

May 22, 2025

Submitted via Forest Service Website

(<https://www.fs.usda.gov/r01/custergallatin/projects/67845>)

Amy Haas, Reviewing Officer
Beartooth District Ranger
Northern Regional Office
Attn: Pryor Mountain Joint Herd Management Area and Wild Horse Gather Plan
26 Fort Missoula Road
Missoula, MT 59804

Re: Objection to Pryor Mountain Joint Herd Management Area and Wild Horse Gather Plan Draft Decision Notice, and Finding of No Significant Impact

Dear Ms. Haas,

Friends of Animals¹ submits this objection letter in response to the Draft Decision Notice (DDN) and Finding of No Significant Impact (FONSI) for the Pryor Mountain Joint Herd Management Area and Wild Horse Gather plan completed by the Forest Service (the “Decision”).²

The DDN and FONSI rely in large part on the Environmental Assessment (EA) that was “collaboratively developed” by both the Bureau of Land Management (BLM) and the Forest Service (collectively, the “Federal Agencies”). The Federal Agencies “have a need to coordinate activities” due to the proximity of BLM’s herd management area and the Forest Service’s wild horse territory.³ Furthermore, the Decision is “based on the effects analyzed and disclosed in the [EA].”⁴ This is true even though the Decision “is only for the Forest Service portion of the wild horse management area and herd.”⁵ Lastly, while much of the

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, *Pryor Mountain Joint Herd Management Area and Wild Horse Gather Plan, Draft Decision Notice and Finding of No Significant Impact*, <https://cara.fs2c.usda.gov/Public/CommentInput?Project=67845> (April 9, 2025) (the “Decision”).

³ Decision at 3.

⁴ *Id.* at 5.

⁵ *Id.* at 6-7.

public interaction for the NEPA process was led by BLM, “the Forest Service coordinated throughout the process,” including “review of and response to public comments.”⁶ Thus, many of the same issues raised during the public comment period for the EA, and the resulting Response to Comments, are also implicated here in the Decision.

The Forest Service’s preferred alternative will round up and permanently remove wild horses in the Pryor Mountain Joint Herd Management Area (PMJHMA).⁷ The Forest Service’s Decision will implement Alternative 2 discussed in the EA, and in doing so, has approved of the analysis within the jointly-developed EA. While BLM’s proposed resource management plan amendment (RMPA) falls outside the scope of the Forest Service’s Decision, it is included in these comments because “its analysis was a part of the Environmental Assessment.”⁸

On April 9, 2025, the Forest Service opened the 45-day public objection period, which ends on May 23, 2025. These objections are timely filed. Friends of Animals submitted project-specific written comments on April 23, 2023, and April 29, 2022, 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 objects to the Decision not only because it would be detrimental to wild horses, but also because it violates the Wild Free-Roaming Horses and Burros Act (WFHBA), the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Forest Service’s own regulations. The Decision also jeopardizes the unique and significant population of wild horses in the PMJHMA.

Friends of Animals notified the Federal Agencies that it could not, under the WFHBA, authorize multiple removals for years into the future based on a single decision. Instead, the Forest Service must update its analysis and consider all currently available information before determining if removal is necessary in the future.

Friends of Animals commented that the invasive methods contemplated in the EA are not only unnecessary but also violate the WFHBA. Under the WFHBA, the Federal Agencies have an obligation to conduct management activities at the minimum feasible level, which the Decision does not. Friends of Animals also pointed out that the authorized management level (AML) is still flawed even after a re-evaluation, and that the Federal Agencies should not continue to use this AML.

⁶ Decision at 5.

⁷ BLM refers to these areas as Herd Management Areas (HMAs), while the Forest Service refers to these areas as wild horse territories (WHT). Because the DDN and FONSI use the term “Joint Herd Management Area”, that will be used throughout this comment.

⁸ Decision at 4.

