

Exhibit 7

**RELABELING OF
ACREAGE
CREATED THE
OVERPOPULATION
MYTH OF WILD
HORSES &
BURROS
by TJ Barbour**



Our wild horses are managed by both the Bureau of Land Management and the US Forest Service. Today I'm going to speak exclusively about the Bureau of Land Management (BLM) because they manage the majority of our wild horses and burros, and because they pay the bills for the few that the Forest Service does manage, so the Forest Service takes their management policies and plans from BLM.

The BLM makes the claim that there is an overpopulation problem with our nation's wild horses and burros. I am going to show you how this myth has been manufactured through some creative relabeling of land areas and by cherry picking language in laws and regulations that have been twisted to fit a narrative that supports continued livestock grazing while vilifying our wild horses and burros.

The first federal law to protect American native wild horses was passed because of a grassroots campaign that started a national movement in the 1950's. This was started by a woman named Velma Johnson, who many know as Wild Horse Annie.



During the 1950's Wild Horse Annie sought to get Congress to protect wild horses and burros from mustangers, people who would cruelly round up our wild horses mostly for commercial purposes. She became aware of the cruel manner in which these wild horses were gathered, trapped, and transported, and the fact that most of them were taken to slaughter.

In her efforts to protect them she was able to gain national attention through many articles and interviews in newspapers and magazines. She eventually found lawmakers who were willing to take on the cause to protect our wild horses from inhumane handling. As noted by the Associated Press on July 15, 1959 "*Seldom has an issue touched such a responsive chord.*"

Wild Horse Annie testified to Congress in support of the Wild Horse Annie Act in 1959. She said "*...the fight for the mustang has come a long way in the past few years...From*

a mere handful of fifty or so firm believers in his plight of survival, it has come to an awareness throughout the country of his desperate plight, resulting in a mighty plea on his behalf." And here we are, all of us, meeting this week at state capitals across the nation and at this week-long conference, once again presenting a "mighty plea" to our lawmakers to stop the inhumane treatment and disappearance of our wild horses and burros.

Wild Horse Annie's national campaign resulted in the passing of Public Law 86-234 (the Wild Horse Annie Act) on Sept 8, 1959. This prohibited the use of motorized vehicles to hunt or gather wild horses on public lands. But it did not include language she had hoped for to protect the horses and manage them on their lands.

When the BLM began to interpret the law and decide how they were going to manage the wild horses Wild Horse Annie was not impressed, but rather worried. During communications over the management of a herd in Wyoming she stated "*the BLM is confusing the term 'preserve' with another term, 'permit to exist',*" going on to express her worry that BLM was presenting a pretty picture but perhaps things were not so rosy. She said "*Although they issued a news release indicating that the mustang will now receive help, I can see no evidence that this is their intention. They plan to select certain areas in which they will 'permit certain limited numbers of mustangs to exist.'* There was no talk whatsoever of setting this land aside specifically for the use of the mustang, nor is there any program to provide any form of protection for those few which are permitted to remain." This was in 1967 although it can still be applied despite a more powerful act being passed in 1971.

Wild Horse Annie went on to do a nationwide youth campaign which had thousands of letters and postcards going to lawmakers and the president. In response, once again to public outcry, and because wild horse populations were in such steep decline, Congress unanimously passed the Wild Free-Roaming Horses and Burros Act. Now the BLM had been directed to protect wild horses and burros on the lands where they were then in 1971.

"*WE NEED the tonic of wildness.*" President Richard Nixon quotes Thoreau, on December 18, 1971, as he signed the Wild Free-Roaming Horses & Burros Act. He went on to say:

"During the past several months, many thousands of Americans, particularly children, have concurred in Thoreau's plea with an outpouring of concern for the preservation of wild horses and burros on our Western ranges. ... I take special pleasure today, therefore, in signing strong new legislation to protect these noble animals."

"Embodying the best judgment of both the Congress and the executive branch, it should do much to insure a continuing safe habitat for wild horses and burros on the public lands of the

United States. It declares that all such animals shall be managed and protected..." Said President Richard Nixon upon signing of the bill.



RICHARD NIXON

37th President of the United States: 1969 - 1974

Statement on Signing Bill To Protect Wild Horses and Burros.

The BLM was created in 1946 by combining two existing agencies, the General Land Office and the Grazing Service. Many wild horse advocates, then and now, wonder if these agencies, who were primarily tasked with settling wild lands and protecting the interests of livestock producers using public lands, were the right people for the job. The concern is that there was, and is, a big conflict of interest right at the base.

The BLM manages a larger area of land than any other federal agency, 264 million acres, or about one-eighth of the United States. The mission of the BLM is *"to sustain the health, diversity and productivity of the public lands for the use and enjoyment of present and future generations."*

So after the passage of the 1971 Wild Free-Roaming Horses & Burros Act, referred to hereafter as the Act, or the 1971 Act, the BLM was required to do studies of the habits and habitats of free-ranging horses and burros, permitting public land to be set aside for their use. In addition, the Act required that these horses and burros be protected as "living symbols of the historic and pioneer spirit of the West". The BLM was tasked with identification of the areas where free-roaming horses and burros were found; there was no specific amount of acreage set aside, and the Act required management plans to *"manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public land."*

Although wild horse ranges were principally for the protection of the horses, the land was required to be maintained for multiple use, meaning that these areas were not to be used exclusively for the management of wild horses/burros. The BLM was also permitted to close public land to livestock grazing to protect wild horse and burro habitats.

So let's break that down to just those points that I'm speaking about because I could do

another speech entirely on the failure to uphold some of those mandates like “protection” which has never happened but rather transferred from individuals abusing the horses to the government and their contractors performing the very horrors Wild Horse Annie saw which prompted her actions. Or I could speak about the vagueness in terms like “thriving natural ecological balance” which without a clear legal definition BLM has interpreted that to mean enough forage for livestock producers, resulting in thousands of horses being removed.

Instead, I am going to focus on how relabeling, sales or transfers, and remapping have created the myth that there is a wild horse overpopulation problem. The myth was created by the way the BLM interpreted the law to create regulations that are now part of the Code of Federal Regulations that outline how the BLM will achieve the mandates first given them by the passing of the 1971 Act.

Relabeling

BLM has changed the label of wild horse range to 4 different labels. They are: Herd Area, Herd Management Area, Wild Horse Range and Complex.

BLM was mandated to designate areas where wild horses were on the range in 1971. At first the wording was simply ‘the range’. Wild horse ranges per the wording in the law were to be managed principally for wild horses/burros. This upset a lot of livestock producers, mostly those public lands grazing permittees who raised cattle or sheep very cheaply on public lands. They felt this principal use would severely limit their livestock numbers permitted to be out there. So BLM began a semantic game and started relabeling areas.

The BLM report to Congress in 1974 gave statistics for 1973. They admitted the number of livestock grazing the 10 western states where wild horses live at that time was over 5.5 million animals. The wild horse population was estimated to be 60,000.

However we know that by this time there had been a massive effort (before the bill and right after the passing) to remove as many horses as possible so less land, and less animals would be considered federally protected. This means the claim of our wild horses rapidly disappearing, from 2-3 million in 1900 to approximately 60,000 by the time of the first census in 1973 certainly should have prompted a unanimous bill to protect them.

The most universal use of the rangelands at this time, by livestock, wild free-roaming horses and burros, and wildlife, is the utilization of the forage produced and natural habitat provided. The Bureau administers 52 grazing districts under the authority of the Taylor Grazing Act. These districts encompass 157,324,558 acres of Federal range (table 57). During calendar year 1973, 13,759 operators (table 59) held 15,669 licenses or permits (table 60) to graze 5,546,394 livestock animals to the extent of 10,382,996 animal unit months (table 59). Gross receipts from grazing use

TABLE 63.—*Wild Free-Roaming Horses and Burros, calendar year, 1973*
(Estimated numbers)

State	Horses	Burros	Total
Arizona.....	115	10,000	10,115
California.....	3,000	3,200	6,200
Colorado.....	500	-----	500
Idaho.....	500	8	508
Montana.....	325	-----	325
Nevada.....	20,000	1,000	21,000
New Mexico.....	7,550	80	7,630
Oregon.....	5,265	16	5,281
Utah.....	1,000	50	1,050
Wyoming.....	4,411	20	4,431
Total.....	42,666	14,374	¹ 57,040

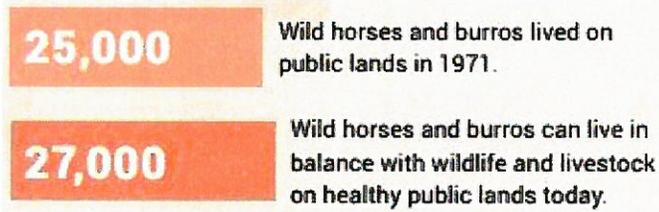
¹ Included in total numbers are 17,165 horses and 123 burros claimed under Section 5 of the Wild Horse and Burro Act. The total number also includes branded horses grazing in trespass which were not claimed.

Additionally, in the 1986 publication in the Federal Registry, BLM made the following admission in regards to amending the ACT: "(Section 4710.2 Inventory and monitoring.) Several comments urged that the authorized officer be required to address the numbers of horses and burros that existed in herd areas in 1971 as a basis for further management. This suggestion is not adopted in the final rulemaking. There is no indication in the Act or its legislative history that herds should be managed at their 1971 size or any other specific level. Furthermore, although estimates of 1971 population levels have been made, they are at best conjectural and highly unreliable. It is more appropriate to allow the authorized officer the flexibility to determine appropriate management levels based on analysis of competing land uses, forage availability, and public concern."

*Note: The joint report to Congress lists the numbers of horses for 1973 AND an additional 3,000 managed by Forest Service in a chart not shown here, for a total population of 60,000.

BLM has routinely claimed that the national Appropriate Management Level (AML) comes from the number of horses that were on the land when the Act was passed in 1971. So managing the herds for approximately 27 thousand horses, which is based on what BLM claims was the census in 1971 is a lie. Additionally, why would we ever want to again see a decline in the population to a number that prompted Congress to be so alarmed that they unanimously passed an Act to protect them?

BLM's Wild Horse & Burro Program Infographic



Taken from their downloadable infographic published in 2022

Before I go further let me explain that I refer to US Code or USC. The USC is made up of the official federal statutes of the United States, and contains 53 titles. It includes laws or statutes passed by Congress.

And I refer to the Code of Federal Regulations (CFR). The CFR contains all of the regulations promulgated by executive agencies. In the context of wild horse/burro law, the CFR Title 43 contains the regulations put in place by BLM that put statutes or the 1971 Act from the USC into administrative practice. Regulations in the CFR can change every year so it is important to stay updated with the most recent version. Regulations can also be worded differently than their corresponding statute in the US Code since they are the BLM's practical implementation of the statutes.

United States Code - (USC)

The law enacted by Congress.

16 U.S. Code Chapter 30 - WILD HORSES AND BURROS

Code of Federal Regulations - (CFR)

The regulations put in place by BLM that put statutes from the USC into administrative practice

43 CFR Part 4700 - PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

As BLM interpreted the Act and began changing the labels in the CFR the BLM began calling these areas where horses were "herd areas" instead of range, naming just a few

of these areas 'Ranges' with a capital R. They are the Pryor Mountains Wild Horse Range in Montana, the Little Book Cliffs Wild Horse Range in Colorado, the Nevada Wild Horse Range in Nevada., and the Marietta Wild Burro Range, also in Nevada.

By 1978 the Ranges were named (although without any Congressional authority to split up the range as defined in the USC), and BLM established 209 other areas labeling them herd areas.

Originally, and to this day, according to the USC range is defined as:

(16 U.S. Code § 1332 - Definitions)

(c) "...the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;

This is the only definition that existed, for any acreage where wild horses and burros lived or were managed, when the act to protect them on those lands was passed until 1986. There was no range with a capital R, no herd area or herd management area, despite BLM having changed labels already in 1978.

In December of 1984 the BLM announced plans to amend the CFR defining how they were going to meet the mandates of the 1971 Act. These changes were finalized and published in the Federal Register in March of 1986.

Several comments from the public, about these amendments, were received which objected to a specific subsection (§ 4710.3-2) saying that "*numerous wild horse and burro ranges will be established on public lands*".

At this point in 1986 the BLM changed the 'range' to 'Range' officially. This put the minds of livestock grazers at ease because BLM was making official this label with no intention of creating any further "Ranges" to be managed principally for the federally protected animals. To this day no new "Ranges" have been added.

BLM also created another label calling some acreage Herd Area (HA) and Herd Management Area (HMA). And when the final decision was published in the Federal Register in 1986 the BLM had included a definition for Herd Area replacing range as the general definition of acreage to be used. These changes were unconstitutional going against the original intent of the 1971 Act.

BLM now defined Herd Area as:

(§ 4700.0-5 (d)Definitions.)

"...the geographic area identified as having been used by a herd as its habitat in 1971"

Then to break up these large HA's the BLM developed and officially defined 2 more labels. These are Herd Management Areas or HMA's and Ranges which are defined under the management area section of the regulations in the CFR differently than the definition which still exists in the USC.

The definition in the CFR for HMA's says:

(§ 4710.3-1 "*Herd management areas.*)

The authorized officer shall establish herd management areas for the maintenance and management of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, and the relationships with other uses of the public lands...."

BLM states on their website: "*Today, the BLM manages wild horses in subsets of these Herd Areas, known as Herd Management Areas.*" When did Congress authorize managing the animals on these smaller HMA's instead of the entire herd range, or Herd Area?

And ranges were officially defined in 1986 as well which read:

(.§ 4710.3-2) "...Herd management areas may also be designated by the authorized officer as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds."

BLM had to create this entry for ranges, in the regulations, to appear to still be in compliance with the Act. But notice that the definition for a range to be created or designated is based on a HMA, not the larger area now called a HA. Again, where was the legal authority to diminish the lands the Act had stated were to be used for management of these animals? BLM was not acting to carry out the mandate that was intended, but it was now clear that they were intent on twisting and turning the law to attempt to appease livestock grazers.

So this is where the BLM changed the original mandate to manage all wild horse areas "principally" for wild horses or burros to only "Ranges" had to be managed principally for them, despite already managing this way starting in 1978.

In the publication in the Federal Register in 1986 when the new regulations were finalized 43 CFR was amended in the final rulemaking to require that populations be self-sustaining and that populations of horses and burros be kept in balance with other uses as well as the productive capacity of the habitat. Again note the wording "in balance with other uses", not principal use.

Despite BLM receiving several comments urging that the language on forage allocation in the existing regulations be retained, because horses or burros had principal use right? Other comments stated that the word “comparably” was vague and should be replaced by “equivalent” in describing how wild horses and burros will be considered in relation to other resources in formulating land use plans. This request was generous in that commenters were willing to change principal use to equivalent use.

However BLM skirted giving any such verbal limitation by stating: *“Specific provision for forage allocation is not necessary because the policy is clearly stated that wild horse and burro management will maintain self-sustaining populations. This cannot be done without adequate forage. The word “comparably” is used in the existing regulations to require all resource values to be considered in proportion to their presence on the land, competition with other resources, and the interest of the public in them. Assigning equal or equivalent weight to all resources, as some comments suggested, would not allow varying circumstances to be treated appropriately.”*

So BLM has at this point done away with “principal use” in all but 4 areas. They have reduced that to comparable use with other resources, like other wildlife, and livestock. What happens after that gets even worse.

BLM started using the Federal Land Policy Management Act (FLPMA) to justify multiple use decisions which included livestock grazing. So even though the CFR (4710.5) allows for Closure to livestock grazing. Stating: *“If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.”* BLM in almost every case will reduce the number of horses allowed instead of reducing the number of livestock.

