

April 22, 2021

VIA ELECTRONIC SUBMISSION (CARA)

Heber Wild Horse Territory Management Plan
P.O. Box 640
Springerville, AZ 85938

Re: Heber Wild Horse Territory Management Plan

Dear Forest Service Officer:

Friends of Animals¹ submits these comments in response to the draft environmental assessment (EA) , draft territory management plan (TMP), proposed Appropriate Management Level (AML) for the Heber Wild Horse Territory Management Plan Project to request that the Forest Service consider the impacts of its actions and seize plans intended to capture wild horses and suppress the characteristics that define them as wild and free.

The Forest Service needs to take a hard look at its management of wild horses and the data that demonstrates wild horses are an integral part of natural public lands. There was a time when millions of horses roamed the West; a time when the ecosystem was diverse, the land was rich, and the landscape wild. It was not until humans started to use our public lands for personal profit that the ranges started to deteriorate. Overwhelming evidence demonstrates that grazing millions of cattle for the meat industry, as well destructive fossil-fuel energy development on public lands, have caused damage to the range, not wild horses.

Nonetheless, the Forest Service continues the rush to approve this long-term, expensive plan that paves a path for eliminating wild horses. the Forest Service claims that it needs to remove horses to the established AML for a total of 50- 104 wild horses across the Heber

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

Wild Horse Territory. However, this number is based on prioritizing the interest of those who seek to graze private cattle in the area.

Friends of Animals asks the Forest Service to consider giving horses room to roam freely in the limited space allocated to them. In particular, the Forest Service should circulate an Environmental Impact Statement (EIS) or new Environmental Assessment (EA) that analyzes additional alternatives in detail, including adjusting the AML, expanding the area available to wild horses, eliminating cattle from the Territory, and protecting predators to create a thriving, natural ecological balance without the need to artificially reduce wild horse populations. The Forest Service should also take a hard look at the impacts of wild horses and correct the EA which erroneously attributes a disproportionate share of range deterioration in the Heber Wild Horse Territory to wild horses despite the evidence that cattle, are causing damage to the range.

Finally, Friends of Animals asks the Forest Service to consider its obligations to protect wild horses under the Wild Free-Roaming Horses and Burros Act (“WFHBA” or “Act”).

A. The Forest Service should consider its obligations under the Wild Free-Roaming Horses and Burros.

In 1971, a bipartisan Congress passed the WFHBA because it was “concerned that wild horses were vanishing from the West.”² Congress declared that “wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people.”³ Congress stated, “wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death, and to accomplish this they are to be considered in the area where presently found as an integral part of the natural system of public lands.”⁴

The Act obliges the Forest Service to “protect and manage wild free-roaming horses and burros as components of the public lands . . . in a manner that is designed to achieve and maintain a thriving, natural ecological balance on the public lands.”⁵ Additionally, the Act mandates that all management activities “be at the minimal feasible level.”⁶

According to the Senate Committee report accompanying the bill:

The committee wishes to emphasize that the management of the wild free roaming horses and burros be kept to a minimum both from the aspect of

² 16 U.S.C. § 1331.

³ *Id.*

⁴ *Id.*

⁵ 16 U.S.C. § 1333(a).

⁶ *Id.*

reducing costs of such a program as well as to deter the possibility of “zoolike” developments. An intensive management program of breeding, branding, and physical care would destroy the very concept that this legislation seeks to preserve . . . leaving the animals alone to fend for themselves and placing primary emphasis on protecting the animals from continued slaughter and harassment by man.⁷

The WFHBA mandates that Secretary maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands to determine AMLs and make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals.⁸

The WFHBA only authorizes the Forest Service to remove “excess” wild horses in limited circumstances.⁹ In making such a management decision, the Forest Service must make a determination that: (1) “an overpopulation [of wild horses] exists on a given area of the public lands,” and (2) “action is necessary to remove excess animals.”¹⁰ The WFHBA also mandates that decisions to remove wild horses be based on currently available information and that they be implemented immediately.¹¹ The Forest must then issue a new decision and analysis under the National Environmental Policy Act before each roundup. Moreover, each decision must be limited to what is immediately needed and the Forest Service cannot continually roundup and remove horses merely to maintain or achieve established AML. Current inventories and site-specific removal decisions are also necessary to ensure that the Forest Service manages wild horses at the “minimal feasible level.”¹²

B. The Forest Service should consider its obligations under the National Environmental Policy Act.

1. The proposed action meets the level of significance that triggers preparation of an EIS.

The National Environmental Policy Act (NEPA) requires an acting agency to prepare a detailed environmental impact statement (EIS) for federal actions that significantly affect the quality of the human environment. The EIS should include “(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be

⁷ 92nd Congress, Senate Report 92-242, June 25, 1971.

⁸ 16 U.S.C. §1331(b)(1).

⁹ 16 U.S.C. 1333(b)(2).

¹⁰ *Id.*

¹¹ 16 U.S.C. § 1333(a).