Friends of Animals and others commented that the Federal Agencies also erred by failing to consider aspects of the plan as required by the National Environmental Policy Act (NEPA). These aspects include both positive impacts of wild horses on the ecosystem and negative impacts of the proposed roundup on wild horses themselves. Friends of Animals discussed why the proposed amendment (and, accordingly, the Decision) jeopardizes the health and viability of the unique Pryor Mountain wild horses. Friends of Animals and others also commented that the Federal Agencies violated NEPA by failing to consider or include reasonable alternatives. Some alternatives were excluded due to an overly narrow purpose and need statement.

These comments were not fully addressed or resolved by the Federal Agencies in the Forest Service's DNA or FONSI, the Final EA, or the appendices.

DISCUSSION

A. The Forest Service's Decision violates the Wild Free-Roaming Horses and Burros Act, the National Forest Management Act, and Implementing Regulations.

The Forest Service must comply with the WFHBA, 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.⁹ Instead, the Forest Service seeks to conduct multiple future roundups at unidentified times until the wild horse population is eradicated.

1. Neither the Forest Service nor BLM has the authority to continually round up wild horses for up to ten years without conducting additional analysis and soliciting public input.

In 1971, a bipartisan Congress passed the WFHBA, declaring that "wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people."¹⁰

Congress stated, "wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death, and to accomplish this they are to be considered in the area where presently found as an integral part of the natural system of public lands."¹¹ The WFHBA directs the Forest Service to "protect and manage wild free-roaming horses and burros as components of the public lands . . . in a manner that is designed to achieve and maintain a thriving, natural ecological balance on the public lands."¹² The purpose of the

⁹ 16 U.S.C. § 1333(b)(1).

¹⁰ *Id.* at § 1331.

¹¹ *Id.*

¹² *Id.* at § 1333(a).

WFHBA is to protect wild horses and it only authorizes the Forest Service to remove wild horses in limited situations.¹³

The EA discusses the “10-year life” and the “ten-year lifespan” of its Gather Plan, which “is the timeframe BLM [and Forest Service] will be undertaking proposed management actions.”¹⁴ The Response to Comments regarding the preliminary EA only clarified that the Federal Agencies would conduct gathers until “lower AML is achieved.”¹⁵

The Forest Service does not have authority to continually remove wild horses for ten years without making a specific determination before each individual roundup. The WFHBA states that, before removing wild horses, the Federal Agencies must make a determination that 1) an overpopulation exists, and 2) that action is necessary to remove animals.¹⁶ The Forest Service’s regulations define excess as “wild free-roaming horses and burros which have been removed by authorized personnel pursuant to applicable law or which must be removed from an area in order to preserve and maintain a thriving natural ecological balance in coordination with other resources and activities.”¹⁷ This determination must be based on current information.¹⁸

Congress included the statutory requirement to make a determination before each removal for good reason. Conditions on ranges change from year to year. Making sure decisions are based on current conditions helps the Forest Service conduct management activities “at the minimal feasible level” as required by the WFHBA.¹⁹ It also ensures that decisions are made based on how conditions are now, not how they were up to a decade ago. By failing to make a determination before each analysis, the Forest Service also removes public participation from the process. Doing so violates the WFHBA’s requirement that the Forest Service “shall consult” the Fish & Wildlife Service, state wildlife agencies, independent scientists recommended by the National Academy of Sciences, or any other knowledgeable experts in the field of horse and burro protection when making a determination.²⁰ Both of these reasons behind making the statutorily-required determination—current condition of the

¹³ See 16 U.S.C. § 1333(a) (“[A]ll wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary **for the purpose of management and protection** in accordance with the provisions of this Act.”) (emphasis added).

¹⁴ BLM and Forest Service, *Environmental Assessment for Pryor Mountain Wild Horse Range (PMWHR) Joint Herd Management Area Plan (JHMAP), Revision Appropriate Management Level (AML), Wild Horse Gather Plan, and Proposed RMP Plan Amendment (MD WH-7)*, <https://www.fs.usda.gov/r01/custergallatin/projects/67845> (Nov. 15, 2024) (hereinafter “EA”) at 37, 55, 56, 65, 72.

¹⁵ *Id.* at 72.

¹⁶ 16 U.S.C. § 1333(b)(2).

¹⁷ 36 C.F.R. § 222.60(b)(3).

