for long-term genetic and numeric viability combined with the use of a publicly agreed technique to increase genetic diversity in the herd more quickly, such as by introducing new mares.

### **Failure to consider and analyze other viable proposed alternatives**

The Forest Service has failed to consider and analyze in depth other viable proposed alternatives and related key issues suggested by public commenters. Below are examples of BMBP's comments relevant to this objection:

“Since the Forest Service is apparently biased against the existence of wild horses on the Ochoco, they are failing to think of other reasonable management guidelines that could be friendly amendments to Alt. 3, such as the lower level of 150 horses not being a lower limit regarding natural causes of mortality (wild animal populations naturally fluctuate depending on the severity of winter and droughts, etc.) but as a range under which (200) the Forest Service is not allowed to kill the horses. If the population naturally goes down, it may be reflective of increased natural limits to herd size—especially regarding climate change. However the Forest Service should not be allowed to increase livestock (currently sheep) use of the Territory, as that is one way to reduce pressure on forage, riparian area, and wild horse viability. The FS should be allowed to decrease livestock numbers, which makes sense with projected climate stressors, but not increase them to the detriment of wild horses and wildlife.” (comment written on EA p. 7, with p. 7 the same in the final EA)

“Whether to allow future allotment permits to increase numbers of livestock should be very much within the scope of analysis as relevant to future effects to wild horses under different alternative analyses.” (comment written on EA p. 8, with p. 8 the same in the final EA) As the draft EA notes, multiple commenters expressed concern regarding this issue: “Others are concerned that livestock are having impacts on natural resources that are being blamed on wild horses and that modifying livestock grazing practices could improve forage conditions for the wild horses.” (EA p. 8, first par. in both the draft and final EA)

“Since the methods of wild horse population control are controversial among the public, based on comments, it is an inadequate range of alternatives not to consider the varying effects of different population controls to wild horse genetics, population size, and humane treatment of the horses through genetics, population size, and humane treatment of the horses through different alternatives using different population control methods. These are key issues for analysis.” (comment written on EA p. 8)

Re: the proposed alternative “Big Summit Wild Horse Territory should be enlarged”: We submitted a comment that we thought this would be a reasonable alternative that should have been fully analyzed in the EA “for the purpose and need of improving wild horse genetics and distribution.” (from comment written on EA p. 9) If it's true that the WFRHBA limits the management of wild horses and burros “to the areas where wild horses and burros were found in 1971, which is the area identified in the 1975 EA” (EA p. 9), why has the Forest Service been managing the wild horses that are outside the defined Big Summit Territory, and how can that capturing and removal management of wild horses outside of the Big Summit Territory be planned for the proposed action? By definition, capture and removal of wild horses outside of the designated Territory is “management” of wild horses outside of the designated Territory. Based

on this information, we are opposed to management of the wild horses outside of the designated Big Summit Territory.

The Forest Service should have also quoted the section of the WFRHBA that limits management of wild horses and burros to the territory occupied in 1971. Please send us a hard copy of the Wild Free-Roaming Horses and Burros Act, in full, by mail.

Re: the proposed alternative “Responding to Wild Horses in Crises”, we commented: “With the strong bias of Ochoco FS staff against wild horses [in the past as well as currently], it’s hard to trust them with broad rationales for subjectively determining how old, sick, or lame a wild horse should be to be “destroyed”.” (comment written on EA p. 9, with the same text on the final EA p.9) This is something the Forest Service should take seriously, allowing oversight, guidance, and any offered assistance from wild horse advocates on euthanasia decisions and other controversial aspects of the proposed wild horse herd management plan.

Re: the “Provide a Buffer to Ensure Survival of Population” suggested alternative—see par. 1 on EA p. 10. EA p. 10 is the same in both the draft and Final versions of the EA:

“This is a reasonable part of an action alternative which may or may not be seen by the commenter as addressed by alt. 3.” (comment written on EA p.10)

Re: the suggested alternative “The agency lacks expertise to manage wild horses. Forest Service should allow COWHC or others to implement wild horse herd management” (see EA p. 10):

“The agency does appear to either lack the expertise to manage wild horses or to ignore such expertise, which needs to be analyzed in the EA.” (comment written on EA p. 10) We suggest that there at least be oversight of wild horse management by the Forest Service by Central Oregon Wildhorse Coalition (as part of our proposed modified alternative) as the Wild Horse and Burro Advisory Group does not seem to be reining in the agency’s bias toward incremental extermination of the wild horses.

“So many relevant public concerns are being excluded from detailed analysis and alternatives that the FS is deepening the conflict between the agency and the public rather than resolving it.” (written comment on EA p. 10) NEPA requires the agency to attempt resolution of public and scientific conflicts through detailed analysis and modifications of proposed actions. Regarding lack of trust in the agency, there is no disclosure in the EA that the Further Consolidated Appropriations Act of 2020 placed a limitation on the funding appropriated by the act for both the BLM and FS so that funding is unavailable for the destruction of any healthy, unadopted wild horse and/or burro or the sale of a wild horse and/or burro “that results in the destruction of the animal for processing into a commercial product” (EA p. 11) because the Oregon Bureau of Land Management had a corruption scam that limited wild horse and burro “adoptions” to BLM friends, family, and staff who then turned around and killed and sold the wild horses for commercial meat product profits. Information like this is very important context that should have been disclosed in the EA. Our related comment: “Is this [the last bullet point text on EA p. 11] due to the BLM’s killing and sale of healthy unadopted wild horses...as meat—from OR BLM?” (comment written on EA p. 11, with the relevant text still on the final EA p. 11 with no revision)

Re: the “Modify the current livestock grazing practices” suggested alternative: “However this is a reasonable alternative that could potentially be adopted under the current allotment plans, as the permittee has already found it necessary to drop one half of the total allotment from grazing by their sheep for two consecutive years due to lack of sufficient forage and has done this voluntarily [according to the EA]. Thus adjustments like excluding the most damaged portions of riparian areas and active restoration could be acceptable, as well as shrub and riparian protection in the winter range not used by sheep” [or in other parts of the allotment where needed]. (comment written on EA p. 11, except for bracketed parts)

Regarding the following EA statement: “Conducting vegetation management and fuels treatments is outside the scope of the herd management plan and would require separate NEPA

analysis”: “Why should riparian restoration actions require separate NEPA analysis when this is a central agency concern re: wild horses?” (comment written on EA p. 10) Notably the Forest Service typically includes active riparian restoration with proposed timber sales under the guise of “Vegetation Management” projects or “restoration projects”, even though the riparian damage, as in this case, is generally the result of cumulative impacts from livestock over-grazing, past timber sales, and previous road construction. Further, the Ochoco NF is currently proposing unprecedented extensive vegetation management in the form of non-commercial thinning as part of the Sunflower allotment cluster reauthorization for cattle grazing. In that case we do feel that such extensive thinning and up to 21” dbh is in fact outside the scope of the grazing reauthorization plan. However the proposed inclusion of extensive tree thinning in a grazing allotment reauthorization shows the bias exercised against any alternative suggested for the wild horse management plan correcting identified riparian damage and diminishing forage by any means other than removing wild horses.

BMBP has commented on our objection regarding failure to consider and analyze viable proposed alternatives and key issues, with our comments quoted and cited above.

### Resolution

To remedy this problem, the Forest Service would either have to reissue a new Environmental Impact Statement offering a full range of alternatives as required by NEPA for public review and comment, or better meet our concerns expressed in our related comments above by designing a modified proposed alternative that would both retain a large enough number of wild horses for the AML (at least up to 135) for long-term genetic and numeric viability combined with the use of a publicly agreed technique to increase genetic diversity in the herd more quickly, such as by introducing new mares.

