May 17, 2020

Submitted via CARA

To Whom It May Concern:

These comments on the *Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment* (#46228) are submitted on behalf of the American Wild Horse Campaign ("AWHC").

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

## I. OVERVIEW

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

The Big Summit Wild Horse Territory ("WHT") is located within the Ochoco National Forest in central Oregon and is comprised of roughly 25,434 acres of land. The proposed action will replace the existing management plan from 1975 which set the WHT boundary and Appropriate Management Level ("AML") of 55-60 wild horses. This NEPA action will also amend the Ochoco National Forest Land and Resource Management Plan ("LRMP") from 1989 which provided direction that the AML was a maximum of 60 wild horses.

The United States Forest Service ("USFS") estimates that roughly 135 federally protected wild horses currently reside in the WHT, yet the USFS is proposing to establish a new AML of 12-57 wild horses—all while the USFS is fully aware that the herd is genetically compromised.

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

1. The USFS's plan to remove federally protected wild horses from lands within and outside of the WHT violates several federal laws;

2. As required by NEPA, the USFS must analyze a reasonable range of alternatives and such analysis must include the feasible and reasonable alternatives detailed by AWHC in this comment letter; and

3. USFS must take the requisite "hard look" at the environmental impacts of its action, which will result in short-term and long-term effects to federally protected wild horses, the family bands of wild horses that reside in these areas, the genetic diversity of these wild horse populations, and potential measures that could mitigate the impacts resulting from USFS's action.

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

## II. LEGAL BACKGROUND

### A. NEPA

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

In NEPA's implementing regulations, there are two specific mechanisms whereby federal agencies must evaluate the environmental and related impacts of a particular federal action—an EA and an EIS. *See* 42 U.S.C. § 4332(c). These procedural mechanisms are designed to inject environmental considerations "in the agency decisionmaking process itself," and to "'help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.'" *Pub. Citizen*, 541 U.S. at 768-69 (emphasis added) (quoting 40 C.F.R. § 1500.1(c)). Therefore, "NEPA's core focus [is] on improving agency decisionmaking," *Pub. Citizen*, 541 U.S. at 769 n.2, and specifically on ensuring that agencies take a "hard look" at potential environmental impacts and environmentally enhancing alternatives "as part of the agency's process of deciding whether to pursue a particular federal action." *Baltimore Gas and Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 100 (1983). The alternatives analysis "is the heart" of the NEPA process. 40 C.F.R. § 1502.14. NEPA's implementing regulations require that the decisionmaking agency "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." *Id.* Importantly, the NEPA process "shall serve as the means of assessing the environmental impact of proposed agency actions, *rather than justifying decisions already made*." 40 C.F.R. § 1502.2(g) (emphasis added); *see also Id.* § 1502.5 (requiring that NEPA

review "shall be prepared early enough *so that it can serve practically as an important contribution to the decisionmaking process* and *will not be used to rationalize or justify decisions already made*") (emphasis added), *Metcalf v. Daley*, 214 F.3d 1135, 1141-42 (9th Cir. 2000) ("the comprehensive 'hard look' mandated by Congress and required by the statute must be timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.").

An EIS must be prepared by an agency for every "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(c). Under NEPA's implementing regulations, "significance" requires consideration of both context and intensity. 40 C.F.R. 1508.27. "Context" refers to the scope of the activity, including the affected region, interests, and locality, varying with the setting of the action, and include both short and long-term effects. 40 C.F.R. 1508.27(a) (2018). "Intensity" refers to the severity of impact, including impacts that may be both beneficial and adverse; unique characteristics of the geographic area, such as proximity to wetlands, wild and scenic rivers, or ecologically critical areas; the degree to which the effects on the quality of the human environment are likely to be highly controversial; the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration; whether the action is related to other actions with individually insignificant but cumulatively significant impacts; the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act; and whether the action threatens a violation of federal law imposed for the protection of the environment. *See* 40 C.F.R. § 1508.27. Where an action is not expected to result in a significant environmental impact, the agency must still prepare an EA and a FONSI. *Id.* §§ 1508.9, 1501.3.

### B. National Forest Management Act

Enacted in 1976, NFMA established a formal two-step process for forest planning. See generally *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1376 (9th Cir. 1998). First, the Service must "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System." 16 U.S.C. §1604(a). Each land and resource management plan ("LRMP") must "provide for multiple use and sustained yield of the products and services obtained therefrom . . . and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness." Id. §1604(e)(1). This statutory process requires meaningful "public participation in the development, review, and revision of land management plans." Id. §1604(d).

Second, once an LRMP is developed, NFMA mandates that all subsequent agency action in that forest comply with it. *Idaho Sporting Congress, Inc. v. Rittenhouse*, 305 F.3d 957, 962 (9th Cir. 2002); *Sierra Club v. Martin*, 168 F.3d 1, 4 (11th Cir. 1999). Thus, "[r]esource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans." 16 U.S.C. §1604(i). Like other site-specific plans, "Wild Horse and Burro Territory plans are to conform with the Forest land and resource management plans." Forest Service Manual §2263.11 (Jan. 2003); see also 43 C.F.R. §4710.1 (analogous requirement for Bureau of Land Management, providing that "[m]anagement

activities affecting wild horses and burros . . .shall be in accordance with approved land use plans").

If the Service determines that part of an LRMP is no longer valid and must be modified, the agency must amend the plan subject to NFMA's formal procedures. 16 U.S.C. §1604(f)(4); see *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 961 (9th Cir. 2005). While non-significant amendments require fewer procedural safeguards, "[i]f an amendment to a[n] Forest Plan would be 'significant,'. . . then NFMA mandates substantial public involvement, planning, and input, requiring, in essence, the Forest Service to conduct the same complex planning process applicable to promulgation of the original plan." *Citizens' Committee to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1032 (10th Cir. 2002) (quotation marks and citation omitted); see also 16 U.S.C. § 1604(f)(4) (amendments to LRMP resulting in a "significant" change must follow the procedures applicable to the development and revision of LRMPs).

### C. The Wild and Free-Roaming Horses and Burros Act

In 1971, Congress unanimously passed the Wild Horse Act. This law provides that "wild free-roaming horses and burros shall be protected from capture, branding, harassment, [and] death," and that they must be "considered in the area where presently found, as an integral part of the natural system of the public lands." 16 U.S.C. §1331. The Act directs the Forest Service to "protect and manage wild free-roaming horses and burros as components of the public lands." Id. §1333(a). On public lands that are home to wild horses, "[a]ll management activities shall be at the minimal feasible level." Id.