¹⁸ 16 U.S.C. § 1333(b)(1).

¹⁹ *Id.* at § 1333(a).

²⁰ *Id.* at § 1333(b)(1).

lands and public input—particularly apply to the Pryor Mountain wild horses, whose population is small and naturally fluctuates with the seasons.

In addition, failing to make a determination before each gather violates the WFHBA. One court recently held that a decision “exceeds statutory authority insofar as it permits removal of excess horses and burros up to ten years from its promulgation.”²¹ Yet, the Federal Agencies continues to disregard that court’s order and move forward with additional ten-year plans. By doing so, the Forest Service has violated the WFHBA.

Lastly, the Decision also violates the National Forest Management Act (NFMA) which mandates that the Forest Service use the best available scientific information in amending a land use plan.²² The Forest Service cannot authorize the use of information that could be as many as ten years old. By approving this plan, the Decision violated the NFMA.

2. The Federal Agencies’ invasive methods to alter wild horse populations are unnecessary, do not adequately protect Pryor Mountain wild horses, and violate the WFHBA’s mandate that its management activities be at the minimal feasible level.

Under the WFHBA, the Forest Service has an obligation to keep its management activities “at the minimal feasible level.”²³ However, the management activities under the RMPA and associated plans in general are largely unnecessary, and thus not at the minimal feasible level, because the Federal Agencies exaggerate the threat of overpopulation and related growth rates. For example, a 2018 final EA claimed that, without any removals, the Pryor Mountain herd would experience an 8% growth rate and “would be over 200 wild horses” by 2021.²⁴ Subsequently, a Court enjoined BLM’s action, and as a result, there have been no removals since 2015. The current population in 2025 on the PMJHMA is only 200, showing that this growth rate was highly exaggerated.²⁵

The EA states that the Federal Agencies “cannot cause all patrilineal or matrilineal lines to be propagated” in order to preserve genetic diversity.²⁶ Nothing in the current RMP suggests that the Forest Service must cause all lines of descent to be propagated. The EA even admits that not every male wild horse gets to reproduce, again suggesting that their analysis is inaccurate and their concern for overpopulation is misplaced.²⁷ BLM has not

²¹ *Friends of Animals v. Culver*, 610 F. Supp. 3d 157, 162 (D.D.C. 2022).

²² 36 C.F.R. § 219.3.

²³ 16 U.S.C. § 1333(a).

²⁴ BLM, *Final PMWHR Bait/Water Trapping Gather and Fertility Control Environmental Assessment DOI-BLMMT-A010-2017-0055-EA* at p. 34,

https://eplanning.blm.gov/public_projects/nepa/89925/153181/187725/2018_PMWHR_bait_gather_fertility_control_EA_final.pdf.

²⁵ Decision at 6.

²⁶ EA at 7.

²⁷ *Id.*

conducted a roundup since 2015, and the population has not risen dramatically, just barely reaching 200 individuals ten years later.

However, even if the population grew as the EA claims, BLM's chosen methods would not protect Pryor Mountain herd. Under its RMPA, BLM will not be able to preserve genetic diversity and maintain a self-sustaining population of healthy wild horses as required by the WFHBA regulations.²⁸ Instead, BLM will only monitor the Observed Heterozygosity (H_0) of the herd. While this measurement can be a good indicator of how much diversity is found within a herd, it cannot prevent the loss of diversity. Instead, it can only inform the Federal Agencies when loss of diversity has already happened. Thus, relying on H_0 is wholly insufficient to protect the unique diversity found within Pryor Mountain wild horses.

BLM's own handbook states that the invasive population control methods it plans to use (maximizing breed age horses, adjusting the sex ratio, and introducing mares from other herds) should only be used if the "minimum wild horses herd size cannot be maintained due to habitat limitations."²⁹ There is nothing in the EA suggesting that the minimum horse herd size cannot be maintained. The EA asserts the opposite: that the Pryor Mountain wild horses will grow unabated at an 8% rate. Even if there were habitat limitations issues, BLM has the ability and authority to increase the size of the PMJHMA onto adjacent public lands.

