

Modoc National Forest
Wild Horse and Burro Specialist
225 W. 8th St.
Alturas, CA 96101

re: DGPWHT Middle Section

December 24, 2022

Modoc National Forest Staff:

The Central Oregon Wild Horse Coalition realizes it is well past the October 2, 2022 deadline for submission of comments to the Project's scoping documents issued on September 1, 2022. However, we were only recently apprised of the Proposed Action, by another wild horse advocacy organization, though we would have expected to be made aware as an 'interested party'. We responded to the Double Devil Corral project and submitted a subsequent FOIA request (regarding Corral operations; we did not receive the requested information). At this juncture, it may still be helpful to all parties to provide our perspective in advance of the preliminary Environmental Assessment.

Our primary concern is that AML for the Middle Section must be established; in addition to the existing AML and derived from thorough, objective and transparent analysis.

Unfortunately, under previous Modoc National Forest Management, the 2013 EA, FONSI, and Decision were prepared and approved under less-than-credible circumstances.

The short-list of improprieties and potentially-serious violations of law surrounding the 2013 Decision included:

1. Misuse of Secure Rural Schools and Community Self-Determination Act, Title II funds. The Act is intended to fund the *implementation* of Forest Service projects; not project *planning*.
2. The use of the Secure Rural Schools and Community Self-Determination Act to directly replace Federal employees violated Federal employment and appropriations rules.
3. The Cooperative Agreement mechanism was improper, since the Agreement process cannot be used to acquire goods or services for the Federal Government, especially when the 'public benefit' is limited to financial enrichment of a particular sector.
4. Use of Federal Acquisition instruments instead of the Agreement process would have also been improper, due to the 'Advisory and Assistance' nature of the service procured, which prohibits contracting with former Federal employees and lists at least three other stipulations which would have also been violated under the Contracting process.
5. Additional funds contributed by the Modoc County Farm Bureau and individuals toward the employment of "retired Forest Service employees", in large part members of the MCFB, may have constituted Augmentation, and absolutely gave the appearance of private parties directly 'buying' outcomes favorable to their interests.

6. Forest Service regulations prohibit the management of Wild Horse and Burros by other entities; this occurred in the construction and management of the Double Devil Corrals, when management of the horses – still protected under the Wild Free-Roaming Horses and Burros Act – was handed off to the Modoc County Farm Bureau and its agents.

36 CFR Sub part D - Management of Wild Free-Roaming Horses and Burros § 222.61 Administration of wild free-roaming horses and burros and their environment.

(a) The Chief, Forest Service, shall:

(2) Provide direct administration for the welfare of wild free-roaming horses and burros that are located on the National Forest System by use of the Forest Service organization rather than by the granting of leases and permits for maintenance of these animals to individuals and organizations;

7. A celebrated member of the ranching community and the Modoc County Farm Bureau, as a supposed Cooperative Extension agent, was placed in a position of public spokesperson for the Devils' Garden Plateau horses, and frequently made official and public comments representing the Forest Service regarding the situation to include speculative commentary and promoting her own "research".

8. Most egregious, and unabashedly flagrant, was the sheer and unmistakable conflict of interest driving and permeating the formal environmental analysis.

The Farm Bureau is a committed member of the National Horse and Burro Rangeland Coalition (as is Society for Range Management), which exists only to rid livestock grazing lands of wild horses and burros. The Farm Bureau's published policy for wild horse and burro management is overtly anti-wild horse, including lobbying for lethal controls. Yet, the Modoc National Forest readily gave the analysis and EA preparation to the Modoc County Farm Bureau, and although the Forest Supervisor's signature punctuated the documents, the EA's findings and data were the entire basis for the Decision. It cannot be denied that the quality of any data rests not only on the expertise of its design and acquisition, but on its objectivity. Data can be manipulated.

Further, inter-personal conflict of interest was evident, between Modoc County personnel involved in the securing of Title II funding, and at least one of the "retired workers". Several of these "retired workers" were awarded high honors by the Modoc County Farm Bureau for their success in writing the EA which maintained the desired AML and initiated the removal of countless Devil's Garden Plateau wild horses. The Modoc County Title II applicant left no doubt as to the extent of influence intended and realized, when invited to speak at a meeting of the Crook County (Oregon) Natural Resource Advisory Committee on February 13, 2019. En route, and stopped by winter conditions, he phoned-in his attendance and made the following statement:

"We are supposed to have 200-400 wild horses on the Modoc National Forest. We had 4000. So we got some retired Forest Service employees and wrote the Wild Horse EA, and all the Forest Service had to do was sign off on it."

The circumstances which culminated in the Devil's Garden Plateau EA and Decision should have resulted in the vacating of the Decision. Instead, there remains a deep stain on the Modoc National Forest's integrity, and a legacy of pervasive betrayal of the public trust.

This does not need to brand the Modoc National Forest's Wild Horse management program going forward.