In 1980, the Service adopted regulations requiring it to "[a]dminister wild free-roaming horses and burros and their progeny on the National Forest System in the areas where they now occur (wild horse and burro territory) to maintain a thriving ecological balance considering them an integral component of the multiple use resources." 36 C.F.R. § 222.61(a)(1). The agency must "[e]stablish wild horse and burro territories in accordance with the Act and continue recognition of such territories where it is determined that horses and/or burros will be recognized as part of the natural system." Id. § 222.61(a)(3).

## III. FACTUAL BACKGROUND

On June 19, 2017 the USFS announced a proposal to write a new WHT plan with a Notice of Intent to prepare an Environmental Impact Statement published to the Federal Register on June 21, 2017 (Vol. 82, No. 118). However, the USFS later withdrew this notice after the agency's decision that an EA would be more appropriate because preliminary evaluation found that "no potential impacts to the human environment are anticipated."

In April 2020, the USFS released the Ochoco Wild Horse Draft EA for public comment. This EA primarily contains an updated management plan for the Big Summit WHT by:

- Establishing a new AML
- Managing for genetic viability

- Slowing the herd's growth rate through various fertility control options
- Developing am Emergency Action Framework
- Developing an off-range plan

The proposal also seeks to amend the Forest Plan so that it comes into conformance with the final management plan as set through this NEPA process. The alternatives set forth by the draft EA seeking to implement the above objectives are a no action alternative, an alternative that will further restrict the AML with genetic management, and an alternative that will raise the AML with no genetic management.

AWHC participated in a Wild Horse Working Group, an initiative started at the request of the USFS. The outcome of the working group was the creation of the Emergency Prevention and Action Strategy which was presented to the USFS. The USFS found the strategy to be a valuable tool and focused on three areas: monitoring and recognizance, public outreach and education, and developing a "Task Force." Additionally, AWHC submitted scoping comments on July 21, 2017 in response to the USFS's scoping letter for an update of the 1975 Ochoco Land and Resource Management Plan for the Big Summit Territory. (Attachment 3).

## IV. DISCUSSION

### A. <u>An EIS is Required</u>

#### 1. An EIS is Necessary for the Proposed Management Plan

The USFS must prepare an EIS for this proposed action due to the breadth and scope of the project. The proposed action will span years and impact thousands of acres of land with the conduct of multiple roundups, removals, and other largely unproven and potentially inhumane management practices on wild horses. Thus, USFS's decision to prepare an EA here, in lieu of an EIS, is contrary to NEPA and its implementing regulations.

Indeed, several of the NEPA "significance" factors are triggered by the proposed action, although the presence of only one significance factor *requires* preparation of an EIS. *See Pub. Citizen v. Dept. of Transp.*, 316 F.3d 1002, 1023 (9th Cir. 2003) ("If the agency's action is environmentally 'significant' according to any of these criteria [set forth in 40 C.F.R. 1508.27], then DOT erred in failing to prepare an EIS."); *Humane Soc'y of the U.S. v. Johanns*, 520 F. Supp. 2d 8, 20 (D.D.C. 2007) (explaining that "courts have found that the presence of one or more of [the CEQ significance] factors should result in an agency decision to prepare an EIS") (citations omitted); *Fund For Animals v. Norton*, 281 F. Supp. 2d 209, 218 (D.D.C. 2003) (same).

The following significant factors are triggered here. Accordingly, the USFS is required to prepare an EIS on this extreme draft analysis.

- **40 C.F.R. § 1508.27(b)(4)** – This factor addresses "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial."

"Controversy in this context does not mean opposition to a project, but rather a substantial dispute as to the size, nature, or effect of the action." *Hillsdale Environmental Loss Prevention, Inc. v. U.S. Army Corps of Engineers*, 702 F.3d 1156, 1181 (10th Cir. 2012). The USFS cannot credibly assert that the proposed analysis will not be controversial for several reasons. Significant scientific controversy over the proposed analysis already exists, as many of its components are contrary to the findings of the NAS in its 2013 report (Attachment 4) and some of the proposed management tools are unproven and highly controversial – both scientifically and socially.

The controversial aspects of this proposal include:

- Continuing management practices that are "facilitating high rates of population growth on the range" by rounding up and removing a large number of wild horses from the WHT.

- The genetic viability of this comprised herd of wild and free-roaming horses. Such a low AML of 12 individuals is scientifically controversial as the agency itself does not definitively know whether or not removing such a large portion of the population will further genetically compromise the individuals remaining in the WHT.

- GonaCon research is extremely limited, and as such there are important remaining questions regarding negative impacts to pregnant mares (association with abortion when given in early stages of pregnancy), long-term physiological effects, and whether the vaccine is a permanent sterilant or reversible. Even the short-term social/behavior effects are not yet established.

- The impacts of the proposed sterilization methods on natural behaviors. The percentage of the herd that could be subjected to surgical sterilization is a determination that will have significant bearing on the effects of sterilization on the behavior of the remaining wild horses in the WHT.

Since the dispute under "controversy" also applies to the "size, nature, and effect of the action," the USFS should note the extensive controversy surrounding the nature of the proposed action. Social acceptability is a factor that the USFS cannot ignore when considering the breadth and scope of controversy that surrounds some of the proposed elements in this analysis. The EIS process contains more rigorous requirements for public participation and for the disclosure and consideration of reasonable opposing viewpoints. Accordingly, an EIS would be a far better mechanism for the agency to use to consider the vigorous public debate over the proposed mechanisms for managing wild horse populations.

In sum, there is much scientific controversy that already surrounds the proposed analysis.

- **40 C.F.R. § 1508.27(b)(5)** – This factor addresses "[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks."

With this proposed analysis, the USFS is considering several new approaches that are controversial and remain unproven. This level of uncertainty and unknown risk is demonstrated by the proposal to consider surgical sterilization and the use of the unproven vaccine, GonaCon. Not much is known about the long-term safety, efficacy, and impacts to wild horse behaviors and natural social behaviors when either GonaCon or surgical techniques are used. Therefore, the decision to implement these unproven management tool options will have highly uncertain or unknown impacts.

- **40 C.F.R. § 1508.27(b)(6)** – This factor addresses "[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration."

