

September 23, 2024

Submitted via Forest Service Website

(<https://www.fs.usda.gov/project/?project=64950>)

Joseph Swisher
Mono Lake Ranger District
Attn: Removal of Wild Horses Outside of the MPWHT
P.O. Box 429
Lee Vining, CA 93541

Re: Objection to the Inyo National Forest's Draft Decision Notice (DDN) and a Final Environmental Assessment (EA) / Finding of No Significant Impact (FONSI) for the Removal of Wild Horses Outside of the Montgomery Pass Wild Horse Territory (MPWHT)

Dear Mr. Swisher,

Friends of Animals¹ submits this objection letter in response to the Draft Decision Notice (DDN), Final Environmental Assessment (EA), and Final Finding of No Significant Impact (FONSI) completed by the Bureau of Land Management and the U.S. Forest Service (collectively, the "Federal Agencies") regarding the decision to round up and permanently remove wild horses outside of the Montgomery Pass wild horse territory (MPWHT).²

These objections are timely filed. The Preliminary EA was published on the Forest Service Website on May 28, 2024. Friends of Animals submitted project-specific written comments on June 26, 2024, during the designated comment period, and now incorporates those comments by reference pursuant to 36 C.F.R. § 218.8(b)(4).

These objections relate to the specific comments that Friends of Animals and others submitted. Friends of Animals and others commented that the Forest Service erred by not making the proper excess determination or confirming that the removal was necessary to sustain a thriving and natural ecological balance, as required by the WHBA. Friends of

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

² U.S. Forest Service & BLM, *Removal of Wild Horses Outside the Montgomery Pass Wild Horse Territory (MPWHT)*, <https://www.fs.usda.gov/project/?project=64950> (Aug. 8, 2024).

Animals also commented that the Forest Service erred by not analyzing whether the current conditions could sustain the existing wild horse population. Friends of Animals notified the Forest Service it could not, under the WHBA, authorize multiple removals for years into the future based on a single decision. Instead, it must update its analysis and consider all currently available information before determining if removal is necessary in the future.

Likewise, Friends of Animals and others commented that the Forest Service also erred by failing to consider aspects of the plan as required by the National Environmental Policy Act. These aspects include both positive impacts of wild horses on the ecosystem and negative impacts of the proposed roundup of wild horses. Lastly, Friends of Animals and others commented that the Forest Service violated NEPA by failing to consider or include reasonable alternatives, such as reducing livestock, allowing horse population to naturally stabilize, expanding the wild horse territory. Other reasonable alternatives that were presented by commentors included protecting sensitive riparian areas or creating safe wildlife crossings. These comments were not fully addressed or resolved by the Federal Agencies in the DDN, Final EA, or appendices.

DISCUSSION

A. The Federal Agencies' must comply with the Wild Free-Roaming Horses and Burros Act.

The Federal Agencies must comply with the WHBA, including making a proper “excess determination” before removing wild horses, providing the evidence that the removal of wild horses is necessary, and limiting application of the Final EA to the current proposed roundup, rather than seeking to conduct multiple future roundups at unidentified times until the wild horse population is eradicated.

1. The Federal Agencies must make a proper excess determination, including an analysis of what constitutes a thriving, natural ecological balance, before rounding up wild horses.

The WHBA authorizes the Federal Agencies to remove “excess” wild horses only in limited circumstances.³ Decisions about what animals to remove must be based on current information that there is overpopulation of wild horses and that removal is necessary.⁴ In addition, a determination to remove wild horses must be based on, among other things, “the current inventory of lands within [the Secretary’s] jurisdiction.”⁵

³ 16 U.S.C. § 1333(b)(2).

⁴ 16 U.S.C. § 1333(b)(2); see also *Colo. Wild Horse & Burro Coal., Inc. v. Salazar*, 639 F. Supp. 2d 87, 93-94 (D.D.C. 2009).

⁵ *Id.*

In interpreting these statutory requirements, BLM has issued guidance that in making an excess determination, the authorized officer must first analyze: (1) grazing utilization and distribution; (2) trend in range ecological condition; (3) actual use; (4) climate (weather) data; (5) current population inventory; (6) wild horses and burros located outside the HMA in areas not designated for their long-term maintenance; and (7) other factors such as the results of land health assessments which demonstrate removal is needed to restore or maintain the range in a thriving, natural ecological balance.