### **Failure to adequately analyze direct, indirect, and cumulative effects**

The Ochoco Wild Horse Management Plan demonstrates failure to adequately analyze environmental effects of the project throughout the document, including omissions and distortions such as the following addressed in our comments:

Comments addressing direct and indirect effects:

“Somehow the Forest Service is much more forthcoming about environmental impacts from wild horses than they are about similar or greater impacts from permitted livestock, and keeps neatly evading the question of how they are distinguishing wild horse impacts from sheep impacts—where’s the evidence?” (comment written on EA p. 7)

“Table 2 is based on the likely false premise that wild horses alone are responsible for unsatisfactory riparian conditions and that winter range riparian use levels are only derived from increased wild horse numbers, despite increased numbers of elk.” (comment written on EA p. 20)

“Sheep also prefer riparian forage. How is wild horse use of riparian forage and damage to riparian areas distinguished from sheep grazing, browsing, and damage?” (comment written on EA p. 3)

“Whether to allow future allotment permits to increase numbers of livestock should be very much within the scope of analysis as relevant to future effects to wild horses under different alternatives analysis.” (comment written on EA p. 8)

“The wild horse forage analysis for winter foraging stops short of calculating how many acres of forage each horse would need for forage for the duration of heavy snow and how much of that forage would be consumed by elk and deer. Ideal winter forage (preferred plants on flatter slopes

with less than 40% canopy closure as calculated on p. 32) would be about six acres per horse but this does not account for forage use by deer and elk or for horses ranging further outside the Forest Service-determined winter range during periods of snow melt and less snow.” (written on EA p. 32)

“This is a very reductionist analysis, seemingly designed to minimize the amount of winter forage available to wild horses. Wild horses, like most grazing animals, are opportunistic, and not confined to just ideal conditions for winter foraging (i.e. to only preferred forage plants and only to canopy closure less than 40% or even only to slopes less than 20%).” (written on EA p. 32)

“On EA p. 34, the Forest Service says that two Condition and Trend “clusters” were used for determining upland vegetation ratings in the Big Summit territory, as displayed in Figure 4 photos on p. 35. However, below the photos of these transects on p. 35, the analysis says that: ‘Because only one reading has occurred, no trend information is available from the data.’ Which is it? Data that can be legitimately used to determine a trend or not? Table 7 is useless for a consideration of forage trends. Yet Table 6 is used to determine trends in two locations based on only three “readings”. This section seems very muddled and confusing. There is not enough information to assess accuracy.” (comment written on EA p. 34) Pages 34 and 35 remain the same in the final EA, so the confusing analysis is still an issue.

“The use of sex ratios for population control needs more explanation and disclosure of concerns.” (written on EA p. 59) This problem remains as the letter accompanying the Draft Decision Notice promises no sex ratio manipulation, while the Draft Decision includes gelding of stallions and admits that this is sex ratio manipulation.

The draft EA p. 61 and the final EA p. 60 state: “Once the AML is reached, because of the increase in wildlife, in a below to average winter, exceedance of the Forest Plan allowable levels could still occur, however wildlife can roam outside of the Territory, where horses are required to remain inside the Territory year-round.” Our comment: “Don’t the wild horses ever jump the fences? Evidently some of them do ignore the ‘requirement’ to stay in the territory.” (written comment on EA p. 61) Elsewhere in the EA analysis and in the Response to Comments in the final EA, the Forest Service admits that the wild horses are found outside the Territory and that fences are sometimes down, allowing a larger range to be used by the wild horses, which would include winter use outside the Territory. This is a direct contradiction in the EA analysis, illustrating the bias inherent throughout the EA of contentions systematically used to support the proposed action regardless of internal contradictions from evidence on the ground or lack of evidence on the ground.

“How much damage to range “improvement” developments actually occurs due to wild horses? This seems like a made-up reason to reduce wild horse numbers and is not quantified, with no evidence that the damage is actually from wild horses.” (written on EA p. 74 and also re: par. 2 of the final EA p. 74)

“This is not necessarily true that additional or increased bait trapping will not have additional effects to aquatic species, their habitat, and hydrology ‘because the effects have already been realized’ as some bait trapping sites may have grown over again, better trapping sediment. Re-opening them may be like re-opening a healing wound.” (written on EA p. 117, with no change on the final EA p. 117)

“Also missing from the wild horse capture and adoption narrative is the amount of demand for adopting wild horses and the increasing cost of horse feed and declining demand for horses in general that occurred in eastern Oregon some years ago. These issues are important because they influence the agency’s desire to kill rather than adopt out wild horses. This needs to be disclosed and updated to the current situation.” (written on EA p. 30, with the final EA being the same)

Another one of our comments on inadequate direct and indirect effects analysis can be found in handwriting on EA p. 31.

There has been hardly any change in the final EA from the draft EA despite the enormous volume of impassioned comments from the public criticizing the wild horse herd management plan and the EA's analysis. Many of our concerns expressed in the comments reiterated in this objection (since the Forest Service evidently ignored most of them) echo other commenters' concerns expressed in their comments. This indicates a lack of interest in public concerns on the part of the Forest Service and their stubborn persistence in pushing their very unpopular and harmful proposed action. This resistance to modification of the EA and the proposed action stands in defiance of the intent of NEPA for the agency to respond meaningfully to public concerns and use comments to shape alternatives and modify proposed actions.

Comments addressing inadequate analysis of cumulative effects:

"...It seems like the Forest Service, in this case, is instead choosing this opportunity to use riparian damage from cumulative impacts of logging, road-building and use, and sheep (and past cattle) grazing to blame wild horses for riparian damage and get rid of as many as possible of the wild horses as scapegoats. While wild horses use riparian areas like other grazing animals and cause localized impacts by over-grazing and trampling stream banks, the Forest Service has not made a clear case that wild horses are primarily to blame for these existing conditions or that removing most of the wild horses will be enough to allow for riparian recovery." (from typed comment summary, p. 4)

"We are concerned by the current state of degraded conditions of some riparian areas in the Big Summit Territory (such as those pictured in the EA)...However we consider all of these impacts to be greatly compounded by ongoing sheep grazing and by severe legacy impacts from logging, road-building and past intensive and extensive over-grazing by thousands of sheep and cattle in the area, not just the consequence of wild horses there. The severe legacy damage in particular requires active restoration that should be part of the action alternatives for this wild horse management plan." (from typed comment summary, p. 6)

"Just listing sources of ongoing and foreseeable cumulative effects, as in Table 3, is not sufficient for NEPA-required cumulative effects analysis. Further subsuming past cumulative effects into the present effects is not justified as it acts to conceal and distract from past management mistakes (such as livestock overgrazing) that may then be continued without scrutiny—as with 2,200 sheep on already badly degraded allotments that were damaged for the long term by more overgrazing and then for recent years, by similar levels of livestock grazing on top of legacy damage with evident forage and riparian decline now attributed just to wild horses." (comment written on EA p. 23, which is the same in the final EA p. 23)

"With riparian conditions so bad, why hasn't the Forest Service taken more riparian restoration actions for the area? The existing conditions can't legitimately be blamed solely on wild horses with the extreme legacy damage from excessive sheep and cattle numbers, continuing stress from 2,200 sheep being grazed in the area (as opposed to only 135 wild horses), and past and current logging practices and wild fire suppression. Yet the Forest Service is now using bad riparian conditions to get rid of the horses." (comment written on EA p. 42, now on pages 41-42 of the final EA) We also made a similar comment on EA p. 113.

"Again, the analysis neglects to consider in detail the browsing, forage, and water use impacts from sheep and native ungulates in the same areas as where horse use occurs. For instance, elk and deer likely also use the "Winter Range" and also browse more heavily in the winter." (written on EA p. 43)

"Given admissions of other factors contributing to forage and riparian decline, why isn't the Forest Service addressing identified conifer encroachment in riparian areas, assessing the contribution to forage gains in the upland forage from the Canyon and HEJ timber sales, and

implementing needed riparian restoration to address legacy damage?” (comment written on EA p. 46, with most of the referenced same text now on final EA p. 45)

“Why are the wild horse cumulative effects discussions limited to only winter forage utilization population growth controls—fertility control drugs and permanent sterilization? This is inadequate cumulative effects analysis. (See p. 60)” (written on EA p. 60 and still on p. 60 in the final EA)

“The alternatives also need to be analyzed for cumulative effects to the viability, health, and persistence of the wild horse population, as well as to its wildness—not just to forage availability.” (comment written on EA p. 61, with the same text now spanning final EA pages 60-61)

“This is insufficient cumulative effects analysis for livestock grazing, as any beneficial or negative effects of the Canyon and HEJ [Howard Elliot Johnson] timber sales to livestock grazing (e.g. more forage availability being reasonably foreseeable) is not discussed at all, even though such consideration could make for a better prognosis for forage for both wild horses and sheep under all alternatives.” (comment written on EA p. 75, with the same text on the final EA p. 75)

“Given that timber sales like HEJ and Canyon should result in increased upland forage capacity for many years [which is not considered in detail in the cumulative effects analysis], ...and the fact that the forage use estimates are all based on above average snowfall, when average snowfall is likely to decrease overall under climate change, [which is also not analyzed under cumulative effects] a reasonable number for the wild horse AML could be 60-135 horses, with flexibility within that range according to the effects of changing environmental conditions, the overall health of the horse population, and the severity of damage—without sheep—to riparian areas and forage availability.” (written on EA p. 63, with the same paragraph of text on final EA p. 62 )

For context for the following comment, the EA text on p. 70 (in both the draft and final version of the EA) reads: “Grazing of domestic livestock (cattle, sheep, and horses) has occurred in the analysis area since the late 1800s. In both subject pastures within the analysis area, large bands of sheep (ranging from 1,000 to 3,000 ewe/lamb pairs) were grazed until after the establishment of the Ochoco National Forest in 1907....estimated that in 1906 a total of 340,000 sheep and 30,000 cattle and horses grazed the Western Division Blue Mountain Reserve (Hodgson, 1913). During this time, heavy livestock impacts to soil and vegetative resources were severe and these impacts continue to affect the ecosystems of the Ochoco National Forest.”