With this proposed action, the USFS is adopting a new approach that could set a precedent for how future actions proceed in numerous regards:

- The reduction in the number of wild free-roaming, reproductively intact wild horses and the management of the WHT population to such a low AML. Currently there is no research regarding the impacts of a similar plan to maintain a significant portion of an already small wild horse population as non-reproducing;

- The reduction in the AML primarily in response to a periodic occurrence of *potentially* limited winter forage. The USFS cannot arbitrarily reduce the AML of wild horses in WHT primarily because of above average snowfall that will not always occur;

- Potential use of GonaCon as a management tool in a USFS herd before research documenting its behavioral effects is completed; and

- The potential release of geldings or sterilized mares. The USFS has never before released geldings or sterilized mares to the range as a non-reproducing population and management strategy. Research on the impacts to the environment and to the wild horses of this action has not been completed. This untested action could set precedent for the management of wild horses in WHT's across the West.

The USFS fails to adequately analyze how geldings and sterilized mares will affect wild horse management in the WHT, including any negative affects experienced by the wild horses after the procedures, any behavioral changes to the horses after being re-released, etc. The USFS cannot move forward and continue to implement a supposed management tool without any consideration for at least how that tool has or has not worked on wild horses in other WHTs or even Herd Management Areas (under the management of the Bureau of Land Management where BLM claims it has already implemented it). The USFS should have made any and all information and data about other gelding populations available to the public for consideration in writing comments on this proposed action in the Big Summit WHT.

Besides being counter to scientific recommendations, these decisions, individually and combined, could set dangerous precedents for management of federally protected wild horses across the West.

- **40 C.F.R. § 1508.27(b)(10)** – This factor is triggered if "the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment."

As described above, one of Congress's primary goals in enacting the WHA was to protect wild horses and burros from various types of adverse impacts, including those that harm their wild and free-roaming behaviors. 16 U.S.C. § 1331. There can be no legitimate dispute that surgical sterilization, including gelding, risks serious adverse impacts to the wild and free-roaming behaviors of individual burros and the herds to which they belong. USFS's pursuit of gelding and mare sterilization as management tools is inherently inconsistent with the fundamental Congressional intent in the WHA to "protect" wild horses. *See* 16 U.S.C. § 1333(a).

The WHA embodies a congressional intent to require USFS to manage wild horse populations humanely. Congress repeatedly stressed its intent to require humane management. *See id.* § 1333(b)(2)(iv)(B) (requiring that wild horses removed from the range are "humanely captured" and the "humane treatment and care" of wild horses made available for adoption"). Accordingly, this EA threatens violation of the WHA because, among other things, the agency failed to thoroughly consider opposing viewpoints from experts about gelding and spay, and failed to provide an opportunity to comment on the specific protocols that the agency plans to implement these options, or the management of partially non-reproducing herds; either now or in the future life of the plan. The USFS has also failed to include the specific protocols for genetic viability testing and for the introduction of individuals since this herd has been determined to be genetically compromised.

Additionally, the WHA mandates that "[a]ll management activities shall be at the minimal feasible level." 16 U.S.C. § 1333(a). Surgical sterilization, falls far short of this legal requirement. Such procedures are more invasive, inhumane, and risky than other non-surgical methods of fertility control, such as PZP, and cannot be said to constitute the minimal feasible level of management in accordance with a statute that aims to protect wild horses and burros.

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

Likewise, USFS's wholesale failure to consider the social acceptability of surgical sterilization threatens a significant violation of the WHA. As described above, Congress enacted the WHA precisely because of the social and cultural importance of wild horses. *See* 16 U.S.C. § 1331 ("Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West" and "that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people").

In conclusion, an EIS is required when even *one* of these factors is implicated. Because at least *four* significance factors are triggered here, it is wholly inconsistent with NEPA and its regulations for the USFS to prepare only an EA. Therefore, it would be a patent NEPA violation if USFS refused to prepare an EIS. For all of these reasons, an EIS is required for this action.

### 2. NFMA Compliance

As noted above, NFMA requires the USFS to "develop, maintain, and, as appropriate, revise" LRMPs. 16 U.S.C. § 1604(a). All site-specific "[r]esource plans … and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans." Id. §1604(i) (emphasis added); see also 36 C.F.R. § 219.10(e).

The USFS has chosen the format of an EA to analyze the proposed management plan and forest plan amendment. Although, in certain circumstances, a forest plan may be amended absent the formal NFMA amendment process, this is the case only where the USFS analyzes the action and sets forth evidence to establish that the amendments "would [not] result in a significant change in such plan." 16 U.S.C. § 1604(f)(4). Here, the USFS has not performed such analysis to explain that the proposed amendments will not result in a significant change to the 1989 LRMP or alter the long-term objectives for the Big Summit WHT. Significant amendments require a lengthy and detailed amendment process. As the USFS's regulations explain, "[a] proposed amendment that may create a significant environmental effect and thus require preparation of an [EIS] is considered a significant change in the plan for the purposes of the NFMA." 36 C.F.R. § 219.13(b)(3).

The proposed amendments as set forth in the draft EA clearly require a formal NFMA amendment process because the USFS is substantially changing the current guidance on wild horse management within the WHT as originally written in the 1989 LRMP. The current EA itself notes that the "purpose of the amendments is to update guidance and allow adjustments to the AML based on changing conditions." An update in management guidance has led the USFS to write an entirely new management plan in this EA, one AWHC notes above should have been an EIS as well. The amended guidance language refers to federally protected wild horses as livestock, a gross oversight by the USFS and a dangerous departure from the current language which clearly deals with wild horses as a separate user of the WHT. Further, the departure from a fixed AML of "60 head" to an ambiguous AML that allows for "changing conditions" is a huge departure and precedent-setting change to the language of the LRMP.

Thus, an EIS would provide a more effective analysis for the proposed amendments as well. Therefore, it is clear that an EIS is required for this action.

## B. Adequately Analyze the Impacts of the Proposed Action

### 1. Changes to AML

Under the proposed action, the USFS has chosen to move from an AML of 57-60 wild horses to 12-57 wild horses. This proposal is problematic on several fronts.

First, the USFS should adhere to the National Academy of Sciences' ("NAS") recommendations for "transparency, quality and equity" in the process to adjust AML. This must include basing decisions on sound environmental and monitoring data, a complex understanding of herd dynamics and genetic viability needs, as well as equity in resource distribution in the WHT.

