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USDA Forest Service, Inyo National Forest
USDI Bureau of Land Management, Bishop Field Office
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Submitted via: https://www.fs.usda.gov/project/?project=64950

Re: American Wild Horse Conservation ("AWHC") written objection to the Montgomery Pass Wild Horse Territory Environmental Assessment (DOI-BLM-CA-C070-2024-0001-EA)

Dear District Ranger Heller and Field Manager Lisius:

This written objection is submitted on behalf of American Wild Horse Conservation ("AWHC"). This objection is submitted pursuant to the August 8, 2024 Montgomery Pass Wild Horse Territory ("MPWHT") Environmental Assessment ("EA") and associated appendices issued by the Mono Lake Ranger District of the Inyo National Forest Service ("FS") Bureau of Land Management ("BLM") Bishop Field Office.

AWHC is the leading national nonprofit organization dedicated to preserving the American wild horse and burro ("WH&B") in viable free-roaming herds for generations to come, as part of our national heritage. Our grassroots efforts are supported by a coalition of over 60 historic preservation, conservation, horse advocacy, animal welfare organizations, as well as more than 700,000 individuals.

In addition to AWHC's formal comments, please take note of the over 5,100 objections submitted in response to the attached action alert that was shared with our supporters and advocates.

COMMENTS

A. The agencies' proposed action fails to comply with binding authorities and congressional direction.

16 U.S.C. § 1331 unequivocally provides the Congressional intent of the Wild Horses and Burros Act (16 U.S.C. Ch. 30) stating that "[i]t is the policy of Congress that wild free-roaming horses and burros shall be protected from *capture*, branding, harassment, or death." (emphasis added). The Bureau of Land Management, United States Forest Service, or any other agency, is not excluded from this Congressional intent and therefore capture and removal of wild horses from their habitat should only be employed as a last resort for management. See also *Colorado Wild Horse and Burro Coalition, Inc. v. Salazar* 639 F. Supp. 2d at 98 holding that both the USFS and BLM are clearly subject to the Act's prohibition against capturing wild horses on public lands. This plain meaning reading of Congressional intent is further supported by the BLM's own implementing regulations which state that "[m]anagement shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans." 43 C.F.R. § 4710.4.

In 2013, over ten years ago now, the National Research Council ("NRC") of the National Academy of Sciences found that the "BLM's current strategy to curb populations by permanently removing horses from the range each year perpetuates high population growth rates." Laney, K. (2013). New National Academy of Sciences Report: Using science to improve the BLM wild horse and burro program: A way forward. Rangelands, 35(4), 26-27. http://dx.doi.org/10.2111/RANGELANDS-D-13-00043.1. The stated purpose and need for this action is "to gather and remove excess wild horses from outside the MPWHT in accordance with the WFRHBA." As such, the agencies cannot possibly argue population growth suppression options like fertility control are outside the scope of the EA. The agencies should reassess the importance of population growth suppression, specifically porcine zona pellucida ("PZP").

Although the BLM has stated that wild horse populations need to be reduced before fertility control will work, given the findings of this NRC report, this is an unattainable goal. AWHC's Virginia Range Fertility Control Program ("VRFCP") (https://americanwildhorsecampaign.org/virginia-range-fertility-control) demonstrates that fertility control works on a large scale. AWHC's VRFCP is the world's largest wild horse fertility control program and in the first 3.5 years of the program reduced the foaling rate by 60%, without using roundups. To date, AWHC's VRFCP has administered fertility control to 2,028 mares on the range, including horses that live in remote areas of the range and are afraid of people. The agencies have not attempted in the past to utilize fertility control treatment options, nor does the PEA give any indication that such treatment is being considered.

A related peer-reviewed study further substantiates the feasibility of humane fertility control as a viable alternative to helicopter roundups and removals for wild horse management on Western

public lands. Schulman, Martin L., et al. "Immunocontraceptive Efficacy of Native Porcine Zona Pellucida (PZP) Treatment of Nevada's Virginia Range Free-Roaming Horse Population." *MDPI*, Multidisciplinary Digital Publishing Institute, 18 Jan. 2024, www.mdpi.com/2076-393X/12/1/96. The study, led by University of Pretoria professor Dr. Martin Shulman, a veterinary specialist in equine reproduction and expert on non-lethal methods for the management of wildlife, including elephants and wild horses, evaluated data from American Wild Horse Conservation's fertility control program on free-roaming horses in Nevada's Virginia Range. It concludes that "this method of immunocontraception [PZP] was associated with providing an effective, humane, publicly acceptable, and practical alternative to the previous reliance on lethal, logistically demanding, or inhumane control methods." *Id*. Moreover, the study revealed that the sustained use of the PZP vaccine led to a ~60% reduction in foal births within four years and achieved a 72.5% population coverage from 2019-2022. *Id.*

