Modoc National Forest
Wild Horse and Burro Specialist
225 W. 8th St.
Alturas, CA 96101 re: DGPWHT Middle Section

May 12, 2024

Modoc National Forest Staff:

Thank you for providing this opportunity to comment on the Devil's Garden Plateau Wild Horse Territory Management Plan and Environmental Assessment, and in particular, for the extended time period in which to do so. The Central Oregon Wild Horse Coalition appreciates the complexity and nuance of the situation, and the additional time will help us to better understand the breadth of this Decision. This action will shape the future of the Devil's Garden Plateau Herd, and we have noted the attention given to the interconnectedness of even simple "solutions", such as the unintended consequence of fencing certain water sources only to shift impacts to another micro-environment. We choose to interpret this as a fresh platform from which to move forward in a spirit of open dialog.

For this reason, we first seek clarification on some points which could potentially influence our support of the Alternatives presented:

1. Does the Modoc National Forest assume the maintenance of the two distinct phenotypes into the future, and has genetic study been conducted on the two types to determine genetic similarity or differentiation? (this would inform genetic exchange objectives in opening the Middle Section or strategies to achieve genetic diversity through intentional exchange)

2. Has progress been made toward assurance that all captured horses will be properly identified by freezebranding; that a National database will be developed to track captured horses (or use BLM infrastructure and numbers assigned to Forest Service); that compliance checking will be conducted regardless of adopter location and by trained staff or volunteers; and that titles will be issued following appropriate certification of horses' welfare?

3. What genetic analysis has been conducted to determine genetic diversity in small pastures, particularly when a subset of total AML has been established for those pastures? Has relatedness (Fixation index) between horses apparently residing primarily in separate pastures and other bands/Herd been explored and documented?

4. Reference has been made to additional water sources to be developed; when will these sources actually be developed, and will they be designed to replicate natural ecosystems over time, benefiting all wildlife (large ponds, solar-powered pumps, gravity circulation to maintain open water in winter, overflow to provide additional habitat, etc.)?

5. Have effects of extensive livestock fencing on wildlife been analyzed and documented?

6. What future effects of predation on horses are anticipated? Does the Ewanyk study indicate that significant impacts may already be occurring and is additional study planned? Are Gray Wolves present in or near the Territory in addition to Mountain Lions?

7. What was the effect of Intervenors' complaint relative to Devil's Garden Preservation Group "Settlement Agreement"?

8. Is "Excess Use" defined in any available document?

9. Where/how is the "Animal Unit Factor" used in determining forage allocations or AML?

10. The EA at 5 states "Key Issue... The issue is whether to add the Middle Section to the territory which would allow wild horse gathers of excess horses to aid in achieving AML." Should this be interpreted to mean horses have not previously been gathered from the Middle Section?

11. Appendix IV. Draft Appropriate Management Level Evaluation for the Middle Section of Devil's Garden Plateau Wild Horse Territory states (p. 52) "This Draft AML Evaluation (In Process)…
and "The AML Determination for the Middle Section of the territory will be made as part of the forthcoming Decision Notice to issue a revised Territory Management Plan. Any proposed AML adjustment for the Devil's Garden WHT would likely account for historic incidental horse use in the Middle Section. This evaluation will be completed prior to release of the draft supplemental environmental assessment." This is also alluded to in a brief statement in the EA's "Public Involvement" section (p.5): "In that (Scoping) notice the MDF stated that the revised TMP would be analyzed in a Supplemental EA. After review of public comments and given the amount of time that has lapsed since the 2013 DGP-WHT Decision (10 years), the MDF decided to develop a stand-alone EA analyzing the effects of the proposed action." In both theory and fact, this appears to set aside one of the most salient components of this analysis; how many horses the added Middle Section should support. Since the Court Order has already established the Purpose and Need to add some portion of the Middle Section to the Territory, wouldn't the absence of analysis of AML under Alternatives virtually nullify the weight and validity of this EA? Is there indeed a "supplemental" document yet to be provided, and if so, when can the public expect to have access to it? (see *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348, 109 S. Ct. 1835, 104 L.Ed.2d 351 (1989) (citing NEPA § 101, 42 U.S.C. § 4331). "Its purpose is 'action-forcing': *It ensures that the agency, in reaching its decision, will have available, and will carfully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decison making process and the implementation of that decision."* (emphasis added)

As indicated, our Comments may be limited by information voids, and by our lack of detailed ground-based and historical background which are undoubtedly built into this EA and Alternatives. Therefore, our Comments are somewhat contingent on acquiring more knowledge of the situation at hand.