The EA must note and consider that the NAS concluded:

> How Appropriate Management Levels (AMLs) are established, monitored, and adjusted is not transparent to stakeholders, supported by scientific information, or amenable to adaptation with new information and environmental and social change….standards for transparency, quality and equity [are needed in] establishment, adjustment, and monitoring [of AMLs]. (Attachment 4, p. 11).

Second, the USFS notes that the population growth rate of this herd is only 7-8 percent. (EA p.2). Thus, the reference to the National Research Council's ("NRC") estimation that some wild horse herds can grow at 20 percent is not applicable to this population. The USFS must manage the population in the Big Summit WHT under the assumption that the population growth rate is far lower than the 20 percent estimate, at 7-8 percent.

Finally, the USFS notes in the EA that the herd is already genetically compromised. Allowing the herd to be taken down to 12 individuals will not help the genetic health of the remaining animals.

The USFS must consider how any future use of fertility control with such a low AML could affect the health and genetic viability of the herd. Merely adding a couple of horses to a management area does not prevent inbreeding and genetic problems. Dr. Gus Cothran has personally informed AWHC that once genetic viability is low, it takes generations to correct and that adding a few horses does not prevent inbreeding in small herds.

Further Dr. Lori Eggert personally informed AWHC of her initial thoughts regarding the genetic viability of the Big Summit herd under the USFS's proposed action. A reduction of the herd to 12-57 individuals could have deleterious effects on the genetic diversity. In order to work to prevent this, the USFS must manage, at the very least, to the high end of the range *and* make sure that the individuals who remained were the *least* related because the breeding of those individuals would not necessarily result in a large loss of diversity or an increase in inbreeding in the first few generations. However, the USFS would have to be dedicated to closely monitoring the genetic health of the herd. To Dr. Eggert, the two largest concerns with maintaining such a small herd are that driving the herd down to such a small number would risk destroying the existing band structure and that at such a small size, the fecundity of females will be maximal, driving up the population growth rates. Dr. Eggert noted that in the event there is sufficient scientific evidence that shows wild horses are the cause of the range damage in the WHT, the *most prudent* management plan would be Alternative 1, an AML of 55-65 individuals, with the addition of genetic monitoring and the introduction of 1-2 unrelated mares *every* generation (10-15 years). Her proposal is a hybrid of Alternatives 1 and 2 and should be seriously considered by the USFS in the final EA.

However, since the proposed action is also considering the implementation of fertility control to help stabilize the population, the USFS should also discuss that because an AML range is established to allow the population to grow in the years between roundups, an AML range would be unnecessary if the population is being managed properly with PZP fertility control.

### 2. Fertility Control

#### *a. PZP Fertility Control*

Though the USFS notes it will have "all 'acceptable methods of control'" available to stabilize the wild horse population, AWHC again asks that the USFS proceed first, and exclusively, with a comprehensive fertility control vaccine program. The WHT is a smaller range with a small population of horses. Such circumstances should be ideal for the implementation of humane fertility control vaccines as the preferred method of fertility control. In order to properly analyze the implementation of a comprehensive fertility control program in the WHT, the USFS must disclose more information relative to how such a program would be structured. This includes, but is not limited to, information such as:

- Stating how many mares would be darted, what time of year they would be darted, whether boosters would be given, and how the vaccine and booster would be administered;[1]

- Explaining the database used for tracking which mares have received a vaccine and/or booster and the records system to be implemented with the program;

- Explaining how the program will research and track the effectiveness of the fertility control vaccine on the population and individual levels, and how the USFS plans to track any adverse reactions to the fertility control vaccine; and

- Explaining how a comprehensive fertility control program would affect the genetic viability of the herd for the duration of the plan.

AWHC asks that the USFS pursue a PZP program in the WHT. However, if in the final EA the USFS continues to leave the door open to other tools, then the final EA must adequately analyze and discuss those in turn. AWHC is basing this next portion of our comments primarily in response to the Standard Operating Procedures included with the EA at Appendix E since the draft EA is silent on which options will be chosen. The Appendix notes that the included tools "will be available for use" and "are part of the Proposed Action."

#### *b. Gelding*

AWHC asks that the USFS abandon consideration of gelding in the WHT, but if the USFS plans to implement a gelding program, or, as a consequence, manage a portion of the Big Summit horses as non-reproducing, then that must be clearly analyzed and disclosed in the

[1] Note that studies have shown, with both PZP and GonaCon, boosters increase effectiveness. *See* Attachments 1 and 2.

final EA. In violation of NEPA, the draft EA gives no analysis or consideration to the scientific controversy surrounding the use of gelding as a management tool in wild and free-roaming horses. The final EA should include a lengthy discussion that acknowledges and analyzes the serious risks that gelding represents to stallions and also disclose the castration side effects and deaths for all of the stallions in either USFS or Bureau of Land Management ("BLM") holding facilities.[2]

Additionally, the analysis should note and consider the often-severe impacts of gelding on wild stallions who will be returned to the range where they will be expected to fend for themselves and live in often-harsh conditions. In fact, the impacts cannot only affect these animals' physiology and ability to survive but also their behavior and therefore their influence on or relationship to the herd.

At the very least, the final EA must consider the NAS recommendation against gelding stallions who live on the range (Attachment 4):

> However, some or total loss of sex drive would be likely in castrated stallions, and this is counter to the often-stated public interest in maintaining natural behaviors in free-ranging horses. With respect to effects at the population level, it is not clear how castration of males would be better than vasectomy, which does not affect testosterone or male-type behaviors. Ultimately, the growth rate of any population that includes reproductive horses of both sexes will be commensurate with the number of fertile females in the population. (p. 156)

and

> A potential disadvantage of both surgical and chemical castration is loss of testosterone and consequent reduction in or complete loss of male-type behaviors necessary for maintenance of social organization, band integrity, and expression of a natural behavior repertoire. (p. 142)

Bruce Nock, Ph.D., tenured faculty member at Washington University School of Medicine and an expert in the physiological effects of stress, suggests that gelding may compromise a horse's ability to survive on the range. He writes (Attachment 5):

> Gelding (removing a horse's testes) will have irreversible effects on both the individual horse and the herd. A gelded horse does not behave as a "wild" or "free-roaming" horse. . . [the procedure] decreases muscle mass and strength, reduces bone density, and increases frailty. These deficits put the horse at a significant disadvantage on the range in terms of survival. A gelding will still have to compete with intact stallions for resources. His smaller size and strength, however, will not only put him at a competitive disadvantage, it increases the likelihood that agonistic encounters with intact stallions will result in severe injuries.