Despite clear direction from the U.S. Senate Committee on Appropriations to implement a robust and humane fertility control strategy of reversible immunocontraceptive vaccines, with specific attention on increasing the use of fertility control in its management of wild horses and burros, the agency has offered alternatives to conduct roundups and removal of wild horses from these HMAs without applying any fertility control treatment. Senate Report 118-83 (available here: https://www.congress.gov/118/crpt/srpt83/CRPT-118srpt83.pdf) and *See also* House of Representatives Committee on Appropriations Report 118-155 (available here: https://www.congress.gov/118/crpt/hrpt155/CRPT-118hrpt155.pdf) including up to $11,000,000 for the administration and research on known and novel population growth suppression strategies, prioritizing implementation of existing immunocontraceptive vaccines.

Other methods of fertility control contemplated by this proposed action are impractical and/or poorly understood in wild equines – and therefore further planning should abandon plans to use these methods. For example, the SOPs for GonaCon are far more complicated than those for PZP and this will likely lead to more errors in the application of GonCon. *See* Appendix B. Similarly, the limited research of IUD treatment demonstrates that retention of the device by mares is extremely inconsistent – thereby undermining the very purpose of application. At minimum, the agency should explain how it aims to monitor mares that have an IUD. In addition, a mare must be held for 14 days before it can be confirmed that she is not pregnant, which is a requirement for this method to be effective. Most wild mares spend a significant portion of their lives pregnant and therefore the agency is unlikely to find many candidates fit for this treatment.If further planning retains any plans to use IUDs, the agency should make clear where it has gathered information that treatment with these devices can last as long as two to five years.

The agencies should forgo selecting implementing actions that utilize roundups as the main method of controlling this wild horse population, and instead focus their attention on starting the use of responsible PZP fertility control programs. Additionally, the agencies argue any conversation about off range holding and adoption programs and their associated costs is outside the scope of the EA, but we strongly disagree. It is necessary to take a close look at where these

animals will end up when they are removed from their home and the cost that will be associated with their care.

The BLM has widely utilized gather operations to manage wild horses and burros under its jurisdiction leading to a quagmire of problems and just under 64,040 horses and burros being held off range. Wild Horse and Burro Off-Range Facilities Report – March 2024 available here: https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/program-data. There is no indication as to why the BLM is proposing to add to the number of wild horses that will be held off-range or incur the costs of this maintenance, a bill which is ultimately footed by taxpayers. Indeed, maintaining these wild horses and burros off-range is a major problem for the BLM and the public, costing taxpayers an estimated $108.512 million and representing 69% of the agency's program expenditures for FY 2023. *Program Data: Program Expenditures*, Bureau of Land Mgmt., https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/program-data (FY2023) (last accessed May 23, 2024). An additional 3% of the expenditures disclosed by BLM constitute placement programs that are inextricably tied to the agency's policy of focusing on gathering wild horses and burros as a means of population control. *Id.* Together with off-range holding and gather operations, these programs make up 77% of the BLM's Wild Horse and Burro Program Budget for FY 2023 and cost taxpayers an estimated $122 million. *Id.*

Regardless of the narrative promoted by the BLM regarding the successful placement of gathered wild horses and burros, the figures speak for themselves. As disclosed in the BLM's Off-Range Highlights for Wild Horse and Burro (WHB) Advisory Board Meeting, Phoenix, AZ, Dec. 11-15, 2023, available here: https://www.blm.gov/sites/default/files/docs/2023-12/OffRange%20Update%20for%20Dec%2023%20WHB%20Advisory%20Board%20Meeting.pdf, the BLM had only placed 8,045 wild horses and burros into private care in FY23. Unbelievably, this number of placements was presented by the BLM as an indication of success, in spite of the fact that its own reporting showed an increase of 1,643 wild horses and burros being held off-range from January, 2023 to January 1, 2024. Wild Horse and Burro Off-Range Facilities Report – January 2024 and July 2023. In summary, the BLM spent almost $122 million to place 8,045 wild horses and burros into private care, while at the same time adding 1,643 wild horses and burros to the tens of thousands already being held off-range.

Making matters worse, the agency plans to remove more than 19,600 additional equines from the range this year, while only planning to administer a mere 1,420 fertility control treatments. https://www.blm.gov/sites/default/files/docs/2024-02/Tentative%20National%202024%20%20Gather%20Sched.%20Revised%20Feb%201%202024.pdf. Unfortunately, the nearly 20,000 additional wild horses and burros planned to be removed will likely increase dramatically based on proposed actions such as this one that were not included in the tentative schedule. Considered in this context, even the 8,045 adoptions touted as a great success by the agency, appear to be nothing more than self-serving propaganda distracting from the malfeasance created by the

agency's current practices. It's not clear how the agency can possibly be presenting removal operations, such as the proposed action, as compliant with congressional direction. What is clear is that the agency has no interest in taking congressional directives seriously or using scientific information to in fact attempt to meet its directives. *See* a more detailed discussion or the findings of the NAS report *supra*, as well as the scientific studies cited in these comments. As a result, further planning should disclose the agency's reasoning for choosing to continue to ignore decades of scientific information and current congressional direction to employ a robust fertility control program.