But, there are certainly some clearly-expressed points to which we can respond unequivocally. The first of these is the Proposed Alternative, almost in its entirety. The Central Oregon Wild Horse Coalition finds Alternative 1 to be unacceptable on several fronts;

1) The AML of 206-402 cannot be considered valid, even without the addition of a portion of the Middle Section. As stated in our Scoping response (included as separate attachment), the 2013 AML for the DGPWHT as a whole was based on a patchwork Determination process which excluded "Moderate" utilization and limited the allocated AUMs to 8 months instead of the 12 months typically found in a year. As stated, we are still unclear about the role of the "Forest Service Policy" of conversion of wild

horse AUMs by a factor of 1.2, since we are unsure if forage calculations originated as a specified number of available AUMs. If that is the case, then we will strongly oppose this ridiculous "policy". There may be a wild horse, somewhere, who enjoys the amount of feed allocated to USDA's imaginary domestic horses on year-round domestic pastures and/or supplemental feed, understanding that USDA forage charts are meant to inform domestic farmers and ranchers as to how much feed various herbivores might consume within the structure of farm capacity (including prairie dogs). But this does not reflect the existence of a wild horse who must survive on what remains after permitted livestock consume/trample the bulk of forage at its peak (certainly not in the instance of Big Summit horses, who rarely exceed 800 lbs. and who paw through snow during winter months to access that forage). We hope this absurd conversion factor is not further reducing the number of Devil's Garden wild horses which, by Federal law, are authorized to live in viable, sustainable numbers. Regardless, the formulas used in the 2013 EA conspicuously reduced the number of horses allowed in the Territory to the same average number of horses carried over from the earliest days of Wild Free-Roaming Horses and Burros Act (WFRHBA) implementation. The first (1975) AML of 300 also appears to have ignored the stated population of 500 in 1974, committing the foundational transgression against the WFRHBA. Then, and notwithstanding the recent court ruling (Friends of Animals v. Bureau of Land Management Civil Action No. 18-2029 (RDM)) against long-range wild horse and burro management plans, it's now 2024, and the shelf life of the 2013 AML has been exceeded. Appendix IV. Draft Appropriate Management Level Evaluation for the Middle Section of Devil's Garden Plateau Wild Horse Territory at 17 cites the 1991 MDF Forest Plan: "every ten years revise the herd management plan for each wild horse territory, including forage allocation for horses within the carrying capacity of the territory..." Too, regardless of Court decisions and any differences noted between those cases and the Devil's Garden Plateau circumstances, NEPA requires currency of analysis.

(Oregon Nat Desert v. BLM) 625 F.3d 1092 (9th Cir. 2008) 531 F.3d 1114 *"*The EIS violated NEPA in the ways we have stated. Having addressed the problems we have identified, the BLM may decide to make different choices. *NEPA is not a paper exercise, and new analyses may point in new directions.*" and "'Continuing to pursue the issues raised in its comments and protest, ONDA contended in its complaint that the BLM had violated NEPA by (1) "fail[ing] to take a `hard look' at the environmental consequences of the proposed action, because *the Plan and FEIS do not present adequate baseline information and discussion on critical environmental resources and/or resource issues, including . . . current conditions* of . . . non-WSA roadless areas;" (2) failing adequately to analyze the cumulative impacts of the Plan; and (3) "fail[ing] to analyze and discuss a reasonable range of alternatives . . . with respect to areas allocated to livestock grazing and to off-highway vehicle restrictions.'" (emphasis added)

And, of course, additional acreage unquestionably merits the re-evaluation of the entire Territory, to include mitigation measures to address resource damage authentically attributable to wild horses; other than reduction of horse numbers. This has been established in settled law, that the WFRHBA requirement of "minimal feasible level management" means "...with as little disruption to the horses' lives as possible" (*Am.Wild Horse Campaign v. Bernhardt*, 442 F. Supp 3d 127).

Agencies bear responsibility to resolve ecological challenges without undue impacts to the wild horses and burros which they are mandated to protect. Removing horses is second only to the wholesale slaughter of horses in terms of severity and "disruption to the horses' lives".

We are grateful, however, for the willingness expressed in Alternative 1 to manage perceived overuse of riparian areas by restricting access to sensitive areas. Improving habitat and mitigating localized damage meets the provision of Minimal Feasible Level Management. But, as stated previously, we share in the Forest Service's concern that pressure may then be diverted to other water sources, and are puzzled as to why promised new water developments have not materialized. Solutions such as targeted, well-researched water developments can benefit all species, and will be increasingly necessary if rangeland health is to be achieved West-wide and regardless of wild horse presence. Innovative response to environmental threats has been the hallmark of the Forest Service in other areas; this infrastructure can be tapped to fulfill management objectives as stated in the WFRHBA.