Our comment written on EA p. 70: “So legacy impacts to soils and plant cover and diversity from heavy livestock use (1906—340,000 sheep & 30,000 cattle & horses in the Ochoco) “were severe and these impacts continue to affect the ecosystems of the Ochoco National Forest.” (EA p. 70) So why are 125-135 wild horses being scapegoated for legacy livestock damage and current use by up to 2,200 sheep each year?”

“Climate change could be aggravating forage availability and quality [the effects of climate change are not analyzed in detail in the EA] as well as 2,200 sheep perhaps not being sustainable over the long-term on top of severe legacy damage continuing effects from hundreds of thousands of sheep and tens of thousands of cattle and horses across the Ochoco NF. The far fewer wild horses appear to be used as scapegoats for unsustainable livestock (sheep) use.” (comment written on EA p. 70) The EA notes that: “In 2017 and 2018, the permittee requested non-use due to resource concerns, to rest one pasture each year. Reduction in numbers in previous years was a result in the decrease in forage availability and forage quality, based on conversations with the current permittee and confirmed by vegetation data collected within the analysis area....” (EA p. 70)

“All the past apparent clearcutting to create even-aged timber farm pine plantations no doubt contributed a great deal to the lack of large woody debris, channel entrenchment, low pool formation, loss of access to flood plains, and increased sedimentation of streams. Road-building and use contributed to excess fine sediment. Thousands of sheep grazing likely contributed to

loss of shrubs, forage, and riparian plants—not just the horses.” (written on EA p. 113, with the relevant text still on the final EA p. 113)

“A lot of the stream riparian damage sounds like it is based on legacy damage from a combination of past overgrazing by livestock, road construction, and logging that won’t heal or recover due to continued pressure from both sheep and wild horse grazing use and possibly due also to increased numbers of native ungulates [i.e. elk].” (comment written on EA p. 115, which is the same in the final EA) This legacy damage is confirmed by the EA: “Poor riparian vegetation conditions across the Ochoco National Forest have resulted from historic logging practices, road building and channel incision which caused a lowering of local water tables in the riparian zone.” (EA p. 114)

“Why is there no recorded data in Table 4 regarding how many wild horses captured and hauled were adopted and how many killed for most of the years covered? These include 1981-2012! Is this to cover up the killing and selling for meat of wild horses at the BLM corrals? Why are there no comments [analysis] as to the reasons for capture and removal for many years? (All years except 1993, 2003, 2005, 2015, 2016, and 2017.)” (comment written on EA p. 29, with the same Table on the final EA p. 29 with a modified footnote; see also our last comment written on EA p. 11) This comment raises the issue of cumulative effects of wild horse removals and killings to the current poor genetic viability of the existing horse herd and also the issue of not disclosing extreme bias on the part of the BLM and the Forest Service against the wild horses, including no disclosure in the EA analysis of the well- publicized BLM corruption scandal of “adopting” out wild horses only to family, friends, and staff of BLM in order to send them to slaughter for commercial meat products. Notably, this BLM orchestrated commercial slaughter of wild horses led to the riders limiting sales of wild horses to sales with limitations, which the proposed action now proposes to violate by allowing sales of wild horses with no limitations. Missing contextual information in the EA analysis is key to the Forest Service’s effort to slip in components of the proposed action such as sales of horses without limitations and vague broad criteria for euthanizing wild horses.

“The Ochoco Summit OHV trail project, like the Blue Mountain Forest Resiliency project, has been dropped and should not be included as a cumulative effect.” (Both defunct projects are listed for foreseeable future cumulative effects.) (comment written on EA p. 118, with the final EA p. 118 remaining the same)

#### Resolution:

BMBP has commented on its objection to the Ochoco Wild Horse Management Plan EA’s failure to adequately analyze direct, indirect, and cumulative effects of a range of management impacts on various receptors.

See our comment quotations and citations in the paragraph above and references to inadequate analysis in comments quoted in other sections of this objection.

To resolve this objection, an Environmental Impact Statement needs to be prepared that adequately analyzes direct and indirect effects of the Wild Horse Management Plan, and cumulative effects of the project in combination with past, ongoing, and reasonably foreseeable future actions to NEPA standards, with a public comment period to enable informed public comment and agency review.

#### **Failure to use best available science and inaccurate use of the science**

There are numerous instances in the Wild Horse Management Plan of analysis not reflecting the full range of best available science or using science inaccurately. Examples of failure to use best available science and inaccurately using science from our comments:

Failure to use best available science:

“Two recent studies of the wild horses in the BST indicated low genetic variability (Cochran 2011 and Mills 2010). Low genetic variability can lead to lowered resilience and increased expression of recessive traits. According to the National Academy of Sciences, ‘Theoretical and empirical studies have demonstrated substantial fitness costs associated with the loss of genetic diversity in both free-ranging and captive populations....Isolation and small population size, in combination with the effects of genetic drift, may reduce genetic diversity to the point where herds suffer from the reduced fitness often associated with inbreeding. That would compromise the ability of herds to persist under changing environmental conditions.’” (EA p. 2)

“So from our point of view, the best available science contradicts Forest Service plans to reduce the wild herd size to only 12 to 57 animals, which is far too low to ensure genetic viability and individual horse health and fitness and is contrary to the intent of the Wild Free-Roaming Horses and Burros Act’s intent to protect the wild horses and burros from extirpation and from removal of most of them from the wild, as well as from inhumane treatment.” (comment from our typed summary of comments, p. 2) We made a similar comment written on EA p. 2.

“Notably there is no guarantee of genetic viability given for Alternative 2. Experts would no doubt advise a much higher herd number of wild horses to achieve and sustain genetic viability and wild horse health and fitness, as that is consistent with the best available science. This is a biased assessment for the foreseeable outcome of Alt. 2 for genetic variability and typical Forest Service blackmail in not allowing for new wild horse mares to be introduced to improve genetic variability under Alt. 3.” (comment written on EA p. 20, with the same text in the final EA on pages 19-20)

“So is more information being gathered on Big Summit wild horse genetics before specific management actions are recommended, as advised by Cothran (2011)? Evidently not. [In fact, the Forest Service used a Categorical Exclusion to rush the fertility control application of mares in the herd before any more genetic sampling was done for the Big Summit herd, with little opportunity for public response and no opportunity for members of the public to file objections and negotiate with the agency.] The genetics discussion ends there. This is failure to follow best available science (Cothran 2011) and inadequate analysis.” (comment written on EA p. 33, with the same text on the final EA p. 33)

“We want to hear directly from genetics experts and wild horse population experts whether a range of 60-135 wild horses as an AML would maintain the long-term viability of the herd if outside mares were introduced.” (comment written on EA p. 63, with the text now on the final EA p. 62)

Inaccurate use of the Science:

“What was the original biological basis (from Conservation Biology) for only allowing 55 to 65 (or later 60) wild horses to persist in this territory?” (comment written on EA p. 3, same in both draft and final EA versions)

“Does the herd’s relatively low rate of growth per year—7-8%—account for mortality rate? If the growth rate overall is 7-8% a year, what was the herd size in 1975 and 1989? It’s been 30 years since 1990. This does imply a doubling of the population in that time if mortality does not exceed production—if the herd size in 1990 was at least 63 horses or more. If the wild horse population in the Big Summit territory was in 1990 more than 63-67 horses (for 125-135 horses now), then the overall growth rate of the herd is actually less than 7%, incorporating variability over the last 30 years. Variability of the growth rate over a longer period of time needs to be taken into account.” (comment written on EA p. 4, same text on p. 4 of the final EA)

Based on other statements in the EA, apparently mortality was not taken into account, making the estimate of average herd growth rate fundamentally flawed, regardless of whether my math above is accurate. Further, the herd population has been stabilizing at about 130 horses, which indicates a recent balance not reflected in the assumed 7-8% growth rate, let alone a 20% growth rate.