Lastly, even if the population were experiencing an 8% growth rate, and even if the Forest Service were unable to expand the range through increasing the PMJHMA acreage, the methods the Federal Agencies plans to use would still violate the WFHBA and its regulations. As discussed above, the Forest Service must conduct management activities "at the minimum feasible level."³⁰ Replacing the unique horses in the PMJHMA with horses from other HMAs would not "maintain a wild horse herd that exhibits a diverse age structure, genetic diversity, and any other characteristics unique to the Pryor horses."³¹ This sort of intensive management and "zoolike" conditions was what Congress attempted to avoid when it enacted the WFHBA.³² It is not even clear that such introductions function as intended, as at least one other RMP found that stallions who were introduced from a different HMA "failed to assimilate into the existing herds and therefore did not contribute

²⁸ See 43 C.F.R. § 4700.0-6(a), EA at 6-8.

²⁹ BLM, Wild Horse and Burros Management Handbook, H-4700-1 at 22.

³⁰ 16 U.S.C. §1333(a)(1).

³¹ 2015 Billings Field Office RMP at 3-31.

³² See 92nd Congress, Senate Report 92-242, June 25, 1971 ("The committee wishes to emphasize that the management of the wild free roaming horses and burros be kept to a minimum both from the aspect of reducing costs of such a program as well as to deter the possibility of "zoolike" developments. An intensive management program . . . would destroy the very concept that this legislation seeks to preserve . . . leaving the animals alone to fend for themselves and placing primary emphasis on protecting the animals from continued slaughter and harassment by man.")

as they were intended.”³³ The EA speculates that previous introductions of mares have worked out, but does not account for the RMPA’s introduction of both mares and stallions.³⁴

The RMPA’s other option, increasing the ratio of stallions to mares in the PMJHMA, also presents concerns that BLM has not sufficiently addressed. For example, skewing the sex-ratio disrupts the natural social structures of wild horses. Increased stallion aggression due to fewer mares can threaten the well-being and safety of all the wild horses. One report from the National Academy of Sciences found at least two negative consequences: decline in body condition of males, and lower foraging success in females.³⁵

In the discussion of changes made as a result from the comment period, the EA only clarifies more specifically what these sex ratio numbers will be.³⁶ The intensive management activity called for in the RMPA violates the WFHBA’s requirement to manage wild horses at the “minimal feasible level” and its duty to protect wild horses within the PMWHR.

3. The AML re-evaluation continues to be flawed, and the Forest Service should not rely on this AML.

The final AML re-evaluation is substantially unchanged from the re-evaluation submitted with the preliminary EA. The Response to Comments show that only minor changes such as adding definitions or clarifying phrases have changed.³⁷ Several of these responses to comments repeat the same stock phrase.³⁸ Furthermore, none of the surface-level changes to the EA have any substantive impact on the Forest Service’s preferred AML number, which did not change.³⁹

The method used in the EA to determine AML—Method 2, carrying capacity calculation based on rangeland health and pounds of production—has flaws that the Forest Service has not meaningfully addressed. As Friends of Animals and others pointed out, this method continues to rely on a 2021 analysis as an assessment of the range health, but 2021 had a near-record low amount of precipitation. The Response to Comments admit that “[d]rought

³³ BLM, *Murderers Creek Wild Horse Territory/Herd Management Area Management Plan* (2009), available https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_033478.pdf.

³⁴ EA at 33.

³⁵ National Research Council, *Using science to improve the BLM wild horse and burro program: a way forward*, National Academies Press (2013) at 98.

³⁶ EA at 73-74.

³⁷ See *Id.* at 72-74.

³⁸ For example, “*Method 1 of Appendix C was presented as the approach that was used in 2016 to calculate carrying capacity using available data and was included to illustrate utilizing two different methods of analysis results in approximately the same conclusion*” is stated no fewer than 17 (seventeen) times. Appendix P – Response to Comments at 30-36, 40.