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[2] BLM statistics should be included here because of the agreement between the USFS and the BLM which notes that the BLM is holding horses transferred from the USFS and holding is usually where stallions are gelded.

> The compromised physical capacities that accompany gelding are likely to endanger castrated horses in a number of ways. In addition to undermining their ability to compete with intact stallions, it may diminish their ability to traverse the harsh terrain and great distances normally travelled to acquire food and water. This would jeopardize their survival particularly during challenging weather conditions, like droughts or heavy snow storms. A limited geographical home range is also likely to deplete local resources and negatively impact the ecological system as a whole. To survive in the wild, a horse must be able to achieve a certain fitness level that may be impossible to attain once the animal is castrated. In my professional opinion, releasing a castrated horse into a wild herd is an inhumane management approach that certainly does not "protect" or "help preserve" wild horses in any sense of the word.

Dr. Kirkpatrick, the Director of Science and Conservation Biology at Zoo Montana and a foremost authority on wildlife reproductive biology, focuses his comments (Attachment 6) on how gelding effects the herd:

> The very essence of the wild horse, that is, what makes it a wild horse, is the social organization and social behaviors. Geldings (castrated male horses) no longer exhibit the natural behaviors of non-castrated stallions. We know this to be true from hundreds of years [of] experience with gelded domestic horses. Furthermore, gelded stallions will not keep their bands together, which is an integral part of a viable herd. These social dynamics were molded by millions of years of evolution, and will be destroyed if the BLM returns castrated horses to the HMAs. . . . Castrating horses will effectively remove the biological and physiological controls that prompt these stallions to behave like wild horses. This will negatively impact the place of the horse in social order of the band and the herd. (emphasis added)

As such, the USFS must analyze in full the controversy surrounding gelding in the final EA and how the tool may be used within the WHT in the future. Without this information, the USFS threatens a clear violation of its duties under NEPA.

*c. Spaying*

AWHC asks that the USFS abandon any consideration for spaying horses in the WHT, but if the USFS plans to implement a spay program, or, as a consequence, manage a portion of the Big Summit horses as non-reproducing, then that must be clearly analyzed and disclosed in the EA. In violation of NEPA, the draft EA gives no analysis or consideration to the scientific controversy surrounding the use of mare sterilization, commonly referenced as spaying, as a management tool in wild and free-roaming horses.

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

In its final report, the NAS concluded that spaying was "inadvisable" and also recommended against gelding. (Attachment 4). For example, it stated

> The possibility that ovariectomy may be followed by prolonged bleeding or peritoneal infection makes it inadvisable for field application." (p.130).
>
> and
>
> Surgical ovariectomy and ovariohysterectomy are commonly used in domestic species, such as cats and dogs (including feral cats and dogs), but seldom applied to other free-ranging species." (p. 114).

In addition, the 2015 NRC report (Attachment 7) found:

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

The NRC suggested that the less invasive sterilization techniques proposed in the last round of research "would be safer—with less risk of hemorrhage and evisceration –and probably less painful." However, despite the scientific recommendation from the NAS/NRC against ovariectomy (even laparoscopic) as a method to control population growth and despite the overwhelming scientific controversy generally, the USFS has nevertheless vaguely proposed to pursue a dangerous, precedent-setting and extreme plan to sterilize wild mares in the WHT.

As such, the final EA must consider not only the methods but also the risks when analyzing ovariectomies, and the other methods of mare sterilization, for use in the WHT. Highlights of concern – and impacts that must be adequately analyzed in this proposed analysis – follow below:

- Impacts on physiology due to reduction of estrus and alteration of hormones.
- Risk of infection under conditions that may not be entirely sterile.
- Risk of sedation and restraint in wild horses.
- Risks of hemorrhage, evisceration, colic and infection due to inability to provide the required post-operative care.
- The risk of post-operative pain in these mares and the USFS's inability to provide adequate post-operative pain relief.
- Consider the risks of the procedure when performed by veterinarians that lack training in this outdated procedure.

- The risks to pregnant mares. Including but not limited to abortion, stress, and hemorrhage.

- The risks to dependent foals when the mother undergoes the procedure and due to pain or complication may not let a foal nurse, may not produce milk, or may injure the foal when reacting to pain.

- The feasibility of the proposed procedures for use on the range, including cost, and lack of sterile environment for surgery.

The USFS must acknowledge the serious health risks that ovariectomy, and other invasive surgical sterilization techniques, represent to wild mares and the careful post-operative monitoring and care, including pain relief and restricted movement, necessitated by the procedures when performed on wild horses.

AWHC has detailed the health and behavioral concerns of spaying mares in its comments on the BLM's multiple EAs for the Mare Sterilization Research Project, which was supposed to take place at the Hines Corrals in Oregon. The most recent version of those comments which laid out our primary concerns with this management tool are included by reference and attached at Attachment 8. In addition, many equine veterinarians have acknowledged and warned about the impacts of ovariectomies, including via a letter to Secretary Bernhardt signed by 80 veterinarians in opposition to the BLM's continued pursuit of ovariectomy via colpotomy as a management tool. (Attachment 9). Similarly, lawmakers in both the House and Senate have expressly criticized the BLM for pursing this method, noting that the agency appears to recognize "the risky nature of the procedure, but is nevertheless aiming to quantify precisely how dangerous it is using federally protected animals", and that the BLM should instead "pursue humane and scientifically-supported fertility control projects, such as the [PZP] vaccine" (Attachments 10 and 11). To that end, the Senate Appropriations Committee approved language in the Fiscal Year 2020 Interior report specifically delineating that "any population growth suppression strategies" employed "must be proven, safe, and humane" (S. Rept. 116-123). Spaying mares would almost certainly fail to meet that bar.

Ultimately, the USFS should drop plans to surgically sterilize federally protected wild mares and focus instead on non-surgical methods of fertility control that preserve the natural behaviors that distinguish wild-free roaming horses from domestic horses.

