

intended to prevent, and potentially threatens to eliminate or greatly reduce the presence of wild and free-roaming horses and burros from the federal public lands.” *Id.* at 1537.

(3) *United States v. Hughes*, 626 F.2d 619 (9th Cir. 1980). The defendant was a participant in the Adopt-a-Horse program, under which excess wild horses are captured and loaned to participants for their use but cannot be sold for commercial exploitation. *Id.* at 620. Despite the government’s requirements under this program, the defendant sold a number of his adopted horses to a slaughterhouse where the horses were processed into horsemeat for human consumption abroad. *Id.* Among other things, the defendant was convicted of maliciously causing the death of the horses. *Id.* In affirming the determination that defendant acted with malice, the Ninth Circuit agreed that “malice” under the Act requires “a finding that the defendant committed intentionally a wrongful act toward the animal without justification or excuse.” *Id.* at 625-26.

The purpose of 16 U.S.C. § 1338 is to criminally prosecute those who seek to harm wild horses, not well-intentioned citizens. An attempt to save a wild horse from starvation, particularly during periods of extreme winter and forage conditions, does not demonstrate a deliberate disregard for the well-being of the animal nor constitute a wrongful act without justification or excuse. Any position to the contrary defies common sense. Therefore, as demonstrated herein, individuals cannot be subjected to criminal prosecution under the Act for providing supplemental feed to wild horses during extreme weather conditions.

C. The Ochoco Forest’s Statutory Interpretation Is Inconsistent With Clear Congressional Intent

At the outset, courts strictly construe criminal statutes against the government. *United States v. Denny-Shaffer*, 2 F.3d 999, 1014 (10th Cir. 1993). Further, the intention of the lawmaker governs the construction of the criminal statute. *Huddleston v. United States*, 415 U.S. 814, 831 (1974). Here, the intent of Congress does not support your interpretation of the Act.

In fact, the criminal provisions in the Act are designed to preserve and protect wild horses on public lands. *E.g.*, *United States v. Hughes*, 626 F.2d 619, 620 (9th Cir. 1980) (citing 16 U.S.C. § 1331); *see also Kleppe v. New Mexico*, 426 U.S. 529, 536 (1976). Indeed, the use of criminal prosecution to *protect* wild horses is well supported in the Act’s legislative history. *See, e.g.*, H.R.Conf.Rep.No.92-681, p. 5 (1971), U.S.Code Cong. & Admin.News 1971, p. 2159 (The purpose of the legislation is “the *survival* of wild free-roaming horses and burros.”). The Senate similarly concluded as follows:

During the course of this century, the wild horse population has dwindled to a minuscule fraction of the estimated 2 million that once roamed the western plains and mountains. They have been cruelly captured and slain and their