Methods of placing these wild horses have led to other problems for the BLM including a pending lawsuit challenging the Adoption Incentive Program ("AIP"), that did little to dispose of the majority of horses held by the agency, and instead created a prohibited pipeline of wild horses and burros being auctioned for slaughter. *See American Wild Horse Campaign et al. v. Haaland*, *et al*., USDC, District of Colorado, Civil Action 1:21-cv-02146-REB. In fact, as disclosed by the BLM in a celebratory AIP blog, since its launch in 2019, only about 17,000 wild horses and burros have been adopted through the AIP. These results certainly do not provide reasonable justification for the millions of taxpayer dollars the agency is spending each year on these programs, or the approximately 64,040 wild horses and burros that the agency will continue to hold off-range without the slightest indication of how it intends to resolve this issue.

In addition, the agency must consider the future welfare of horses it plans to store in off-range holding before proceeding with the proposed action. At minimum the agency should develop plans to prevent infections and outbreaks among wild horses that have been removed from the range, as current standards have been demonstrated to be ineffective. A number of preventable outbreaks and deaths at holding facilities emphasize the importance of addressing this problem. For example, in May 2022, about ¾ of the animals being held at the Wheatland Facility demonstrated signs of strangles and 19 ultimately died. https://wildhorseeducation.org/2023/03/23/disease-in-holding-facilities/amp/. Later that summer, 146 horses died (including 24 foals) at the Canon City Facility from equine influenza. Reports later found that many of these horses had only been partially vaccinated when the outbreak began. See https://awionline.org/awi-quarterly/spring-2024/after-roundup-fate-wild-horses-government-holding-facilities. As a final example, 23 animals died at the Winnemucca Off-Range Facility from botulism (14 deaths were unexpected and 9 horses were euthanized). See https://americanwildhorse.org/media/24-days-23-deaths-hidden-impacts-blms-range-holding.

It is also noteworthy that after the Wheatland Facility outbreak, the Facility was forced to shut down and did not reopen until March 2023 for an adoption event. This means that there were 3,500 less spots for horses removed from the range. Given these disturbing outbreaks and deaths, the agency should seriously reconsider plans to remove more horses from their habitat and placing them in these facilities.

Additional consideration should be given to these concerns as they pose a danger not only to the wild equines, but also potentially the American people. Toxins such as botulism affect human beings and the risk of zoonotic transmission will continue to increase with an increasing number of equines being sent to facilities such as Winnemucca. These tragic and horrific outbreaks underscore the inadequacy of current CAWP standards and should create urgency in agency planning to consider the potential effects on human beings from its current practices – especially since the agency aims to place these horses into private care. In fact, this type of danger, affecting the quality of the human environment and created by this major Federal action is precisely the type of issue that by definition requires an Environmental Impact Statement. *See* 43 CFR 46.400.

Barring specific exceptions, despite removal from the range, wild horses held off-range are still subject to the corresponding laws and under the management of the applicable federal agency. This undermines any attempt by the agency to in fact reduce the number of animals being managed and represents an unreasonable method of complying with its directives.

The agencies should consider relying more heavily on other methods of managing wild horse populations on the range and examine mandatory considerations regarding placement. Should the agencies retain their proposed action to gather wild horses on and outside the MPWHT, they must analyze the economic and welfare concerns related to increasing the already overcrowded off-range holding population of wild horses. In addition, the agencies should consider an alternative that places the horses back on the MPWHT or another HMA or territory.

B. A decision by the agencies to remove wild horses from these areas would be an arbitrary and capricious abuse of discretion.

43 CFR 4720.1 authorizes the BLM to remove excess animals from public lands only "[u]pon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists." In examining the current relevant information, it should first be noted that the Appropriate Management Level ("AML") for this HMA was established at least 36 years ago by the 1988 MPWHT Coordinated Resource Plan. Continued reliance by the agency on this determination is arbitrary, as an assumption that range conditions have remained unchanged for 36 years cannot be reasonable. It is the responsibility of the agency to reexamine current conditions before continuing with any proposed action. Should the agencies elect to remove wild horses from the area, at minimum, it must conduct an assessment to inform itself of the current appropriate management level and land health of the MPWHT that will allow for a genetically viable population. The agency tries to side step this analysis by claiming the EA does not reconsider AML and, as a result, any point about the need to recalculate is outside the scope of this EA, but this argument is illogical. The EA *must* reconsider the AML as it is certainly outdated, the agencies are not excused from this responsibility simply because they did not include it in their planning documents. The need to reconsider AML is highlighted by the agencies' response to relevant comments which state that "excess" animals arbitrarily includes

animals outside the HMA. Despite mentioning 16 USC 1332, thriving natural ecological balance and multiple-use relationship, an equine's location outside of an HMA does not logically represent a threat to damage the range. As a result, if the agencies choose to use an excess horse determination in this proposed action, they should as minimum consider the thriving natural ecological balance of the subject area, including range health, in further planning – instead of arbitrarily designating a wild horse "excess" based on the location where the horse is found.