³⁹ Decision at 7.

years are not optimal”⁴⁰ to conduct Rangeland Health Assessments (RHA) and that “[c]onditions during 2021 serve as an example of a severe drought.”⁴¹ But that did not deter the Federal Agencies from largely relying on this abnormal year to assess the condition of the rangeland and carrying capacity therein. The EA analyzed 2021 as the year to collect data “at six areas commonly used by the Pryor Mountain horses as winter range and calculated pounds per acre of residual forage available for winter use.”⁴² In this same year, BLM also conducted a field survey to “qualitatively assess vegetation.”⁴³ The EA claims that the Federal Agencies used “multiple lines of evidence” to evaluate rangeland health, notably the Rangeland Analysis Platform data from 1986-2021.⁴⁴ However, data from the year 2021 still features prominently in the RHA, including multiple on-site data collections and all eight of the dated photographs present in the RHA. And even though the EA mentions the drought’s existence throughout the RHA, the Forest Service did not make adjustments based on this exceptional year; it treats 2021 as the norm for the future.⁴⁵

Method 2 also discounts almost 2/3rd (62%) of the rangeland as potential forage sites for wild horses. The Response to Comments explains that the excluded lands are “primarily used as recreation and wildlife habitat.”⁴⁶ However, the Forest Service has the ability to exclude recreation from Forest Service lands. If wild horses could forage there, the Forest Service should let the wild horses access these areas. Moreover, wild horse use is compatible with recreation and other wildlife’s use of the habitat.

In addition, the “wildlife habitat” that the EA mentions includes wild horses, who are themselves wildlife. The EA statements as to whether this habitat is suitable for wild horses is contradictory. The EA first states that “[t]he vast majority of the range is described as limestone or rock outcrop” and that these areas “have very little use as rangelands.”⁴⁷ In the next paragraph, however, the EA admits that the Pryor Mountain wild horses “do utilize the limestone and rock outcrop soils more than others.”⁴⁸

Even though the EA admits that wild horses utilize and seek forage within these Range Reference Units (RRU), it is unclear whether all of the acreage of this ecological type has been included in the Federal Agencies’ assessment of the range. The EA states that about half of the “limy” RRU’s 9,625 acres include the limestone and rock outcrop soils that wild

⁴⁰ Appendix P, *Response to Comments* at 44, 149.

⁴¹ EA at 31.

⁴² Appendix B, *Pryor Mountain Rangeland Health Assessment* at 10.

⁴³ *Id.* at 12.

⁴⁴ *Id.* at 26.

⁴⁵ For example, BLM states that “[t]he BLM concluded that long-term drought has reduced forage production;” that “[t]he low production values may be attributed to . . . grazing combined with drought conditions in 2021;” and that the “current range conditions, which have been exacerbated by drought.” *Id.* at 5, 30, 42.

⁴⁶ Appendix P, *Response to Comments* at 36.

⁴⁷ *Id.*

⁴⁸ *Id.*

horses utilize. However, while the limy RRU has the largest amount of acreage among all ecological types within the PMJHMA, the EA still only considered 15,819 acres out of the roughly 42,000 acres within the PMJHMA.

It is thus possible that thousands of acres within the PMJHMA are actually acceptable as rangelands yet are not included in the EA's assessment. It is likely that if all acreage within the PMJHMA were considered—including the “vast majority” of the PMJHMA's 26,000 acres that the EA dismissed out of hand and did not analyze—a higher AML would be justified even under this flawed method.

Additionally, Method 2 relies on a definition of AML found within BLM's handbook that is neither legally binding nor a product of notice-and-comment rulemaking. Under the WFHBA, the AML should be based on current information,⁴⁹ rather than a static number that does not change along with range conditions. While it is clear that the Forest Service seeks to reduce the population of wild horses to as small as possible (the low AML), there is no legal basis for doing so. Horse populations have surpassed the artificially-constructed “high” AML for many years now, and several accounts of the rangeland health show good or improving quality of the rangeland. This is direct evidence that the need to reduce the AML is unnecessary and inaccurate, as the larger herd has been thriving while the rangeland health stays largely positive.

Furthermore, as mentioned by multiple commenters including Friends of Animals, the low AML brings the Pryor Mountain wild horses to a small population size which threatens genetic viability and diversity of the herd as a whole.