BLM claims that FLPMA mandated them to manage public lands for multiple uses. Therefore they cannot manage these areas principally for wild horses but rather must consider them comparably. However, BLM ignores the line in FLPMA that says *“The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.”*

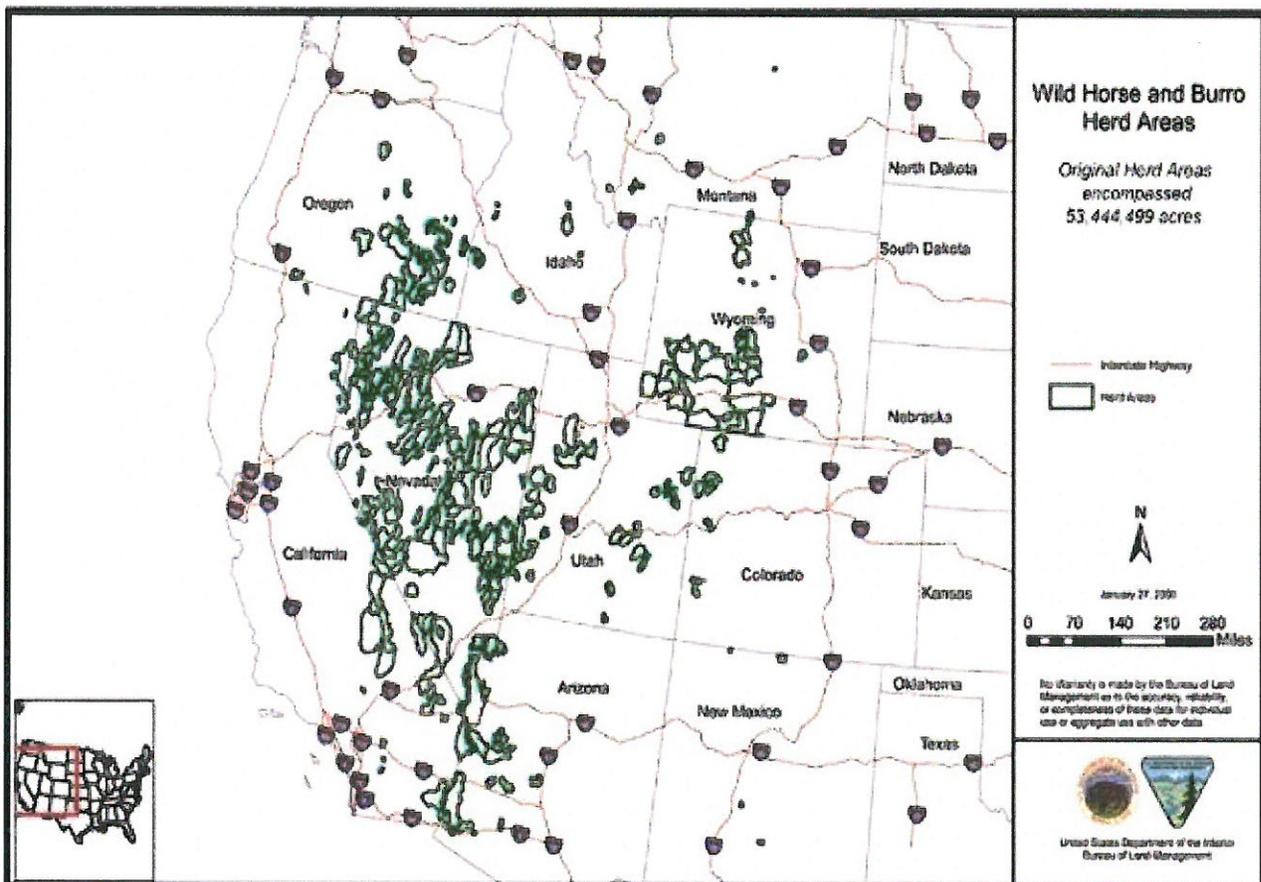
The 1971 Act was a land use policy already in existence which was upheld in *Mountain States v Hodel* where the judge ruled that: *“In structure and purpose, the Wild Free-Roaming Horses and Burros Act is nothing more than a land-use regulation enacted by Congress to ensure the survival of a particular species of wildlife.”* Therefore FLPMA does not apply to areas managed for wild horses and burros as it relates to multiple use versus principal use.

BLM through relabeling, and ignoring inconvenient parts of law has managed to continually decrease the actual acreage used to manage wild horses and burros.

In February 2009, U.S. Representatives Nick Rahall, a Democrat from West Virginia, and Raul Grijalva, a Democrat from Arizona, introduced HR 1018, the "Restore Our American Mustangs Act". The act, if passed, would have amended the 1971 Act to increase available acreage for wild horses, develop additional sanctuaries, "*[forbid] the killing of healthy animals, and [allow] greater public participation in herd management decisions.*" The bill passed a House vote on July 17, 2009 with a vote of 239 for and 185 against, but died in the Senate after being referred to the Senate Energy and Natural Resources Committee.

The first areas designated after 1971 totalled 53,444,499 acres.

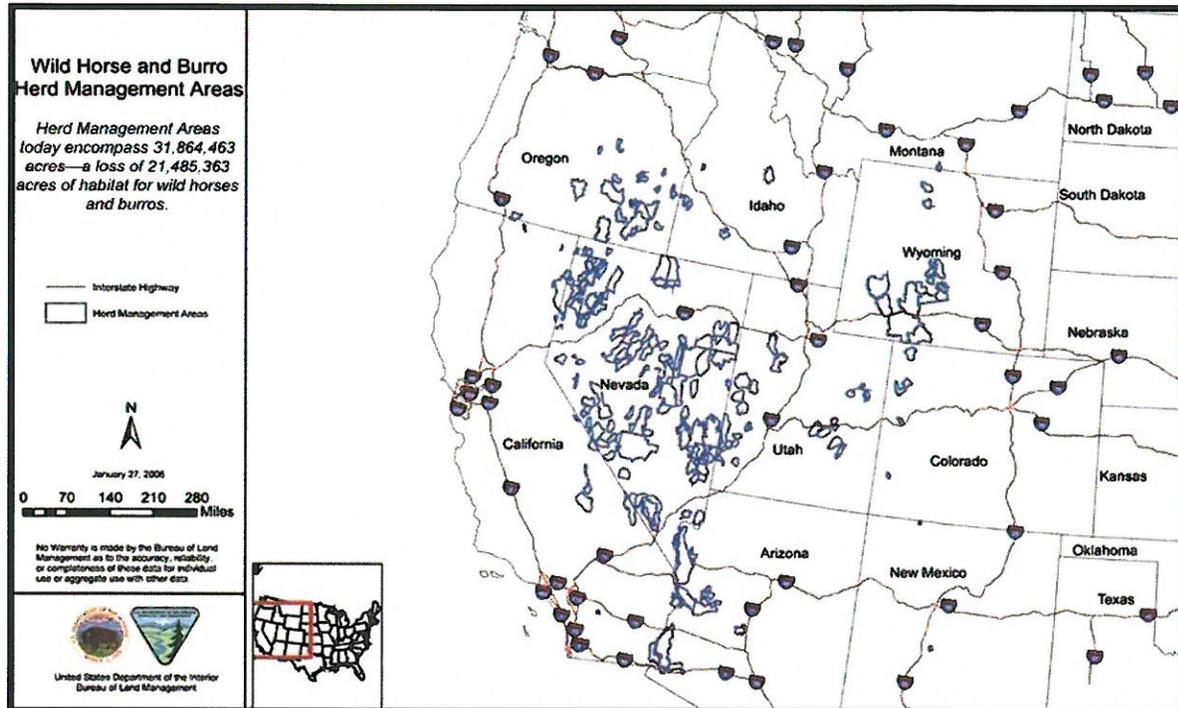
1971



By 2005 BLM was reporting that HA's were totaling approximately 53.3 million acres. However the 201 areas where horses were actually managed, now called HMA's, had an acreage of roughly 34.4 million acres.

By 2009, the BLM reported that there were 339 HA's with 51.2 million acres, and 180 HMA's and an acreage of 31.8 million acres.

Now in 2022 they manage 26.9 million acres for wild horses and burros in 177 herd management areas. And the specific acreage is impossible to verify or differentiate between HA, HMA, state, private or even fenced out areas.



So the national pasture has gone from 53.4 million acres to 26.9 million acres according to BLM statements on the surface. This is a loss of about half their original lands, which is bad enough but to add injury to insult if one researches a bit more, you find out that the acreage reported as 26.9 million acres cannot be verified using the BLM web pages and documents.

I stated “on the surface” because as you dig deeper you find more inconsistencies. For example, BLM recently put the “Herd Area and Herd Management Area Statistics as of March 1, 2021” out and the total acreage they claim is managed for HA's is 42.3 million acres. However, if you add the HA's by state that are managed currently for horses/burros you get 22.7 million acres. And the total BLM acres for HMA's is 26.9 million acres. The big difference in the HA acreage is because BLM lists in separate tables for each state the BLM acreage no longer being managed for HA's which totals 19.6 acres. If you add the 2 figures you get 44.4 million acres, which is closer to the 42.3 million they claim. And this is all from the same document published by BLM.

	BLM Acres	Total
National HA Acres		42,304,802
AZ		1,765,281
CA		3,224,907
CO		376,538
ID		390,969
MT		28,324
NV		9,717,198
NM		24,506
OR		2,532,733
UT		2,541,574
WY		2,118,247
Total HA BLM Acres According to State Totals		22,720,277
National HMA Acres		26,917,766
AZ		1,498,207
CA		2,053,082
CO		365,988
ID		383,894
MT		27,094
NV		14,032,947
NM		24,506
OR		2,733,577
UT		2,154,456
WY		3,644,013
Total HMA BLM Acres According to State Totals		26,917,764

**BLM Inconsistencies -
all figures from current BLM Website**

WILD HORSE AND BURRO ACREAGE

Land Managed for Wild Horses and Burros

In 1971, when Congress passed the Wild Free-Roaming Horses and Burros Act, these animals were found roaming across 53.8 million acres of public land, known as Herd Areas, of which 42.4 million acres were under the BLM's jurisdiction. Today, the BLM manages wild horses in subsets of these Herd Areas, known as Herd Management Areas (HMAs), that comprise 31.6 million acres.



The Bureau of Land Management manages and protects wild horses and burros on 26.9 million acres of public lands across 10 Western states as part of its mission to administer public lands for a variety of uses. The Wild Horse and Burro Program's goal is to manage healthy wild horses and burros on healthy public rangelands.

Complexes and Sales/Transfers

After the relabeling of lands and improper use of multiple use over principal use the BLM then performed 2 more twists that have taken more land from the wild horses/burros. They now have, and are still, creating Complexes. They will take several HMA's, normally 4 - 6 of them, and create a complex to be managed as one area. Then they start lowering the Appropriate Management Level (AML) or population size allowed for each HMA. Eventually they zero out 1 or 2 of the HMA's, this means they remove all animals and no longer manage those acres for them. This decreases the acreage of the complex however, complexes are often listed with the acreage of all the original HMA's but do not reflect the acreage removed when an HMA is zeroed out.

The second twist I mentioned earlier in regard to loss of acreage for wild horse and burro habitat is that BLM has sold and transferred lands where horses were. This happens most often in sales or transfers to state land trusts. I first came across this during a case in 2018 for the Muddy Creek HMA in UT. In this specific instance portions of a wild horse area were sold to Utah School and Institutional Trust Lands Administration (SITLA). This created a checkerboard area of federal public lands and state lands. Then when wild horses or burros moved from an area of public lands onto

state lands they were considered off the HMA. SITLA then sued BLM to remove the horses from these SITLA lands. So BLM agreed to gather and remove them.

In another sale to SITLA BLM stated they were selling lands with the wild horses to the state and, because the only way to keep the horses off the area would be to construct a fence which was not feasible, that HMA, Blawn Wash, was zeroed out for horses. What part of the 1971 Act gave them the authority to sell or transfer lands where the wild horses are?

In 2001, a land exchange between the BLM and the State of Utah School and Institutional Trust Lands Administration (SITLA) placed the most critical wild horse habitat of the Blawn Wash HMA lands into SITLA administration. SITLA lands comprise 43% (25,970 acres) of the Blawn Wash HMA, which produces an estimated 70% of the forage in the HMA. The forage allocations within this area are now controlled by SITLA. Wild horses managed by the BLM could not be excluded from the SITLA lands without fencing the whole boundary of the SITLA lands, which would be very difficult due to the rough terrain. Also, it would be very costly. For these reasons it was determined that the Blawn Wash HMA would be managed at an AML of zero

Adding insult to injury again, BLM continued to use the acreage for Blawn Wash in the totals when including it as an HMA in the Bible Springs Complex. They do claim zero horses, but use the acreage anyway.

Bible Springs Complex Wild Horse Gather, Removal and Fertility Treatment Plan
DOI-BLM-UT-C010-2014-0035-EA

Springs, Blawn Wash, Four Mile and Tilly Creek Wild Horse Appropriate Management Level (AML) Assessment, signed 4/18/2005 (EA# UT-040-04-47)). The current AMLs for the Complex HMAs are shown in Table 1 below.

Table 1. Current AML for Bible Springs, Blawn Wash, Four Mile, Tilly Creek HMAs

HMA	AML	Season of Use	AUMs	HA Acres	HMA Acres
Bible Springs	60-30	Year Long	720	61,863	57,890
Blawn Wash	0	Year Long	0	62,787	0
Four Mile	60-30	Year Long	720	61,273	58,710
Tilly Creek	50-20	Year Long	600	37,006	35,963
Bible Spring Complex	170-80		2040	222,929	152,563

However when BLM put out a plan to gather animals in the Complex the chart stated the HA acreage is 222,929, this included 62,787 acres that no longer exist for Blawn Wash. If the Blawn Wash acreage was taken out it would be a total of 160,142 acres. But the HMA acreage they list in the last column is 152,563 because each of the other 3

HMA's remaining have also been reduced in size.

It's also important to note that all the Utah HMA webpages, give totals for the larger HA acreage even though the page is for the HMA, giving the appearance that more acreage is actually used for the animals.

The real acreage in these complexes is often unknown, and the acreage will vary between different websites and documents BLM puts out. For instance the BLM information on the complex webpage for the Antelope Complex states: *"The Antelope Complex has four herd management areas (HMA) which... encompasses over 1,608,350 acres of public land."*

I added each HMA listed individually, I included private and state acreage along with federal land for each HMA, and only came up with 1,338,315 acres. In trying to establish what figures are accurate I found the 2018 Wells Wild Horse Resource Management Plan (RMP) Amendment which is a document that outlines not only wild horse management for that area, but would also contain plans for all other uses of that area, like livestock grazing, extraction activities and recreation etc. This amendment is the most current version of the RMP and when I added up the acreage for the 4 HMA's in this document I got a total of 1,183,340 acres. So the Complex is either 1.2, 1.3 or 1.6 million acres.

Although the BLM information for the Antelope Complex states:
"The Antelope Complex has four herd management areas (HMA) which consist of Goshute, Spruce-Pequop, Antelope Valley, Antelope HMAs and encompasses over 1,608,350 acres of public land." per their website on 1/11/2022 I added each HMA listed individually, included private and state acreage management along with federal land for each HMA, and only came up with 1,338,315 acres. It is unclear to me what the discrepancy is. For purposes of this report I am including the original acreage of each HMA, not the complex acreage which seems to be an error.

From the individual listings above these are the HMA's listed as being the Antelope/Antelope Valley Complex:

ANTELOPE	327,385
ANTELOPE VA	502,909
GOSHUTE	267,277
SPRUCE-PEQUOP	240,744

Total 1,338,315 Acres

This is not the 1,608350 acres they claimed are the total acreage of the Complex in the 2021 gather environmental assessment.

Further frustrating my attempt at finding out exactly how many acres are really managed for wild horses was the fact that BLM states they manage 26.9 million acres of public lands for wild horses and burros, but when listing acres on individual webpages they include acres that are not public lands. Some is state, some is public, and some simply has no horses on it for any measurable time, or was just zeroed out but still left listed.

For example BLM listed one entire HMA, the Ash Meadows HMA, with a total of 115,143 acres. However, the area is only managed for one horse because of the incidental use of horses migrating through the area.

While we are very happy that BLM acknowledges horses migrate, and they are allowing this area to be used for the occasional horse, it is not really an HMA with a herd being managed on it, therefore inclusion of the acres in the total really makes it appear that more land is being managed for herds than there really are.