Although the EA earlier admitted that the actual rate of population growth for the Big Summit territory herd has only been 7-8% a year in recent years, as referenced above, the EA analysis nonetheless uses the higher 20% rate of population growth cited for different wild horse herds in order to claim a higher number of horses would have to be captured and removed every year to maintain AML levels: “Once the AML is within the range (in up to 5 years) given the common wild horse population growth rate of 20 percent, around 10 head of horses would need to be captured annually or 20 to 25 head of horses would need to be captured every other year to maintain AML if fertility control methods are unsuccessful at reducing population growth rates....” (EA p. 58, emphasis ours, with the same text on the final EA p. 57) Our related comment: “Yet the Big Summit wild horse population growth has been observed to be only about 6-7% [or 7-8%] annual growth, not 20%, so a 20% increase should not be assumed in the analysis. (See p. 58, par. 2.) This biases the analysis to more frequent wild horse removal.” (written on EA p. 58)

“The wild horse forage analysis for winter foraging stops short of calculating how many acres of forage each horse would need for forage for the duration of heavy snow, and how much of that forage would be consumed by elk and deer.”

“Ideal winter forage (preferred plants on flatter slopes with less than 40% canopy closure as calculated on p. 32) would be about 6 acres per horse but this does not account for forage use by deer and elk or for horses ranging further outside of the Forest Service-determined winter range during periods of snow melt and less snow.”

(comments written on EA p. 32, with same text on p. 32 of the final EA)

“It appears that only two sites in one kind of forest habitat are being used to characterize forage conditions over the whole Big Summit wild horse territory of 25,434 acres. This is incredible misuse of the science, with far too small and limited sample size.” (written comment on EA p. 36)

“The calculations for forage needed by wild horses per horse per each month (out of 12 months) and per each ewe/lamb pair per each month (out of 3.5 months of permitted grazing) don’t seem to pencil out as accurate comparisons. Assuming that three ewe/lamb pairs are the equivalent of one wild horse in forage consumption (which is suggested in the EA), each three ewe/ lamb pairs are calculated (based on Table 17) to be allocated about 153.2 pounds of forage per month of use, while the one wild horse equivalent to these three ewe/lamb pairs is strangely allocated about twice as much (about 301 pounds per wild horse per each of 12 months.) Unless I’ve miscalculated or am missing something, the forage calculations in Table 17 are artificially inflating the amount of forage needed by 65 wild horses, as compared with three pairs of ewes and lambs equivalent for forage consumption.” (written on EA p. 53, with Table 17 the same and the same text spanning pages 52 and 53 of the final EA)

“Right, so there’s 2,200 ewe/lamb pairs using almost all of the Big Summit territory and the lack of forage available and the riparian damage is being mostly blamed on only 125-135 wild horses? This is arbitrary and capricious (ridiculous).... sheep graze to much shorter stubble heights than horses.” (comment written on EA p. 68, with the relevant range text and Table 21 still on the final EA p. 68)

“Given that there have been no formal surveys to measure sedimentation in the territory, there is likely no credible way for the Forest Service to attribute excess sediment and turbidity to wild horses—at least not in a quantified or percentage manner--relative to the sheep using the area and

to legacy livestock impacts.” (comment written on EA p. 118, with same text on the final EA p. 118)

### Resolution

BMBP has commented on its objection to the ONF’s failure to use best available science and inaccurate use of the science in the Wild Horse Management Plan analysis. See our comment citations and quotations in the paragraphs above.

In order for the Wild Horse Management Plan to comply with NEPA, the Forest Service needs to incorporate the requisite best available science and use the science accurately, with professional integrity in analysis in an EIS available for public comment for the Wild Horse Herd Management Plan to better and more accurately inform public comments, agency review, and decision-making.

Failure to Disclose Methodology for Key Assumptions:

“On EA page 34, the Forest Service says that two Condition and Trend “clusters” were used for determining upland vegetation ratings in the Big Summit territory, as displayed in Figure 4 photos on p. 35. However, below the photos of these transects on p. 35, the analysis says that: ‘Because only one reading has occurred, no trend information is available from the data.’ Which is it? Data that can be legitimately used to determine a trend or not? Table 7 is useless for a condition of forage trends. Yet Table 6 is used to determine trends in two locations based on only three “readings.” This section seems very muddled and confusing. There is not enough information to assess accuracy.” (comment written on EA p. 34, with the same text on the final EA p. 34)

“The EA fails to fully explain the methodology of ‘Nested Frequency’ transects used or even to describe their interpretation of the Canyon Creek transect photos of p. 35. A lot of fundamental information for interpretation is missing: for instance, were the photos from 1964, 2004 and 2015 all taken at the same time of year? Photos taken in the spring would naturally look a lot greener and more lush than photos taken during the dry late summer period. It’s very unclear what the significance of Table 7 is supposed to be.” (comment written on EA p. 35, with the same content on the final EA p. 35)

“See discussion on EA p. 36, par. 1. Further, there is no explanation of how the “downward trend” was determined, which is apparently necessary for a “Fair” condition (see Table 6, p. 34) to be deemed unsatisfactory in the LRMP.” (comment written on EA p. 36, which is the same as the final EA p. 36)

“How are forage need pounds calculated for elk and deer, and based on what numbers of elk and deer in the Territory? Why are wild horse forage pounds calculated at so much higher than 2,200 sheep, at only 65 wild horses in Table 17? Why is the methodology for these key calculations not disclosed, as required by NEPA?” (comment written on EA p. 53, with the same text now on both pages 52 and 53 in the final EA)

### Resolution

BMBP has commented on the objection of Failure to Disclose Methodology for Key Assumptions. See our comments quoted and cited above.

To resolve this objection, a full Environmental Impact Statement needs to be prepared for this wild horse herd management plan, with methodology for key assumptions fully disclosed.

## **II. National Forest Management Act Violations**

The Wild Horse Management Plan violates the National Forest Management Act in the following ways: failure to ensure the viability of Management Indicator and other species, including the focal Wild Horse species. The Forest Service is in potential violation of Forest Plan INFISH standards and guidelines for riparian area (RHCA) protection and of the Wild Free-Roaming Horses and Burros Act, as it is incorporated in the Forest Plan, through proposed actions. The Forest Plan requires adherence to INFISH requirements, including moving toward attainment of Riparian Management Objectives in forest areas, and protection of wild horse herds in their designated territories, as mandated by the Wild Free-Roaming Horses and Burros Act.

#### **Failure to ensure the viability of Management Indicator Species (MIS)**

Our comments noted many areas of analysis in which the Black Mountain EIS failed to demonstrate that the viability of Management Indicator (MIS) and Sensitive species would be ensured with project implementation. Species of concern for protection of viability included the following Management Indicator species: Sensitive Redband trout. We are also concerned about failure to ensure viability of Sensitive -listed species on the Forest, including Sensitive Columbia Spotted frog and Sensitive-listed Redband trout.

The Forest Service has legal responsibilities to protect the viability of Management Indicator and Sensitive species, but not to increase forage for sheep (and likely enable more continuous sheep grazing during seasons otherwise vacated) by removing the far fewer horses as an overriding goal. It's not appropriate or legally justifiable to keep reducing Management Indicator species' suitable habitat (e.g. Redband trout) in project after project, even after that species is considered to be declining ("Sensitive") by the Forest Service. The EIS did not include adequate cumulative effects analysis as to all these reductions of suitable habitat for MIS Redband trout and Sensitive Columbia Spotted frog across the Forest. (See our objection and comments above regarding inadequate cumulative effects analysis.) It is not justifiable to plan for continued impacts and cumulative potential loss of species viability for a Management Indicator species (e.g. Redband trout) based on "long-term" theoretical re-growth of suitable habitat eventually, as the species' viability may be lost before the habitat can grow back—especially given continued sheep grazing and likely planned timber sales in the same area in the future, and the decades suitable riparian habitat structure would take to re-develop. We asked the Forest Service to adopt a modified alternative that would incorporate active riparian restoration to address stated Forest Service concerns in the Wild Horse Management Plan EA regarding degraded riparian conditions but they did not consider this viable alternative component in depth. This indicates their primary motive is to get rid of as many wild horses as possible, not to significantly restore stream functioning from legacy riparian damage from multiple types of mis-management, including over-grazing by sheep, timber sales, and road construction.