¹² 16 U.S.C. § 1333(a).

avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action.”¹³

The proposed action and alternatives in the EA would result in major environmental impacts and warrant preparation of an EIS. In particular, the proposed action would have a significant effect on the local area and Wild Horse Territory because it would remove the majority of wild horses from the area. It would have both short-term and long-term significant effects. In the short term, most of the wild horses would be removed, drastically altering the ecology of the area and making it difficult for people to observe or view wild horses in the area. It would also have severe long-term consequences, including undermining the social structure, stability, and viability of the wild horse populations in the Heber Wild Horse Territory.

Finally, the Forest Service must issue a separate site-specific NEPA analysis for each roundup and does not have authority to issue one decision that covers multiple roundups over the course of multiple years.

2. The Forest Service should thoroughly analyze the impacts of the proposed action and alternatives.

As discussed above, the proposed action warrants an EIS. However, regardless of whether the Forest Service prepares an EA or an EIS it must take “a hard look” at the impacts of an action prior to making an irreversible and irretrievable commitment of resources.¹⁴ To meet this obligation, the Forest Service must identify and disclose to the public all foreseeable impacts of the proposed action.¹⁵

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

¹³ 42 U.S.C. § 4332(2)(C).

¹⁴ *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97-98 (1983).

¹⁵ *See* 42 U.S.C. § 4332(2).

a. The Forest Service should consider the proposed actions impact on the health, viability, and sustainability of wild horses in and around the HMAs in the Heber Wild Horse Territory Complex.

The Forest Service must consider the impacts of its proposed actions on the genetic viability of the wild horses in and around the Heber Wild Horse Territory. The Forest Service fails to take into account that the proposed action places the health of the wild horses at risk. Not only did the Forest Service fail to take a hard look at how the proposed action would impact the wild horses, but it also failed to disclose any enforceable plan to protect the health, viability and sustainability of these wild horses.

The Forest Service's proposal to lower the population of each HMA to less than 150 wild horses puts the health and future of these wild horses at serious risk. The use of fertility control only compounds the problem. Moreover, the Forest Service failed to consider the baseline conditions and genetic health of the wild horses in the Heber Wild Horse Territory. NEPA mandates the Forest Service consider the baseline health of these wild horses **before** approving a management plan. This is necessary to analyze how proposed actions will impact the wild horses in the Heber Wild Horse Territory.

Moreover, the Forest Service cannot avoid its duty with vague claims that it could monitor the herd and release mares from other HMAs to maintain genetic diversity. As an initial matter, importing horses from other HMAs to coverup the Forest Service's mismanagement of the wild horses is precisely the zoo-like conditions that Congress sought to avoid when it passed the WFHBA to protect wild and free-roaming horses. In addition, if the Forest Service is going to rely on mitigation measures such as introducing wild horses, then it must include sufficient detail about how this will be implemented to constitute an enforceable commitment. The EA merely includes vague language and fails to provide any detail sufficient to constitute an enforceable commitment. If an agency could "paper over flaws" in its analysis with assurance that its "mitigation team will implement, monitor, and adjust mitigation techniques" it would "effectively gut the environmental safeguards that Congress enacted in . . . NEPA."¹⁶

The EA also completely fails to consider how the proposed action and alternatives in combination with past and foreseeable future removals/fertility controls will have cumulative impacts on the genetic health, diversity, and sustainability of wild horses in and around the Heber Wild Horse Territory. The Forest Service must disclose and analyze this information before taking any action to impact the wild horses in or around the Surprise Complex.

¹⁶ *Envtl. Def. v. U.S. Army Corps of Eng'rs*, 515 F. Supp. 2d 69, 84-85 (D.D.C. 2007).

b. The Forest Service should consider the social, behavioral, and physiological impacts of population growth control measures on wild horses.

Friends of Animals, concerned members of the public, and the scientific community have repeatedly provided the Forest Service with scientific studies regarding the permanent and even fatal impacts of various wild horse population control methods. Friends of Animals urges the Forest Service to review and consider recent scientific research and disclose the actual impacts of population control on wild horses.

c. The Forest Service should take a hard look at range conditions and impact of various other land uses.

The EA assumes that wild horses are causing harm to the range and that the population needs to be reduced. However, the Forest Service fails to take a hard look at how wild horses are impacting the range. The Forest Service does not analyze grazing utilization and distribution, trends in ecological conditions, climate data, or any other evidence that deterioration from wild horses is occurring in the Heber Wild Horse Territory. Nor does the EA provide an explanation of how the Forest Service determined the impact of horses, as compared to other uses, on the condition of the range. The Forest Service cannot genuinely dispute that leasing the land for ranchers to graze their domestic cattle has, and continues to, negatively impact the range.

However, the Forest Service never determines what degradation is likely from wild horses as compared to other uses. Without this baseline information, the public cannot meaningfully comment on, or compare, proposed alternatives. Moreover, the Forest Service itself cannot make an informed decision without first taking a hard look at how various uses impact the range. The Forest Service's failure to quantify how much other uses are contributing to range deterioration is a serious flaw particularly as more studies demonstrate that wild horses can have a positive impact on the range, and thus, the Forest Service is likely erroneously attributing damage caused by other uses to wild horses.

d. The Forest Service should consider the positive impact of wild horses.