ASH MEADOWS HMA

The Ash Meadows HMA is managed by the Ely BLM District for a population of one wild horse to account for incidental use by wild horses that travel through the area. Although the area cannot sustain a viable wild horse herd, wild horses from the adjacent Delamar Mountains HMA enter the area and will use it for a short period of time, before returning to their home range.

Further clouding the finding of the actual number of acres that wild horses can live on is the fact that the acreage for the HMA's listed by BLM will not reflect the actual acreage utilized by wild horses because almost every single HMA listed also includes cattle. This means that the acreage listed for any given area is not actual. Additionally, with cattle comes fences that keep them from parts of the HMA's they are already being limited to.

So originally we had a big box, the range, then we had a relabeling of that box to an HA, (with the exception of the 4 boxes they called Ranges), then FLPMA came into existence and multiple use mandates were used to make a small circle in the HA box that circle is labeled an HMA. And still even that HMA has to be shared with livestock and other grazing wildlife. Then BLM, combining several HMA's, makes a new area and labels it a complex. WHY not just use the original HA's then? Because creating the HMA's allowed them to map out natural water sources and prime grazing lands, which I will address later.

Because there is currently no way to determine the actual acreage with all the different numbers in BLM's various documents, plans and websites, the next best way to see how much of a "share" the horses get would be to determine forage and water allocations, In order to do this you would have to research each individual HMA, and this is found in the Land Use Plan (LUP) or Resource Management Plan (RMP) for that

area. The LUP/RMP will also give the amount of forage allocated to other wildlife, and to livestock. I find that most HMA's allow the horses approximately one-fourth of the forage. The BLM will typically give at least half to livestock, then the rest is split between wild horses/burros and other grazing wildlife. Using the proportion for forage allotted you can apply that same proportion to attempt and determine the land BLM manages them on.

For instance if an HMA is 300,000 acres, the typical forage allocations are 150,000 to livestock, 75,000 to elk/deer/bighorn sheep or antelope (other grazing wildlife) and 75,000 to the wild horses. Obviously this isn't an exact calculation because of variables like: not every acre would have forage, some areas have much less 'other wildlife', etc. Given different variables that do exist you might see a larger allocation given to livestock, but rarely would you see an increase for wild horses no matter what the circumstances. This method certainly isn't fool proof, but often tells the truth much clearer than the webpages of BLM do. BLM is required to be transparent, but the transparency thus far has proven that BLM numbers cannot be relied upon to be accurate

In my attempt to use the BLM individual HMA pages to prove the claim that BLM manages 26.9 million acres for wild horses and burros I could not verify anything. I often had to try and search for other documents or web pages because some pages gave partial information or unclear information. I found some things that make transparency of actual acreage impossible to discern. These problems include, but are not limited to:

- information that's unclear, or partial necessitating the use of other sites or documents.
- different documents for specific a HMA, such as the RMP/LUP's or even an Environmental Assessment (EA) often show different acreage for that HMA.
- all of Utah's websites for HMA's give the acreage for the HA
- BLM includes acreage that is not public land, but is private land or state lands without specifying how much of each is in each area.
- some HMA's are in more than one state and are listed in each state they are in, which could lead to adding the total acreage of that HMA twice..
- complexes are listed with total acreage, and each individual HMA is still listed, which again, could lead to adding all of these areas twice.
- BLM in one instance also listed the "area around the HMA's" of a complex which was almost the total acreage of the HMA's added together, thus trying to double the acreage when in fact the areas outside HMA's are not being managed for wild horses and burros
- one HMA shows that the wild horses were only allowed to be on a grazing allotment on the HMA, further decreasing the acreage actually used to manage that herd, but yet listing the entire HMA.

Mapping and Fencing Out

That HMA is the Tobin Range HMA. Where BLM listed 2 allotments, or livestock pastures, where the horses are allowed to be, but no acreage for those areas is listed, and if you look up the allotments to try and find out you will see that only a portion of those allotments are on the HMA. So discerning how much of the allotment can be used by the horses is as impossible as finding out how much of the HMA they can actually use is.

TOBIN RANGE HMA

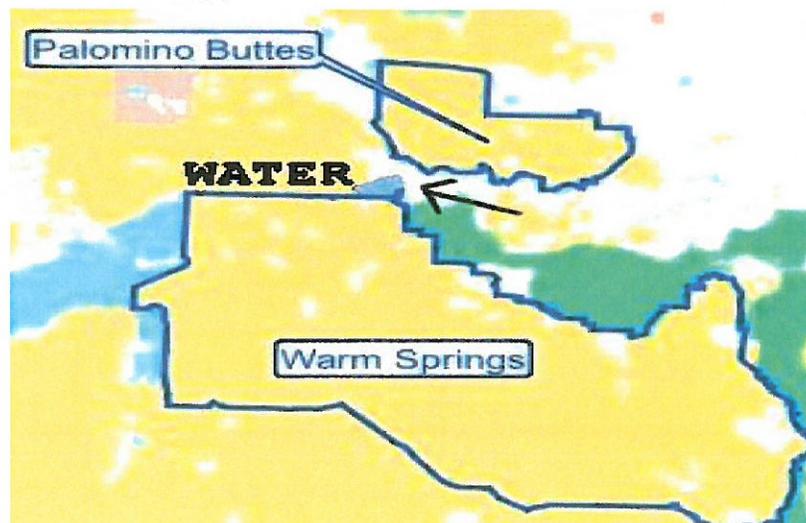
Size: The area consists of 186,654 acres of BLM land and 11,582 acres of a mix of private and other public lands for a total of 198,236 acres.

Horses are to occupy the area of the HMA in the Pumpnickel and South Buffalo allotments.

What is the truth in that entry is that wild horses and burros are often not managed on the acreage BLM states just because it is the acreage given for the area whatever it's labeled. The horses are almost always fenced into smaller areas on the original lands. They are often fenced out of water. This was done when the original areas were reduced to HMA's. The lines drawn on the maps were drawn to exclude areas of natural water or prime grazing lands for livestock.

For instance the Palomino Buttes HMA boundaries, and the Warm Springs HMA boundaries in Oregon are only a few miles apart. It is likely this and many other herds in Oregon were all one herd. But through mapping boundaries the BLM has created small pockets of horses in the least desirable areas.

In the case of the Palomino Buttes and Warm Springs HMA's what's in the area between the 2 that has been excluded for wild horse use? As shown by the little blue area WATER is what was mapped out of the HMA.



This drawing of lines on a map very often is to avoid the law. The 1971 Act is a land management plan therefore it comes with water rights. Thus far all the water rights have gone firstly to livestock, mining etc., not the horses/burros.

If you look at the BLM maps for each state you see how the HA's often touch one another, the way to deal with the idea of big areas of land being used principally for wild horses or burros was to draw them on the map as if they were somehow different herds, then create HMA's that were smaller, and maybe separate those if there's any good water for livestock, mapping the wild horse out. Then when they can no longer reduce the area on the map they just start fencing.

All this has continued because BLM uses FLPMA to support whatever narrative they want. For example, we know they use the multiple use mandate in FLPMA to claim cows can be on wild horse lands, but when wild horses were eliminated from areas in the Ely District in Nevada an advocate asked why the Secretary did not notify Congress when a resource (the wild horses) was eliminated per FLPMA mandates.

The response from BLM was to define principal or major use, which according to FLPMA: *"includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production."*

This letter is in response to your October 27, 2009 letter to Senator Harry Reid regarding the Bureau of Land Management (BLM) eliminating herd management areas (HMAs) within the Ely District as a result of implementing the Ely Resource Management Plan (RMP). You also cited provisions of the *Federal Lands Policy Management Act of 1976* (FLPMA) Sec. 202 (e)(2) [43 USC 1712(e)(2)], which requires the Secretary to notify Congress when a management decision is made or action taken that "excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more...". The Senator asked that BLM respond directly to you.

The provision you cited of the FLPMA Sec. 202 (e)(2) [43 USC 1712(e)(2)] does requires the Secretary to notify Congress when a management decision is made or action taken that "excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more...". However, we first must review the legal definition of principal or major uses as defined by the FLPMA, Sec. 103 (l)[43 USC 1702]: The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

This statute does not include, address or apply to the management of wild horses and burros. As a result, the statute you cited does not apply to the elimination of the HMAs resulting from the implementation of the Ely RMP. We hope this clarifies any misunderstanding of this statute.

BLM went on to erroneously state that the statute doesn't apply to wild horses, because the definition doesn't say wild horses ignoring the legal determinations in several court cases that establish our wild horses as wildlife. *Mountain States v. Hodel* is one such case where the judge ruled that "...wild horses and burros are no less "wild" animals than are the grizzly bears..."

This is just one example of how BLM will use a law, such as FLPMA to manage for multiple uses, but then turn around and say that very law doesn't apply to wild horses.

This letter was also just one example of the bias BLM holds against our horses. And, by using semantics, relabeling areas, selling and transferring lands, and by mapping out and fencing off water or forage originally used by the herds the BLM has effectively created an illusion that wild horses are overpopulated.

This overpopulation claim has been coupled with terms like overgrazing and now drought. Because BLM's mission is the same as it was when they were the Grazing Service, they continue to protect those who use our public lands to graze their livestock. The overgrazing is blamed on wild horses when there is 1 horse for each 10 cows in these areas. Any damage including to habitats for critical or endangered species is very often blamed first on wild horses, causing their removal.

Adversely, there has never been a case where livestock were removed and wild horses were not. There has never been a wild horse area that was closed to livestock due to drought or lack of forage so that the horses could remain. This is accepted because of the wording used to make it palatable.

Wording matters, and for the wild horses, BLM has added words like "CONTROL" to the original mandate to protect and manage. This was seen in the 1986 amendments. The 1986 amendments where words changed the meanings, made it seem the original intent of the act was different.

Some of those changes are seen comparing the USC language to the CFR language. A few examples are:

Wording in the Act in the USC

"The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands..."

BLM wording in the CFR

"The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management."

It may seem like a small issue but when you believe the BLM needs to “control” something, it gives the impression that there is some problem that needs to be managed. BLM used that word to imply that populations need to be controlled, when in fact they really wanted to control where the horses were allowed to be, and were making the areas smaller, while also giving themselves a twisted interpretation of FLPMA to apply multiple use versus principal use mandates.

The “*natural ecological balance of all wildlife*” became “*balance with other uses and the productive capacity*” removing wildlife but again mentioning multiple “*other*” uses. The addition of productive capacity means profit making uses of the land.

Instead of receiving principal use, they were now considered comparably, at least in regulations, although land use plans typically show them receiving less than comparable rations of forage and water allocations.

And despite BLM being told by their own geneticist that a herd needs at least 150 horses to be genetically healthy or self-sustaining, almost no herd is that large. Herds have all been reduced to populations that in no way can be “self-sustaining” but BLM explains this away by saying they will import horses from other areas when genetic studies indicate the need.

Wording in the Act in the USC

“All management activities shall be at the minimal feasible level and shall be carried out... in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.”

BLM wording in the CFR

§ 4700.0-2 “Objectives. The objectives of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use...”

BLM wording in the CFR

§4700.0-6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.

(c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior.

The BLM is supposed to manage the horses with the goal of ‘maintaining free-roaming behavior.’ The National Academy of Science did a report evaluating the BLM Wild Horse and Burro Program, and stated in that report that they use the terms free-ranging

and semi-free-ranging.

This was much different than their idea of free-roaming to which the report said:

“Although the 1971 legislation calls horses and burros in the western United States free-roaming, the committee chose to use the term free-ranging to reflect the purposeful and spatially adaptive uses of the rangelands that the horses and burros inhabit. Such populations are allowed to use spatially extensive habitats in ways that increase access to forage, improve their physiological condition, and increase the probability of their own and their population’s viability.”

Additionally, the report states that this was done to:

“acknowledge that when fences or other constraints are placed on wild horse areas this would make these horses semi-free-ranging given that there is still enough room for the animals to move freely over larger areas than typical farms or ranches.”

The practice of fencing them out of water only affects the horses, not other grazing wildlife who jump fences. And in fact, BLM authorizes water improvements for every other wildlife and domestic animal on public lands, but not for wild horses.

Below are just a few examples I pulled from public inspection documents I have. There are hundreds more. In these examples, the top 2 are pipelines and a tank to improve livestock areas, the third is for elk, the last is a letter in which the BLM responds to an advocate who offered help to haul water or build wells for wild horses. BLM tells them no and gives their reasoning. We believe this is still the current policy or attitude of BLM because in 2020 Utah BLM arrested 2 campers for providing water to wild horses and burros.

BLM's purpose and need for the fence, water pipeline and trough is to improve livestock management on the Murphy Gap and South Coal Valley Allotments through better distribution and to implement a guideline to help continue progress toward achieving the standards and guidelines for rangeland health as approved by Nevada's Mojave-Southern Great Basin Resource Advisory Council (1997).

2010 plan

Summary of Proposed Action and Alternatives

The proposed action associated with EA NV-043-08-012 is to install a permanent water storage tank with a short pipe into a livestock watering trough in the Maverick Springs Range on the Maverick Springs Allotment/Triple B Wild Horse Herd Management Area (HMA) in FY2009. The site is currently a temporary water haul site. The project site is located entirely within T 24 N, R 59 E, Section 6. The proposed action will be in accordance to the description provided in EA NV-043-012.

The need for the proposal is to make the site a permanent livestock water source thereby improving livestock distribution across the Maverick Springs Allotment and enhancing range and habitat management.

) December 2009.

"The purpose and need for the EA was to construct a new water development to more evenly distribute big game use in the area, particularly of elk. An additional source of water that lasts through summer would lessen the likelihood of big game animals using manmade water sources on the mine property and may reduce use of the Kimberly water development which could allow it to remain useable throughout the year, avoiding the need for continued tanker fill-ups. Big game occurrence and use would be more evenly distributed across the landscape rather than concentrated around the Kimberly Guzzler." (Giroux Wash and Horse Range Water Developments EA (DOI-BLM-NV-L010-2009-0018 December 2009 pg. 3)

BLM generally avoids developing artificial water (such as wells) for wild horses and burros. We try to rely on naturally occurring water instead. When we establish the appropriate management level (AML), we carefully consider the amount of forage and perennial water which is available. We attempt to achieve the goal of establishing a thriving natural ecological balance at the minimum feasible level of management. While we recognize that wild horses and burros do utilize artificially developed water sources, we try to make sure the animals are not dependent on these waters as their only source. This is because if horses depend on artificial water and that source should fail, their lives could be at risk. An exception to this is where we develop a spring source which allows water to be maintained at the source while delivering water off site for the animals.

They claim to carefully consider the amount of forage and water but what they don't point out is that cattle are on the land for less than a year. And they don't clarify that this is always during the months when the snow is melting off the mountain tops, and the spring plants are coming in and everything is nice and green. The cattle are left out until everything is dried up, dead and/or consumed. But, when BLM wants to claim horses do more damage than livestock they are very quick to point out that horses are there year round and livestock are not. This constant perversion of facts has painted a lopsided picture.

BLM claims that artificial water sources habituate the wild horses to a specific area or water source, but when livestock producers put water out for livestock that's okay. However, we have watched, over and over, in every state, livestock get removed at the

end of their permitted schedule, during the hottest, driest months of the year. The livestock producers are no longer providing water in these troughs or tanks. They also often illegally leave gates closed which stops the horses from roaming to find alternate water sources. So, now when we're into the dry season and the livestock producer just stops hauling water where wild animals are acclimated to getting their water, advocates for the horses are not allowed to begin hauling. BLM would rather claim drought and remove the horses.

Not only does making the areas smaller and smaller present a problem for access to water, forage, and even each other for genetic health, but it also produces the illusion that the wild horses have overpopulated and are utilizing resources such as food and water at such great rates that they are destroying the habitat, leaving nothing for other wildlife, and livestock, so they must be reduced.

What we see when we look at the big picture, and all of the twisting and deception that has happened over the past 51 years, is that BLM drew a pasture boundary on a map, then kept making it smaller and smaller, until finally they could scream overpopulation, when in fact the pasture has just gotten too small.