Whether or not the errors made in the AML Determination analysis were deliberate, meant to maintain historic horse populations, the Modoc National Forest needs to take responsibility for calculations which resulted in the current AML.

Assuming assessments of range condition were correct across all areas monitored, two steps in deriving carrying capacity from range condition were misapplied, altering the high AML figure which, when averaged with low AML, conveniently amounted to the same average AML as was arbitrarily established on the word of local residents and Forest Service staff in the 1970s:

The AML calculation formula in the BLM Handbook leaves no room for interpretation. Even without value judgments regarding the appropriateness of AML and Utilization as general concepts, the simple contrast between the BLM formula and the Modoc National Forest's version of the formula is disturbingly significant.

BLM states, on Page 71 of their Handbook: "To drive a weighted average utilization for the HMA, determine the number of acres within the HMA which received moderate, heavy, or severe utilization for each evaluation year." The annotated footnote affirms that to comply with the established Primary Range definition, "slight, light, and 'no' use areas" should not be included in the weighted average determination. The 2012 Evaluation failed to include Moderate utilization in every AML calculation, which resulted in appreciably lower carrying capacity than would have been derived from following BLM direction. Taking BLM's guidance literally, excluding acreage in the Extreme utilization category would have also increased AML, compared to the Modoc National Forest's redacted formula determinations.

Further, the Modoc National Forest's Evaluation decreased the number of months in a year from 12 to 8. This is based, according to the explanation accompanying the "Determination of Weighted Average Utilization" on charts of Period of Use: 8 months from March 1, 2012 - October 31, 2012 (end of monitoring period)". Horses consume forage outside the Modoc National Forest's monitoring period, and this is reflected in the aggregate range condition. BLM seems to grasp this, and uses a full 12 months to arrive at a base number of "horse months" (or AUMs for those who consider 1 cow or 1 horse to equal 1 AUM. The Forest Service's 1.2 conversion factor increases total AUMs later in calculation). This deviation additionally reduced the Modoc National Forest's AML calculation compared to the BLM formula, which is cited in the Evaluation.

Using the BLM formula, even without assessing various pastures which had little use within the Devil's Garden Plateau Territory and therefore received no analysis in this Evaluation, the high range of AML would have been 599 - NOT 402.

Interestingly, "Extreme" condition, a category not mentioned in the BLM Wild Horse and Burro Handbook, was used randomly to convert range condition to allowable AUMs. Similarly, the EA failed to cite the "Forest Service policy" assigning 1.2 AUMs to wild horses, whereas the figure was intended to calculate utilization by permitted domestic horses. These factors may not have contributed to an inaccurate evaluation of wild horse carrying capacity, but the inconsistencies certainly add to the distrust of the process. As the Middle Section is analyzed in consideration of AML, process efficacy and transparency must be improved.

A secondary concern, tied to the quality of analysis issue, is that the scoping documents are somewhat ambiguous as to the reach and durability of the updated Territory Management Plan. Indications are that it is expected to govern Devil's Garden Plateau management for 10-20 years, but concurrently cements Forest Plan language to define "excess horses" as those numbering more than the high end of AML. Although this is the practice of many BLM and Forest Service units, the term "excess" is more accurately and lawfully tied to "thriving natural ecological balance"; a term without legal or even substantive definition. Most certainly, this cannot be defined by local land use plans, particularly by those standards which first allocate forage to un-natural permitted livestock and which over-allocate ecological resources to increasing recreation and other extractive activities. The Wild Free-Roaming Horses and Burros Act is a Congressional Act, and cannot be subordinate to a local land use plan; it should be considered comparable to the Bald and Golden Eagle Protection Act which *informs and governs* local actions and standards.

Since AML should guide managers according to range conditions – relationship to a thriving natural ecological balance – at the time AML is established, it follows that as conditions change, more analysis should determine whether the AML is still, or ever was, truly appropriate. Given the damaged credibility of the Modoc National Forest to conduct such analysis objectively and according to NEPA direction, it is incumbent on the Forest to assure that this updated Territory Plan will allow for public comment prior to planned gathers.

Additional concerns are that, again in keeping with common practice rather than sustainable, responsible management, genetic diversity will be measured only according to Observed Heterozygosity values, rather than accepted conservation biology standards and guidance from the 2013 NAS report which directs agencies to measure Allelic Richness as well. Too, it is unclear whether the Middle Section's inclusion will facilitate better mixing of East/West populations, or if any consideration will be given to changing allotment fencing to accommodate this in the future. Maintaining phenotypical identity may or may not be a positive genetic health goal, but if comprehensive genetic study has not been conducted in the past to determine fixation index and other differentiation between the two distinct types, this would be an appropriate time to acquire that knowledge.

The Central Oregon Wild Horse Coalition looks forward to the formal analysis of the Middle Section's inclusion in the Devil's Garden Plateau Wild Horse Territory, and appreciates the effort being made to manage the Herd in greater conformance to historical use of the area.

Respectfully,

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