2) The use of any version of GonaCon is unacceptable. We find it troubling that any unintended, long-term or permanent sterilization is merely dismissed with the statement "If long-term treatment resulted in permanent infertility for some treated mares, such permanent infertility would be consistent with the desired effect of using GonaCon (e.g. effective contraception)." Indeed, it is a known expectation that GonaCon is likely to result in permanent sterilization. Aside from private conversations with BLM researchers to this effect, it is widely known that Baker's study was truncated prior to determining long-term effects of GonaCon on mares' return to fertility. Without attempting to ascertain the context and intent of the word "sterilization" from the WFRHBA's list of remedies to overpopulation (16 U.S.C § 1333 (b)(1)), there are still ramifications associated with any means of sterilization. At the very least, as noted in the 2013 NAS Report, p.108 "At the population level, removing females even temporarily from the breeding pool is likely to reduce the effective population size (*Ne*) and genetic diversity of the population". Research on behavioral effects of fertility control is sorely limited, typically to the simplistic verification of treated mares' acceptance into social structures of the remaining population. But this ignores the more subtle impacts to that structure. Foals are the heart of a band or a herd; at the core of band cohesion which promotes generational knowledge transfer, leadership development, survival strategy, and position security. Interrelationships are dynamic and purposeful, with foal production inherently recognized and valued as the future of the band. These critical aspects of wildness, and infinitely more that mere humans cannot know, are bound to be diminished or lost with permanent sterility.

Further, the EA itself provides ample reason to question the safety of GonaCon use in wild horses (EA at 47-49) and assurances to the contrary amount to untethered assumptions that ill effects are "not expected". Kirkpatrick had registered his concerns, specifically regarding increased cardiological risks to humans, for example, which was apparently alleviated to BLM's satisfaction simply because the NAS Report concluded that "the mechanism and results of GnRH agonists would be *expected to be different*..." (see NAS p.115) But this prediction lacks empirical evidence. And, again from the NAS Report, p.132, contraception comparison charts reveal these cautions: "Sexual behavior may not be cyclic, inasmuch as ovulation appears to be blocked; Should not be administered during early pregnancy because abortion could occur; Few data on horses". (The Central Oregon Wild Horse Coalition recently witnessed the effects of an unborn foal's arrested development and subsequent death, leaving the mare to suffer untold weeks or months of attempts to expel the necrotic flesh. We were unable to save the mare. This experience warrants strong opposition to any preventable foal loss.) Too, because the scientific community views effects across a broad spectrum of mammalian species to be potentially relevant to all mammalian species, it may be significant that research findings have cautioned against low levels of progesterone (an effect of GonaCon; see EA at 48) in human females; "Anovulation and low levels of serum progesterone have been associated with a significantly higher risk of breast cancer in premenopausal women." (In Defense of Progesterone: A Review of the Literature; Allan Lieberman, Luke

Curtis). Also, it was perhaps widely suspected that GonaCon and its variants may have potentially-serious side effects on horses:

"At present, immunocontraception based on pZP glycoproteins appears to be the most practical and effective (Barber and Fayrer-Hosken 2000a, Fraker and Brown 2011), with few side effects (Ransom et al. 2010). pZP-specific vaccines likely have fewer side effects compared to GnRH vaccines (like GonaConTM; National Wildlife Research Center, Fort Collins, CO), *because GnRH receptors are located in a variety of tissues in addition to reproductive organs, including the nervous system (Lopez et al. 2007), bladder (Bahk et al. 2008), and heart (Skinner et al. 2009).* The potential effect of pZP-based immunocontraception on social structure and behavior in herd animals has been explored by others who reported either no differences (Kirkpatrick et al. 1995, Powell 2000) or minimal differences (Ransom et al. 2010) between vaccinated and control mares with respect to activity budgets, hierarchy within the herd, or interactions with stallions, unlike GnRH vaccines, which suppressed behavioral and physiological estrus (Elhay et al. 2007, Botha et al. 2008)." (emphasis added)

When studies of effects of GonaCon on wild mares' return to fertility are inconclusive since subject mares were not followed into latter years, there certainly cannot be available research analyzing long-range cancer occurrence in wild mares, or other unspecified, unknown effects. This is deeply concerning, and resonates with Kirkpatrick's alarm that "anti-GnRH vaccines could lead to adverse effects in other organ systems outside the reproductive system." (EA at 48)