BLM insists on managing for a number, and that number is supposed to be the number of horses that were on the land in 1971, when they admit that number was pure conjecture. If BLM is supposed to manage them on the lands where they were in 1971 then they need to repatriate at least 26.5 million acres to the program. If BLM wants to keep cows on herd areas they need to follow the mandate in the law that gives wild horses and burros principal use.

We want Congress to go back to that 1971 law. We want them to think about the intent of a law passed to protect and manage a "fast-disappearing", integral part of our public lands. We want them to look at the changes in language, the relabeling of areas in order to remove them, the illegal sales of lands that should have been considered withdrawn for having a specific purpose. Congress must see how deceptive BLM is by putting out numbers that contradict each other, never really giving a clear, transparent picture of how many horses are on how many acres, and what other animals share that specific acreage.

The Horse & Burro program needs to be run by people with no conflict of interest. Transparency that is required has never happened with BLM, and that is getting worse. The ones who suffer the most at the hands of the greedy, and the lawmakers who haven't heard us, or who have ignored us, are our wild horses and burros.

BLM announced recently that for a second year in a row our national population is in decline. We strongly agree, and we recognize that they are in such sparse areas, in

such small herds that they are soon going to be genetically extinct if Congress does not act now.

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Acronyms

BLM - Bureau of Land Management
AML - Appropriate Management Level (population)
HA - Herd Area
HMA - Herd Management Area
FLPMA - Federal Land Policy Management Act
RMP - Resource Management Plan
LUP - Land Use Plan
USC - United States Code or US Code
CFR - Code of Federal Regulations

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Exhibit 8

**Determination of Whether Horses Inhabiting the
USFS Heber Wild Horse Territory are
“Wild Free-Roaming Horses”**

Prepared

by

Mary Ann Simonds

March 5, 2007

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Introduction

This report documents the investigation and determination of the status of horses inhabiting the "Heber Wild Horse Territory" along the Mogollon Rim of the USFS Apache-Sitgreaves National Forest in Arizona.

Historically horses have inhabited the area for several hundred years dating as far back as the Spanish Missionaries in 1699. Conflict as to the status of horses currently inhabiting the area have resulted in the removal, harassment and death of several horses.

The USFS claims the horses currently on the Forest may be from the neighboring Apache Indian Reservation, as they feel there are no wild free-roaming horses in the Heber Wild Horse Territory, while others state that horses inhabiting the Mogollon Rim and Heber Wild Horse Territory resemble horses that have been there since 1971. Although no accurate estimates of horses have been made, it is thought that horses number approximately 400.

Field investigations were conducted October 3-6, 2006 of the area. Historical and social research was also conducted and assisted in the findings of this report.

Summary of Findings

Wild free-roaming horses are inhabiting the Heber Wild Horse Territory on the Mogollon Rim of Apache-Sitgreaves Forest as documented from field investigations, photographic records, social and historical research. Data indicates that horses of similar ancestry have inhabited the area prior to the formation of the Heber Wild Horse Territory 1971, and are still inhabiting the area today as of October, 2006.

Although there is no accurate ecological or population data on the horses, it appears at least two or more distinct bands exist in this area. One group with a dominant buckskin stallion numbering from 15- 30 horses and at least one with a dominant black/ bay stallion of approximately the same number of horses. Although some pictures indicate these bands may mix, most of the photo documentation shows the bands as fairly well defined groups with normal stallion-like behavior of either a stallion standing slightly off from the group watching or a stallion demonstrating herding/moving behavior. Typical of wild horse bands, the photos used as reference for this report, indicate a mix of mares with foals at their sides, yearlings and two-year olds, as well as other young stallions with small harems moving within a larger band led by an older lead stallion. (See Appendix- Photos)

Based on the historical and social data as well as photo and field documentation of horses located near "Buckskin Wash -Horse Ridge- Black Canyon in the Overgaard-Heber area, the horses appear to be a mixed herd of predominantly "buckskin" horses, some with dun stripes in one group and dark brown/black and bays in an another group. Sorrels and palominos are evident in the groups but do not appear to be dominant. The buckskin with dun stripes and the dark brown/ black colorations along with the apparent confirmation of the photographed horses are characteristic of wild free roaming horses and typical of "Spanish" ancestry. Photographic records from both Pamela Reed and Cheryl Crandel document these groups. Records of these horses can be documented dating back to Father Keno and the Spanish Missionaries traveling though this area in 1699. Observations by local residents indicate buckskin horses have been sited on numerous occasions in the same area over the last 10-30 years.

The dark brown, black group was photo documented between July 2003 and Oct 2005 near the Rim Road near Fort Apache Reservoir, along Joe Tank Ridge and West of Forest Road 140 on several different occasions by different Forest Service employees. Field observations from October, 2006 support these findings as fresh manure and hoof prints were observed throughout the area and especially near water sources.

Behaviorally, field observations indicate that horses in the Pinedale area also are free-roaming wild horses, although there is not sufficient data to make a determination as to the ancestry of these horses. Observations from local residents indicate horses have been in the area as long as residents "can remember" and have been sited on

2

numerous occasions. Based on behavioral and observational records and discussions with local residents, the horses in this area seem to be mostly young stallions or bachelors with small family bands.

No data was observed or obtained that indicated in any way that the horses inhabiting the Mogollon Plateau and the Heber Wild Horse Territory were recent feral released horses. No horses were observed with brands or with horse shoes and it is unlikely there is much permanent migration of horses from surrounding areas. The Mogollon Rim is a geographic barrier known to support wild horses through the last century. All data indicates the horses were living in stable natural family based groups mixing into

larger herds at times or bachelor groups with a few young lone stallions characteristic of wild horse behavior.

Further investigations into the behavioral ecology of the horses in this area should be made to develop baseline data and determine best management practices in order to preserve the wild free-roaming horses representing the “living symbols of the historic and pioneer spirit of the West”, as well as their contribution as an “integral part of the natural system of the public lands”.

Wild Free-Roaming Horses and Burros Act of 1971

The Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195) was passed to protect the wild and free roaming horses and burros of the United States of America existing on public lands. The Act specifically states :

“ Congress finds and declares 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; and that these horses and burros are fast disappearing

from the American scene. It is the policy of Congress that 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 are where presently found, as an integral part of the natural system of the public lands.”

“Public lands” were defined as “any lands administered by the Secretary of Interior through the Bureau of Land Management (BLM) or by the Secretary of Agriculture through the Forest Service (USFS).” The BLM designated lands inhabited with wild free-roaming horses were referred to as “Herd Management Areas”, while the USFS referred to these lands as “Wild Horse Territories”.

Determination of Horses Inhabiting the Heber Wild Horse Territory

Methods

A combination of data was used in determining the status of horses in the Heber Wild Horse Territory. Area maps were reviewed and historical records researched. A field investigation was made in October 2006 riding, driving and hiking through the area. Social data was obtained from people residing in the area with knowledge about the horses, their behavior and observations. Data was collected with the help of long-time

resident in the area Joseph Wager who provided documentation of interviews with local residents as well as photographs of the horses in the area.

Field Investigation:

A field investigation was made during Oct 3-6, 2006 by driving roads, hiking to waterholes and riding the washes and ridges within the Heber Wild Horse Territory and the Mogollon Ridge area. (Appendix for maps) Areas where recent observations of horses had been made were transected several times by driving on the roads in the area. Washes and rims were observed by riding horses across these areas. Field data collected included habitat assessment, photo documentation of horse prints on roads and at water sources, and observation of stud piles along roads and washes.

Habitat

Horses appeared to use a variety of habitats including the burned forest area and ponderosa pine forest. Manure and hoof prints were observed in both areas. Horse habitat also included the draws and washes with water, open grass meadows, sandy areas and along roads. Although the Rodeo-Chediski fire of 2002 burned a considerable portion of the habitat, sufficient habitat exists to support the number of horses in the area. Most of the habitat viewed as of Oct 4, 2006 was in good to excellent range condition, with the exception being near water sources. In some areas, cattle were grazing the area and erosion was evident in and around water holes.

Based on field observations using manure and hoof prints as well as horse hair marks on trees, it appears that the horses move throughout the area observed and may inhabit one area for several days to a couple of weeks before moving to another area. Because water sources in the area were plentiful both natural and manmade, the horses have the ability to find food, water and cover over a variety of habitats.

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Based on stud piles deposited at main roads, it appears that stallions respect each other's "markings" as most stud piles amounted to only one or two droppings on opposite sides of the road. This is not unusual for horses to use roads or fence lines as delineation of "territories". Although wild free roaming horses are not particularly territorial compared to other wildlife species, they will often mark water holes and special areas so that other stallions do not challenge the existing herd.

The Pinedale area exhibited a difference in that there were more stud piles observed at the roads viewed with more droppings. This can be more characteristics of young stallions or stallions who do not have well formed harems and are more interested in marking territory rather than caring for their herds. Bachelor stallions are also known to mark more often.

It is unlikely the horses would migrate up and down the plateau as horses seem to stay in the area they feel most comfortable and usually do not move unless they are searching for food and water or being pursued and must flee. It is likely that if the

horses moved as a result of the fire, that the herds associated with the area before the fire returned to their home habitat.

Recent fences and cattle guards in the area may limit horse migration to some areas, but there was not sufficient data to make any determinations of habitat use based on recent fence locations.

Seasonal ability to find and utilize forage, water and cover are the key components to investigate in order to evaluate habitat use in the area. Although wild horses may prefer grassy meadows near water, they are known to adapt to a variety of habitats from forest zones and rocky outcrops to high desert and ocean saltgrass marches. Based on field data of hoof prints, grazed areas, trails, manure droppings and observations, it appears the horses like to use ridges for viewing, washes and draws for protection and watering and forest with grass/shrubs for grazing/browsing. Migration patterns seem to have varied from up and down washes, through forest slopes and along roads in some cases. This is typical of other wild horse herds familiar with their habitat.

Wild vs. Feral Horses

Since it is thought most horses in the Western United States today were at one time domesticated, wild horses have been referred to as “feral or free-roaming”. From a horse’s perspective, if it was born in the wild and learned the social ecology of a herd, then it is not a feral domesticated horse, but a wild creature.

Although it has not been uncommon for ranchers to release domestic horses or for domestic horses living near wild horses to escape, these horses may be at an adaptive disadvantage compared to wild adapted horses. Since most horse behavior is learned behavior, feral horses who have learned to find food and water in a corral with friends

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may try to return to corals with food and water unless they are accepted into a stable herd with good leadership. Feral domestic horses returned to the “wild” often do not survive droughts, or cold winters because they do not have the “behavioral herd wisdom” to know how to survive.

Horses have a strong need to “belong” to a social group and to most wild horses this means their friends and the herd. Although wild horses usually prefer to find food and water in their habitat, if forage is limited or water not available, they will look for sources even if it means using human related habitat. The other exceptions when wild, non-feral horses encroach upon human habitat usually are related to either a young or bachelor stallion smelling domestic mares or a lone horse with no herd looking for friends. Otherwise wild horses prefer to be safely in their stable bands with good leadership usually characterized by a lead stallion and often a lead mare with other less status mares and associated lesser stallions and small family bands as observed in both the Buckskin and Dark Brown/Bay/Black bands.

Based on habitat use, photo observations of the groups, the direct sightings and accounts of various people observing the Buckskin band and at least one Dark Brown/Black/Bay

group, these bands demonstrate wild horse characteristics. Their coloring, behavior, intelligence, adaptation and their ability to utilizing the full extent of their habitat and maintain a stable and sustainable population of various aged and sexed members all contribute to this conclusion.

Historical Records

Map Names

Investigation of current maps (Maps M-1) revised in 1996, with the original dating back possibly as far back as 1920s, indicate many of the geological features in the area contain horse names. It was characteristic for people to refer to features based on the what they observed in the area, a person who lived there or the activity taking place at the time of naming. Names found in the area where horses are located today, such as Buckskin Wash, Dead Horse Point, and Horse Canyon most likely were named because there were Buckskins in Buckskin Wash, a dead horse at Dead Horse Point and horses in Horse Canyon. Today, there are still buckskin horses residing near Buckskin Wash and horses in Horse Canyon.

Historical Literature

Historical records were reviewed and indicate the area has had wild horse documentation since Father Keno's travels in 1699. (see Appendix). More recent documentation,(1922) of wild horses include *Hashknife Cowboy, Recollections of Mack*

Huhges by Stella Hughes. In a section on "wild horses" she states. " There were bands of wild horses running all the way from Mormon Lake, out of Flagstaff, clear to Heber on the Mogollon Rim." In an article from Arizona Highways in January 1988, the author states. " I gained respect for the feral horses when I lived on an old homestead near Deer Springs on the Mogollon Rim. " She goes on to tell stories of a black stallion which she encountered several times on the Rim and the other bands of horses.

It appears from historical literature that Black/Buckskin horses have inhabited the Rim since at least the early 1900s and most likely since 1699.

The US Forest Service map indicates that in 1971-72 they defined an area as the Heber Wild Horse Territory and began implementing a management plan. It appears that no Wild Horse Management Plan was ever implemented. (See Appendix – Administrative Record)

Historical data indicates horses have inhabited the area very likely since the Spanish Missionaries travels continuously up to today. Although, ranch horses and other feral horses may have been introduced into the original population of horses, the "wild and free roaming horses" appear to have a sustainable population indicated by the color, markings and confirmation of the horses photographed recently (See Appendix)

Social Research

Interviews and information conducted by Joe Wager and others obtained through direct conversations, indicate that local residents have on numerous occasions observed horses on the Rim from campgrounds and fire towers to roads and near their homes. Trail riders, hunters, campers, and other recreational users have also observed horses and signs of horses.

Human population in the area appears to have been relatively sparse in the early 1970s but has continued to grow since that time. Hence, there are more field observations of wild horses recently in the last 10-15 years than from 1971- 1990.

Social data also supports that a fairly stable population of various bands of black/dark brown/bay horses and buckskin horses exist on the Rim within and near the original Heber Wild Horse Territory. This is based on numerous visual observations of the similar bands by various people in the same area as well as photo documentation. Bachelor stallions have also been documented particularly in the Pinedale area. (See Appendix). There is insufficient data to make any scientific findings concerning the horses in the Pinedale area, but clearly there is sufficient data to support findings of at least two or more stable groups of wild horses in or near the Heber Wild Horse Territory.

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Appendix

Photographic Records

- P-1 Lakeside RD- Horse Photos (Forest Service), 10/25/06
- P-2 Horse Photos provided by Anthony Merrill/ In Defense of Animals (IDA 000140-000250) Photographed by Pamela Reed September 2005.
- P-3 Photographs by Joe Wager/Cheryl Crandel Sept 2006
- P-4 Photographs by Mary Ann Simonds, Oct 2006
- P-5 Pinedale horses –before and after shootings
- P-6 Television Channel 12 News –Dec, 2005

Maps

- M-1 Apache-Sitgreaves, National Forests, Arizona – USFS-USDA Revised 1996
- M-2 USFS –Heber Wild Horse Plan, Black Mesa R.D., Apache Sitgreaves N.F.s –Wild Horse Territory General Area, Oct. 4, 2006.
- M-3 Heber Wild Horse Territory – Original Map
- M-4 Field Survey Area Map

Literature

- L-1 Historical Literature
- L-2 Administrative Record

Author's Information

- A-1 Curriculum Vitae
- A-2 Publications
- A-3 Expert Cases in Last Four Years
- A-4 Compensation

L-1 Historical Literature Reviewed

Baeza, Jo. Jan. 1988. Horses of Arizona. *Arizona Highways*, pp 4-13.

Bolton, Herbert Eugene. _____. *Rim of Christendom: A Biography of Eusebio Francisco Kino Pacific Coast Pioneer*. Tucson, Arizona, The University of Arizona Press.

Hughes, Stella. _____. *Hashknife Cowboy: Recollections of Mack Hughes*. Tucson, Arizona. The University of Arizona Press.

Kino, Eusebio Francisco. 1699. *A Kino Keepsake: Facsimile of an original Eusebio Francisco Kino Field Diary*, Preserved at the University of Arizona Library, Describing Southern Arizona.