The EA provides an incomplete and misleading analysis of the impact of wild horses on the range and the no action alternative because it ignores scientific information about the positive impact of wild horses. Studies demonstrate that wild horses support healthy ecosystems on public land if given sufficient habitat and left alone.¹⁷ For example, wild

¹⁷ See Downer, C. C. (2014). The horse and burro as positively contributing returned natives in North America. *American Journal of Life Sciences*, 2(1), 5-23 (attached); see also Lundgren, E. J., Ramp, D., Ripple, W.

horses help spread plant seeds over large areas where they roam. Wild horses do not decompose the vegetation they ingest as thoroughly as ruminant grazers, such as cattle or sheep, which allows the seeds of many plant species to pass through their digestive tract intact into the soil that the wild horses fertilize by their droppings. Wild horses also help to prevent catastrophic fires and help to build more moisture-retaining soils. Soil moisture dampens out incipient fires and makes the air coating the earth moister.¹⁸ Wild horses refill a significant empty niche within the North American ecosystem.”¹⁹

Wild horses select preferred grasses, sedges and herbs, including coarse, highly abrasive grasses, creating a mosaic of high and low vegetation that creates a more diverse habitat for invertebrates, small vertebrates and herbaceous plants.²⁰ Unlike cattle, wild horses do not stay at water sources, but rather move after drinking and will travel long distances from water.²¹

Wild horses are self-regulated and the population would likely come into balance with the ecosystem if left alone. In contrast, removing wild horses to artificially low numbers not only negatively impacts the individual horses and the genetic viability of the herd, but it is also short-sighted and ineffective because it prompts short-term population growth.

The National Academy of Sciences Report concluded that “management practices are facilitating high horse population growth rates.”²² It explained that, “[r]emovals are likely to keep the population at a size that maximizes population growth rate, which in turn maximizes the number of animals that must be removed and processed through holding facilities.”²³ This directly conflicts with the WFHBA’s mandate that “all management activities shall be at the minimal feasible level.”²⁴

J., & Wallach, A. D. (2018). Introduced megafauna are rewilding the Anthropocene. *Ecography*, 41(6), 857-866 (attached).

¹⁸ *Id.*; see also Ripple, W. J., et al. (2015). Collapse of the world’s largest herbivores. *Science advances*, 1(4), e1400103; Wild Horse Fire Brigade - Rebalancing North American Ecosystems: <https://grazelife.com/blog/wild-horse-fire-brigade-lessons-in-rebalancing-north-american-ecosystems-by-rewilding-equids/>.

¹⁹ Downer, *supra* note 17, at 12.

²⁰ Naundrup, P. J., & Svenning, J. C. (2015). A geographic assessment of the global scope for rewilding with wild-living horses (*Equus ferus*). *PloS one*, 10(7), e0132359.

²¹ Ganskopp, D., & Vavra, M. (1986). Habitat use by feral horses in the northern sagebrush steppe. *Journal of Range Management*, 207-212.

²² National Research Council. 2013. Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward. Washington, DC: The National Academies Press. <https://doi.org/10.17226/13511>.

²³ *Id.*; See also Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment at 63, available at https://www.fs.usda.gov/nfs/11558/www/nepa/100829_FSPLT3_5268324.pdf.

²⁴ 16 U.S.C. § 1333(a).

C. The Forest Service should consider reasonable alternatives to the proposed action.

The Forest Service should consider reasonable alternatives to achieve a thriving natural ecological balance in the Heber Wild Horse Territory including adjusting the current AML, adjusting forage allocated to cattle, and allowing natural controls. To the extent that the Forest Service argues that the purpose and need of the action is limited to removing wild horses, it has defined the purpose and need in unreasonably narrow terms.

D. Conclusion.

The Forest Service indicates that there is no longer room for a natural free-roaming population of wild horses. But Friends of Animals believes in (and Congress sought) a place on our public lands devoted principally to wild horses, horses free from human exploitation and manipulation.

Friends of Animals strongly opposes the roundup and removal of any wild horses within and around the Heber Wild Horse Territory. Friends of Animals also opposes the use of fertility control on wild horses as a population management tool. The Forest Service's increased management and restriction of wild horses strays from the vision of freedom and wildness that Congress sought to protect. Friends of Animals request that the Forest Service consider the true impact of its proposed actions and consider additional alternatives that protect wild horses. The Forest Service should instead consider adjusting the AML in the Heber Wild Horse Territory and limiting conflicting uses that have adverse impacts to the environment, such as cattle grazing. The Forest Service should also consider natural controls, including protecting predators in the area. Finally, before the Forest Service decides to conduct any proposed roundups, it must consider the impacts of the roundup and subsequent captivity on the wild horses and their potential contribution to a balanced ecosystem if left alone.

Thank you for the opportunity to comment, and please contact me if you have any questions or concerns.

Sincerely,

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