3) We are skeptical that "computer-video assisted pneumatic dart projectors or computer automated pneumatic" technology can be safe and reliable methodologies to administer fertility control. Some technologies defy reasonable explanation as to why they are considered advancements worthy of pursuit; driverless cars, and, this. We fully understand that GonaCon cannot currently be delivered via field darting. As stated, the Central Oregon Wild Horse Coalition will oppose the use of any rendition of GonaCon, thus eliminating the need for this technology. However, we also grasp the daunting nature of a successful fertility delivery system within a Territory comprising over a quarter million acres. Advocacy can tend to imagine solutions on paper, but which lack realism on the ground where wild horses and their Agency stewards reside. It was on a range similar in expanse and herd approachability to the DGPWHT that we came to appreciate the near-impossibility of population control when any such program requires close proximity, repeatedly, to individual animals which will invariably vanish into the canyons when humans come within a half mile. It was also on this occasion that we saw the solution; what may seem untenable to a few volunteers or a small summer range crew is achievable with a professional, mobile cadre of military Veterans. We presented the concept at the 2018 National Wild Horse and Burro Advisory Board, and it was accepted as a formal recommendation. Sadly, in conference with BLM Wild Horse and Burro officials, it became clear that upper-level management did not understand the concept nor did they want to understand it. We grew (more) cynical, realizing that a Veterans Public Lands Service Corps will not be successful until agencies commit to performing their primary duties under the WFRHBA; to *protect* and *manage* wild horses and burros rather than merely controlling their numbers. Through a COWHC Board member who, by virtue of her National-level career contacts at Department of Labor, Veterans Affairs, and Department of Defense, and Colorado State government, we have continued to present the idea to a receptive audience. (note: This is NOT associated with the bill presently circulating in Congress.) Our concept draws from military Veterans across ages, abilities, and areas of expertise, as the program would employ logistical and administrative support staff as well as field crews tasked with projects such as herd censusing; fence construction or removal; water devel-

opment; range condition monitoring; fertility control and documentation; and habitat restoration including invasive species eradication.

Veterans are problem solvers. They are versed in leveling obstacles on war fronts far more hostile than our Western public lands. The concept envisions a program managed by NGO partners, mirroring agreements and contracts through which agencies can currently request Veterans' wildfire suppression crews, rather than direct employment (though the program would not preclude Federal employment, especially when many field offices are experiencing low candidate application). The Veterans Public Lands Service Corps would enable professional development through Veterans' education and job training benefits, and additional financial support could come from numerous agencies and organizations which exist to improve Veterans' lives. A combination of professional/career teams and skilled temporary or part-time staff would meet the needs of individual Veterans, and would mobilize according to agencies' local project requirements.

Should the Modoc National Forest wish to consider the Veterans' program as a progressive move toward multiple positive outcomes, the Central Oregon Wild Horse Coalition would assist with program establishment and oversight. However, we would not consent to this under Alternatives 1-3, as Veterans' expressed desire is to honor and improve this Country, including its wild lands and wild life. With the objective of helping the Territory to recover from historic and current degradation regardless of cause, only a modified Alternative 4 would be an appropriate framework for the investment of Veterans' time and effort.

4) Lastly, the Central Oregon Wild Horse Coalition cannot support the manipulation of male to female ratios to attain population goals. Having witnessed forced matings of fillies and observed the impacts on 2 year-old mothers, we believe every effort should be made to avoid this situation.

As mentioned, of the Alternatives ostensibly "on the table", Alternative 4 is the most palatable, but would require certain alterations to be consistent with the WFRHBA and the stated Purpose and Need. The EA at 1 states "All or portions of the delineated Middle Section will be analyzed in this EA and could be added to the Devil's Garden Plateau Wild Horse Territory". The delineated portions of the Middle Section considered in Alternative 4 would certainly command analysis, yet virtually no analysis is apparent. Several problematic voids in analysis are glaring. First, Alternative 4 is titled "Expand Area of Territory, Sustain Current Wild Horse Population, Limit Fertility Control Measures" (EA at 16).

The initial point in question is - What *is* the current population? Table 6, "Wild Horse Population Estimates and Scheduled Removals since 2016" (EA a 26). only raises more questions. When, for example, the 2022 population is 1,205 prior to gather (the reader assumes this is what is meant) and 816 post-gather, only a 64% growth rate would reach a censused number of 1,339 in 2023. In 2021, a gather of 501 horses would have produced a population of 1,436 - *before* any natural reproductive increase - yet the 2022 population was 1,205. We also understand the challenge of counting wild horses, since we designed and conducted the Ochoco National Forest's annual wild horse census from 2001-2019. Therefore, it is not the Devil's Garden population estimates with which we find substantive fault, but the random number of 1000 bearing equivalency to "the current population" when that is a somewhat elusive quantity. Also, 1000 seems to be a rather disingenuous "high AML" when in reality - were this Alternative to be selected - it appears ***750*** will be the upper level. While the advocate community is often found opposing agencies' arbitrary AMLs, in this instance we are in that camp with Alternative 4's

AML that we actually sort of like. The reason for our opposition is simply that it is not supported by analysis. Again; Alternative 4 received virtually *no* analysis. We also find that even the cursory dismissal of this Alternative, which appears to have the NEPA-violating purpose of placating advocates, is based on sparse and feeble explanation. Most critically, the Forest Service promises mitigation measures in some instances, such as water development, and restricts proactive mitigative action such as riparian fencing and spring restoration to the Proposed Alternative. Concerning Alternative 4's negative impacts to Shortnose Sucker and Lost River Sucker (EA at 21), a conflict exists between these damning *projected* impacts and the EA's promise to reduce livestock to avert these very impacts.