Polzer, Charles, W. 1998. *KINO A Legacy: His Life, His Works, His Missions, His Monuments*. Tucson, Arizona. Jesuit Fathers of Southern Arizona.

L- 2 Administrative Record

A-1 Author's Curriculum Vitae

Mary Ann Simonds, MA, has worked professionally in the horse industry for over 30 years, riding, training, and teaching. Obtaining her B.S. degree from the University of Wyoming in 1976 in Wildlife Biology with a minor in Range Management she focused her research on wild horse behavior and ecology. Her research efforts earned her an appointment to the 1990-1992 US Wild Horse and Burro Advisory Board making recommendations to the BLM and Congress. Mary Ann received her Masters degree in 1988 in Interdisciplinary Consciousness Studies with emphasis in Human-Animal Interaction and Healing and a specialization in Organizational Development and Leadership. Working in the fields of the horse industry, mining reclamation, organizational development, wildlife biology, animal awareness, and human-animal interaction and healing, Mary Ann has conducted research and given papers on a variety of subjects from Eco-tourism and horse behavior to stress management of animals.

Mary Ann has been a guest lecturer and clinician for such organizations as USCTA, USDF, SPCA, EQUITANA, the University of California, Davis, Nippon Animal Science and Veterinary University (Japan), and Washington State University. She founded the Whole Horse Institute in 1985 and the Equestrian Science Institute in 2000 to provide educational classes for the horse industry on topics from marketing and sales to health care and behavior. In cooperation with Washington State University, Extension, Mary Ann has sponsored the Horse Symposium at WSU, Vancouver since 1996 teaching hundreds of local horse enthusiasts. Mary Ann donates numerous hours to horse-related youth and non-profit organizations such as the Phoenix Foundation, the Youth Equestrian Science Studies (YESS), the International Society for the Protection of Mustangs and Burros, the Livestock Advisors and 4 H. She has also been instrumental in developing equine assisted therapy programs.

Mary Ann has had numerous articles on horse behavior and other related subjects published in a variety of magazines. Outdoor Life and ESPN II television featured her 22 part horse behavior and natural health series on *Horsing Around*. Mary Ann is well published both here and in Germany and has two new books coming out in German. She is the developer of Toklat Originals' *Natural Vibrations* line of magnetic therapy and stress management remedies for

horses and riders and a co-founder of Mystic Horse which is a sales support company for Mary Ann's educational and stress management products. Mary Ann continues to research equine behavior and health care, while she conducts clinics, consults and writes internationally. She has a book on *Herbs for Horses*, several CDs on horse behavior, as well as 4 videos/DVDS: *The Art of Buying a Horse*, *Herbs and Aromatherapy for Horses*, *Think Like a Horse* and *My Space Your Space: Understanding Horse Culture*.

As an "Expert Witness", Mary Ann has worked for both plaintiff and defense. Her cases have involved "horse behavior" and "standards and practices for the industry". Cases have ranged from auto/horse incidents to horse/rider/people related injuries. She has testified in court on several occasions and other cases have been settled after arbitration proceedings.

A-2 Publications By Author

Videos, CDs, Books

Stress bei Pferden: Erkennen und Behavndeln, book Kosmos, 2007

Was Pferd Wirklich Brauchen, book, Kosmos, 2006

My Space, Your Space-Understanding Horse Culture, DVD MH Productions 2004

Wild Horse Wisdom: Lessons from the Wild, Mystic Horse Productions, 2002 (Audio CD)

Giving Up Freedom-Finding Friendship: Wild to Domestic Stress Free, MH Productions, 2002 (Audio CD)

Herbs and Aromatherapy for Horses, Painted Pony Productions, 1999 (video)

Herbs for Horses, Belvoir Publishing, 1998 (book)

Think Like a Horse, Communication Arts, 1993 (video)

The Art of Buying a Horse, Glenn-Craig Production, 1985 (video)

Magazine Articles

The author has published numerous articles over the last ten years and has written regularly for the following magazines. There are too many articles to list.

The Holistic Horse

Equine Wellness

Natural Horse

Flying Changes

Articles either about the author or by her have been printed in the following international magazines in the last two years.

Planet Cheval au naturel

Cavallo

Reiter Revue

A-3 Author's Expert Witness Cases in the Last Four Years

The author has periodically accepted cases through TASA –Technical Advisory Services for Attorneys over the last 10 years.

Peter Moote Law Firm October 2005. Freeland, Washington
Gaumer v. Hardie

Reber Ranch, Horse Evaluation –March 2003, Washington
Steger

A-4 Compensation

Field Investigation	\$ 2500	paid
Data Review and Report Preparation	\$ 2500	to be paid

Total Compensation \$ 5000

Exhibit 9

Will There Be a Healthy Future for America's Wild Horses and Burros IN THE WILD? PZP or Reserve Design? You Decide!

By Craig C. Downer, Wildlife Ecologist, Wild Horse and Burro Fund, P.O. Box 456, Minden, NV 89423-0456. ccdowner@aol.com

September 24st, 2016

On September 7th, 2016, I participated in the National Wild Horse and Burro Advisory Board rangeland tour of the Antelope Valley Wild Horse Herd Management Area (HMA); and on September 8th, I again participated in this board's official meeting at the historical Stockman's Hotel in Elko, Nevada. Though both tour and meeting provided for some public input, these were "one slick operation" by BLM officials and certain members of the board. This event aimed to convince all board members as well as the public of a "wild horse overpopulation crisis" with a pre-meditated selection of sites to visit and points to make. And I can well understand why a person with little knowledge and background on wild horse and public lands issues or with a pre-existing selfish agenda could be easily stampeded into accepting the over-population myth.

Indeed, on Friday, September 9th, the board voted 8 to 1 to recommend disposal of ca. 44,000 wild horses and burros currently in holding throughout the United States. If accepted by the BLM, such a recommendation would result in the cruel killing of most of these national heritage animals.

Being all too aware of how wild horses and burros have been set up to fail, all too aware of how they have been used as scapegoats for ecological problems that overpopulated humans have basically caused, I was relieved that BLM officials did not – at least for now – accept their appointed board's advice. I was also pleased to learn that BLM recently cancelled certain surgical sterilization experiments on over 200 captured wild mares in Oregon and others in Wyoming for which over \$11 million dollars had been allocated.

The board's recommendation would have been tantamount to murdering nearly all of the 44 thousand horses and burros in holding. This proposed bloodbath created an enormous national and international outcry, becoming a global bone of contention. And I find it heartening to see evidence that so many people care about the wild ones and their right to live freely and naturally.

Horses and their burro cousins are highly-evolved beings, fellow sojourners on planet Earth, companions who have lived and labored alongside us humans for many generations –even several millennia! What horses and humans have experienced together concerning Life's unfolding story is truly awesome! Could this be why the cavalier disposal of the lives of so many horse souls rankles so deeply and with so many?

Today a great moral challenge stridently calls for us humans to more fairly and justly treat our fellow inhabitants of planet Earth. We must give these fellow conscious beings the life they deserve for a change! In the case at hand, horses present highly evolved beings present here on Earth for millions of years of free and natural living, often in wide-open spaces. In diverse ecosystems, they have developed intricate relationships with an astounding diversity of plants and animals and in a way that is truly splendid. As an ecologist, I realize that they are mutually complementary to the other species of fauna and flora. And that they are extraordinarily beautiful should give us some clue as to why they are pleasing to Heaven.

Such realizations occurred to those who established the Wild Free-Roaming Horses and Burros Act of 1971 (WFHBA). This was one of the first times Americans decided to do something major that was genuinely good for a fellow species. And it defied centuries, even millennia, of human self-absorption, thoughtlessness, cruelty and greed. For rather than merely continuing to take from, we humans actually chose to give back to horse kind something of true worth and excellence: their natural freedom to live on their rightful natural land, or home. In other words, to be themselves!

Along with the Wilderness and similar acts, the WFHBA was a “great forward leap for mankind.” Yet, an “all-points bulletin” today concerns our government’s emerging plans for America’s last remaining wild horses and burros. As a wildlife ecologist and even more as a human being who appreciates horses in the wild, I perceive their enemies not only among those traditionally opposed to them, but in our very government and even among people who claim to be wild horse advocates yet who are quick to overly compromise the future of these wild horses and burros as naturally living Earthlings! Why are the latter buckling under to the wild horses’ and burros’ traditional detractors and enemies? It seems that they are being duped into conceding to plans that will only ensure the decline of the wild herds. Many of us believe that this pusillanimous position must not pass! (*No pasara!* as we speakers of Spanish say.)

Core to what’s wrong are the so-called “Appropriate Management Levels” (AMLs) that have been assigned to the legal wild horse and wild burro herds on their legal lands throughout the West, both on BLM and US Forest Service lands. And along with these, the failure to fairly allocate natural resources for truly viable populations. These AMLs are simply much too low! They are genetically non-viable and would result in under-populated herds.

Any group of creatures that senses itself to be underpopulated usually “struggles to survive,” as Charles Darwin so aptly stated. Herd numbers as well as the locations and sizes of Herd Management Areas (HMAs) have been too arbitrarily set to fit the demands of cattle and sheep ranchers, big mining corporations, expansion-hooked land developers, ORV rippers up of the land, and the kill-focused hunting establishment. As is so typical, the root of the problem lies with that thoughtlessness and greed that infects too many humans today. The consequence has been many millions of acres of zeroed-out, though still legal, herd areas, and herd sizes and the sizes and habitat composition of HMAs (BLM) and Territories (US Forest Service) that are simply not adequate to the long-term survival needs of those wild horses and burros who still remain. To my very bones I feel that we humans must rise to the great moral challenge concerning the horses and burros and their right to live free. And this also has to do with our own success as a species, for it concerns obeying the laws of Higher Justice that govern the universe.

Truly realizing and living the noble intent of the WFHBA will make America great again, allow it to stand uprightly on solid moral ground. We shall learn to share the land and freedom with the wild ones, and this lesson shall be our salvation. We shall no longer restrict and exploit such “paragons of Nature” as the horses and their rightful lands in such a way that denies them their true place in the world we share with them as home. Today we have arrived at a crucial crossroad, a critical turning point:

Faulty PZP-type Choice for America’s Wild Horses and Burros

Shall we only continue to restrict and distort the true natures of the horses and burros and to ever greater degrees, as well as their proper habitats here on Earth? Shall we only continue to deny them genuine freedom here on Earth by condoning marginally productive, water-deprived, and un-whole

habitats that have been carelessly and deviously assigned for them? Shall we be cornered into accepting the application of harmful, FDA-classified pesticides such as *Porcine Zona Pelucida*, or PZP, GonaCon, SpayVac, etc.? These drugs, vaccines, inhibitors of healthy horses – call them what you like – only distort and suppress the true health and well-being of vigorous wild horses and burros! And then do we expect the wild horses and burros so violated to fit into unfairly small and inadequate habitats that do not provide their long-term survival needs? No! Such marginal habitats, substandard population numbers, and biologically compromised individuals are simply unacceptable! They would not be genetically viable and would only set the horses and burros up for inbreeding suppression while at the same time preventing their filling their ecological niches in a harmoniously adapted way. And these animals already face enough survival challenges without having to deal with the violation of their most intimate parts!

Is PZP really a solution that works for the horses/burros?

I have participated in many wild horse and burro meetings and heard talks given by experts describing PZP and its actions on wild horses, including by PZP's inventor Dr. Jay Kirkpatrick and by Dr. Daniel Rubenstein, a behavioral zoologist who has studied PZPed wild horses in nature. I have also perused many scientific and popular articles about the effects of PZP upon wild horses, both short- and long-term, and both upon individuals and their social groups. Here are some of the major proven damages to wild horses caused by PZP:

- (1) PZP weakens immune systems of individuals and their herds since it inhibits reproduction in horses with stronger immune systems. Horses with weaker immune systems are precisely those who reproduce in greater numbers in PZP-treated herds. Eventually, PZP weakens wild horse herds' overall immune systems. (Reference: Gray, M.E. & Cameron, E.Z. 2010. Does contraceptive treatment in wildlife result in side effects? *Reproduction* 139: 45-55.)
- (2) Increased stress is experienced by mares who have been successfully darted by PZP and by other members of their social bands. This is because of PZPed mares' frustration in completing their natural reproductive cycle, which affects the other members of their bands. Ironically, it is precisely the mature and stable, more content and non-PZPed bands that do, in fact, cause a slowing of reproductive rates, as years of research by the International Society for the Protection of Mustangs and Burros (ISPMB) and others abundantly proves. (Reference: Sussman, Karen. 6/6/2015. Suspicious deaths with use of anti-fertility drugs. ISPMB Journal. www.ispmb.org/BirthControlDeaths.html.)
- (3) PZP adversely affects mares' hormonal systems and consequently the social groups to which they belong. PZPed mares become irritable, aggressive, and more masculine, causing disharmony in their bands. PZP lowers estrogen and increases testosterone in mares and also produces ovarian cysts. Cysts increase testosterone levels. (Reference: U.S. National Library of Medicine. National Institutes of Health. Ovarian overproduction of androgens. (Reference: <https://www.nlm.nih.gov/medlineplus/ency/article/001165.htm>.)
- (4) Auto-immune oophoritis, aka ovaritis or inflammation of ovaries, and also stillbirths result from PZP. Autoimmune oophoritis can lead to the development of other autoimmune diseases. (Reference: Kaur, K. & Prabha, V. 2014. Immunocontraceptives: New Approaches to Fertility

Control. *BioMed Research International*, Vol. 2014, Article ID: 868196.)

- (5) PZP-darted herds in Little Book Cliffs, McCullough Peaks, and Pryor Mountains wild horse legal herd management areas gave birth nearly year-round, i.e. 341 days, rather than in the normal spring season. This exposed PZPed wild mares and their offspring to extremes of temperature, and, consequently, to suffering and death. (Reference: Ransom, J.I. *et al.* 2013. Contraception Can Lead to Trophic Asynchrony between Birth Pulse and Resources. *PLoS ONE* 8(1): e54972. Doi: 10.1371/journal.pone.0054972.)
- (6) It is quite disturbing that PZP antibodies transfer to foals from the mare through the placenta while they are in the womb as well as through mare's milk. These antibodies react with and bind to the *zona pellucida* of female newborns. Yet, BLM regularly administers PZP to pregnant and lactating mares in spite of these published scientific findings. (Reference: Sacco, A.G. *et al.* 1981. Passage of zona antibodies via placenta and milk following active immunization of female mice with *porcine zona pellucidae*. *Journal of Reproductive Immunology*. 1981, December; Vol 3, Issue 6: pages 313-322.)
- (7) Weakening of immune system subjects wild horses to mal-adaptiveness to unforeseen major changes such as are occurring due to Global Warming, or catastrophes such as epidemics or wildfires. (Reference: Gray & Cameron, 2010, *op cit.*)
- (8) PZP causes the immune system to attack and destroy the ovaries and produces a large variety of adverse effects. (References: Gray & Cameron, 2010, *op cit.*; Kaur & Prabha, 2014, *op. cit.*)
- (9) By extending the lifespans of PZPed mares, PZP creates abnormal numbers of aged, sterile mares. This disadvantages younger horses, who continue to be taken away by BLM roundups to reach arbitrary AMLs. This appeases livestock or other wild-horse-adverse interests on the public lands, rather than respecting the General Public, whose majority values wild horses and burros and wants them to be fairly treated. (Reference: Knight, C.M. & Rubenstein, D.I. 2014. The Effects of *Porcine Zona Pellucida* Immunocontraception on Health and Behavior of Feral Horses (*Equus caballus*). Princeton University thesis, Dept. Ecology & Evolutionary Biology.)
- (10) PZPed mares are no longer reproductively active in the wild horse population, thus diminishing the genetic viability of the herd. The resources they consume would otherwise contribute to reproducing adults and their offspring and maintain the vigor of the herd into ongoing future generations that adapt to ongoing environmental changes, thus assuring their long-term survival. (Reference: Ransom, J.I. *et al.* 2013, *op. cit.*)
- (11) PZP is a safety hazard to humans, especially to females who administer it. (Reference: Devlin, M. 2015. Fact Sheet: The Truth about PZP. <http://protectmustangs.org/?p=8749>.)