*d. GonaCon*

AWHC asks that the USFS include further analysis on GonaCon in the final EA. Currently, GonaCon is an experimental fertility control vaccine that interferes with the production of reproductive hormones, which drive natural behaviors in wild horses. Before the agency moves forward with this method it must include that not much is known about the long-term safety and efficacy and the impacts to wild horse behaviors and natural social behaviors, which are the differentiating factors for these federally protected animals. In fact, the peer-reviewed article on the ongoing GonaCon study in the Theodore Roosevelt National Park, emphasizes that research on the use of GonaCon as a form of fertility control for wild horses is in its nascent stage and

therefore limited. The study was only conducted on a handful of mares and even so it showed that the mares still acted like cycling mares – further demonstrating that more research on the effects to wild and free-roaming behaviors of the mares is necessary before this vaccine would be appropriate for broad use as a management tool.

Additionally, the NAS specifically noted that:

> Preserving natural behaviors is important, so GonaCon **seems** [emphasis] more appropriate for use in females in that some research has **suggested** [emphasis] that female sexual behavior continues. However, further studies on behavioral effects of this product are needed. (Attachment 4, p.7).

Thus, the final EA must note that the NAS clearly thought that GonaCon required further study. Since published research on GonaCon in horses is limited, there are remaining questions regarding negative impacts to pregnant mares (including association with abortion when given in early stages of pregnancy), long-term physiological effects, and whether the vaccine is a permanent sterilant or reversible. Even the short-term social/behavioral effects are not yet established. Thus, this experimental fertility control drug is not yet appropriate for field use and the USFS should proceed with PZP as explained above instead.

*e. Skewed Sex Ratios*

The EA also notes that sex ratio skewing is a possible action for implementation with the proposed action. AWHC asks that establishing skewed sex ratios as part of the management plan for the WHT be eliminated from consideration. However, if the USFS chooses to consider skewed sex ratios as a management tool, the final EA must analyze how skewing of sex ratios is not scientifically supported and is unreasonable if the majority of mares will be treated with an immunocontraceptive vaccine. Further, at the very least, if skewed sex ratios are to be implemented in the WHT the final EA must disclose the ratio which the USFS plans to implement.

AWHC notes for the USFS that the BLM has detailed the negative impacts of sex ratio skewing in several NEPA actions over the years:

> Wild horse populations will produce roughly equal numbers of males and females over time (4700 WHB Handbook, 4.4.1). Re-establishing a 50/50, male to female, sex ratio is also expected to avoid consequences found to be caused by skewing the ratio in either direction. Sex ratio typically adjusted in such a way that 60 percent of the horses are male result in slightly reduced populations (Bartholow 2004), implying that ratios would need to be adjusted even further to account for a significant slowing of population growth. In the Pryor Mountain Wild Horse Range, Singer and Schoeneker (2000) found that increases in the number of males on this HMA lowered the breeding male age but did not alter the birth rate. In addition, bachelor males will likely continue to seek matings, thus increasing the overall level of male-male aggression (Rubenstein, 1986). (2015 Cold Springs HMA and 2017 Stinkingwater HMA Population Management Plans, Attachment 12, p. 25 and Attachment 13, p. 21).

> If selection criteria leave more studs than mares, band size would be expected to decrease, **competition for mares would be expected to increase**, **recruitment age for reproduction among mares would be expected to decline**, and size and number of bachelor bands would be expected to increase. . . . (emphasis added). (Beatys Butte EA DR FONSI 2009, Attachment 14)
>
> **Skewing the sex ratio of stallions v. mares would result in a destabilization of the band** (stallion, mare and foal) structure moving it from five to six animals to three animals. **Social band structure will be lost resulting in combative turmoil as surplus stallions attack a band stallion trying to capture his mare. This could result in the foal being either killed or lost.** The mare and foal will not be allowed to feed or water naturally as the stallion tries to keep them away from the bachelor bands of stallions, resulting in stress to the mare during her lactation condition. (emphasis added). (EA FONSI for the South Steens Wild Horse Gather**,** Attachment 15).

At bottom, the USFS must disclose and analyze the impacts of these methods if any consideration is going to be given to these tools as management options in the WHT. Without this information, it is impossible for the public to provide meaningful comment on the proposed management plan. Further, it is equally impossible for the USFS to justify this management plan without at least a complete analysis of the above-mentioned factors.

### 3. Roundup and Removal

Specifically, AWHC asks that the roundup and removal of the majority of wild horses currently in the WHT be eliminated from consideration in this EA. However, if the USFS moves forward with its analysis of a roundup and removal action, the agency must note that the WHA requires the USFS to manage wild horses and burros at the minimum feasible level. Such a roundup and removal operation will fail to meet that standard. Instead, the proposed action will continue the business as usual approach of "management" by removal and stockpiling more wild horses in off-range holding facilities.

As such, the EA must further analyze the risks of helicopter drive trapping to the environment and the horses as well as the economic and welfare concerns related to increasing the off-range holding population of wild horses. In any subsequent NEPA actions, such as a roundup plan, the USFS must explicitly state for the public where the horses will be transferred and how the agency plans to ensure their safety after removal. This includes clarification as to what facilities the USFS was referring to in the EA when it notes that removed wild horses could go to leased or contracted private facilities. The EA must list any of these facilities that currently exist, any that the USFS is soliciting, and the policies that these facilities will follow in the care and handling of wild horses in their care. This also includes the USFS's plan for tracking the horses that are removed from the range, through holding, and adoption or sale (if completed). The agency must disclose and explain how it plans to track and keep record of every horse while they are in USFS, BLM, or private contractor custody.

### 4. Economic and Social Impacts

According to the Council on Environmental Quality, under NEPA, "agencies are required to

determine if their proposed actions have significant environmental effects and to consider the environmental and related social and economic effects of their proposed actions." The USFS and BLM are facing an escalating fiscal crisis off-the-range as a result of the mass removal of wild horses from the range and the stockpiling of captured mustangs in government holding facilities. The removal of more wild horses from the WHT will add wild horses to taxpayer-funded holding facilities. These factors must be disclosed and analyzed in the EA.