Even though the EA claims it is not relying or using the flawed Method 1 (actual horse numbers, utilization data, and precipitation data), BLM still relies on this method in part to support the conclusion of Method 2. This is because BLM alleges that, since the two methods reached a similar result, the result must be valid. BLM thus relies on Method 1 as an important supporting data point, again stating 17 (seventeen) times that “[m]ethod 1 . . . was included to illustrate utilizing two different methods of analysis results in approximately the same conclusion.”⁵⁰ To the extent that BLM relies on Method 1 to reinforce their ultimate conclusion regarding AML, such reliance is inappropriate because it largely relies on the Pryor Mountain Wild Horse Range Appropriate Management Level (AML) Recalculation Report (hereinafter, “2016 Recalculation Report”) that was released in December 2016. As stated in Friends of Animals comment letter at the time, there were several problems with that report. The Federal Agencies never addressed the problems with the report or responded to comments. Indeed, according to the e-planning website, the 2016 Recalculation Report was withdrawn.

⁴⁹ 16 U.S.C. §1333(b)(1).

⁵⁰ Appendix P, *Response to Comments* at 30-36, 40.

The Response to Comments failed to meaningfully address Friends of Animals' comments. In contrast to "minimal feasible level," the EA reaffirms that the Federal Agencies are committed to continual roundups every four years.⁵¹ While the Decision points to a thriving natural ecological balance (TNEB) as important, it still fails to acknowledge the TNEB that exists now with a population greater than the Forest Service's ideal "high" AML. This shows that the AML is inaccurate, as the land currently holds a higher population without negative impacts on the land. The Forest Service should meaningfully consider these comments, and how it must abide by the WFHBA in setting these AMLs.

4. BLM's proposed amendment jeopardizes the uniqueness of the Distinct Population Segment (DPS) of the horses in the Pryor Mountain Wild Horse Range.

The Forest Service's regulations require that it protect wild horses.⁵² The wild horses in the PMJHMA have been described as the "most significant wild-horse herd remaining in the United States" and as "a unique genetic resource."⁵³ The Old Spanish lineage of horses has been lost in Spain and now can only be found in the Americas. Yet, the Federal Agencies attempt to downplay the importance and uniqueness of these horses in its Response to Comments, stating that the herd is "relatively similar" to other wild horse herds.⁵⁴

Relying on Observed Heterozygosity to maintain genetic diversity, as the Forest Service plans to do, jeopardizes the uniqueness of the Pryor Mountain herds because it only addresses genetic loss after the fact. Instead, the Forest Service should look to what experts have suggested: increasing the population size. The 2013 Cothran study suggested an increase in population size and pointed to early evidence of inbreeding that is likely caused by the Federal Agencies' control of the population size.⁵⁵

The Response admits that the Pryor Mountain horses are one of just three herds in the country which demonstrate high levels of Spanish ancestry.⁵⁶ While other herds may also have Spanish ancestry, this does not detract from the Pryor Mountain horses' uniqueness in their own way. If these genetics are lost in the PMWHR, there is nothing to suggest that other herds have the same mix of genetics.

Even if the Pryor Mountain herds weren't genetically unique, which several studies show that they are, allowing inbreeding and reducing the breeding pool will negatively impact fertility and viability in the herd. While a reduction in population may suit the Forest

⁵¹ *Id.* at 71.

⁵² 36 C.F.R. § 222.60.

⁵³ Ryden, H. (1999). *America's Last Wild Horses*. New York: The Lyons Press, at 320; Cohen, B. (1999). *Survivors of Time: Lost Horses of the Pryor Mountains*. The Seattle Times, *available at* <http://community.seattletimes.nwsources.com/archive/?date=19990815&slug=2977380>.

⁵⁴ Appendix P – *Response to Comments* at 108.

⁵⁵ Gus Cothran, (2013). *Genetic Analysis of the Pryor Mountain Wild Horse Range*, MT.

⁵⁶ Appendix P – *Response to Comments* at 2.