For these and related reasons, I believe that PZP will seriously harm and undermine the vigor of wild horse and burro populations that our nation's laws mandate us to protect and preserve, as well as to manage. The restoration and maintenance of herd vigor is essential to the ongoing ecological adaptation and long-term survival of each herd. Healthy reproduction is key to healthy wild horse and burro

individuals, bands and herds. Tampering with reproduction produces a variety of aberrations that lead to dysfunctional and disordered wild horses. This results in a decline of the herds.

I have heard from many people who closely observe and/or live near wild horses treated with PZP. They describe many still-born or defective foals produced by mares in whom the effects of PZP have worn off, permitting them to again try to reproduce. Also please consider that after a few to several years of yearly application, PZP generally produces total sterility in mares, depending upon the strength of their individual immune systems. This calls into serious question the proclaimed “reversibility of PZP” to enable mares to reproduce again! To reiterate: of great concern is the fact that PZP is less effective in those mares with weakened immune systems. Hence, the wide-spread use of PZP among America’s last wild horse/burro herds – nearly all below minimum viable population (MVP) level – will seriously undermine their long term survival.

But thankfully there exists an honorable alternative to PZP, and similar horse-disrespectful “quick fixes”. As a wildlife ecologist, I have formulated a sound alternative to PZP and similar invasive proposals. This *Reserve Design* strategy would restore long-term viable, ecologically well-adapted, and naturally self-stabilizing populations of wild horses and burros throughout the West. (References concerning Reserve Design: Peck, S. 1998. Reserve Design. In: *Planning for Biodiversity: Issues and Examples*. Island Press, Washington, D.C. Pages 89-114; Soule, M.E. & Terborgh, J. 1999. Continental Conservation: Scientific Foundations of Regional Reserve Networks. Island Press, Washington, D.C.; Downer, C.C. 2010. Proposal for wild horse/burro reserve design as a solution to present crisis. *Natural Horse* Volume 12, Issue 5, pages 26 to 27; Downer, C.C. 2014. The Wild Horse Conspiracy, www.amazon.com/dp/1461068983, look up “Reserve Design” in Index.)

Reserve Design: the Intelligent and Caring Choice for America’s Wild Horses and Burros

If followed correctly, the unanimously passed WFHBA would have set aside somewhere between 54 million and 90 million acres for the preservation of wild horses and burros in the wild. Lamentably, the rights of these animals—and their human supporters—have been undermined by wild horse and burro enemies, including officials charged with their protection. Current policies toward these “national heritage species” are thinly disguised plans for reducing the herds to crippling low, non-viable population numbers. These levels would be unable to sufficiently and adequately reproduce so as to survive into the long-term future. Too often the plan has been to simply eliminate them from their legal areas, i.e. “zero-out”. Indeed, anywhere from 22 million to 40 or more million legal acres have been declared officially empty and “not for” the wild horses and burros or simply ignored at the onset of the WFHBA in the early years of this act (see Downer, C.C. 2014. The Wild Horse Conspiracy).

Some wild horse advocates and observers say there are only 33,000 wild horses and burros remaining on America’s public lands as independently estimated for mid-2016 (Louise, Katia, wild horse documentary filmmaker, pers. comm.). Even if the official BLM figure of 67,027 wild horse and burros remain on the public lands (55,311 horses & 11,716 burros [BLM report of March 1, 2016]), either level would be out of step with the amount of ecologically appropriate habitat where these animals have a legal right to live. The small number of horses and burros our government intends to leave on each of the ca. 179 remaining BLM-designated areas is a sure prescription for the over-fragmentation and isolation of wild horse/burro populations. This would only jeopardize their long-term survival, compromising their true vigor in the wild.

The nationwide population of wild horses and burros that our government plans to allow as the high end Appropriate Management Level is only 26,715. This would be composed of only 1,676 individual wild horses and/or burros in Arizona; 2,200 in California, 812 in Colorado, 617 in Idaho, 120 in Montana, 12,811 in Nevada, 83 in New Mexico, 2,715 in Oregon, 1,956 in Utah, and 3,725 in Wyoming. (Source: Herd Area and Herd Management Area Statistics as of March 1, 2016. BLM, Washington, D.C.) These assigned population levels are very unfair and cater to wild horse and burro detractors while largely disregarding the General Public that strongly support this Quality of Life issue.

Our government's current goal of and plans for drastically reducing small and genetically vulnerable wild herds include the partial—and very possibly total—sterilization of mares through PZP injection. These plans also include the unnatural skewing of sex ratios to establish excess males, even in the naturally harem social structure of naturally living horses in which females are usually more numerous. And even more invasive measures have been planned in the past and are likely to crop up again, including painful—often lethal castration of stallions and the ovariectomies (removal of ovaries) of mares (thankfully recently cancelled in Oregon and Wyoming), as well as the individually deranging and socially disruptive injection of sterilization drugs or vaccines, such as PZP.

Clearly, our wild horses and burros are in a very critical situation today. I judge them to be more imperiled than they were in 1971 just before the passage of the WFHBA when they were “fast disappearing from the American scene”—and I used to work with Wild Horse Annie. We must quickly respond with a well-conceived plan for reforms that will restore the true rights of wild horses and burros upon our public lands. These lands belong to all Americans, not just to resource exploiters, whether officials of corporations or private individuals. As a wildlife ecologist and deeply rooted native Nevadan personally familiar with many of the West's wild horse and burro herds, I strongly urge the restoration of these deeply rooted North American native species. Their return to North America should be as genetically viable and naturally self-stabilizing herds that are allowed to adapt ecologically to each specific region where they have legal right. This can be accomplished by following the sound principles of Reserve Design. Such a plan would end cruel, disruptive roundups and reproductive manipulations—practices that mock the true intent of the 1971 WFHBA by causing untold suffering and death to these beautiful and highly evolved, sensitive, wise, and freedom-loving creatures.

Reserve Design combines ecological, biological, social, and political considerations in order to achieve desired results. Basically, it involves setting aside areas of complete year-round habitat where human intervention is buffered against and where natural processes are allowed to reestablish natural checks and balances. Reserve Design will achieve internal harmony for the diverse, yet interrelated, species living within each wild horse/burro-containing ecosystem.

Critical steps for realizing Reserve Design in wild horse and wild burro habitats are as follows:

[1] Properly identify the long-term survival requirements for viable equid population levels to be accommodated in each reserve. Our chief focus would be to promote wild horse/burro-containing ecosystems of adequate size and condition to sustain viable equid populations and where plant and animal species are allowed to adapt naturally over the generations and in inter-balanced fashion. The level of 2,500 individual has been recommended for the viability of an equid population by the IUCN SSC Equid Survival Group (Equid Action Plan, IUCN SSC ESG, 1992).

[2] Conscientiously identify appropriate ecological areas suitable for the implementation of wild horse/burro-containing reserves. This would involve travel to, on-ground inspection of, flights over, and GIS analysis of a wide variety of places throughout the West. This would also entail setting up Cooperative Agreements under Sections 4 and 6 of the WFHBA in order to achieve complete habitats around the federally designated wild equid lands and involving both private and other government lands such as state and local.

[3] Wherever possible, wisely incorporate natural equid predators (such as puma, bear, and wolf) that would both limit and tone/strengthen, wild horse and burro populations.

[4] Wherever possible, wisely incorporate natural barriers that would limit the ingress and/or the egress of certain species, including the wild horses and burros. This would avoid conflicts and set up conditions for the natural self-regulation of populations.

[5] Identify where buffer zones, artificial barriers, or other means of impeding movements in and out of a reserve should be established in order to keep the species in question from coming into conflict with humans. Buffer zones possibly involving non-injurious means of “adverse conditioning” could be employed as well as “positive reinforcement” as a means of encouraging the wild equids to stay within the reserve, as for example, by providing all of their habitat needs. Also, “semi-permeable barriers” that do not restrict most species but do prevent equids from passing out of the reserve may be used. These means would be described in practical detail and as tailored to fit each specific reserve area.

[6] Identify the presence and abundance of necessary food, water, shelter, mineral procurement sites, elevation gradients for seasonal migrations, etc., that will accommodate the long-term habitat needs of long-term viable wild equid populations. Such will also allow the natural rest-rotation of foraging between the natural subdivisions of the reserve. Fences within the reserve that impede the free-roaming lifestyle of the wild equids will be located and their removal accomplished. The intrinsic Carrying Capacity of the land in question will also be estimated as closely as possible. Such will be based upon the Productivity of forage adequate to at least a minimally viable population of wild horses/burros. Besides food, this determination will take into account other survival factors such as water, minerals, shelter, breeding and nurturing habitat, seasonal migrations, and needed protection from existing threats to the wild equids.

[7] Identify geographical regions whose human inhabitants are benignly disposed toward the creation and long-term implementation of extensive, ecologically balanced wild horse/burro-containing reserves. This would involve traveling to different areas and setting up meetings with pertinent individuals, town and government officials, etc. This also relates to the setting up of Cooperative Agreements under Sections 4 and 6 of the WFHBA, as mentioned above.

[8] Identify ways of and benefits from implementing Reserve Design that result in win-win relationships centered on the presence of wild horses and burros. Ecotourism is one major possibility here, and wild horse/burro viewing tours have already proven to be successful in several states, including Craig London’s tours to the Montgomery Pass wild horses of eastern California. Restoring native ecosystems, including soils and native species, would be a major ecological benefit. The reduction of flammable vegetation through equid grazing and the restoration of hydrographic basins through the enrichment of soils, would be other major, positive contributions by wild horses and burros. Another major benefit concerns the prevention of catastrophic wildfires that over-burn vegetation, sterilize soils and denature

their stored seed banks. Such fires can set the life community back to very primitive evolutionary stages. Indeed, it can be strongly argued that the restoration of wild equids in North America is crucial to combating life-disrupting Global Warming itself.

[9] Of key importance is informing the public concerning the many ways that horses and burros, as ecological "climax" species, self-limit their own populations once their respective ecological niches are filled in any given bounded area. This knowledge is key to realizing a humane relationship with these animals, a relationship that does justice to and demonstrates respect for them. And it is this respect and appreciation on the part of us humans that is key to allowing the horses and burros to fulfill their important natural roles within the life community.

Whom to Contact to Help Wild Horses and Burros:

Please contact your Senators and Representatives, the President, the Secretary of Interior and its Bureau of Land Management; and the Secretary of Agriculture and its US Forest Service. Both of these agencies are mandated by the WFHBA to preserve and protect as well as to manage the wild horses and burros and their legal lands and resources for the benefit of the former.

Also contact your state governor and state, county, and municipal officials concerned with wildlife and natural resources. Get in touch with the media: newspapers, magazines, TV and radio stations. Make all of the above aware of what is needed to stop the over-reduction or zeroing-out of the herds and the cruel abuse of wild horses and burros, whether through drugging, vaccines, surgeries, or other unnatural and invasive methods. Rather, persist in the restoration of the wild horse and burro herds and their habitats to viable levels, healthy conditions and sizes. This will be to restore the pure intent of the law.

A key committee to contact right away is the U.S. House of Representatives' Appropriations Committee, particularly its Interior, Environment & Related Agencies Subcommittee. The telephone number of the latter is (202) 225-3081. Emails of staff to contact are betsy.bina@mail.house.gov and Kristin.richmond@mail.house.gov. This subcommittee is now deciding which direction to take in regards to the wild horses and burros. It has been hearing too exclusively from traditional wild horse and burro enemies. Those of us who value and appreciate the wild horses and burros and their rightful place in the world of nature must set the record straight for these wonderful and ancient presences on Earth. We must not allow their enemies or those ignorant of their worthiness prevail!

The spirited and intelligent horses and burros are depending on you and me! In addition to contacting the above, be sure to contact the President of the United States and the White House staff at (202) 456-1111 (TTY/TTD: (202) 456-6213). Switchboard (202) 456-1414. You can also do this by email at <http://www.whitehouse.gov/contact> or president@whitehouse.gov.

You may contact your Senators and Congressmen/State Representatives (federal and state) by linking on internet with "Elected Officials / USA Gov". This will provide you with the contacts you require for federal, state, and local offices. The link is: <https://www.usa.gov/elected-officials>.

Also contact the natural resource and public lands committee and subcommittee in the U.S. Senate.

On behalf of our wonderful wild horses and burros, I sincerely thank all of you for your caring and for your effective action. Together we can assure their rosy future, one they surely merit.

Exhibit 10



Photo by Carol J. Walker

WHITE PAPER
on the
Bureau of Land Management's
Wild Horse & Burro Program,
with a Focus on Problems Related to Holding Facilities

Wild Horse Freedom Federation, Inc.
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July 2017

I. EXECUTIVE SUMMARY

This White Paper on wild horse and burro management has been prepared after years of targeted analysis and research by the Wild Horse Freedom Federation (“WHFF”). WHFF undertook this extensive effort in order to provide the public, and the federal agencies responsible for wild horse & burro protection and management, with a cohesive and comprehensive look at the current state of affairs regarding some highlight topics, an identification of areas of problem and of strength, and suggestions for a path forward that will serve stakeholders on all sides of the wild equid issue: the federal government, landowners and ranchers who are in proximity of wild horse and burro range, advocates who seek changes in federal management of the horses, and of course the equines themselves.

Based on our analysis and research, WHFF provides here constructive criticism and carefully considered suggestions for the treatment of wild horses and burros across America, in a way that will simultaneously honor the Congressional mandates of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 and the obligations of the Department of the Interior, the Bureau of Land Management and the Forest Service with respect to the management of these animals as it is directed and governed by federal law.

In the course of our research, WHFF has collected thousands of documents from the governing agencies, interviewed individuals close to the issues, and applied a science-based scrutiny to the data collected, in order to reach the conclusions and suggestions described in more detail here.

The purpose of WHFF’s years-long project has been to both identify areas of concern, and propose solutions to problems that seem to be hindering the government’s ability to perform its duties towards all stakeholders in the area. The White Paper follows up on the 2013 National Academy of Sciences report on the wild horse and burro program and on the various reports by the Office of the Inspector General, in order to provide additional depth, and information, which will hopefully promote a more open and informative view and vision for the future of our wild equines.

II. WILD HORSE FREEDOM FEDERATION

WHFF is a national organization that brings decades of experience, and an intelligent and measured approach to the area of wild horse advocacy. WHFF's goals are simple – to unite seasoned experts, solid science, and documented facts, in order to ensure a long and prosperous future for the wild horses and burros who make America's lands their home. In short, WHFF is committed to using a strong foundation of detail and a measured degree of legal advocacy to build a legacy for our descendants to be able to share the beauty and splendor of the herds protected by the Wild Horse Act.

From its inception, WHFF has brought together a group of supporters and experts who are some of the nation's leading equine welfare advocates, from some of the top equine organizations. Its focus and goal has been, and remains, the protection and improved welfare of American wild horses and burros. WHFF serves its mission by engaging in careful and detailed examination of the treatment of wild horses and burros by the federal agencies authorized and empowered to protect and manage these animals. This White Paper is the result of some of WHFF's work over the past several years.

WHFF is the voice of not only those animals that cannot speak for themselves but also, most effectively, for the majority of the American public which has repeatedly expressed the desire to stop the unnecessary removal of wild horses and burros from public lands where they should remain, and the proper, legal management of the Wild Horse & Burro Program.

III. AREAS OF FOCUS OF WHITE PAPER

The questions that have been raised by WHFF's research and data collection are many, but the topics addressed in this document are covered by the following three key points of inquiry:

1. Where are all the horses and burros that are being taken off the range going? WHFF's analysis demonstrates unequivocally that the BLM's counts of formerly-wild horses and burros in both short-term and especially in long-term holding facilities are regularly inaccurate or

inconsistent, so that there is and has been no reliable accounting of the number of animals being held by the BLM for years. Because of this, neither the government nor the public is able to obtain a true representation of the numbers of wild equids that are going to long-term holding facilities, or the numbers that are being adopted, sold, euthanized or dying. This absence of accurate data also raises the very serious question of whether wild horses and burros taken off the range are going to auction or to slaughter without proper reporting or factual justification for such transfers.