In the reading of *American Wild Horse Preservation Campaign, et al. v. Perdue et al.* (No. 1:14-cv-00485), we find that although the 1971 MDF Land and Resource Management Plan affirmed the (approximate) Territory acreage of 258,000, it was not the source or the pivotal legal basis for that number. Instead, the Court found that the Modoc National Forest materially considered the Middle Section to be part of the Territory due to management actions and other acceptance of that boundary. Similarly, the Forest Service states (EA at 1) "...the Forest issued a Public Scoping Letter announcing the intent to prepare an updated TMP that included a DGPWHT map showing one contiguous territory of 286,067 acres."(2011) And, Appendix IV. Draft Appropriate Management Level Evaluation for the Middle Section of Devil's Garden Plateau Wild Horse Territory, at 4, states "However, a 2003 Wild Horse Viewing brochure (FS 2003a) illustrated the territory based on a population survey area map (Figure 1). That 2003 map included the Middle Section with parts of Carr, Triangle, Avanzino, Timbered Mountain, and Big Sage Allotments as well as other outlying allotments (Blue Mountain, Howards Gulch, Mammoth, Tucker, and West Grizzlie Allotments." Computed acreages vary for unknown reasons, but one factor is expressed (EA at 1); "The Forest Plan did not specify whether BLM's Round Mountain HMA was included in the designated size of the territory and there were no published maps depicting 258,000 acres". The lawsuit itself seemed to vary from the (approximately) 258,000-acre total as well. We are confused. We suspect there are few un-confused types engaged in this process, as it appears nearly impossible to know exactly where the boundary was, should have been, should be, or will be. Still, the map associated with Alternative 4 would seem to offer the horses greater opportunity to disperse, to migrate, and to intermingle, and this is a primary reason we support Alternative 4.

In terms of our efforts to find data and rationale in support of analysis, not only are population estimates unreliable, and effects from wild horses conflated with those of permitted livestock, we find only generalized, mostly outdated, and speculative analysis in support of an AML of 206-402, or 500-750. Photos and graphics are duplicates of those used in the 2012 analysis.

As one example of many, pie charts developed by individuals known to be unfavorable to wild horses (Figure 9, EA at 33) suggest two conclusions; wild horses drink water, and wild horses spend less time at water sources than do cattle, which is consistent with other studies conducted in Great Basin/High Desert environments:

Ganskopp, D., & Vavra, M. (1986). Habitat use by federal horses in the Northern sagebrush steppe. Journal of Range Management, 39(3), 207-212. "Horses rapidly vacated the watering areas after drinking. A seasonal trend was observed in which horses remained slightly closer to perennial water sources during warm, dry summer months than during spring periods when additional seasonal sources were available. Seasonal differences were not statistically significant, however."

The common theme throughout the 2013 EA and the 2024 EA is that utilization standards are not being met "in part" due to wild horses, or that "observations" have been made, or that it "appears" wild horses have contributed to over-utilization. These "appear" to be casual and speculative conclusions; NOT the hard look required by NEPA. In 2013, the Forest Service had the open window and the open checkbook to effectively determine a reasonable wild horse population relative to range condition (though livestock effects can never be completely separated from those of wild horses and other wildlife even when livestock are temporarily or recently excluded. See Sneva et al. 1980, West et al.1984 "Arid and semi-arid plant communities can be relatively slow to recover from disturbances. For example, sagebrush steppe plant communities can take several decades once a disturbing agent is removed for even partial recovery.") But, in 2013, formulas from the BLM Handbook, meant to provide estimates of appropriate wild horse or burro carrying capacity, were blatantly manipulated to arrive straight back to historic numbers. Too, Forest Plan livestock utilization standards simply cannot serve as a surrogate to "thriving natural ecological balance". By definition, grazing by domestic livestock is "un-natural". And, also by definition, "thriving natural ecological balance" remains definition-less. "Utilization" has also been the subject of much skepticism from those who commercially graze on public lands, calling out the flawed methodology of basic metrics, and the limited reliability in establishing appropriate stocking rates based simplistically on a subjective consumption/residual forage model. (Example: Utilization and Residual Measurements: Tools for Adaptive Rangeland Management, Society for Range Management 2018) Additionally, permittee-collected data raises more doubt as to objectivity, yet the Modoc National Forest advertised classes which would certify permittees to submit data from their own grazing allotments (*Permittee Monitoring Workshop, Tuesday, May 16, 2017 10am-1:00pm Brought to you by the Modoc National Forest, UCCE Modoc County, Modoc County Farm Bureau, and Modoc-Washoe Experimental Stewardship Program*).