Service's preferred course of action, it does not comply with the WFHBA's mandate that wild horses shall be "protected from capture, branding, harassment, or death."⁵⁷ The Forest Service should not approve the RMPA, as doing so will further degrade the genetic diversity. Similarly, bringing in both mares and stallions from other herds will obliterate the uniqueness of this herd. Not only is this wrong, but it also violates the WFHBA.

B. The Forest Service's Decision violates the National Environmental Policy Act.

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 Forest Service violated NEPA by failing to consider positive aspects of wild horses on the ecosystem.

While the EA continues to discuss the alleged negative impacts of wild horses, this concern is misplaced and unfairly focuses solely and inaccurately on wild horses. The EA's analysis for ecosystem sustainability should include all of the relevant factors. Climate change in particular is something that the Federal Agencies know about and can currently make efforts to address without violating the WFHBA. Instead of taking efforts such as re-seeding native plants, the Forest Service continues to blame horses for the alleged deterioration of rangeland.

In its Response to Comments, the Federal Agencies discuss how wild horse populations will continue to grow unabated at 11% annually, but also admits that poor nutrition would negatively affect the growth rate of the Pryor Mountain herd.⁵⁸ As discussed above, there has not been a roundup of horses since 2015, and the herd experienced only about a 3% growth rate during this time. These populations fluctuate naturally, and allowing the population to do so would let the Forest Service comply with the WFHBA's mandate to manage horses at the "minimal feasible level."

Additionally, the Forest Service plainly ignores any positive impacts that wild horses bring to the range, including helping spread plant seeds through fecal matter, fire prevention through soil moisture level, digging wells that serves as riparian nurseries and buffer against climate change, and creating a diverse habitat of plants due to selective foraging.⁵⁹ The EA did not acknowledge any of these positive impacts, and instead continues to

⁵⁷ 16 U.S.C. § 1331.

⁵⁸ Appendix P, *Response to Comments* at 146-47.

⁵⁹ See Craig Downer, *How Wild Horses & Burros Help North American Ecosystems*, 2 Am. J. Life Sci. 5 (2014); Erik J. Lundgren et al., *Equids engineer desert water availability*, Science (April 30, 2021), available at: <https://www.science.org/doi/10.1126/science.abd6775>; Naundrup, P. J., & Svenning, J. C., *A geographic assessment of the global scope for rewilding with wild-living horses* (Equus ferus). 10 PLoS One 7 (2015), <https://doi.org/10.1371/journal.pone.0132359>.

lambast wild horses in the PMJHMA. The Forest Service should take a hard look at these positive impacts instead of dismissing them without sufficient analysis.

No guesswork is required to see how horses affect the range, even when their numbers are above the current AML. Horses have consistently been above BLM's AML, and three out of the four riparian areas within the PMJHMA are either functioning properly, or at risk for non-horse reasons.⁶⁰ The Federal Agencies' response left this fact unaddressed. As Friends of Animals pointed out in our initial comments, multiple sections of PMJHMA have had stable and consistent trends for decades.⁶¹

The Forest Service should manage these wild horses as a self-sustaining population. When left alone, wild horses will do just that. They will not have explosive growth as BLM suggests, and as the data flatly contradicts. Instead of dismissing positive impacts from wild horses and exaggerating their negative impacts, the Forest Service should take a hard look at all of the impacts as required by NEPA.⁶²

2. The Forest Service violated NEPA by failing to sufficiently consider—or excluding due to a narrow purpose and need—a reasonable range of alternatives.

The Forest Service has rejected a number of reasonable alternatives which would accomplish the purpose and need of the RMPA and would do so with minimal management levels pursuant to the WFHBA's requirement. Instead of considering these alternatives, the Forest Service has steadfastly stuck with BLM's preferred course of action, in violation of NEPA's requirement to consider alternatives.⁶³ For example, both Federal Agencies failed to consider alternatives that would 1) expand the area for Pryor Mountain wild horses onto additional public lands, 2) require environmental analysis before each roundup, or 3) actually preserve the unique genetic heritage of the Pryor Mountain wild horses. These are all reasonable and the Forest Service should have considered them as part of NEPA's requirement on alternatives within the Decision.