2. Why are there so many discrepancies in the counts provided by the BLM? As set out in detail below, based on documentation received directly from the BLM, and on visual observations by WHFF personnel, there are large discrepancies in the numbers of horses and burros being managed by the BLM – both on and especially off the range. While the causes of the discrepancies may be many, it behooves the BLM to rectify these ongoing problems with accurate population estimates and recordkeeping, in order to allow the agency, Congress and the public to get a firmer grip on the scope of the problems presented. Open and scientifically defensible reporting is the key to a successful management program, so the source data must be something upon which all stakeholders can rely. If these disparities were explained – and corrected – it might assist the public and the BLM in identifying areas of mutual interest and accord, and solutions for moving forward.

3. Are BLM procedures in compliance with federal law as well as internal regulations and requirements, and in accord with the agency's mandate under the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 ("Wild Horse Act" or "WFRHBA")? As explained in this document, the BLM's practices with respect to long-term holding contracts and contractors are lax at best, and likely in

violation of the agency's own requirements. On a larger scale, the BLM's conduct in removing wild horses and burros from their range, and the way the equids are treated once they get to the holding facilities, runs afoul of the BLM's statutory mandate under the Wild Horse Act. Given the importance of the procedures set up to protect and manage wild horses and burros in short-term and long-term holding facilities, we are sure the BLM recognizes the need for adherence to the established protocols.

4. Separate from the issue of disparity in the numbers of animals moving through the Wild Horse and Burro Program, WHFF has discovered many situations in which, per BLM's own statistics, the BLM's growth rate and corollary population estimates are scientifically and biologically impossible, skewing the basis for the removal of wild equines from the range, and jeopardizing the Program at multiple levels.

5. The BLM's justifications for wild horse and burro gathers has ignored the very real threat to herd population dynamics and genetic diversity, two features that are vital components of any wild animal conservation and population management program. The BLM's adoption of strategies that threaten to eliminate the functioning and self-perpetuating herds as healthy entities must be addressed and reversed.

IV. LEGAL FOUNDATION AND POLICY

A. The Wild Free-Roaming Horses and Burros Act

In 1971, Congress announced broad protections for America's wild equids, when it passed the Wild Free-Roaming Horses and Burros Act ("Wild Horse Act" or "the Act"), 16 U.S.C. §§ 1331–1340. Congress found as a federal policy that the animals needed special protection because

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; and that these horses and burros are fast disappearing from the American scene.

16 U.S.C. § 1331.

America's wild horses and burros are true natives of the continent, having roots that were established here millions of years ago.¹ They once roamed the western rangelands of the United States in vast herds. But over time, desirable grazing land was fenced off for privately-owned livestock, while wild equines were slaughtered or captured for other private uses. The herds began to dwindle, and the remaining animals were driven to marginal, inhospitable grazing areas. By 1971, the number of free-roaming wild horses and burros had diminished from an estimated one to two million or more in the late nineteenth century to a number that has been estimated to have been between 17,000 and as many as 26,000 or more.²

Alarmed at the decline of these herds, Congress adopted the Act to protect the wild horses and burros from "capture, branding, harassment, or death." 16 U.S.C. § 1331. According to Congressional findings, they had been cruelly slain, used for target practice and harassed for sport. S. Rep. No. 242, 92d Cong., 1st Sess., *reprinted in* 1971 U.S. CODE CONG. & AD. NEWS 2149, 2149. Congress also found that the wild horses and burros had been exploited by bounty hunters who sold them to slaughterhouses for commercial production. See also Johnston, *The Fight to Save a Memory*, 50 TEXAS L. REV. 1055, 1056–57 (1972).

The historical and symbolic importance of wild horses prompted Congress to enact the Wild Horse Act. Throughout debate over the bill, members of Congress celebrated wild horses as "living symbols of . . . the nobility of freedom,"³ "a symbol of American freedom and

¹ <https://www.livescience.com/9589-surprising-history-america-wild-horses.html> (accessed July 10, 2017). Burros were reportedly crossed the country with early surveyors and pioneers because of burros' lower needs for water and forage and heightened ability to scale rough terrain.

² 92 CONG. REC. 5028 (1971) (statement of Senator Jackson).

³ *Id.*

liberty,”⁴ “synonymous with ultimate freedom,”⁵ “a symbol of the Old West,”⁶ “living reminders of our great Western heritage,”⁷ and “living symbols of the pioneer spirit of the West.”⁸

As a result of wild horses’ historical importance, Congress determined that wild horses and burros deserve to be protected from abuse and exploitation.⁹ Congress found that “harassment, abuse, and wanton killing” and “inhumane commercialization” were responsible for their near extinction.¹⁰ Consequently, Senator Henry M. Jackson introduced the Act to end the “senseless slaughter” of wild equids.¹¹ The Senate Committee on Interior and Insular Affairs intended the Wild Horse Act to “remove the possibility of monetary gain from exploitation of these animals.”¹²

Beyond its concern for the welfare of the animals, Congress was aware of what its failure to act would say about the nation, our societal values, and our appreciation of these animals who had given us so much.¹³ If wild horses were not protected and preserved, we would be rejecting

⁴ *Id.* at 34775 (statement of Congressman Baring).

⁵ *Id.* at 34774 (statement of Congressman Conte).

⁶ *Id.* at 34775 (statement of Congressman Johnson).

⁷ *Id.* at 34779 (statement of Congressman Ryan).

⁸ *Id.* at 34780 (statement of Congressman Anderson).

⁹ *Id.* at 34773 (statement of Congressman Wiggins).

¹⁰ *Id.* at 34772, 44317 (statements of Congressman Wiggins and Baring, respectively).

¹¹ 92 CONG. REC. 5028 (1971) (“It is the purpose of my bill to end this senseless slaughter of the animals which played such a major role in the exploration and settlement of the Great Plains and the Far West with the refuges and sanctuaries they need and to place these animals under the protection of the Secretary of the Interior.”).

¹² SEN. REP. NO. 92-242, at 4 (1971); *id.* at 44536.

¹³ See 92 CONG. REC. 22670 (1971) (“We are dealing with not only the welfare of these animals but with an important part of our history. Boys and girls in our country grow up with tales of pioneers, Indians, and wild horses. This is part of the dream of growing up in America.” (Statement of Senator Jackson)).

the “spirit which has kept them alive and free against almost insurmountable odds”—“the national spirit which led to the growth of our Nation.”¹⁴ The Wild Horse Act serves to “reaffirm[] or restor[e] the faith of our Nation’s young people” that the government was “concerned with protecting our Nation’s wildlife and our national heritage.”¹⁵ Mahatma Gandhi is famous for stating that the greatness of a nation is reflected by the way in which it treats its animals. Congress’s enactment of the Wild Horse Act embodied that sentiment—the way we treat our wild horses and burros will determine how we feel about America’s heritage and future.

The Wild Horse Act further provides, *inter alia*, that viable herds of wild horses and burros should remain on the lands on which they were found at the time the law was passed, “as an integral part of the natural system of the public lands.”¹⁶ That is, barring compelling reasons to the contrary, wild horses are supposed to be, and are entitled to stay in their “herd area”—the “geographic area identified as having been used by a herd as its habitat in 1971.” 43 C.F.R. § 4700.0-5(d).

Congress delegated to the Secretary of Agriculture and the Secretary of the Interior jurisdiction over all wild free-roaming horses and burros “for the purpose of management and protection.” 16 U.S.C. § 1333(a). Section 1333(a) provides that “[t]he [applicable] Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation” *Id.*

The Bureau of Land Management (“BLM”) is charged with implementing the Wild Horse Act for the majority of America’s wild equids, with the Forest Service responsible for wild

¹⁴ SEN. REP. NO. 92-242, at 1 (1971).

¹⁵ 92 CONG. REC. 34774 (1971) (statement of Congressman Seiberling); *see also* 92 CONG. REC. 34781 (1971) (“sav[ing] and protect[ing] the free roaming horses and burros” would reaffirm “the pioneer spirit and the love of freedom that built this great land of ours.” (Statement of Congressman Hogan)).

¹⁶ *Id.*

horses and burros on land under its jurisdiction.¹⁷ The BLM manages a larger area of land than any other federal agency — 264 million acres, which equates to roughly one-eighth of the United States.¹⁸ The BLM’s implementation of the Act has led to the filing of numerous lawsuits, by ranchers as well as by animal advocates. At best, the BLM’s management of wild horses and burros, and its exercise of its authority to do so, is a controversial hot button in all levels of state and federal government -- as well as among animal welfare professionals and the public.¹⁹

Congress requires the agencies involved to preserve and safeguard the horses and burros in a manner that causes the animals the least amount of interference. The Wild Horse Act provides that “[a]ll management activities shall be at the minimal feasible level ... in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species.” 16 U.S.C § 1333(a). Given their historic presence, a *natural* ecological balance logically includes the presence of wild horses and burros, whenever possible, over other commercial interests that were not part of the natural ecology of an area.

The BLM’s own regulations mirror and amplify the statutory requirement that it engage in the least amount of interference with the free-ranging equids that is necessary. The regulations mandate that management of the herds *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. And 16 U.S.C. § 1333(b)(1) requires the BLM to maintain a current inventory of wild horses and burros so that it can

make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of

¹⁷ *Kleppe v. New Mexico*, 426 U.S. 529 (1976) (finding the Wild Horse Act constitutional).

¹⁸ Kristen H. Glover, *Managing Wild Horses on Public Lands: Congressional Action and Agency Response*, 79 N.C. L. REV. 1108, 1109 (2001).

¹⁹ See, e.g., National Research Council of the National Academy of Sciences, “Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward” (“NAS Report”), p. 2 (“BLM is subject to ardent criticism from various stakeholders regarding its approach to management of free-ranging equids.”).

excess animals, or other options (such as sterilization, or natural controls on population levels).

Id. § 1333(b)(1). That is, under section 1333(b)(1), the BLM must make an independent determination regarding whether action *should* be taken to remove excess animals. The term “excess animals” means wild free-roaming horses or burros “which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area.” 16 U.S.C. § 1332(f)(2). So in order to be an “excess” horse or burro, the current state of affairs on the range must establish that the removal of the animal is *necessary* in order to “maintain a thriving natural ecological balance and multiple-use relationship in that area.”

Despite its constant program of removal and relocation of wild equids, BLM’s actual authority to remove them from their herd areas is quite limited. First, BLM must obtain reliable information about the herd, the environment, and the range conditions. Second, an analysis of that data must result in a finding that there is an overpopulation of horses or burros in that herd area. Third, BLM must identify those animals who are “excess.” Finally, and *only* if it is *necessary*, BLM can remove the “excess” horses or burros. *Id.* § 1332(b)(2). The agency can only take animals out of the herd who “*must* be removed.” *Id.* § 1332(f) (emphasis added).

Where BLM has not made a determination that wild horses or burros in a herd are “excess” and it is necessary to remove them, any removal decision is subject to being set aside as being “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”²⁰

The BLM has issued regulations implementing the Wild Horses Act, which require that “[w]ild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.” 43 C.F.R. § 4700.0-6(b). Simply put, the equines must be given at least equal, if not heightened, consideration in the BLM’s determinations as to what is to be done to maintain the wild animals on their home ranges.

Balancing the interests of ranchers and the extraction industry on one hand, and the wild

²⁰ See, e.g., *Colorado Wild Horse and Burro Coalition, Inc. v. Salazar*, 639 F. Supp. 2d 87, 98 (D.D.C. 2009).

equids on the other has been at the core of controversy over the BLM's implementation of the Act. As of 2001, for every wild horse on the BLM lands, one hundred cows were grazing — a statistic that does not comport with the directives of the statute or the regulations.²¹

B. The BLM is Supposed to Prohibit the Sale of Wild Horses and Burros for Slaughter.

The 2004 “Burns Amendment” to the Wild Horse Act — “inserted behind closed doors,” without a single hearing, and in opposition to the will of a majority of legislators²² — permits the sale (as opposed to the adoption or long-term maintenance) of a limited number of “excess” animals.²³ But since April 2005, it has been and remains BLM policy to uphold congressional intent and prohibit the sale of wild horses for slaughter.²⁴ Indeed, following the passage of the Burns Amendment, the BLM began selling wild horses pursuant to its terms.²⁵ While a Wyoming horse protection group purchased the first excess wild horses sold by the BLM in 2005, some of these horses were eventually sold for slaughter.²⁶ Recognizing that most

²¹ See Glover, *supra*, at 1120; see also Kenneth P. Pitt, *The Wild Free-Roaming Horses and Burros Act: A Western Melodrama*, 15 ENVTL. L. 503, 505 (1985).

²² 150 CONG. REC. E2174-03, 2004 WL 2805157 (2004) (speech of Congressman Whitfield).

²³ “Excess animals” are “wild free-roaming horses or burros (1) which have been removed from an area by the Secretary pursuant to applicable law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area.” 16 U.S.C.A. § 1332(f). Only a fraction of excess animals are eligible for sale under the Burns Amendment — those who are “more than 10 years of age” or who have been “offered unsuccessfully for adoption at least 3 times.” 16 U.S.C. § 1333(e)(1).

²⁴ James R. Carroll, *House OKs horse protections*, THE COURIER-JOURNAL, May 20, 2005 (attached hereto as Exh. 3); United States Government Accountability Office, Report to the Chairman, Committee on Natural Resources, House of Representatives, “BUREAU OF LAND MANAGEMENT: Effective Long-Term Options Needed to Manage Unadoptable Wild Horses,” GAO-09-77, at 43 (Oct. 2008) (“GAO Report”) (“To reduce the likelihood that a buyer would purchase these animals and then sell them for slaughter, BLM changed its sales process to require buyers to sign a ‘statement of intent’ that they *do not intend to sell the animals for slaughter.*” (emphasis added)).

²⁵ GAO Report, *supra* n. 24, at 43.

²⁶ *Id.*

Americans oppose the slaughter of wild horses and that the Wild Horse Act was passed to prevent the commercial exploitation and slaughter of wild horses and burros, the BLM has subsequently condemned that practice, and has acted to prevent the recurrence of wild equines being sold for slaughter.

In May 2005, the BLM reaffirmed its intention to prevent wild horses from going to slaughter. At that time, the BLM began requiring purchasers of excess wild horses to agree, in the bill of sale, to not sell wild horses for slaughter. The BLM's sample bill of sale states that "Purchaser agrees not to knowingly sell or transfer ownership of any listed wild horse(s) and/or burro(s) to any person or organization with an intention to resell, trade, or give away the animal(s) for processing into commercial products."²⁷ Any purchaser who misrepresents the intent to sell wild horses for slaughter is subject to criminal prosecution.²⁸

The BLM has also confirmed its policy with action. It enforced its ban on selling wild horses for slaughter in 2011, investigating two purchasers of wild horses in rural Utah — Robert Capson and Dennis Kunz.²⁹ After signing a bill of sale for wild horses with the BLM, Capson and Kunz were caught transporting 64 wild horses to holding pens in Presidio, Texas, the last stop before crossing the border to Mexico, where the horses were to be slaughtered.³⁰ According to a BLM Wild Horse and Burros Program director, the BLM acted quickly to protect the horses because the agency takes the "care and responsibility of these horses very seriously."³¹ Capson

²⁷ BLM Form 4710-23, Bill of Sale for Wild Horse(s) and Burro(s) (May 2005), http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs/wild_horse_and_burro/documents.Par.37342.File.dat/sample_bill_sale.pdf (attached hereto as Exh. zz).

²⁸ *Id.*; 18 U.S.C. § 1001.

²⁹ Steven Long, *Utah Indictments Come Down in BLM Mustang Killer Buyer Case*, HORSEBACK MAGAZINE, Sept. 11, 2011, <http://horsebackmagazine.com/hb/archives/11468>.

³⁰ *Id.*; Indictment, *United States v. Capson and Kunz*, 2:11-cr-00813 (D. Utah, Sept. 14, 2011).