In the response to comments, the Forest Service addressed this by stating that “[s]ection 1.1 has been updated to add clarification to the excess determination.”⁶ However, the Final EA changes nothing from the Preliminary EA. The Final EA simply re-states that idea that, because the area outside of the MPWHT is considered an area of public lands that are not to be managed for wild horses, then all wild horses above a population of zero are considered to be “excess.”⁷ However, Federal Agencies fail to consider expanding the range or providing additional forage for wild horses in the MPWHT.

By strictly basing the “excess determination” on the number of horses and not the condition of the range and wild horse herds, the Federal Agencies failed to consider the other factors required under statute and agency directives. The Federal Agencies have not sufficiently made the required determination that excess wild horses inhabit the planning area or that immediate removal is necessary, as required by the WHBA and the Federal Agencies’ own guidance documents.

As Friends of Animals mentioned in the June 2024 comment letter, many factors can contribute to the “thriving, natural ecological balance” as required by the WHBA.⁸ These additional factors include human activity and ranching use of livestock grazing allotments. The Final EA still lacks analysis of how those factors affect the range. Thus, the Final EA failed to consider the effects of all these uses, and instead simply relied on the number of wild horses in determining that the population was “excess” and is to be immediately removed, contrary to the WHBA.

2. The Federal Agencies erred by not analyzing current conditions on the range.

Friends of Animals commented on the Preliminary EA to point out that the WHBA mandates that decisions to remove wild horses be based on currently available information and be limited to what is immediately necessary.⁹ Current inventories and site-specific

⁶ Appendix 7, *Preliminary EA Response to Comments* at 55.

⁷ Final EA at 6.

⁸ 16 U.S.C. § 1333(a).

⁹ 16 U.S.C. § 1333(a).

removal decisions are also necessary to ensure that BLM manages wild horses at the “minimal feasible level.”¹⁰

However, the Preliminary EA lacked a sufficient analysis of the number of horses that the range can sustain, whether the range can support the existing population, or how many horses should ideally be part of a thriving and natural ecological balance. In response to these comments, the Federal Agencies stated that such concerns are “outside the scope of this EA.”¹¹ This directly contrasts with both the WHBA and agency guidelines that require site-specific analysis and continued monitoring **before** removing excess wild horses.

Moreover, the Federal Agencies failed to consider whether the MPWHT should be expanded based on the area wild horses used at the time WHBA was passed, and they failed to consider whether MPWHT could be expanded based on cooperative agreements. Finally, the Federal Agencies failed to consider if it could allocate more forage for wild horses in the current MPWHT. The Federal Agencies did not demonstrate that, based on the current condition, removal is necessary to achieve a thriving, natural ecological balance.

The Federal Agencies still intend to permanently remove the vast majority of the wild horse population without first determining whether the range in its current condition can sustain wild horses and the population that can be sustained. Any proposed roundup is in violation of the WHBA.

3. Federal agencies cannot continually remove wild horses for multiple years based on a single decision or analysis.

The WHBA authorizes agencies to remove “excess” wild horses only in limited circumstances.¹² Importantly, such excess determinations should be made before every roundup.

However, the Final EA states that “[w]hile the agencies plan to immediately remove all excess animals outside the boundaries of the MPWHT, experience reveals that it is unlikely that a single [roundup] can achieve this.”¹³ This means that the proposed action will require not just an initial roundup, but an unidentified number of roundups over an unidentified period of time.

This plan for future roundups based on the same environmental analysis violates the WHBA’s requirement that site-specific analysis take place before every roundup.¹⁴ While Friends of Animals commented on this aspect of the DDN during the comment period, no

¹⁰ *Id.*

¹¹ Appendix 7, *Preliminary EA Response to Comments* at 15.

¹² See 16 U.S.C. § 1333(b)(2).

¹³ Final EA at 14.

¹⁴ 16 U.S.C. § 1333(b)(2).

changes were made in the Final EA. Thus, the Final EA allows for the possibility to conduct future roundups based on this same analysis. Not only does this allow for actions based on old or unreliable data, but it also removes the opportunity of the public to comment on future removal operations.

B. The Federal Agencies' Final EA violates the National Environmental Policy Act.

The National Environmental Policy Act (NEPA) requires an acting agency to prepare a detailed environmental impact statement (EIS) for federal actions that significantly affect the quality of the human environment. The EIS should include “(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action.”¹⁵

Even after comments from Friends of Animals and others, the Federal Agencies failed to consider multiple different impacts of the proposed action. They also failed to consider multiple reasonable alternatives to the proposed action. Each of these constitutes a violation of NEPA.