The Federal Agencies claim that expanding the boundaries "goes beyond the scope of the project."⁶⁴ The Forest Service must manage horses where they were known to exist in 1971, it must manage wild horses as "an integral part of the natural system of public lands," and it must do so at a minimal feasible level.⁶⁵ None of these statutory mandates prevent

⁶⁰ Appendix B, *Pryor Mountain Rangeland Health Assessment*, at 42-48.

⁶¹ Friends of Animals, 04/27/2023 Comment at 11 (discussing Crooked Creek riparian and Penn's cabin as having stable and/or increasing levels of forage).

⁶² *Baltimore Gas & Elec. Co. v. Natural Res. Defense Council*, 462 U.S. 87, 97-98 (1983).

⁶³ 42 U.S.C. § 4332(C)(iii).

⁶⁴ Appendix P – *Response to Comments* at 130.

⁶⁵ 16 U.S.C § 1331; 16 U.S.C. § 1333(a).

the Forest Service from allowing the horses more space on its portion of the PMJHMA and authorizing a corresponding increase in the AML.

As mentioned above, the Forest Service does not have the authority to jointly create a single EA, and then continuously round up horses for ten years with no additional environmental analysis or input from the public. In its Response to Comments, the Federal Agencies repeatedly state that the roundups will continue until they reach the low AML.⁶⁶ This means that the Forest Service could conduct a series of roundups that left a handful of horses over the low AML each time, for ten years. Even if this AML were a proper number, there is no reason that BLM needs to reach the low AML. The AML is purposefully a range. The Forest Service should have considered this as an alternative. Instead, it plans to shut the public out of the process for ten years, in violation of NEPA's requirements to consider alternatives. This also violates the WFHBA's mandates to consult with independent parties before removing wild horses and only remove horses after determining that there is an overpopulation and that removal is necessary.

The Forest Service also should have considered actions which would have preserved the genetic uniqueness discussed above. Instead, the Federal Agencies try to have it both ways. The Response to Comments does recognize the "uniqueness" of the Pryor Mountain herd.⁶⁷ Yet, in the EA, the Federal Agencies plainly state that "BLM is not required by law to manage the herds found in any given HMA as if they were genetically isolated populations."⁶⁸ The Forest Service did not push back on this point in the Decision. The alternatives that the EA discusses, which include skewing the sex ratio and introducing mares and stallions from other herds, will only make it more difficult to preserve the uniqueness of the Pryor Mountain herd.

The Forest Service should analyze an alternative which will maintain the unique characteristics of the Pryor Mountain population. Doing so would allow the Forest Service to comply with NEPA, and with the WFHBA's mandate to manage horses at the minimal feasible level. Instead, the Forest Service plans to take a heavy-handed approach which will not preserve the genetics of the Pryor Mountain herd.

CONCLUSION

Friends of Animals strongly opposes the roundup and removal of wild horses in the Pryor Mountain Joint Herd Management Area. As it stands now, the Decision violates the WFHBA, NEPA, and the NFMA. Before the Federal Agencies decide to conduct any proposed roundups, they must consider the impacts of the roundup and the potential contribution of

⁶⁶ Appendix P – *Response to Comments* at 71, 74, 78, 118, 130, 131 (stating that "gathers would be conducted until low AML is reached").

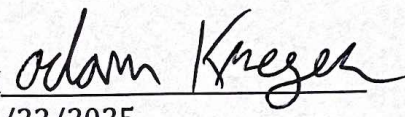
⁶⁷ *Id.*

⁶⁸ EA at 32.

wild horses as a positive impact to a balanced ecosystem if left to remain in their natural habitat on the range.

As explained in the multiple comments submitted by Friends of Animals in the planning process, the proposed RMPA, the analysis in the EA, and the Forest Service's Decision—which supports and agrees with BLM's proposed action—are inconsistent with NEPA, the WFHBA, and the NFMA. The Forest Service should ensure that the Decision complies with mandates from all three of these Federal statutes before finalizing the Decision.

Sincerely,

X 
5/22/2025

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