BLM policy explicitly states that when "making the determination that excess WH&B are present and require immediate removal, the authorized officer will analyze current information including grazing utilization and distribution, trend in range ecological condition, actual use, climate (weather) data, current population inventory, WH&B located outside the HMA in areas not designated for their long-term maintenance and other factors which demonstrate removal is needed to restore or maintain the range. Justifying a removal based on nothing more than the established AML is not acceptable." BLM Wild Horse and Burro Management Handbook (2010) at 47. Despite this unambiguous policy, the BLM's proposed action dismisses these safeguards, choosing instead to disregard even the agency's own policy.

Because the agencies cannot possibly be alleging that an AML set 36 years ago is current information, the BLM is not authorized to remove any horses until the requirements of this regulation are addressed. Pursuant to 16 U.S.C. 1332, removal is only permitted to protect current or prospective land conditions. *See* 16 U.S.C. 1332(f)(2) (stating "which must be removed from an area in order to preserve and maintain a thriving ecological balance and multiple-use relationship in that area"). Therefore, the current AML represents, at best, an appropriate target for the MPWHT in 1988, and does not reflect the current land conditions and needs. In addition, because the requirements of this authorizing statute are based on a thriving ecological balance and multiple-use relationship in the area, changes in other resource use over the last 36 years would affect the accuracy and reliability of the current AML.

43 C.F.R. § 4710.2 directs the agency to "inventory and monitor herd and habitat characteristics" in HMAs, and such information should be disclosed and inform further agency planning. Among the most troubling assumptions included in the proposed action are speculative population numbers for the MPWHT. Although the current determination that there are excess horses in this territory is by definition arbitrary, as discussed *supra*, even the current population considered by the agency to justify its decision does not comply with the aforementioned regulation or requirements to make an excess determination. As disclosed in the PEA, a population survey was last completed for the MPWHT in March 2024 via simultaneous double-observer aerial surveys. The details of this survey should be disclosed in compliance with 43 C.F.R. § 4710.2, and furthermore we have reason to believe that this figure is not accurate. Most notably, the estimated population of 699 wild horses erroneously reflects the total number of wild horses, not just adult horses. The BLM's own Wild Horse and Burro Management Handbook (2010) states that "AML applies to the number of adult wild horses or burros to be managed within the population does not include the current year's foals." Handbook at 17 and see also the court's

holding in American Wild Horse Campaign, et al. v. Ryan K. Zinke, et al.,Case No. 17-CV-0170-NDF (U.S. Dist. Court for WY, 2019). Therefore, counting foals to make a determination of excess horses in the MPWHT is arbitrary and capricious.

To summarize, the agencies should comply with binding directives and inform itself of current land conditions and population of wild horses in the MPWHT before removing any animals. While the agencies attempt to circumvent the requirements of binding authorities by claiming that obtaining current information and monitoring are beyond the scope of this proposed action, regulations such as 43 CFR 4710.2 "Inventory and monitoring." are not foreclosed by the proposed action. In addition, the legal mechanism by which these removals are authorized is not clear, as no regulation directly authorizes removal of wild horses from public lands without an excess determination. For clarification, 43 CFR 4710.4 states that the management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas and that management shall be at the minimum level necessary to attain the objectives in approved land use plans and HMAPs. No part of this regulation permits removals and furthermore, because management must be at the minimum level necessary, the proposed action should aim to return the horses to the range.

C. The agencies need to further inform itself regarding the genetic information of the subject horses to proceed in an informed manner.

Recent scientific information demonstrates that horses populated the northern Rockies and central plains by the first half of the 17th century CE and were deeply integrated into Indigenous societies before the arrival of European observers in the 18th Century CE. Wiliam Timothy Treal Taylor, et al., Early dispersal of domestic hoses into the Great Plains and northern Rockies. *Science* 379, 1316-1323 (2023). DOI:10.1126/science.adc9691. Consideration of this information is particularly relevant based on the location of the wild horses in the MPWHT. Given the enormous significance of this possible ancestry, the agencies should reasonably inform themselves before proceeding with management plans.