Importantly, managers tasked with implementation of a Federal law cannot be constrained by standards established in a local Land Use Plan. Such Plans must *implement* the Federal law, rather than effectively re-writing it to fit within "standards and guidelines". Unlike BLM regulations which (wrongly) equate Land Use Plans to Herd Management Plans - receiving just reprimand for doing so in *Leigh et al. v. Raby et al.* (3:22-cv-00034-MMD-DLB) - Forest Service regulations (36 CFR §222.61(a)(4)) state only "Analyze each wild horse and burro territory and, based on the analysis, develop and implement a management plan, which analysis and plans will be updated, whenever needed as determined by conditions on each territory."

It is self-evident that a separation of Territory Management Plans and Land and Resource Management Plans is indicated, where a Federal statute is at issue, just as the National Forest Management Act requires "a discussion of important policy considerations, laws, regulations, and other factors expected to influence and affect significantly the use, ownership, and management of forest, range, and other associated lands;" in order to structure local management direction around such Federal law as the Threatened and Endangered Species Act and the Bald and Golden Eagle Protection Act. The Wild Free-Roaming Horses and Burros Act should be treated no differently. From the WFRHBA, Thriving Natural Ecological Balance is pragmatically a more stringent standard than local livestock utilization standards and guidelines, assimilating the principles of Multiple Use, which sought to balance uses within specific landscapes, into the objective of functioning, symbiotic, *natural* ecosystems. Though lacking specific measures after 53 years, there was an evident vision of wild horses and burros thriving in harmony within their native habitat. The WFRHBA does not mention cows, cattle, sheep, or livestock - just wild horses, wild burros, and other wildlife. Yet, this is the place to which we have drifted; subjugating Federally-protected iconic species to the demands of industry and all its barbed wire, consump-

tion, and trampling, and analysis limited to how "key areas" (established in high horse use areas, not necessarily representative of the Territory) which supposedly demonstrates conformance to use standards set for transient privately-owned livestock. Though the Forest Service and BLM are in the unique situation of implementation of a Federal law (WFRHBA) as well as serving as the managers of the entire landscape and 'multiple uses' that comprise wild horse Territories and HMAs, those hazy lines of authority and responsibility cannot become so obscured that agencies lose sight of the specific stewardship of wild horses and burros given to them, and only them, by Congress. Forage allocation falls into this precarious scenario; Forest Service and BLM provide the ONLY habitat for wild horses protected under Federal law, while livestock grazing is a 'use' and agency regulations clearly state that said use can be reduced or terminated at the discretion of agencies. Livestock grazing is subject to standards and guidelines expressed in land use plans, whereas those plans should provide and preserve guidance for *adherence to Federal laws* - whether the Bald and Golden Eagle Protection Act, or the WFRHBA. In *Friends of Animals v. Sparks*, 200 F. Supp. 3d, BLM attempted to elude promises made in a land use plan to re-evaluate AML, by stating that the promise held no legal mandate because it was made in a land use plan, to which BLM is not bound. This premise was affirmed by the U.S. Supreme Court in *Norton v. Southern Utah Wilderness Alliance*, 542 (2012).

When the Forest Service discusses the history of the Devil's Garden Plateau Territory, the WFRHBA is cited (EA at 14) (16 U.S.C. § 1332 Definitions (c)) "'range' means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits..." The Central Oregon Wild Horse Coalition is especially grateful and duly impressed with the inclusion of this plain-text, unadulterated description of the term "range". A wild horse range is undeniably that; the amount of land necessary to sustain an existing (wild horse) herd. *Not* a "special" range which only conveys to certain horses the right to exist - which is the primary purpose of the Wild Free-Roaming Horses and Burros Act and includes ALL wild horses and burros. There are no other tiers of management described or even mentioned in the WFRHBA. Further, the cited passage continues "...and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;" Neither does the Multiple Use-Sustained Yield Act of 1960 preclude this status being granted to the wild horses of the Devil's Garden Plateau Territory, as it prescribes "that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output."

In consideration of these statutes, the "socio-economic" effects discussed in the EA carry less weight, or may even be extraneous to this Project. We find these effects to be framed in a light of antiquity and extreme prejudice, as though Modoc County were destined to be trapped within a 19th-century livestock economy and a vigilante political system. USDA Agriculture Reports for Modoc County contradict the dire economic impact of "too many wild horses" with profit figures growing fatter in recent years.

https://dot.ca.gov/-/media/dot-media/programs/transportation-planning/documents/data-analytics-services/transportation-economics/socioeconomic-forecasts/2022/modoc-2022-a11y.pdf

https://cms5.revize.com/revize/modoc/Agriculture/Crop%20Report/2022%20Modoc%20County%20Crop%20Report%20-%20FINAL.pdf