Examples of how our comments express these concerns regarding the failure to ensure the viability of Management Indicator and other species:

Re: Wild Horse population viability:

First, here are quotes from the EA on p. 33 for science context:

"The maintenance of genetic diversity in a population is a function of the genetic effective population size....It was originally thought that an effective population size of at least 50 was necessary to avoid short-term inbreeding depression, but empirical work suggest (sic) that if maintenance of fitness is important, effective population sizes much larger than 50 are necessary....it can easily be argued that maintenance of genetic health of a wild horse herd is required in order to meet the 'thriving natural ecological balance' standard of the Act...." (citing

the 2013 National Research Council's synthesis chapter for Genetic Diversity in Free-Ranging Horse and Burro Populations, on EA p. 33)

"The Alternative 2 AML range fails to ensure a viable population of wild horses into the future. The low end of the acceptable AML is ludicrous at only 12. The high end of the AML is still not high enough to ensure genetic diversity and future viability of the population. One severe winter or drought could easily eliminate all 57 wild horses or reduce the population to an even less viable lower number. This is an extirpation plan." (comment written on EA p. 15, with the same text with minor additions with no bearing on our comment on the final EA pages 15 and 16)

"Only 12 horses (or any number below 50) is not acceptable as a target management level [range] for the population as these are clearly too low for a viable population into the future." (comment written on EA p. 58, with this text on the final EA pages 57-58)

"Contraception could lead to decreased genetic diversity. Sterilization of studs would further decrease genetic diversity. We are strongly opposed to permanent sterilization." (comments written on EA p. 17 with the same text referenced on the same page in the final EA)

Re: Columbia spotted frog and Redband trout viability:

"...the EA identifies primarily long-term legacy impacts to Redband trout and Columbia spotted frog and does not single out wild horse use as a primary factor: 'Over the past 50 years (Stuart et al. 2007), lower numbers of Redband trout have resulted from the cumulative effects of loss of riparian vegetation (particularly hardwood trees), bank erosion, increased sedimentation (which can suffocate incubating trout eggs), entrenched streams, loss of beaver and woody debris, and altered stream channels.' (EA p. 112)" (comment from typed summary of our comments, p. 3)

"Regarding Columbia spotted frogs: 'The causes of decline are not fully understood, but like most amphibians, a major threat is the destruction, fragmentation and degradation of streams and wetlands. Land use activities have initiated or accelerated the channel incision process, which has changed the hydrologic function of meadow systems (USFWS 2011). These changes in the hydrology of meadows, mainly the lowering of the water table, can cause the vegetation communities to shift from wet meadow communities to dry upland plant communities. The loss of meadow complexes reduces the available habitat for Columbia spotted frogs.'" (EA p. 112)

"With all this acknowledged long-term degradation of stream and meadow systems and habitat for Redband trout and Columbia spotted frog, why is there no discussion in the EA of Forest Service riparian restoration efforts within the Big Summit wild horse territory? Evidently the Forest Service has been aware of these conditions for many years. The usual response by Forest Service staff on other National Forests (e.g. the Deschutes and the Malheur) is to propose and implement active riparian restoration to start repairing the legacy degradation. It seems like the Forest Service, in this case, is instead choosing this opportunity to use riparian damage from cumulative impacts of logging, road-building and use, and sheep (and past cattle) grazing to blame wild horses for riparian damage and get rid of as many as possible of the wild horses as scapegoats. While wild horses use riparian areas like other grazing animals and cause localized impacts by over-grazing and trampling stream banks, the Forest Service has not made a clear case that wild horses are primarily to blame for these existing conditions or that removing most of the wild horses will be enough to allow for riparian recovery." (from typed comment summary, p. 4)

"Why have no formal surveys for Columbia spotted frog been done in the Big Summit territory despite declining habitat conditions—and no apparent restoration work either?"

"It's impossible to maintain the viability of a species (e.g. Columbia Spotted frog) in the absence of information as to population size, distribution, growth rate, life history, diversity and isolation [of the population], and persistence in the Territory subwatersheds. This violates NFMA species viability requirements and ESA prevention of species uplisting [requirements]."

“With all this acknowledged degradation of stream systems and habitat for Redband trout and Columbia spotted frog, why is there no discussion of Forest Service riparian restoration efforts within the Big Summit wild horse territory? It seems like the Forest Service is choosing this opportunity to use riparian damage from cumulative impacts of logging, road-building and use, and sheep (and past cattle) grazing to blame and get rid of the wild horses as scape-goats.” (all above comments were written on EA p. 113, with the same text on the final EA p. 113)

### Resolution

BMBP has commented on its objection to the ONF’s failure to provide for viability of Management Indicator and other species in the Wild Horse Management Plan. See our comment citations and sample quotes in the above paragraphs.

Resolution of this issue would include:

Re: Columbia spotted frog and Redband trout:

- \* Incorporate needed active riparian restoration in the chosen alternative to help restore degraded riparian conditions where needed to improve Redband trout, Columbia spotted frog, and other aquatic or riparian species’ habitat in the Big Summit wild horse territory.

- \* “The most degraded riparian areas need exclusion fencing to keep out both sheep and horses and need active restoration. The badly degraded riparian areas in this territory are not new; I witnessed them in the [late] 1990’s [and/or the early 2000’s]. They reflect a legacy of overgrazing by livestock, logging impacts, wildfire suppression, plus continued livestock use, yet the FS has failed to take strong enough measures to restore the riparian zones and prevent livestock and other management [-caused] ongoing damage for decades.” (our comment, written on EA p. 43)

- \* “The Forest Service has the latitude to reduce livestock numbers as livestock use is a privilege, not a right, but not to start exterminating wildlife or wild horses. However the FS could use exclusion fencing in the most damaged areas to divert wildlife, wild horses, and livestock from the most damaged riparian stretches and allow for riparian rest and active restoration....” (comment written on EA p. 46)

- \* Reduce the number of sheep allowed to graze or restrict their season of use (e.g. no winter, early Spring, or fall use) or exclude the sheep fully from damaged riparian areas in order to allow the riparian areas to recover from legacy cumulative effects damage in a reasonable time frame with reduced overall grazing pressure or passive recovery.

- \* Begin formal scientific surveys and population studies to assess the population status, population growth, and reproductive success for MIS and Sensitive Redband trout and Sensitive Columbia spotted frog in the Big Summit Wild Horse Territory (and hopefully throughout the Ochoco NF) in order to assess their viability thresholds and ensure the species’ viability.

Remedies re: maintaining the viability of the desirable and focal wild horse species:

- \* Allow the wild horse population to persist at a relatively stable population of 130 horses plus or minus, which means at least up to 135 horses before any trigger to remove horses and a lower range of no lower than 60 horses. Below 60 horses should be seen as a sign that the herd may not be thriving and lacks the genetic diversity needed to be a viable population, as well as the numbers to reliably survive more extreme climatic conditions such as extended drought.

- \* The Forest Service needs to do much more thorough genetic testing of the herd. So far the testing of individual bands may simply be showing the lack of genetic diversity characteristic of small family bands. The Forest Service should use the full range of humane genetic testing methods, such as by sending diverse fecal samples to a scientist with volunteer support.

- \* The Forest Service needs to consider the latest research findings regarding physical and social behavior side effects of the proposed fertility control drug PZP before using it again, and of the

GonaCon drug if it is proposed for use, and not use these fertility controls if they are too harmful to individual mares and foals or for natural herd social structure and behavior.

\* The Forest Service needs to abandon their plan to castrate (geld) stallions, as this would be altering the sex/gender ratio, which the agency says they won't do under the Draft Decision. Gelding would also disrupt patterns of wild horse social behavior and herd structure. Gelding stallions also would not have the effect of reducing population growth but would alter herd social structure. Our related comment on our typed summary, p. 5: "Permanent sterilization can change a wild horse herd's social behavior and lead to younger stallions superseding older breeding stallions, with breeding occurring anyway. Sterilization is thus contrary to supporting the wild character of the herds."

\*Monitor the effects of introducing the mares from other areas for the mares already introduced before introducing more outside mares. Find a well-informed wild horse group or scientist to assess the effects of introduced mares to herd structure and to the mares themselves.

\*Stop removing wild horses just because they are outside the artificially defined wild horse territory. "Why is removal of horses outside the Territory prioritized? These wild horses may be establishing a larger (needed) territory or new territories, either of which relieve forage pressure limitations within the artificially defined territory." (comment written on EA p. 16)

\*The Forest Service needs to tighten and clarify their criteria for using euthanasia so that only severely injured or diseased horses that are not likely to survive are euthanized—and only if no one is willing to give them medical attention as part of adoption. The age of the horse or the horse's behavior should not be sufficient criteria to euthanize the horse. Some un-adoptable horses could be released after bait trapping.