Recent scholarly publications also undermine the agency's current narrative of horses' history in North America and demonstrate that the wild horses are scientifically a native species – even more so than the American Bison and North American Moose. Fossil evidence, as published in 2021, demonstrates that ancient horses in Asia and North America moved back and forth across the Bering Land Bridge, interbreeding for hundreds of thousands of years, while maintaining the same genetic lineage. Vershinina, A.O., Heintzman, P.D., Froese, D.G., Zazula, G., Cassatt-Johnstone, M., Dalén, L., Der Sarkissian, C., Dunn, S.G., Ermini, L., Gamba, C., Groves, P., Kapp, J.D., Mann, D.H., Seguin-Orlando, A., Southon, J., Stiller, M., Wooller, M.J., Baryshnikov, G., Gimranov, D., Scott, E., Hall, E., Hewitson, S., Kirillova, I., Kosintsev, P., Shidlovsky, F., Tong, H.-W., Tiunov, M.P., Vartanyan, S., Orlando, L., Corbett-Detig, R., MacPhee, R.D. and Shapiro, B. (2021), Ancient horse genomes reveal the timing and extent of dispersals across the Bering Land Bridge. Mol Ecol, 30:

6144-6161. https://doi.org/10.1111/mec.15977. Other research has provided direct evidence of horse hunting in North America at the end of the last ice age. Waters, M. R., Stafford, T. W., Kooyman, B., & Hills, L. V. (2015). Late Pleistocene horse and camel hunting at the southern margin of the ice-free corridor: reassessing the age of wally's beach, canada. Proceedings of the National Academy of Sciences, 112(14), 4263-4267. https://doi.org/10.1073/pnas.1420650112.

As published in *Nature* in 2021, more advanced technologies have shown that horses endured in pockets of the arctic zones in North America as late as 5,000 years ago. Murchie, T.J., Monteath, A.J., Mahony, M.E. *et al.* Collapse of the mammoth-steppe in central Yukon as revealed by ancient environmental DNA. *Nat Commun* 12, 7120 (2021). https://doi.org/10.1038/s41467-021-27439-6. This exciting new study demonstrates that horses and humans resided together in North America for around 20,000 years.

This information proves that the horse evolved in North America and spread out to other areas, eventually giving way to the domesticated horse. There is no debate on the legitimacy of the American Bison, or the North American Moose and their right to roam and exist on public lands. However, both species in fact originated in Asia. Moose only migrated to North America as little as 10,000 years ago. Additionally, when the great extinction of Bison occurred in the 1800s due to hunting, the American bison was essentially saved from extinction by few private ranchers. Due to this selective breeding, it was recently published that almost all American bison today have some quantity of domestic cattle DNA. Stroupe, S., Forgacs, D., Harris, A. *et al.* Genomic evaluation of hybridization in historic and modern North American Bison (*Bison bison*). *Sci Rep* 12, 6397 (2022). https://doi.org/10.1038/s41598-022-09828-z . Given this scientific information, the agency should reconsider and reexamine why the wild horses of the United States are not considered a native species for management purposes.

Because the agencies have not accurately informed themselves of the genetic viability nor considered the significance of genetics of the subject horses at all, they cannot purport to be making an informed decision. While the agencies purport that this consideration is beyond the scope of the proposed action, because they are planning to remove horses, considerations such as genetic viability or composition may reasonably be affected by removing individuals from the pool of alleles.

D. Consideration should be given to ecosystem services provided by wild horses to the range.

To comply with its directive to manage wild horse populations for a thriving natural ecological balance, consideration should be given to potential ecosystem services provided by the population of horses on the range. For example, the BLM Sensitive Species Cary's Beardtongue is generally found in disturbed habitat. Pryor Mountain Rangeland Health Assessment at 53. Whether plant communities created or supported by wild horses and burros provide increased habitat for sensitive or other concerned species should be examined and considered in

determining whether the equine populations are contributing to a thriving natural ecological balance.

As such, it is critical for the agencies to consider wild horses very real, positive impacts to the range as opposed to limiting the conversation to negative impacts.

E. The agencies should consider the implementation of new methods to more accurately address land health issues.

43 USC § 1702 (c) defines the term "multiple use" as "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future need of the American people." Given the fact that the BLM has failed to assess Rangeland Health Standards for approximately 36 million acres it administers, further planning must examine and disclose how the agency aims to ensure complete and accurate monitoring. *See* PEER, *Rangeland Health and the BLM Grazing Program*, May 2024, available here:https://peer.org/factsheet-rangeland-health-blm-grazing-pdf/ (the "Fact Sheet") and *see also* BLM Wild Horses and Burros Management Handbook (H-4700-1) at page 30 stating "[m]onitoring data is needed to support AML establishment and decisions to remove excess WH&B. Various rulings from Interior Board of Land Appeals ("IBLA") underscore the need to base WH&B management decisions on the results of monitoring" and *Id*. at page 47 stating that "[j]ustyifing removal based on nothing more than the established AML is not acceptable." In addition, the agency should consider and analyze ecosystem services provided by wild horses in order to comply with these directives.