The importance of these factors was highlighted in a 1982 National Research Council report (Attachment 16):

> *Attitudes and values that influence and direct public priorities regarding the size, distribution, and condition of horse herds, as well as their accessibility to public viewing and study, must be an important factor in the determination of what constitutes excess numbers of animals in any area. . . [A]n otherwise satisfactory population level may be controversial or unacceptable if the strategy for achieving it is not appropriately responsive to public attitudes and values. . . .*
>
> *Biologically, the area may be able to support 500 cattle and 500 horses, and may be carrying them. But if the weight of public opinion calls for 1,000 horses, the area can be said in this context to have an excess of 500 cattle. For these reasons, the term excess has both biological and social components. In the above example, biological excess constitutes any number of animals, regardless of which class above 1,000. Social excess depends on management policies, legal issues, and prevailing public preference..."*

USFS must also evaluate how utilizing PZP fertility control in this area as a means of controlling wild horse population numbers without perpetual roundups, which are costly to American taxpayers and the horses themselves, will decrease unnecessary and wasteful spending of taxpayer funds. The cost savings of comprehensive PZP use is substantial. For example, an economic model published in a peer review article predicted that BLM could attain its population goals and save $8 million in one Herd Management Area by using PZP fertility control and reducing and eventually eliminating removals. (Attachment 17). As such, the use of PZP to manage this WHT is clearly a viable and economically responsible management choice.

Further, the USFS should note that roughly 80 percent of Americans want to see wild horses managed humanely on public lands and given their fair share of the resource. Thus, the social and economic analysis of the proposed action must also review how reducing livestock use could be an economic and social benefit to the agency, the horses, and the American public.

### C. Reasonably Foreseeable Actions

#### 1. Reduction to Livestock Use in the WHT

As the EA notes, since the establishment of the Ochoco National Forest, livestock use has been adjusted to correspond to the carrying capacity of the land. The EA also notes that allotment boundaries have changed over the years, and as such it is reasonably foreseeable that the allotment boundaries within the WHT may change again. The EA also notes how the

permittee "currently feels" that there is not currently enough forage available which led the USFS to designate non-use 2017-2019. Thus, with the fluctuating history of livestock grazing within the WHT it is reasonably foreseeable that the USFS could choose to permanently eliminate or significantly reduce sheep Animal Unit Months ("AUMs") within the WHT in the foreseeable future.

The USFS has a statutory mandate to protect wild horses, while livestock grazing is permitted only as a discretion. Livestock grazing is not required to fulfill the agency's "multiple use" mandate. Further, it is far more cost effective to curtail taxpayer–subsidized commercial livestock grazing in this area than it is to permanently remove wild horses from the range. Thus, a clear future action that the USFS must analyze in the final EA is the reduction or elimination of sheep AUMs within the WHT and how the AUMs currently designated to sheep could be transferred to the wild horses.

### 2. Range Improvements

The USFS must analyze how the implementation of range improvements, such as the development of additional water sources and removal of fencing, could affect the management plan. For example, the removal of any fencing would enhance the ability of the wild horses in the WHT to utilize the entire designated habitat area instead of forcing them to concentrate in certain areas or move outside of the boundaries. The analysis must include a map that shows the boundaries, livestock allotments, wild horse distribution (census map for all seasons), water sources and fencing. Accurate data on wild horse use and distribution relative to the features of the WHT will lead to implementation of the most effective and beneficial future range improvement actions over the course of the management plan.

## D. Adequately Analyze Alternatives

Of the proposed alternatives, one analyzing a drastic decrease in the AML with genetics monitoring and one raising the AML without genetics monitoring, there is room for other reasonable alternatives in the final EA. USFS must take more seriously its obligation to make the NEPA process meaningful since the Draft EA's alternatives exclude evaluation of several obvious additional points to the proposed action. Such gaps raise grave questions as to whether USFS is merely using this process not to genuinely consider alternatives to the action but instead to justify the decision USFS has already chosen, to remove the majority of wild horses from the WHT without even considering creative solutions to manage the wild horses. In fact, in its comments in response to the USFS's scoping letter AWHC raised the concern that it seemed the USFS had already reached the foregone conclusion that the change in AML was necessary given statements such as the horses were "not in a thriving natural ecological balance with other uses and the productive capacity of their habitat." (Attachment 3). Such conclusions at the scoping level demonstrated that the agency had likely already improperly predetermined the outcome of its AML decision before the NEPA analysis had even begun. Since in the draft EA the agency pursued the changes to AML under the same presumptions, AWHC asks again for the agency to consider other alternatives to a reduction in AML as articulated below.

As the NEPA regulations make clear, utilizing the NEPA process as nothing more than a ruse to justify or rationalize a decision already made is a patent violation of the letter and spirit of NEPA. See, e.g., 40 C.F.R. § 1502.2(g) (explaining that the NEPA process "shall serve as the means of assessing the environmental impact of proposed agency actions, *rather than justifying decisions already made*.") (emphasis added); see also id. § 1502.5 (requiring that NEPA review "shall be prepared *early enough so that it can serve practically as an important contribution to the decisionmaking process* and ***will not be used to rationalize or justify decisions already made***") (emphases added). Thus, USFS must consider the several additional, obvious alternative points to the proposed action in the EA.

As such, AWHC reminds the USFS that under the requirements of NEPA, the agency must consider reasonable alternatives to the proposed action. The following alternatives focus on maintaining, and potentially increasing, the wild horse AML and monitoring for genetic viability:

- Increase the AML to a genetically viable and sustainable population range. Implement a comprehensive genetic monitoring program to ensure that the wild horse population's genetic viability trends in the correct direction.

- Implement a comprehensive fertility control program in the WHT utilizing the scientifically proven PZP fertility control vaccine to stabilize the population as currently found on the WHT. If necessary, since consistent and comprehensive PZP application will stabilize the population, incremental removals should occur over time and only when there is room in a holding facility and a need in adoption demand.

- Reduce or eliminate livestock use within the WHT. Wild horses are federally protected animals that the USFS is proposing to manage within their federally designated habitat. However, livestock grazing is not required to fulfill the agency's "multiple use" mandate. It is also far more cost effective to curtail taxpayer–subsidized commercial livestock grazing in this area than it is to permanently remove wild horses from the range.

Impacts to the wild horse population would be mitigated under these alternatives by decreasing livestock grazing on public lands and increasing the wild horse AML with genetics monitoring to ensure herd health.

Specifically on fertility control, AWHC supports consideration of an alternative that analyzes the implementation of a comprehensive PZP fertility control program to manage wild horses at the current population found in the WHT. The USFS must consider the possibility of implementing this option at current population levels utilizing Catch Treat and Release ("CTR") methods for the vaccination of all mares over 1 year of age with the PZP–22 or native PZP fertility control vaccine. The use of PZP fertility control is scientifically established, cost–effective and widely accepted in the mainstream wild horse advocacy and scientific communities. (Attachment 4, p. 99-112). If the herd were managed with PZP fertility control vaccine, the vaccine would need to be given to a sufficient number of mares in the WHT to ensure effective population growth suppression. It is estimated that 80 to 85 percent of the mares should be treated in order to achieve population growth suppression. In addition, should the USFS analyze this alternative in the final EA, the USFS must also outline future plans to continue the PZP fertility control

program in order to continue the population growth suppression and forgo removals. AWHC runs a large successful PZP program on state land in Nevada and is willing to work with the USFS to establish a successful PZP program in the WHT as well.

