

Heber Wild Horse Territory Plan #18916 - Comments

I am an Arizona resident and firmly believe that wild horses “enrich the lives of American people.” See Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. §§ 1331, *et seq.* (the “Act”). Indeed, I value the opportunity to view the Heber Wild Horses both in person and in photographs. Following, please find my substantive comments on the Draft Environmental Assessment (“EA”) and Heber Wild Horse Territory Draft Management Plan (“TMP”).

The United States Forest Service (“USFS”) considered only two alternatives: (1) No Action, and (2) the Proposed Action. Indeed, the USFS has failed to consider a “reasonable range” of alternatives as required under the National Environmental Protection Act (“NEPA”). For instance, the USFS failed to consider an alternative that eliminates or - at a minimum - significantly reduces livestock grazing within the Heber Wild Horse Territory (the “Territory”). The USFS provides the following faulty rationale: “[b]ecause of the requirement to manage for multiple uses, the established history of authorized livestock grazing within the territory, and the abundance of forage that was not identified as a limiting factor in the appropriate management level determination, this alternative was not brought forward for detailed analysis.” EA at p. 14. The USFS disregards the fact that, pursuant to the Act, the Territory was designated as a “**sanctuary**” for the protection and preservation of wild horses. 16 U.S.C. § 1333(a). Moreover, even designated ranges managed under a multiple use concept are to be “**devoted principally**” to wild horses. 16 U.S.C. § 1332(c). Additionally, the mere fact that livestock grazing has historically occurred within the Territory does not negate this option from consideration. Finally, eliminating or significantly reducing livestock grazing within the Territory would provide up to an additional 506,000 pounds of the available forage to wild horses, which - in turn - would allow an increase in the appropriate management level (“AML”). Given that substantial livestock grazing occurs outside of the Territory, it is anticipated that the impact on permittees currently authorized to graze livestock within the Territory would be minimal. See EA, at p. 51, Table 12 Permitted livestock grazing in the Heber Wild Horse Territory. Consequently, the USFS wrongly dismissed an alternative eliminating or significantly reducing livestock grazing within the Territory from detailed consideration.

The USFS also failed to consider other reasonable options, including:

- Removal of livestock before any removal of wild horses if it is determined that vegetation and soil stability conditions are trending downward. *Cf.* TMP at p. 5 Criteria for Determining Excess Horses (“Key grazing areas are sampled for ecological conditions and show the vegetation and soil stability conditions are trending downward, and horses are identified as a contributing factor.”) (emphasis added).
- Elimination of boundary/perimeter fencing to preserve natural wild horse behaviors, including movement, connectivity of habitat, etc. *Cf.* TMP at p. 31 (“Excess fences (fences no longer needed for livestock management or resource protection) will be removed where feasible to allow free movement of horses within the territory.”)

- Utilization of human fertility control, *i.e.* porcine zona pellucida (PZP) vaccine, as a means of stabilization and reducing wild horse population (and without removal of wild horses).
- Refrain from cruel and senseless roundups of wild horses under any circumstances. Roundups (a/k/a gathers) are illogical, resulting in astronomical numbers of wild horses in long-term holding and associated costs.
- Refrain from gathers and removals while the population is within the AML range. *Cf.* TMP, App. 3. Standard Operating Procedures for Fertility Reduction Treatments p. 20 (“Periodically remove small (1 to 3) numbers of horses from individual bands in order to maintain population numbers when populations are approaching the upper quartile of the appropriate management level”). Determinations for removal, including determinations of excess wild horses, must be based on more than a mere number. Indeed, such determinations must be in compliance with federal law and reasoned, *e.g.*, considering whether adequate forage exists, health of herd, etc.
- Utilization of a remote delivery system to administer contraceptives similar to that utilized in management of the Salt River wild horses in the Tonto National Forest - as opposed to using gathers.
- Refrain from the use of helicopters under any circumstances during gathers.

Additionally, there continues to be a lack of reliable data to support USFS’s estimated wild horse population, annual growth rate, and associated management decisions, including AML. Indeed, only 3 horse-specific surveys have been conducted and relied upon by the USFS. The USFS, in fact, concedes the lack of data. *See, e.g.*, EA at p. 21 (“Horse use monitoring is needed to determine the reasons for lack of use.”); EA at p. 33 (noting “monitoring data specific to horse use patterns is lacking”). Incredibly, the 2017 survey’s estimated population ranges from 270 to 420, which is a percentage difference of over 43%!

Nor does there appear to be any scientific evidence supporting the USFS’s determination that the proposed AML of 50 to 104 horses is sufficient to maintain genetically diverse wild horse populations. *Cf.* Proposed Appropriate Management Level Determination, p. 34 (“The Bureau of Land Management handbook recommends a minimum herd size of 150 to 200 horses (at least 50 effective breeding animals) to avoid inbreeding depression in wild horse populations”); (“the 2013 National Academy of Science committee review ... stated that to maintain herd fitness, the minimum herd size could be closer to 5,000.”).

The USFS fails to provide a framework that adequately ensures the welfare of wild horses associated with the Territory. While the TMP alludes to a management strategy, it focuses on the removal strategy and gives minimal consideration to keeping the wild horses thriving and healthy. To the extent any consideration is paid to the welfare of the wild horses, it is subordinated to livestock interests. *See, e.g.*, p. 31 (“Excess fences (fences no longer needed for livestock management or resource protection) will be removed where feasible to allow free movement of horses within the territory”); (“After livestock are removed, pasture and boundary

gates will be left open to provide wild horse passage and movement and to facilitate the movement of animals between seasonal ranges.”) The TMP should include specific objectives for the Territory concerning preservation of natural behaviors, including removal of existing fencing to allow wild horse movement, connectivity of habitat, and minimization of impacts to the wild horses and their habitat.

The TMP also fails to include provisions protecting wild horses from “capture, branding, harassment, or death.” See 16 U.S.C. § 1331. In the last 3 years, over 2 dozen wild horses have been killed - most of whom were fatally shot. Shockingly, despite being subject to fine and imprisonment, such willful violations are increasing. It is unclear what - if any - precautions, the USFS will take.

The TMP also fails to recognize the historical significance and presence - as well as evidence of the contemporary presence - of wild horses in and around the Territory. See, e.g., TMP pp. 1-2. The USFS’s long-standing practice of discounting the existence of wild horses must be corrected. At a minimum, the TMP should be revised to include an accurate and unbiased narrative of the historical significance and presence of wild horses as well as evidence of the present inhabitation. See, e.g., Notice of Appeal regarding the Record of Decision (the “ROD”) and Final Environmental Impact Statements (the “FEIS”) for the Land Management Plan (the “LMP”) for the Apache-Sitgreaves National Forests filed on behalf of the International Society for the Protection of Mustangs and Burros and TerraWind Ranch Eco-Action Group, at p. 5-8, including referenced attachments thereto, which are in the possession of the USFS.

I am concerned that wild horses may inadvertently be determined to be domestic animals and treated in accordance with State law. The USFS must recognize that 36 C.F.R. § 222.63 concerning the removal of other horses and burros, provides special protection for horses that do not fall initially within the protection of the Act, if they are subsequently introduced into a protected territory “by accident, negligence or willful disregard of private ownership” and become intermingled with wild free-roaming horses. The USFS fails to specify the process by which horses may be determined to be domestic animals. See TMP, App. 1: Standard Operating Procedures for Removal of Excess Wild Horses, p. 10 (“Any branded or previously domesticated animal captured will be handled under regular impoundment and disposal procedures.”). Consequently, it is impossible to determine whether that process affords sufficient protection for wild horses.

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