Concerns related to a lack of monitoring are heightened by the fact that 50% of the total acres assessed by the BLM fail to meet Land Health Standards. *See* PEER, *Evaluating Trends in Rangeland Health on Bureau of Land Management Lands*, May 2024, available here: https://peer.org/report-evaluating-trends-rangeland-health-bureau-of-land-management-lands-pdf/ ("Peer Report") at 5. Considering the BLM's own disclosures, it is undeniable that livestock grazing is the main cause of allotments failing to meet Rangeland Health Standards throughout the country. *Id* at 3.. Interestingly, the PEER Report specifies that out of 56,751,898 acres failing land health standards, only 951, 812 acres are attributed *solely* to wild horses. *Id* at 7. However, livestock alone or in conjunction with wild horses "far overshadow the impact of wild horses alone" at 37,885,522 acres and 6,474,804 acres respectively. *Id*. "These figures challenge the rationale behind BLM's policies that prioritize the removal of wild horses and suggest a need for reevaluating management practices to address the predominant causes of land health issues more accurately…". *Id*.

As such, the agency should consider developing new methods to effectively and accurately address the predominant causes of land health issues. This is especially critical when we consider the 56,751,898 acres of public land (50% of assessed allotments) that are failing land health standards. *Id* at 3. Wild horses are cited as a significant disturbance in less than 1% of allotments,

yet their removal is often prioritized over other strategies. *See* Fact Sheet. It is time for the agency to accurately identify and address the actual causes of significant land health degradation.

F. The agencies should consider the true costs of livestock grazing on the American people and management of wild horses.

As discussed *supra*, "multiple use" is defined as "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future need of the American people." However, U.S. dependency on public-land grazing is minimal and the agencies continue to charge private enterprises a nominal rate for grazing our public lands, while exacerbating climate change and passing on the astronomical costs of this unjust practice to taxpayers.

Given the fact that the BLM has failed to assess Rangeland Health Standards for approximately 36 million acres it administers, further planning must examine and disclose how the agency aims to ensure complete and accurate monitoring. *See* Fact Sheet and *see also* BLM Wild Horses and Burros Management Handbook (H-4700-1) at page 30 stating "[m]onitoring data is needed to support AML establishment and decisions to remove excess WH&B. Various rulings from Interior Board of Land Appeals ("IBLA") underscore the need to base WH&B management decisions on the results of monitoring" and *Id*. at page 47 stating that "[j]ustyifing removal based on nothing more than the established AML is not acceptable."

Concerns related to a lack of monitoring are heightened by the fact that 50% of the total acres assessed by the BLM fail to meet Land Health Standards. *See* Fact Sheet. Given the findings of the PEER Report, it seems clear that livestock grazing is the main cause of allotments failing to meet Rangeland Health Standards throughout the country.

In addition, livestock grazing on public lands costs the agencies and taxpayers millions of dollars in expenditures and social costs. *See* Kauffman, J.B., Beschta, R.L., Lacy, P.M. *et al.* Livestock Use on Public Lands in the Western USA Exacerbates Climate Change: Implications for Climate Change Mitigation and Adaptation. *Environmental Management* 69, 1137–1152 (2022). https://doi.org/10.1007/s00267-022-01633-8 (Kauffman et al. (2022)). As recognized by Executive Order 13990 (2021) and Interior Secretarial Order 3399 (2021), it is essential for U.S. federal agencies to capture the social cost of carbon ("SCC") to evaluate and implement climate change policies. Kauffman et al. (2022) found that a conservative calculation of the SCC from livestock grazing on public lands is 26 times greater than the annual grazing fees collected by the managing federal agencies. *Id*. This conservative calculation did not include the likely greater ecosystem costs and impacts from livestock grazing and associated management that reduce biodiversity, carbon stocks, and rates of carbon sequestration. *Id*.

These catastrophic practices and towering costs to the American public are not justified for multiple-use by minimal U.S. reliance on public-land livestock grazing. Less than 2.7% of all

livestock operators in the U.S. have commercial access to public grazing lands and it has been estimated that only between 3.2% to 3.8% of annual livestock forage comes from western U.S. public lands. Kauffman et al. (2022) at 1138 and 1144. However, this estimate of annual livestock forage from western U.S. public lands is an overestimation, as it only included cows and no other type of livestock. *Id*. When all other beef cattle (except calves) are included in this calculation, public lands provide less than 1.6% of all forage consumed by beef cattle in the U.S. *Id*.