Our related comments written on EA p. 17: "How are 'failing health', 'infirmness', and 'disease' defined as criteria for killing wild horses? These criteria are too subjective and not in keeping with the 'most minimal management feasible.'" "Impairment of freedom of movement is too broad and subjective." "This is an oddly broad definition of 'old' that goes beyond age. How many years of age defines 'old'? Based on this, there is no definite age threshold for 'old' determination." Our related comments written on EA p. 4: "'Sick, lame, or old horses or public safety concerns' is far too broad a category for horses to be killed (the euphemism being used for killing is 'effectively and humanely managing situations', which is far too similar to managerial euphemisms used by the Nazis for mass murder of Jewish people.)" "How sick qualifies for killing? It should only be sick enough that the horse is likely to die soon. Old and lame horses could simply be released. Lameness is curable." Part of the herd's wildness includes wild horse mortality, such as sick, lame, and old horses being taken down, killed, and eaten by wild predators.

\*We want the Forest Service to establish monitoring of any decision to euthanize wild horses by an outside group supportive of wild horses, such as the Central Oregon Wild Horse Coalition. We are skeptical of the objectivity of the Wild Horse and Burro Advisory Board, given the Forest Service proposed alternative. Our related comment: "Who is on the Wild Horse and Burro Advisory Board? How diverse is the representation on this board?" (comment written on EA p. 17) Other wild horse advocates have supported this concern in more specific terms in their comments.

\*Drop planned use of helicopters for gathers and bait trapping as this method is particularly harmful to the wild horses and difficult to operate safely or effectively in the forest conditions. Our related comment on our typed comment summary, p 5: "Helicopter use for rounding up wild horses can create a high level of stress in the horses and increase potential injuries when they enter the holding corral. Helicopter use in the Big Summit territory has also proven ineffective due to the natural forest cover, which will be a continuing condition."

\* "'Excess' sound wild horses over a publicly agreed wild horse population size for this area could simply be given away (adopted) to local ranchers and others desiring to have horses for

humane personal use—but with restrictions and monitoring to ensure humane use and care.”  
(comment for a potential partial remedy written on EA p. 4)

Re: Redband trout and Columbia Spotted frog: See also recommended remedies below, under Forest Plan violations—INFISH.

### **Other Forest Plan violations**

Additional potential Forest Plan violations in the Wild Horse Herd Management Plan include potential violations of Forest Plan standards by allowing further delay of attainment of INFISH/PACFISH Riparian Management Objectives (RMOs) by not planning to implement active riparian restoration for areas with significant legacy damage; and not following management guidance for wild horse herds.

### **INFISH Violations**

The EA gives cause for concern regarding INFISH violations: “...measurements from Blevins and Duncan Creeks have highlighted an increasing trend in stream temperatures though these average maximum values have not exceeded RMO thresholds for adult holding water habitat. Some of the streams that exhibit a decreasing trend in stream temperature continue to exceed the RMO threshold for adult holding water habitat of 59 degrees F. Ochoco Creek, Canyon Creek, and Howard Creek are currently 303d listed for water temperature.” (EA p. 114)

Our comments on potential Forest Plan violation regarding failure to demonstrate adherence to INFISH Riparian Management Objectives (RMOs) state our concerns. See BMBP comments quoted and cited above under NFMA regarding the continued viability concerns for Redband trout and Columbia spotted frog and specific comment references to INFISH RMOs below: “Much more will be needed for attainment of RMOs than just reducing the number of wild horses [which is likely to have only an insignificant effect]. There will also need to be rest for damaged riparian areas from sheep use, active riparian restoration to deal with head-cuts, lack of large wood, and [lack of] stream bank stability, as well as exclusion fencing of damaged areas and cages for shrubs and riparian hardwood trees as well as riparian hardwood planting.” (comment written on EA p. 120 with the exception of bracketed clarifications)

“We feel that our proposed alternative described above strikes a balance between ensuring viability of wild horses on the Big Summit Territory into the future and taking action to restore riparian conditions to INFISH/ Forest Plan standards and to reduce overall forage consumption to ensure the health of the wild horse herds and the elk and deer to survive most winters and to meet Forest Plan standards, as well as the intent and requirements of the Wild Free-Roaming Horses and Burros Act.” (comment in our typed comment summary, p. 5, with minor modifications)

### **Resolution**

BMBP has commented on the Wild Horse Management Plan’s potential violations of INFISH Riparian Management Objectives. See our comments cited and quoted above.

To resolve this objection, the Forest Service needs to:

- \* Incorporate needed active riparian restoration in the chosen alternative to help restore degraded riparian conditions where needed to improve Redband trout, Columbia spotted frog, and other aquatic or riparian species’ habitat in the Big Summit wild horse territory.

- \* “The most degraded riparian areas need exclusion fencing to keep out both sheep and horses and need active restoration. The badly degraded riparian areas in this territory are not new; I witnessed them in the [late] 1990’s [and/or the early 2000’s]. They reflect a legacy of overgrazing by livestock, logging impacts, wildfire suppression, plus continued livestock use, yet

the FS has failed to take strong enough measures to restore the riparian zones and prevent livestock and other management [-caused] ongoing damage for decades.” (our comment, written on EA p. 43)

\* “The Forest Service has the latitude to reduce livestock numbers as livestock use is a privilege, not a right, but not to start exterminating wildlife or wild horses. However the FS could use exclusion fencing in the most damaged areas to divert wildlife, wild horses, and livestock from the most damaged riparian stretches and allow for riparian rest and active restoration....”

(comment written on EA p. 46)

\*Reduce the number of sheep allowed to graze or restrict their season of use (e.g. no winter, early Spring, or fall use) or exclude the sheep fully from damaged riparian areas in order to allow the riparian areas to recover from legacy cumulative effects damage in a reasonable time frame with reduced overall grazing pressure or passive recovery.

\* A supporting comment for these remedies: “Our proposed alternative also includes all of the following:...incorporation of implementing active riparian restoration, including temporary exclusion fencing and native shrub planting in the most damaged areas; prohibiting permitted sheep use of the winter range to reduce overall forage consumption; consideration of reducing sheep numbers permitted in the Big Summit Territory during the next allotment renewal process....” (comment in our typed summary on p. 5)

### **Forest Plan Management Area Guidance Violations**

“Planning guidance instructs the Forest Service to list all ‘acceptable methods of control,’ as well as the extent of natural predation occurring within the territory.” (EA p. 8) The Forest Service has evidently neglected to monitor the extent of natural predation occurring within the Territory, instead only responding to multiple comments regarding this by merely speculating by saying “There is potential for wolves, cougars, and/or bears to occur in the project area. These animals may opportunistically predate on wild horses, though this would likely be a rare or abnormal occurrence, and even then is likely only to occur on young or sick/injured horses. There is little evidence of predation on the herd as a factor affecting population growth (EA p. 27).” (Response on final EA pages 293-294) Anyone could have said that off the top of their head. This response indicates a complete lack of analysis on the extent of predation, with no attempt to find and cite relevant scientific studies, much less to get out in the field and look for evidence of natural predation. The wild horse advocates monitoring the wild horse herd have found both wolf and cougar tracks in the territory. There is no reason to assume that predation by cougars on wild horses, in particular, would be “a rare or abnormal occurrence”. The Forest Service did not follow management guidance to determine the extent of natural predation occurring within the territory.

Notably, the EA notes that: “Ultimately, these free-roaming horses established their territories around Round Mountain and their numbers were kept at around 60 horses by local “horse chasers”, natural deaths and predators. (USDA Forest Service, 1975a).” (EA p. 26) Predators were then listed as a cause of the wild horses remaining at only about 60 horses. “Horse chasers” were an unnatural cause of wild horse removals and deaths at the time, artificially keeping the wild horse number around 60. Wild horse chasing is a euphemism for a highly popular pursuit of capturing wild horses for private ownership and training or for brutally rounding up wild horses for commercial meat sale. The take away here is that without artificial removal and killing of wild horses by people and probably fewer large predators today than in the early 1970’s, the wild horse numbers averaged about 60. However today, with no private round-ups of the horses for

use, sale, or sale as meat, the wild horse herd in the Big Summit area stabilizes at about 130 wild horses, give or take about 5 horses.