### E. Disclose Necessary Information

In order for the public to meaningfully provide public comment on the proposed action the USFS must disclose the following information for the planning area from the past 10 years. This includes, but is not limited to, such information as:

- A complete breakdown of livestock grazing in the WHT, including active and actual AUM allocations for each of the past 10 years;

- All rangeland health assessments for grazing allotments in the WHT. All monitoring data should also be included and the USFS should clearly describe the data delineating the separate impacts of livestock use versus wild horse use;

- All census data of the wild horse population for each of the past 10 years. This includes amending the EA to be consistent with the initially noted actual population increase of 7-8 percent, and not the national estimated increase of 20 percent, throughout the EA. The agency must also include an accurate dispersal accounting for all wild horses within the WHT during the winter season, see maps at Attachment 18 as an example and note how this data demonstrates the wild horse use in the WHT is throughout the territory during the winter; and

- A detailed map of all water sources and fencing within the WHT, and disclosure of water allocations for all uses in the WHT, as well as an explanation of how fencing and engineering of wells and springs for livestock grazing has affected water availability for wild horses and other wildlife species.

In addition, the final EA must accurately depict and differentiate the impacts from both livestock and wild horse use. For example, two U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service biological opinions (Attachments 19 and 20), analyzed livestock use in the allotments which overlap with the Murderers Creek Joint Management Area ("JMA") and wild horse use in the JMA; the 2011 livestock opinion notes that the BLM has non-discretionary duties to monitor, report and regulate livestock use in order to prevent take. Such an intensive review would be beneficial and necessary before the USFS moves forward with implementation of this management plan for the Big Summit WHT. As written, the draft EA does not disclose any clear evidence that demonstrates wild horses are the direct cause of any riparian damage that the USFS is currently claiming exists within the WHT. Thus, an intensive biological review of both livestock and wild horse use of the Big Summit WHT is needed before any final management plan can be implemented accurately.

Further, given the Government Accountability Office's 2017 report, "Animal Welfare: Information on the U.S. Horse Population," AWHC calls into question the agency's ability to measure and differentiate the impacts of wild horses and from those of livestock. The report states, "According to USGS officials and documentation, research that evaluates and separates cattle and

wildlife impacts from wild horse impacts has not been conducted, and studies on horse grazing effects are needed." (Attachment 10, p. 32). Therefore, the draft EA must disclose all monitoring and reporting data that the USFS has collected specifically on livestock use which fulfills its duties to prevent take and demonstrates documentation that can separate livestock impacts from wild horse impacts.

In sum, AWHC requests that the USFS disclose this the above-mentioned necessary information that is required for the public to provide meaningful comment on the proposed action in the final EA.

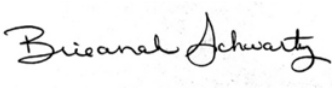
## V. CONCLUSION

For the reasons explained above, AWHC believes that the above information and analysis is the minimum required to satisfy NEPA, and the WHA. We hope that USFS will seriously consider the foregoing comments, as well as those in the attached letter signed by 3,618 American taxpayers (Attachment 21), when preparing the final EA for yet another wild horse roundup in Oregon.

AWHC expects that the USFS will provide the level of detail described and requested above, which is necessary for the agency's informed decisionmaking. NEPA requires Federal agencies to consider environmental effects that include, among others, impacts on social, cultural, and economic resources, as well as natural resources. The above-mentioned concerns, data and information must be fully analyzed in the final EA and adequately considered by the USFS.

Thank you for your consideration.

Sincerely,



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**Attachments**

Attachment 1: Rutberg, Allen, Grams, Kayla, et al, *Contraceptive efficacy of priming and boosting doses of controlled-release PZP in wild horses*, Wildlife Research (April 2017).

Attachment 2: Baker DL, Powers JG, Ransom JI, McCann BE, Oehler MW, Bruemmer JE, et al. (2018) Reimmunization increases contraceptive effectiveness of gonadotropin-releasing

hormone vaccine (GonaCon-Equine) in free-ranging horses (Equus caballus): Limitations and side effects. PLoS ONE 13(7): e0201570

Attachment 3: AWHC Scoping Comments for the Big Summit WHT

Attachment 4: "Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward," National Academy of Sciences, June 2013.

Attachment 5: Gelding Is Likely to Cause Wild Horses Undo Suffering, Dr. Bruce Nock

Attachment 6: Statement by Dr. Jay Kirkpatrick on Gelding

Attachment 7: 2015 National Resource Council Report

Attachment 8: 2019 AWHC and coalition comment letter on BLM Spay Research

Attachment 9: Veterinarians' Letter to Secretary Bernhardt

Attachment 10: House Letter to Secretary Bernhardt

Attachment 11: Senate Letter to Secretary Bernhardt

Attachment 12: BLM Cold Springs HMA 2015

Attachment 13: BLM Stinkingwater HMA 2017

Attachment 14: BLM Beatys Butte HMA EA DR FONSI 2009

Attachment 15: BLM EA FONSI South Steens HMA

Attachment 16: 1982 National Research Council Report

Attachment 17: *An Economic Model Demonstrating the Long-Term Cost Benefits of Incorporating Fertility Control into Wild Horse (Equus Caballus) Management Programs on Public Lands in the United States*, Charles W. de Seve, Ph.D., and Stephanie L. Boyles Griffin, M.S., Journal of Zoo and Wildlife Medicine, 2013.

Attachment 18: Central Oregon Wild Horse Coalition Winter Fly Over Map

Attachment 19: 2011 National Marine Fisheries Service, Final Biological Opinion on the Effects of BLM Prineville District's Authorization of 12 Annual Grazing Permits (2010/00159)

Attachment 20: 2013 National Marine Fisheries Service, Final Biological Opinion on the Effects of BLM's Implementation of the 2007 Murderers Creek Wild Horse Territory/Herd Management Area Management Plan (NWR-2012-716)

Attachment 21: Big Summit WHT Sign-On Letter