In addition, animal unit months ("AUMs") used by the agencies to allocate forage for livestock grazing are egregiously outdated and should be updated to properly assess and address climate change. Current AUMs define the amount of forage needed to feed one 1000 lb. cow and calf for a month, even though the U.S. Environmental Protection Agency reported a mean weight of a cow was 1221 lbs. in 1990 and 1348 lbs. in 2015. United States Environmental Protection Agency (2018) A-250. Inventory of U.S. greenhouse gas emissions and sinks: 1990- 2016. United States Environmental Protection Agency available at: https://www.epa.gov/sites/default/files/2018-01/documents/2018_annex_3_-_part_b.pdf. This upward trend in the weight of cows demonstrates that there is an increase in overall forage use and physical influence on the land from cattle grazing on public lands, and that today a single cow and calf would account for 1.25 AUMs. Kauffman et al. (2022) at 1144. Despite this empirical data, this increase in cattle weight and influence is not currently considered in forage allocation, carrying capacities, or stocking rates – and could indicate that public land use by cattle may have increased by 25% over the past two decades. *Id*. Additionally, this greatly intensified use by cattle is not considered when making management decisions about wild horses.

Livestock grazing on public lands also generates enormous amounts of greenhouse gasses that contribute to global climate change and should be addressed by the agencies. *Id*. at 1145–1146. Current livestock grazing rotations are leading to lower replenishment rates, which will be exacerbated by climate change. *Id* at 1145. In turn this will produce lower quality forage on public lands and will result in higher emissions intensity from cattle. *Id*.

As noted by Kauffman et al. 2022, livestock grazing greatly reduces both the moisture content and replenishment rates. Kauffman et al. (2022) at 1145. Regardless of rotational or seasonal grazing by livestock, this damage to the range reduces the available forage and forage quality, long after the livestock is removed. *Id*. Disclosures by the federal government also show that livestock is likely using far more forage than they are assigned, due to an enormous increase in the average weight of cows. *See* more detailed discussion *supra* of Kauffman et al. (2022) at 1144 stating that today a single cow and calf would account for 1.25 AUMs.

This information undermines any assumption that wild horses are in fact the cause of range degradation, and furthermore supports management decisions that would remove livestock

grazing from the wild horse habitat. As a result, reducing, eliminating, or properly assessing livestock grazing on public lands would allow more forage for wild horses and other wildlife, reducing the likelihood that horses would stray from their designated ranges. As discussed in more detail elsewhere in this comment, grazing permit holders do not in fact have any right to public forage allocation, as a matter of law and the "obligations" to grazing permit holders are a fallacy. *See also* 36 CFR § 222.3 (b) and 43 C.F.R. § 4130.2(c) stating that grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.

Based on a 2021 United Nations Programme and Climate and Clean Air Coalition (UNEP) analysis of the effects of methane on the environment and societies, the reduction of methane emissions alone, from removing cattle on public lands in the western U.S., would avoid 186 premature human deaths; 52 million hours of lost labor from extreme heat; and 18,850 Mg of crop losses each year. Kauffman et al. (2022) at 1146 citing United Nations Environment Programme and Climate and Clean Air Coalition (UNEP) (2021) *Global methane assessment: benefits and costs of mitigating methane emissions*. United Nations Environment Programme, Nairobi, available here: https://www.unep.org/resources/report/global-methane-assessment-benefits-and-costs-mitigating-methane-emissions. Potentially benefiting a miniscule number of private business enterprises by burdening the American public with these dire costs (including premature deaths) does not meet the present and future need of the American people and completely contradicts the agencies' multiple use mandate.

Adding the cost of managing livestock grazing on public lands to social costs provides that grazing livestock on public lands in western U.S. results in a total cost to taxpayers exceeding $608 million each year. Kauffman et al. (2022) at 1148. It is noteworthy that this estimate is not a complete accounting of the costs of greenhouse gas emissions associated with grazing on public lands, such as trucking of livestock and related supplies, gas emissions arising from the administration and monitoring of grazing permits, potential loss of below ground biomass biological soil crusts, social costs of desertification from overgrazing, losses in water quality and quantity, losses in biodiversity, losses in carbon sequestration capacity of the landscape, and other ecosystem services negatively affected by livestock grazing. *Id*.

Therefore, the agencies should re-examine the true costs of livestock grazing on public lands to the American people. Additionally, implementing agencies should be reminded that using federal public lands, that belong to all of us, for the benefit of local private enterprises is unjust and inappropriate, ultimately representing corporate welfare.

G. The agencies selectively cite the long-term study by John Turner and fail to consider natural patterns of predation as a viable alternative to removals.