“With the passage of the Wild Free-Roaming Horses and Burros Act (WFRHBA) in 1971, the Forest Service and BLM were required to manage unbranded and unclaimed wild horses and burros in the areas where they were found (in 1971) as an integral part of the national system of public lands.” (EA p. 2 in both draft and final versions, emphasis ours) And stated again in the EA: “The Act also directed the Secretaries to designate specific areas on public lands for management and protection of horses. Any horses that were unbranded and unclaimed on designated public lands at the passing of the Act, would be protected and managed.” (EA p. 26) And stated on p. 55 of the EA: “The Act limits agency authority to manage for horses to where they occurred at the time of enactment.” Evidently there is no mandate or direction for the Forest Service to manage wild horses outside their designated territory, based on “the areas where they were found (in 1971)”, which in this case is the Big Summit Territory area. Therefore we ask the Forest Service to stop capturing and removing wild horses from outside the Big Summit Territory boundaries. Our supporting comments follow: “Why is it considered necessary to re-locate wild horses outside of the Territory to back inside the Territory? These are meant to be wild populations under the WFRHB Act, not confined horses. The FS should have no liability for wild horses that roam outside the Territory.... This seems to be more based on an obsession of the agency to manage the wild horses to benefit cattle in nearby allotments than any legal requirement to prioritize relocation of wild horses to the territory....” (comment written on EA p. 65, with the same text on the final EA p. 64) “Why is removal of horses outside the Territory prioritized? These wild horses may be establishing a larger (needed) territory or new territories, either of which relieve forage pressure limitations within the artificially defined territory.” (comment written on EA p. 16 with most of the same text on the final EA p. 16 and some on p. 17)

BMBP has commented on the potential Forest Plan violation of not following management area intent regarding the Forest Service and the BLM only being directed or mandated to manage wild horses within their original defined territory as determined by their presence within those boundaries in 1971. See our comments cited and quoted above.

#### Resolution:

\*The Forest Service needs to stop removing wild horses that are outside the defined wild horse territory, as the Forest Service is not directed or mandated to manage wild horses outside the designated wild horse territory.

\*The Forest Service needs to prepare a full Environmental Impact Statement that includes analysis of the extent of natural predation on wild horses in the Big Summit territory based on field evidence of predators or predation and consideration of any relevant scientific field studies in other wild horse territories. (This is a suggestion, as we apparently don't have comments directly on this issue, although we do frequently reference natural mortality.)

### **III. Violations of the Wild Free-Roaming Horses and Burros Act:**

See our comments and objection regarding violations of the Wild Free-Roaming Horses and Burros Act below.

“The EA admits (p. 55) that: “Utilization monitoring data in three sites in the winter range prior to 2010 when horse numbers were within the AML range [55-65], has been consistently been below 30% utilization with one exception.” The Forest Plan allowable use level for forage in the winter range area, for providing for the needs of all wildlife species needs, is 30%. This means that wild horse numbers up to at least 65 are compatible with total winter range forage use below the Forest Plan 30% utilization standard for average winter conditions. Thus there is no reason to drive wild horse numbers down to only a 12 to 57 wild horse AML range, as in the Forest Service’s preferred alternative, which would virtually guarantee eventual extirpation of the wild horse population in the Big Summit Territory. A dozen or more wild horses could easily perish in one severe winter or one extreme drought year and larger numbers of wild horses are needed for long-term genetic variability and associated horse health. The proposed action alternative is inconsistent with the purpose and need of improving wild horse genetic diversity and ensuring the health and fitness of the wild horse herds into the future and would violate the Wild Free-Roaming Horse and Burro Act and the Forest Plan, including with regard to wild horses being part of the multiple uses of the Forest to be protected. It is not honoring and maintaining the wildness of the wild horse herds to remove so many wild horses that the population is no longer viable (as under alternatives 1 and 2) and by transforming most of the wild horses into tame or dead horses.” (comment from our typed comment summary, p. 4)

“The Alt. 2 AML range fails to ensure a viable population of wild horses into the future. The low end of the [chosen] AML is ludicrous at only 12. The high end of the AML is still not high enough to ensure genetic diversity and future viability of the population. One severe winter or drought could easily eliminate all 57 wild horses or reduce the population to an even less viable lower number. This is an extirpation plan.” (comment written on EA p.15, with the same text still on final EA p. 15)

Regarding the proposed introduction of young mares from similar habitats to increase genetic variability of the herd: “This would not be enough to ensure genetic diversity and population viability into the future.” (comment written on EA p. 16, with the same referenced text on p. 16 of the final EA)

“While the EA occasionally admits that historic livestock grazing, logging, and wildfire suppression practices directed by the Forest Service resulted in the existing conditions, such as badly degraded riparian areas and declining forage levels (as on EA p. 42, first sentence)[on p. 41, first two sentences of the final EA], the bulk of the EA goes on to imply that wild horses are exclusively to blame for these conditions—especially in the designated winter range—and uses this false premise to justify maintaining wild horse herds at non-viable low numbers through killing them, sterilizing them, using contraceptives, etc. with the end result foreseeably being driving wild horses to extirpation within the Big Summit territory, which violates the Wild Free-Roaming Horses and Burros Act and even the stated purpose and need for this herd management plan.” (comment written on EA p. 42)

“We are all in favor of the Forest Service taking action to improve degraded riparian conditions, but not by systematically eradicating wild horses and reducing the herd size to the unreasonably low level of 12 (!) to 57 horses. Fifty wild horses is not enough to sustain viability, let alone 12. The Forest Service needs to reduce the impacts of 2,200 sheep in the area, not just the impacts of wild horses to take strong enough measures to restore the riparian zones and prevent livestock and other management ongoing damage for decades.” (comment written on EA p. 43, with the same text on the final EA pages 42-43)

“As stated in the Senate Report, ‘the principal goal of the Act was to provide for protection of horses from man’—this means both in the context of the 1970’s and now, that there should be no planned extermination or extirpation of the wild horse population, whether incremental or not, but the proposed alternative maximizes wild horse removal and sterilization and [or] contraception to force the herd numbers down to unviable levels and keep them there. This would cause a combination of extermination and extirpation of wild horses over time, with the foreseeable result of the wild horse population ultimately perishing. So the proposed alternative 2 and the No Action alt. 1 are both untenable as they would both violate the Wild Free-Roaming Wild Horses and Burros Act.”

“Multiple use management does not mean the Forest Service is allowed to incrementally manage the wild horses to extirpation but that they are to be managed for the protection of wild horse values under the Forest Plan along with other values, such as riparian area values, wildlife, and livestock. The Forest Service is allowed to discontinue livestock use if such use is too damaging or unsustainable but not to plan to eliminate wild horses in their designated territories.” (comments written on EA p. 44, with the same text on pages 43 & 44 of the final EA)

“Management at ‘minimal feasible level’ was not used in the WFRHB Act to keep forage allocations for wild horses at the ‘minimum feasible level’, but to restrict management of the wild horses themselves.” (comment written on EA p. 71, with the same text on final EA p. 71)

“So given the evidence of recent high use of riparian forage by wild horses (e.g. the Canyon Creek pasture in 2018) [assuming this riparian damage was only from the wild horses, which is not demonstrated], why aren’t specific problematic areas targeted for riparian restoration, including exclosure fencing, as would usually be suggested for livestock over-use? Instead, the Forest Service plans extirpation of the wild horses through reducing by killing, sterilization, etc.) to unviable herd numbers with no chance to recover genetic diversity, which violates the WFRHB Act and the stated purpose and need for this wild horse management plan.” (comment on EA p. 72)

“135 horses are ‘high levels’ of utilization compared to 2,200 sheep?! There may be isolated areas of heavier impacts from horses but the FS does not have the authority to drive them to extirpation, whereas the FS does have the authority to reduce the numbers of sheep using the area if needed and to implement riparian restoration and exclusion fencing in the most damaged areas, which could re-distribute both wild horses and sheep away from damaged riparian zones. It’s not fair, legal, or reasonable to plan for extirpation of wild horses in the territory through killing, removal, and sterilization to unviable low population numbers—to allow for 2,200 sheep with no reduction.” (comment written on EA p. 74, with the same text on p. 74 of the final EA)

“Only 12 horses (or any number below 50) is not acceptable as a target management level [range] for the population as these are clearly too low for a viable population into the future.” (comment written on EA p. 58, with this text on the final EA pages 57-58)

“Poorer body condition and associated health and reproduction should be expected to decline during harsher winters with any population of wild animals. This should not be cause for wild horse removals.” (comment written on EA p. 61, with the same referenced text on the final EA p. 61)

“With the passage of the Wild Free-Roaming Horses and Burros Act (WFRHBA) in 1971, the Forest Service and BLM were required to manage unbranded and unclaimed wild horses and burros in the areas where they were found (in 1971) as an integral part of the national system of

public lands.” (EA p. 2 in both draft and final versions, emphasis ours) Evidently there is no mandate or direction for the Forest Service to manage wild horses outside their designated territory, based on “the areas where they were found (in 1971)”, which in this case is the Big Summit Territory area. Therefore we ask the Forest Service to stop capturing and removing wild horses from outside the Big Summit Territory boundaries. Our supporting comments follow: “Why is it considered necessary to re-locate wild horses outside of the Territory to back inside the Territory? These are meant to be wild populations under the WFRHB Act, not confined horses. The FS should have no liability for wild horses that roam outside the Territory....This seems to be more based on an obsession of the agency to manage the wild horses to benefit cattle in nearby allotments than any legal requirement to prioritize relocation of wild horses to the territory....” (comment written on EA p. 65, with the same text on the final EA p. 64) “Why is removal of horses outside the Territory prioritized? These wild horses may be establishing a larger (needed) territory or new territories, either of which relieve forage pressure limitations within the artificially defined territory.” (comment written on EA p. 16)

“What ‘appropriations language’ allows sales of wild horses and burros without limitations?! This would be in violation of the WRRHB Act riders and WFRHB Act intent.” (written comment on EA p. 18, with the same “Off-Range Plan” language on the final EA p. 18)

BMBP has commented on violations of the Wild Free-Roaming Horses and Burros Act. See the comments quoted and cited above.