1. The Federal Agencies violated NEPA by failing to consider positive aspects of wild horses on the ecosystem.

In its June 2024 comment, Friends of Animals pointed out several positive aspects that wild horses can have on the ecosystem. These include spreading of plant seeds, lesser impact than ruminant grazers, and the creation of moisture-retaining soils to prevent fire. Multiple scientific studies demonstrate these positive impacts.¹⁶ Yet, the Final EA continues to lambast wild horses without adequate recognition or consideration of the positive impacts wild horses have.

In the Response to Comments, the Federal Agencies state that the analysis has been updated “to include a Scientific Literature Review on the effects of horses on rangeland ecosystem.”¹⁷ However, in the Final EA, positive aspects of horses are vaguely mentioned in that the Federal Agencies “recogniz[e] the potential benefits of low-density wild horse and burro herds,” but the Final EA goes into no further detail regarding these benefits.¹⁸ At the

¹⁵ 42 U.S.C. § 4332(2)(C).

¹⁶ See Lundgren, E. J., et al. (2021). Equids engineer desert water availability. *Science*, 372 (6541), 491-495; Downer, C. C. (2014). The horse and burro as positively contributing returned natives in North America. *American Journal of Life Sciences*, 2(1), 5-23; see also Lundgren, E. J., Ramp, D., Ripple, W. J., & Wallach, A. D. (2018). Introduced megafauna are rewilding the Anthropocene. *Ecography*, 41(6), 857-866.

¹⁷ Response to Comments at 56.

¹⁸ Appendix 6, *Scientific Literature Review* at 8.

same time, the Federal Agencies recognize that “ongoing effects of livestock grazing may be difficult to separate from horse effects in some cases (Davies et al. 2014).”¹⁹

Meanwhile, the discussion of horse impacts in the Final EA arbitrarily focuses on the negative impacts, while also ignoring impacts from the far larger population of grazing ruminants compared to wild horses.

The Federal Agencies should indefinitely postpone any removal operations and fully consider the positive impacts wild horses have on the health of the range. Instead, they have chosen to proceed with the proposed roundup and remove the vast majority of horses who are outside the boundaries of the MPWHT. This is a violation of NEPA.

2. The Federal Agencies violated the WHBA by not fully considering the physical, social, and behavioral impacts of the proposed action on wild horses.

The Federal Agencies typically employ helicopter-based roundup methods when deciding to remove wild horses from public lands. The Final EA confirmed that such helicopter use is likely in the proposed action. Depending on its size, a roundup can last for several days or several weeks and result in numerous wild horse injuries and casualties.

In the Response to Comments, the Federal Agencies alleged that impacts on wild horses had been included in the Scientific Literature Review. However, that review plainly ignores the multitude of information demonstrating significant negative effects that roundups have on horses. For example, horses initially experience what is known as the fight-or-flight reaction—bodily changes that enhance horses’ chances of surviving a frightening situation by increasing their alertness, capacity for physical exertion, and ability to withstand injury.²⁰

Essentially, the stress of capture and captivity can put the horse “on a path of accelerated deterioration,” leading to long-term physical and mental health problems and a shortened life expectancy.²¹ Likewise, the ongoing trauma experienced by wild horses after the initial roundup extends to both the captured wild horses and those wild horses (if any) that were left on the range.

Instead of ignoring these negative impacts as the Federal Agencies do in the Final EA and appendices, they should instead consider alternatives that do not involve traumatic rounding up and euthanizing of horses. Other alternatives could include evaluating the range to account for current conditions and populations, reducing or eliminating livestock grazing, and allowing the population of wild horses to self-regulate through natural means.

¹⁹ *Id.*

²⁰ Nock, B., & Horsemanship, L. (2010). Wild Horses: The Stress of Captivity.

²¹ *Id.* at 2.

By failing to do this, the Federal Agencies have violated NEPA's requirement of taking a "hard look" at the environmental consequences of its actions.²²

3. The Federal Agencies failed to consider the reasonable alternatives of reducing livestock and controlling horse population through natural means.

By focusing only on roundups, the Final EA lacks required discussion of reasonable alternatives, such as reducing livestock grazing or alternative population control methods. The Final EA has the same deficiency as Friends of Animals initially commented: it is essentially only analyzing one alternative. The lip service paid to a no-action alternative does not justify the exclusion of valid alternatives. The Federal Agencies' narrow and single-minded approach of conducting roundups without considering reasonable alternatives is a clear violation of NEPA's requirements.

a. The Final EA fails to include discussion of reducing livestock as a reasonable alternative.