In 2015, John Turner published a 25-year long study on the Montgomery Pass Wild Horse Territory beginning in 1987. Turner, John. *Environmental influences on movements and distribution of a wild horse (Equus caballus) population in western Nevada, USA: a 25-year*

study. Journal of Natural History (April 2015). https://www.tandfonline.com/doi/full/10.1080/00222933.2015.1024778. The hallmark of this study is the unique opportunity provided by the MPWHT for observing long-term patterns in the relationship between wild horses and their environment. Notably, Turner concludes, "[t]he present study has shown that wild horses are highly adaptive and individually varied in response to environmental pressures. It has also demonstrated the value of long-term monitoring of wild horse populations to reveal underlying dynamics and their potential management implications." *Id* at 2437.

At the time, the horse population in the MPWHT was not restricted by fencing and had not experienced round ups or removals for the past 30 years. Despite the absence of these purposeful human interventions, the MPWHT population did not see a "boom" in population. Rather, wild horse populations were managed naturally by predation, particularly that of mountain lions in the area, and removals were not necessary. *Id* at 2438. According to the BLM, on average, wild horse populations grow between 15 and 25 percent annually. *See* https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/common-questions-from-the-public (citing *Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward*. National Academies (2013) https://nap.nationalacademies.org/catalog/13511/using-science-to-improve-the-blm-wild-horse-and-burro-program). From the beginning of the study in 1987 until its conclusion in 2011, the wild horse population grew about 3.4% each year. This is significantly lower than the national average reported by the agency.

This study is relevant because it speaks to the naturally observed behaviors and patterns of animals, not just the wild horses, in the MPWHT. Turner notes, "[t]he MPWHT has had the natural benefit of ongoing predation to limit horse population growth." *Id* at 2462. The wild horses existed for decades without human interventions and consideration should be given to the organic and pre existing methods of population control. Coupled with consistent fertility control treatments, natural patterns of predation are an adequate option to limiting population growth of wild horses in MPWHT.

H. Further planning must take into consideration the agency's requirements to permit public observation of wild horse removal operations.

The right to observe the removal of wild equines from their habitat is the type of government activity that is protected by the First Amendment of the Constitution of the United States and has been upheld by consistent decisions in Federal courts. The BLM should consider the barriers, such as closing roads and restricting travel, as well as any activities taking place on private land, that the public must now overcome to observe the round ups and gather operations outlined in the EA.

In *Richmond Newspapers, Inc. v. Virginia*, the Supreme Court of the United States made clear that members of the public and the press have the right to access and observe government activities. 448 U.S. 555, 576 (1980). The Supreme Court provided additional unambiguous guidance in *Press-Enterprise Co. v. Superior Court* (hereafter referred to a as *"Press Enterprise II")*, establishing that when a government activity has historically been open to the press and public, and the public has played a significant positive role in that government activity, the government may impose only such restrictions as are narrowly tailored to serve an overriding government interest. 478 U.S. 1, 8–9 (1986). The Court of Appeals for the Ninth Circuit has further held that the analysis from *Press Enterprise II* applies in the context of roundups of wild horses. *Leigh v. Salazar*, 677 F.3d 892, 900 (9th Cir. 2012).

Pursuant to the holding of *Press Enterprise II*, there is no doubt that the roundup of wild horses constitutes a government activity that has historically been open to the press and public. As I am sure you are aware, the press and public have historically had access and a right to be present at wild horse roundups on public land. See *Leigh v. Salazar*, 954 F. Supp. 2d 1090, 1100 (D. Nev. 2013). In addition, public access contributes to the purpose and function of this government action by protecting the health and welfare of these federally protected wild horses and allowing for dissemination of observed information to the public. *Id*. As such, the agency should consider removing any hurdles that were suggested in the EA to prevent members of the public from observing the round up and gather operations.

I. The USFS specifically must adhere to the order of considerations required by 36 CFR §222.69(c).

36 CFR § 222.69(c) sets forth the requirements of how wild horses and burros are to be relocated or removed. Specifically, the regulation directs that animals should be relocated "to other National Forest System lands which were identified as 1971 wild horse or burro territory, providing suitable habitat exists and relocation of animals will not jeopardize vegetation condition." 36 CFR § 222.69(c)(2). In fact, compliance with 36 CFR § 222.69(c)(4) requires that the agency prioritize this type of relocation over placement of animals with private individuals, groups, or other Government agencies. At the very minimum, an analysis and explanation should be provided regarding attempts by USFS to relocate the alleged "excess animals" it proposes to gather to other National Forest System lands, as required by 36 CFR § 222.69(c).

While the agencies respond that "[a]t this time FS has received no requests of this nature and no other Forest Service lands designated as WHTs have been identified as providing suitable habitat where relocation of animals would not jeopardize vegetation condition," no further detail is given to the agency's proactive responsibility to relocate "excess" horses in this manner. Further planning should disclose what, if any, efforts or inquiries the agencies made to comply with this mandatory directive.

CONCLUSION

AWHC strongly encourages the agencies to revise its current proposed action to comply and conform with the authorities and other information included in these comments.

Sincerely,

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