### Resolution

\*Allow the wild horse population to persist at a relatively stable population of 130 horses plus or minus, which means at least up to 135 horses before any trigger to remove horses and a lower range of no lower than 60 horses. Below 60 horses should be seen as a sign that the herd may not be thriving and lacks the genetic diversity needed to be a viable population, as well as the numbers to reliably survive more extreme climatic conditions such as extended drought.

\*Stop removing wild horses just because they are outside the artificially defined wild horse territory; there is no mandate or direction for the Forest Service to capture and remove wild horses outside the boundaries of the Big Summit Territory.

\* The Forest Service needs to do much more thorough genetic testing of the herd. So far the testing of individual bands may simply be showing the lack of genetic diversity characteristic of small family bands. The Forest Service should use the full range of humane genetic testing methods, such as by sending diverse fecal samples to a scientist with volunteer support.

\* The Forest Service needs to consider the latest research findings regarding physical and social behavior side effects of the proposed fertility control drug PZP before using it again, and of the GonaCon drug if it is proposed for use, and not use these fertility controls if they are too harmful to individual mares and foals or for natural herd social structure and behavior.

\* The Forest Service needs to abandon their plan to castrate (geld) stallions, as this would be altering the sex/gender ratio, which the agency says they won’t do under the Draft Decision. Gelding would also disrupt patterns of wild horse social behavior and herd structure. Gelding stallions also would not have the effect of reducing population growth but would alter herd social structure. Our related comment on our typed summary, p. 5: “Permanent sterilization can change a wild horse herd’s social behavior and lead to younger stallions superseding older breeding stallions, with breeding occurring anyway. Sterilization is thus contrary to supporting the wild character of the herds.”

\*Monitor the effects of introducing the mares from other areas for the mares already introduced before introducing more outside mares. Find a well-informed wild horse group or scientist to assess the effects of introduced mares to herd structure and to the mares themselves.

\*Stop removing wild horses just because they are outside the artificially defined wild horse territory. “Why is removal of horses outside the Territory prioritized? These wild horses may be establishing a larger (needed) territory or new territories, either of which relieve forage pressure limitations within the artificially defined territory.” (comment written on EA p. 16)

\*The Forest Service needs to tighten and clarify their criteria for using euthanasia so that only severely injured or diseased horses that are not likely to survive are euthanized—and only if no one is willing to give them medical attention as part of adoption. The age of the horse or the horse’s behavior should not be sufficient criteria to euthanize the horse. Some un-adoptable horses could be released after bait trapping.

Our related comments written on EA p. 17: “How are ‘failing health’, ‘infirmness’, and ‘disease’ defined as criteria for killing wild horses? These criteria are too subjective and not in keeping with the ‘most minimal management feasible.’” “‘Impairment of freedom of movement’ is too broad and subjective.” “This is an oddly broad definition of ‘old’ that goes beyond age. How many years of age defines ‘old’? Based on this, there is no definite age threshold for ‘old’ determination.” Our related comments written on EA p. 4: “‘Sick, lame, or old horses or public safety concerns’ is far too broad a category for horses to be killed (the euphemism being used for killing is ‘effectively and humanely managing situations’, which is far too similar to managerial euphemisms used by the Nazis for mass murder of Jewish people.” “How sick qualifies for killing? It should only be sick enough that the horse is likely to die soon. Old and lame horses could simply be released. Lameness is curable.” Part of the herd’s wildness includes wild horse mortality, such as sick, lame, and old horses being taken down, killed, and eaten by wild predators.

\*We want the Forest Service to establish monitoring of any decision to euthanize wild horses by an outside group supportive of wild horses, such as the Central Oregon Wild Horse Coalition. We are skeptical of the objectivity of the Wild Horse and Burro Advisory Board, given the Forest Service proposed alternative. Our related comment: “Who is on the Wild Horse and Burro Advisory Board? How diverse is the representation on this board?” (comment written on EA p. 17) Other wild horse advocates have supported this concern in more specific terms in their comments.

\*Drop planned use of helicopters for gathers and bait trapping as this method is particularly harmful to the wild horses and difficult to operate safely or effectively in the forest conditions. Our related comment on our typed comment summary, p 5: “Helicopter use for rounding up wild horses can create a high level of stress in the horses and increase potential injuries when they enter the holding corral. Helicopter use in the Big Summit territory has also proven ineffective due to the natural forest cover, which will be a continuing condition.”

\* “There is no reason to ever locate wild horse gathering or trapping within riparian and lithosol habitats, so this should be completely prohibited.” (comment written on EA p. 18)

\* “‘Excess’ sound wild horses over a publicly agreed wild horse population size for this area could simply be given away (adopted) to local ranchers and others desiring to have horses for humane personal use—but with restrictions and monitoring to ensure humane use and care.” (comment for a partial remedy written on EA p. 4)

## **V. Clean Water Act Potential Violation**

Reasons for our concerns about Clean Water Act violations include the following:

Examples of our comments regarding water quality and potential violations of the Clean Water Act: "...measurements from Blevins and Duncan Creeks have highlighted an increasing trend in stream temperatures though these average maximum values have not exceeded RMO thresholds for adult holding water habitat.

Some of the streams that exhibit a decreasing trend in stream temperature continue to exceed the RMO threshold for adult holding water habitat of 59 degrees F. Ochoco Creek, Canyon Creek, and Howard Creek are currently 303d listed for water temperature." (EA p. 114)

"So what has the Forest Service done to restore Ochoco Creek, Canyon Creek, and Howard Creek so that stream conditions are improved enough to remove them from the 303d list? Nothing?" (comment written on EA p. 114, with the same text on the final EA p. 114)

Significantly, the Clean Water Act prohibits further degradation of 303 (d)-listed streams for their listed water quality criteria, yet the Forest Service has not shown in its analysis that further degradation of 303 (d) listed streams would not occur under the proposed action. Conspicuously, there is no analysis of this issue or clear evidence presented that the Clean Water Act would not be violated by continued sheep grazing use at current permitted levels after EA acknowledgement that these creeks are 303 (d) listed.

"With all this acknowledged long-term degradation of stream and meadow systems and habitat for Redband trout and Columbia spotted frog, why is there no discussion in the EA of Forest Service riparian restoration efforts within the Big Summit wild horse territory? Evidently the Forest Service has been aware of these conditions for many years. The usual response by Forest Service staff on other National Forests (e.g. the Deschutes and the Malheur) is to propose and implement active riparian restoration to start repairing the legacy degradation. It seems like the Forest Service, in this case, is instead choosing this opportunity to use riparian damage from cumulative impacts of logging, road-building and use, and sheep (and past cattle) grazing to blame wild horses for riparian damage and get rid of as many as possible of the wild horses as scapegoats. While wild horses use riparian areas like other grazing animals and cause localized impacts by over-grazing and trampling stream banks, the Forest Service has not made a clear case that wild horses are primarily to blame for these existing conditions or that removing most of the wild horses will be enough to allow for riparian recovery." (from typed comment summary, p. 4)

#### Resolution:

\*The Forest Service needs to prepare a full Environmental Impact Statement that analyzes the effects of the proposed action and other alternatives to 303 (d) listed creeks. The Forest Service also needs to specify project design criteria such as exclusion fencing of the listed creeks or full removal of sheep from the 303 (d) listed creeks and/or propose active riparian restoration for these creeks with extensive exclusion fencing to prevent further livestock damage to the 303 (d) listed creeks.

Thank you for your consideration of these objections. We look forward to meeting with you to work on a resolution to our concerns. Many remedies for resolution were suggested throughout our comments.

Sincerely,



Karen L. Coulter

Karen L. Coulter, Director, Blue Mountains Biodiversity Project