Reports also indicate a more diversified agriculture base, with honey bee farming a rapidly growing sector. Too, the "losses" attributed to wild horses may be somewhat misstated. The expressed value of $95 per AUM costs ranchers only $1.35, which has also been a quietly-simmering source of resentment among private-land ranchers who do not enjoy the forage giveaway. We also do not find grazing subsidy costs included in this section, which are, at a minimum, the hard costs of permit administration and other agency staff costs; nevermind other agency cooperation, and the incalculable past and present loss of topsoil, water tables, and species. An extremely conservative estimate is found in "Livestock Use on Public Lands in the Western USA Exacerbates Climate Change: Implications for Climate Change Mitigation and Adaptation" J. Boone Kauffman, Robert L. Beschta, Peter M. Lacy, Marc Liverman (2022), wherein direct agency permit management subsidy is estimated at $8-12/AUM. In "Waste of the West - Public Lands Ranching" Lynn Jacobs (1991) estimated combined (public) subsidy costs at $1Billion annually (at 1991 US Dollar value) or $400/cow year, and private expenditures an additional $1Billion/year. (Jacobs' exhaustive accounting of these costs would be too much information here, but for around $10 a used copy of his book can be had.) And, predictably, the EA's analysis offers no counterclaim from world citizens of an estimated $36.00/AUM for contributions to the greenhouse gas emission total for the planet (from above-cited article), as every living organism is impacted by ruminant grazing, and associated agricultural practices.

Many studies on the effects of livestock's contributions to global warming are readily available in a quick search. The "numbers" vary from 7% to 87%, depending on the researcher and depth and breath of the research. There are even studies that demonstrate how numbers are impossible to calculate, given factors yet unknown and the obvious research bias in both directions. What is known, and cannot be refuted, is that ruminant animals emit greenhouse gasses, and the non-ruminant wild horses' emissions are negligible while the ecological benefits are substantial; wild horses and burros are carbon *sinks* and ecosystem restorers (see Rewilding Europe: *https://rewildingeurope.com/rewilding-in-action/wildlife-comeback/wild-horses/*. The following videos illuminate the urgent need for objective, trustworthy science in regard to livestock and climate change:

https://watch.unchainedtv.com/videos/animal-climate-controversy
https://youtu.be/f_XT8NXc0sY

The EA's pervasive theme of climate change effects overlooks that ruminant livestock are undeniably, and in large part, responsible for that same climate change. Although this indictment applies to ruminant livestock worldwide, this point is made here in response to the supposed high economic value of unencumbered livestock grazing on Modoc County's public rangelands, and considering this value is enjoyed at the expense of a specially-protected, iconic species which simply has no other rangeland.

There is good reason why permit buyout legislation has come before Congress, and why such bills are circulating now. A taxpayer-funded, equitable amount paid to livestock permit holders would accrue lasting public financial benefit, beginning within a few years, while the reclamation of public lands (since the cow/horse occupancy ratio on public lands is roughly 50/1) would begin immediately and greenhouse gas emissions would be reduced by every cow presently "entitled" to forage at the expense of Federally-protected wild horses, other native wildlife, and each of us. Buyouts are possible under Forest Service grazing regulations as written, with *private funds* gladly paid to permit holders. However, there is a smothering cloud of doubt that the Forest Service would permanently retire the permit. This could be remedied at the present time and without new legislation, if there were inclination toward

this option. We realize this discussion occurs "outside the scope of the project"; except, under Alternative 4, it's well within scope. ((see also Appendix IV. Draft Appropriate Management Level Evaluation for the Middle Section of Devil's Garden Plateau Wild Horse Territory at 16: Forest Plan Direction and Existing Management, Forest Desired Conditions - "Adjust term permitted livestock use (either up or down), as needed, based on in-depth analysis of resource monitoring data.")

Lastly, the Forest Service has the distinct advantage of knowing how extensive internal fencing inhibits natural movement and use of habitat of wild horses (and other wildlife); where water sources exist or could exist in relation to horse concentrations; and how effective post-season gate access has been, in terms of facilitating natural migration. To the outsider, the amount of fencing is grotesque. It would seem that small herds are isolated from others (affirmed in pasture-specific AMLs) genetically and ecologically. If gates are opened after livestock have left the Forest, this would also be after breeding season, so genetic diversity goals would not necessarily be met as assumed. It would seem likely that animals could be trapped in winter, or otherwise kept from essential habitat components. This would also explain over-use in some instances. This is information we do not have, and certainly do not find in any analysis of the Middle Section addition Alternatives.

Without further detail, the Forest Service has virtually no sound, scientific basis for any decision regarding the Middle Section, or for affirmation of the 11 year-old Devil's Garden Plateau Territory Management Plan/AML. Recent court rulings support the need for the Modoc National Forest to update its Territory Management Plan, and AML, regardless of the Middle Section addition. Too, the "Settlement Agreement" cannot dictate management actions, in part because of the outdated nature of the Territory Plan and AML to which plaintiffs respond, and also because AML should alert agencies as to "whether" an overpopulation exists 16 U.S.C. § 1333(b)(1), and is not the singular controlling factor which determines how many wild horses must be rounded up. We are greatly disappointed to see this legal action persist while the mandate to include the Middle Section has languished for years, and even now, as prescribed in the Proposed Alternative, does not substantively conform to the Court order.