Reducing the amount of private grazing for livestock would be more likely to achieve a thriving natural ecological balance than allowing livestock grazing without controls. Yet, even after Friends of Animals' comments noting this, the Final EA lacks any mention of reducing livestock in and around the MPWHT. In fact, the only mention of this can be found in the Response to Comments, which lumps together this livestock reduction comment with the impact of roundups on wild horses.²³

Nowhere in the DDN, the Final EA, or the Response to Comments discusses the possibility of reducing livestock grazing. The Federal Agencies acknowledge in the Final EA that the agencies have the authority to implement adjustments to as appropriate when permits are renewed or through coordination with land management agencies and permit holders.²⁴ Yet, instead of analyzing the impact of livestock grazing on the range in the planning area and determining the viability of the reasonable alternative of reducing or eliminating livestock grazing, the Federal Agencies addressed the impact the removal operations will have on livestock grazing.²⁵

The Federal Agencies must consider reducing or eliminating the forage allotted to livestock so that wild horses can thrive and be an integral part of the natural system of public lands. A proper NEPA analysis must be undertaken, which will analyze in detail any alternatives that would eliminate livestock grazing or reduce the permitted use of livestock in the area.

²² *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989).

²³ See Response to Comments at 56-57.

²⁴ Final EA, p. 34-35, § 3.7.

²⁵ Preliminary EA, p. 36-37.

b. The Federal Agencies rejected, without explanation, the alternative of controlling the wild horse population by natural means.

The Final EA likewise lacks discussion of any alternatives that could control the wild horse population through natural means. In its June 2024 comment letter, Friends of Animals included substantive reasons why the Federal Agencies should consider this alternative. Choosing to manage wild horses naturally is a feasible alternative that is not only free and sustainable, but also ensures that wild horses remain as they should: wild.²⁶

In the Response to Comments, the Federal Agencies state that this suggestion is “outside the scope of this EA,” “outside of the scope of this project,” and point to Appendix 2, the Scoping Outcome Summary.²⁷ The Scoping document itself then directs the reader back to the EA, where mountain lions are briefly mentioned.²⁸ However, instead of discussing any of the merits of using this reasonable alternative, the EA only mentions mountain lions in passing. But even these passing mentions of mountain lions in the EA **support** the idea that this is a reasonable alternative.

The EA states that researchers have “documented mountain lion predation of horses” in the MPWHT.²⁹ It notes that horses are living “year-round” in lion-occupied habitat, making them available for predation.³⁰ The EA even explicitly states that “[m]ountain lions are common within the project area and are known to prey on wild horses.”³¹ Yet, the Federal Agencies lack an “official mountain lion population estimate,” suggesting this option has gone completely unanalyzed as a valid alternative.

The Federal Agencies should consider this reasonable alternative in which wild horse populations are managed and regulated through natural means, such as protecting natural predators like mountain lions. The Federal Agencies’ failure to consider this alternative in detail ignores the obligation to manage wild horses at the “minimal feasible level”³² under the WHBA and its obligation under NEPA to consider reasonable alternatives.

CONCLUSION

Friends of Animals strongly opposes the roundup and removal of any wild horses in the planning area outside of the MPWHT. As it stands now, the Proposed Action violates both

²⁶ Dave Philips, Let Mountain Lions Eat Horses, N.Y. Times, May 12, 2018, *available at* <https://www.nytimes.com/2018/05/12/sunday-review/let-mountain-lions-eat-horses.html>. *See also* Wild Horse Country: The History, Myth and Future of the Mustang (2018).

²⁷ Response to Comments at 57.

²⁸ Final EA at 19-20, 57.

²⁹ *Id.* at 20.

³⁰ *Id.*

³¹ *Id.* at 54.

³² 16 U.S.C. § 1333(a).

the WHBA and NEPA. Before the Federal Agencies decide to conduct any proposed roundups, they must consider the impacts of the roundup and the potential contribution of wild horses as a positive impact to a balanced ecosystem if left to remain in their natural habitat on the range.

Friends of Animals would be glad to discuss potential resolution of issues raised in this objection. We hope that the Federal Agencies will use the objection process as an opportunity to engage with stakeholders, including us, to develop a project that is legally and ecologically sound.

Sincerely,

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