In essence, we do not find science-based evidence to support any Alternative which limits AML to 206-402 or to 1000, with or without the Middle Section; any explanation as to why Alternative 4 would allow for high AML of 1000 yet would maintain a population of only 500-750; or why Alternative 4 is held hostage by threats to fisheries, while suggesting livestock reductions would alleviate these impacts. We continue to wonder why restoration and mitigation are excluded from Alternative 4, and why AML cannot be achieved through targeted fertility control in lieu of roundups.

Other concerns include the failure to adequately consider predation impacts, and the Forest Service's refusal to freezebrand captured horses as prescribed in its own procedural direction.

There can be no doubt that mountain lions have a taste for Devil's Garden horses, when several young horses were killed at the Forest Service's own holding corrals. To claim otherwise would be absurd and beyond disingenuous. Wolf predation is also a factor which should have been considered, especially since small, vulnerable horse populations exist within pastures. At a time when wildlife agencies and Forest Service insisted wolves were not preying on the Big Summit Herd, we discovered wolf scat in the Wild Horse Territory, consisting almost entirely of horse hair, and which was found by an independent DNA lab to be Gray Wolf. This was in addition to public comments testifying to wolves tracking wild horses in the Territory, multiple wolf sightings, and a court ruling wherein the same Forest was found to be in violation of NEPA due partially to its refusal to consider impacts to wolves in the (off-

road trail system) project area. Denial of lion predation was also pervasive, yet we were provided with photos from a local photographer of lion attack scars on adult horses; clear testaments to the wild horses' ability to survive what should have been lethal encounters. Both predator species are increasing in numbers, and although the EA alludes to the lion population being at its peak ("Mountain lions are a protected species in California and assumed to be at optimum capacity within the WHT" DGPWHT Appendix IV), as long as there are wild and domestic prey species also at peak capacity, it is difficult to imagine an upper limit to the lions' impact. The reintroduction of the Gray Wolf, though his supporting environment lacks the depth and diversity of his former existence, has been highly successful. Predation will become a significant impact on the horses, even if it currently is not. Rewilding Europe co-founder Wouter Helmer related to us that wolf predation on horses in early projects was rapidly paring down populations until the horses learned defensive behaviors - such as amassing into large combined groups during foaling season. The Big Summit Herd began exhibiting this behavior, at about the same period as both lion and wolf populations were gaining footholds. Although the horses inherently moved their meeting locations year to year, it gave the appearance of great numbers of horses and concentrated "utilization". Predators alter behaviors of prey species. Even if predation is not now limiting horse population growth, it is possible that behaviors are being influenced, perhaps causing localized heavy use of resources. This potential should have been considered for all Alternatives.

A search for "freezebranding Devil's Garden" reveals that the Double Devil Corrals unabashedly does not freezebrand Forest Service horses. This is appalling and unconscionable. The Forest Service has offered no explanation for its defiance of its own program direction and the counsel of the entire advocate community, other than a feeble hint that, in the show ring, wild horses should be proudly on equal footing with high-dollar purebreds... or something. Our reality is that many - ***many*** - wild horses land in the auction yard and then the slaughter pens. It is, to be generous, naive, for the Forest Service to imagine every horse leaving the Double Devil Corrals will have a loving, qualified, lifetime home, or that kill buyers all carry microchip readers because they're honest, ethical, model citizens who would never ever cause harm to an animal or violate the provisions of the Wild Free-Roaming Horse and Burros Act or the Sales Authority creed. The freezebrand offers *some* firewall, especially if the agency maintains a National database and builds the capacity to conduct regular compliance checks and to provide a safety net for failing adoptions. But, the Forest Service as an agency; not just the Modoc National Forest, is morally negligent in its placement program and we will not enable it further. The EA ***must*** promise to freezebrand every horse captured.

To summarize, the Central Oregon Wild Horse Coalition is disappointed in the level of quality of the analysis evident in the EA, most obviously in that the association of the AML with supposed carrying capacity clearly lacks believable, comprehensive data. We know there is much more knowledge of the horses and their Territory which has not been conveyed in these documents, but we must respond to what is before us. With modifications, full analysis, and assuming the Forest Service has presented Alternative 4 in good faith, there could be a pathway toward progressive and sustainable management of the Devil's Garden Plateau Wild Horse Herd, to include the Middle Section according to *American Wild Horse Campaign v. Perdue* 15-5332 (2017).

Respectfully submitted,

Gayle Hunt

Gayle Hunt, Central Oregon Wild Horse Coalition 541-447-8165 gdhunt4@gmail.com