³¹ Alex Cabrero, *2 Utahns indicted for alleged role in horse slaughter operation*, KSL.COM, Sept. 14, 2011, <http://www.ksl.com/?nid=148&sid=17247912>.

and Kunz ultimately pled guilty to the federal criminal charges associated with the sale of horses to slaughter.³²

In another sale-to-slaughter investigation, it was discovered that Tom Davis had sold nearly 1800 horses purchased from the BLM to slaughter. When the news became public, the BLM acknowledged the problem and pledged its adherence to its policy:

The BLM condemns any sale of wild horses for slaughter... [I]t has been (and remains) the policy of the BLM not to sell or send wild horses or burros to slaughter. We take seriously all accusations of the slaughter of wild horses or burros.... Anybody that is found to have violated the 1971 Wild Free-Roaming Horses and Burros Act should be held accountable.³³

BLM also announced its vehement opposition to the sale of wild horses for slaughter on its website. In response to the charge that it sells wild horses to slaughter, BLM responded that it “care[s] deeply about the well-being of wild horses, both on and off the range” and “does not and has not sold or sent horses or burros to slaughter.”³⁴ Further, on its general adoption and sale webpage, BLM states—in bold and italicized font—its policy “not to sell or send any wild horses or burros to slaughter.”³⁵ And at the 2011 “Summit for the Horse” conference, a gathering of

³² Statement by Defendant in Advance of Plea of Guilty, *United States v. Capson and Kunz*, 2:11-cr-00813 DAK-1 (D. Utah, Feb. 15, 2011) (Capson); Statement by Defendant in Advance of Plea of Guilty, *United States v. Capson and Kunz*, 2:11-cr-00813 DAK-2 (D. Utah, Nov. 14, 2011) (Kunz).

³³ See https://www.blm.gov/wo/st/en/prog/whbprogram/history_and_facts/from_the_public.html#davis (last accessed Feb. 8, 2017).

³⁴ “Myths and Facts,” Bureau of Land Management, http://www.blm.gov/wo/st/en/prog/whbprogram/history_and_facts/myths_and_facts.html (last accessed Feb. 9, 2017).

³⁵ “BLM Wild Horse and Burro Adoption and Sales Information,” Bureau of Land Management, http://www.blm.gov/wo/st/en/prog/whbprogram/adoption_program/sales.html (last accessed Feb. 10, 2017).

horse slaughter advocates, guest speaker and BLM Director Bob Abbey reiterated BLM’s anti-slaughter policy, declaring “slaughter is not an option for America’s wild horses.”³⁶

BLM’s conduct, statements, and requirements unequivocally establish that the agency has interpreted the Burns Amendment in such a way that it does no harm to the spirit of the Wild Horse Act – to protect America’s wild horses and burros from commercial slaughter – or to BLM’s continued public and official opposition to and prohibition of the sale of wild horses for slaughter.

C. Contrary to BLM Policy and in Violation of Federal Law, Wild Horses Are Sold for Commercial Slaughter.

1. *Americans Oppose Horse Slaughter for Human Consumption.*

Despite its stated policy against sending wild horses and burros to slaughter, recent history demonstrates that these animals *have gone to slaughter* – well over a thousand if not thousands – in recent years. WHFF is very concerned about this possibility and the current information provided by the BLM – discussed in this document – is wholly inadequate in that regard.

In addition to the federal legal protections provided to wild horses, they are also undisputed icons of America’s past and symbols of the freedom and individualism at the core of American idealism. Descendants of horses who escaped Spanish explorers, as well as from other origins, wild horses roamed the Western frontier before there was a United States of America.³⁷ Wild horses were a permanent and integral part of the landscape during the Nation’s expansion across

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³⁶ “Horse Killer Summit,” <http://wildhorseinvestigationteam.wordpress.com/the-horse-killer-summit/> (last accessed Feb. 15, 2017); *see also* “Prepared Remarks of BLM Director Bob Abbey at ‘Summit of the Horse.’” Bureau of Land Management (Jan. 4, 2011), <http://www.blm.gov/wo/st/en/info/newsroom/extras/summitstatement.print.html> (last accessed Nov. 27, 2012) (“I want to be clear about one thing. Secretary Salazar and I have consistently stated since taking on our current roles that we do not support nor are we willing to incorporate into any wild horse or burro strategy that we pursue . . . the unlimited sale of older horses. . .”).

³⁷ 92 CONG. REC. 34779-80 (1971) (“In the remaining bands of free-roaming horses that still graze our western plains are the descendants of the stock brought to this continent by the first Spanish settlers in the 16th and 17th centuries. Over the years, these hardy animals mixed with the horses owned by the earliest American settlers until today, there remains a conglomeration of mustangs, burros, and several varieties of wild horses.”) (statement of Congressman Wolff).

the continent. We have admired and continue to admire their wildness and herd cultures where they are left alone on the open range.

Just as Americans do not view dogs, cats, or domesticated horses as sources of meat, they do not eat or want others to eat their wild horses.³⁸ The role of horses throughout American history,³⁹ and in contemporary culture, makes their slaughter something that most Americans oppose.

Nevertheless, when some Americans no longer want or are able to care for their horses or when wild horses are captured on public land, the slaughter industry is ready: “killer-buyers” purchase them and send them off to slaughterhouses abroad, if at all possible. Horses are transported to Canada and Mexico, where they are slaughtered and butchered, and their meat eaten or exported to be eaten. In one case, horses were also shipped from the port of Wilmington, Delaware, on a fifteen-day journey, likely without enough food or water, headed to Russia for slaughter.⁴⁰ Horse meat is a common food, even a staple, in many regions, from China and Southeast Asia to Europe.⁴¹ Between 100,000 and 200,000 American horses, from a variety of sources, are slaughtered outside of the United States and end up in restaurants and markets each

³⁸ See, e.g., *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551, 545 (7th Cir. 2007) (“Americans do not eat horse meat. . . .”); see also Terry L. Whiting, *The United States’ prohibition of horse meat for consumption: Is this a good law?*, 48 CANADIAN VET. J. 1173, 1174 (Nov. 2007) (“A commercial market for horse meat as food has never emerged in the USA.”), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2034431/>.

³⁹ Kurt Brungardt, *Gallop Scared*, VANITY FAIR, Nov. 2006, <http://www.vanityfair.com/politics/features/2006/11/wildhorses200611> (“Celebrated in film, literature, and our nation’s history, the mustangs helped Lewis and Clark complete their historic expedition, and during the opening of the frontier, they pulled plows, delivered mail, and carried soldiers in battle.”).

⁴⁰ See <http://www.animalsangels.org/media-news/animals-angels-finds-evidence-us-quarter-horses-exported-lebanese-livestock-vessel> (accessed July 10, 2017). Burros are also regularly sent to slaughter, as the use of their skins increases, with the market needing four to ten million donkeys (burros) each year to meet demand. See https://www.thedonkeysanctuary.org.uk/sites/sanctuary/files/under_the_skin_report.pdf (accessed July 17, 2017).

⁴¹ *Cavel Int'l v. Madigan*, 500 F.3d 551, 552 (7th Cir. 2007).

year, and hundreds of thousands of people eat American horse meat annually.

Because Americans view horses as somewhat totemic or “sacred” animals, horse slaughter for consumption is overwhelmingly unpopular in the United States.⁴² A January 2012 poll confirmed that eighty per cent of Americans strongly oppose horse slaughter.⁴³ The survey found that “Americans oppose horse slaughter overwhelmingly regardless of their gender, political affiliation, whether they live in an urban or rural area, or their geographic location,” or whether they own horses themselves.⁴⁴

Americans oppose horse slaughter and consumption for a variety of reasons. Some attribute this opposition to culture.⁴⁵ Others credit the diametric opposition in principles of eating horses, given their role in American history, from the founding era to westward expansion.⁴⁶ Another factor deterring American consumption of horse meat is the level of cruelty inherent in the slaughter of horses, who are especially frightened and desperate to escape

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⁴² Christa Weil, *We Eat Horses, Don't We?*, NY TIMES, March 5, 2007, www.nytimes.com/2007/03/05/opinion/05weil.html (“Weil”); Josh Ozersky, *The Case for Eating Horse Meat*, TIME (Dec. 28, 2011), <http://ideas.time.com/2011/12/28/the-case-for-eating-horse-meat/>.

⁴³ <http://www.prnewswire.com/news-releases/aspca-research-confirms-americans-strongly-oppose-slaughter-of-horses-for-human-consumption-138494089.html>; see also Press Release, The Humane Society of the United States, USDA Threatened with Suit if Court Order Not Followed Before Horse Slaughter Resumes (Feb. 3, 2012), http://www.humanesociety.org/news/press_releases/2011/11/usda_threatened_02032012.html.

⁴⁴ *Id.*

⁴⁵ Nicholas Day, *They Eat Horses, Don't They?*, CHOW, Nov. 17, 2006, <http://www.chow.com/food-news/53692/they-eat-horses-dont-they/>; Dan Flynn, *Horse Slaughter Issue Won't Go Away*, FOOD SAFETY NEWS, Oct. 25, 2011, <http://www.foodsafetynews.com/2011/10/horse-slaughter-issue-wont-go-away/> (attributing Americans' opposition to eating horse meat to the country's “Cowboy Culture”).

⁴⁶ Brian Palmer, *The Delicious Mr. Ed*, Slate Magazine, Oct. 24, 2011, http://www.slate.com/articles/health_and_science/explainer/2011/10/slaughtering_horses_for_meat_is_banned_in_the_us_why.html.

in slaughterhouses. Yet others do not even attempt to explain their view, simply calling the eating of horse meat “repulsive[.]” and “gross.”⁴⁷

Regardless of the rationale, Americans do not eat horse meat and do not want their wild horses slaughtered and exported for others to eat either.⁴⁸ And it is vital that the federal agency given the important duty of protection over wild horses ensures itself and the public that it is not engaging in the transfer of horses to slaughter.

2. *It Is Indisputable that Wild Horses Are Sold for Slaughter.*

Both proponents and opponents of horse slaughter acknowledge that wild horses are slaughtered for consumption. At the 2011 “Summit for the Horse” conference, Bill desBarres, Executive Director of a Canadian horse advocacy group and consultant for Bouvry Exports, Canada’s largest horse slaughterhouse, acknowledged that BLM wild horses are slaughtered in Canada.⁴⁹ “We do see them in plants in Canada Lots of BLM horses” are slaughtered in Canada, according to desBarres.⁵⁰ More recently, a September 2012 investigation of Mexican horse slaughter plants uncovered, and took photographs of, numerous wild horses with BLM freeze brands being transported from the United States to an Inter Meats plant in Mexico.⁵¹ Even USDA employees admit that wild horses are sometimes exported to Mexico for slaughter. Specifically, USDA veterinarians stationed in Eagle Pass, Texas “sometimes see wild horses bearing the BLM brand in slaughter export pens.”⁵²

⁴⁷ Weil, *supra* Note 42.

⁴⁸ *Id.*

⁴⁹ Horse Killer Summit, *supra* Note 36.

⁵⁰ *Id.*

⁵¹ Investigation of Mexican Horse Slaughter Plants approved for export to the European Union, *Animals’ Angels*, at 2-3, <http://library.constantcontact.com/download/get/file/1101655399670-322/Investigation+at+Mexican+horse+slaughter+plants.pdf> (last accessed Feb. 8, 2017).

⁵² Dave Philipps, “Wild Horses Sold by US Later Ending Up at Slaughterhouses?” (Sept. 29, 2012) (“Philipps Article”), <http://investigations.nbcnews.com/news/2012/09/29/14153296-wild-horses-sold-by-us-later-ending-up-at-slaughterhouses> (last accessed Feb. 15, 2017).

And the BLM is well aware of the nearly 1800 horses who were sold to Tom Davis, who then sold them to slaughter.⁵³ According to the report issued by the Office of Inspector General,

Davis admitted that most of the horses he purchased through [the BLM] ultimately went to slaughter. We determined that the BLM did not follow current law while managing [its Wild Horse and Burro Program.] BLM also failed to follow its own policy of limiting horse sales and ensuring that the horses sold went to good homes and were not slaughtered.

The BLM's conduct with respect to Tom Davis was in direct violation of the federal policy against selling horses to slaughter. It is also in violation of the prohibition on the use of appropriated funds for the destruction of healthy, excess horses.⁵⁴

While the BLM responded to the OIG Report with promises to prevent further instances like that with Davis, the potential for horses being sold to slaughter remains a very real one. In fact, WHFF has uncovered internal BLM documents demonstrating a potential plan to sell thousands of wild horses, probably to end up in slaughter facilities in Canada.

3. *BLM Lacks an Enforcement Regime Sufficient to Prevent the Sale of Wild Horses for Slaughter.*

In connection with its policies discussed above, BLM requires purchasers of excess wild horses to agree not to sell the horses for slaughter. Clearly the agency wants and is motivated to prevent the sale of wild horses for slaughter. But there do not seem to be any effective enforcement mechanisms for this policy. And as illustrated most drastically by the Tom Davis incident – but likely repeating itself on a smaller scale routinely – BLM's *actual enforcement* of its policy is inadequate if not nonexistent. Under current procedures, when BLM sells wild horses, it appears to take no action to ensure that the purchasers use them for the purpose(s) for

⁵³ Office of the Inspector General, "Investigative Report of Bureau of Land Management Wild Horse Buyer", Oct. 23, 2015.

⁵⁴ See *Consolidated and Further Continuing Appropriations Act, 2015*, Pub. L. 113-235, 128 Stat. 2130, 2399 (Dec. 16, 2014) ("Appropriations herein made shall not be available for the destruction of healthy, unadopted, wild horses and burros in the care of the Bureau or its contractors or for the sale of wild horses and burros that results in their destruction for processing into commercial products.")

which they were bought, or even retain ownership of the horses beyond a nominal period of time. Given this lack of safeguards, it is unsurprising that wild horses are sold for slaughter and somewhat surprising that BLM was able to uncover the Utah horse slaughter scheme in 2011.

Unlike *adopted* wild horses, who BLM attempts to track to ensure they are properly cared for and not sold for slaughter,⁵⁵ “excess” horses sold by BLM receive no attention or oversight to ensure their purchasers comply with BLM policy. And because those who adopt wild horses only become owners of the animals after one year of demonstrating humane care, adopters are less likely to purchase wild horses with the intent to sell them for slaughter, as the year of maintenance costs makes adopted wild horses more expensive (if the intent is to send them to commercial slaughter) than other horses who may be bought at auctions. The greater expense and established monitoring associated with the adoption of wild horses, compared to the bargain price and absence of safeguards associated with the direct sale of wild horses, makes the purchase of wild horses an attractive option for killer-buyers and slaughter establishments eager to make a quick profit by selling wild horses for meat.

BLM could take simple, obvious measures to enforce its long-stated policy against the slaughter of wild horses. For example, with domestic horse slaughter effectively outlawed for the immediate future, virtually all slaughter of American horses, including wild horses, occurs in Canada and Mexico. Consequently, all wild horses exported for slaughter are examined by USDA’s Animal and Plant Health Inspection Service (“APHIS”) veterinarians, who must certify their fitness for travel to be slaughtered. But currently, even though these government employees observe wild horses with BLM freeze brands being exported for slaughter,⁵⁶ APHIS “does not monitor whether BLM horses are crossing the border.”⁵⁷ There is no evidence that BLM has asked APHIS to share information regarding these wild horses being sent to slaughter,

⁵⁵ See BLM Manual Handbook 4760-1, Conducting Compliance Checks for BLM’s Wild Horse and Burro Adoption Program (June 17, 2004), http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.48728.File.dat/h4760-1.pdf.

⁵⁶ Philipps Article, *supra* Note 52.

⁵⁷ Horse Killer Summit, *supra* Note 36.

which BLM could use to investigate the horse's purchasers and, upon investigation, enforce its stated policies. BLM's lack of any affirmative protection of wild horses, or active enforcement of its prohibition of the sale of wild horses for slaughter, enables unscrupulous purchasers to violate BLM policy and federal law, and to send American horses and burros to foreign consumers as meat.

4. *Commercial Slaughter Cannot Be Accomplished Without Horrendous Treatment of Wild Horses.*

The BLM is responsible for protecting and preserving wild equines, and any actions it takes which lead to the inhumane treatment of horses and burros under its care result in liability and a violation of law for the agency. If wild horses and burros are ending up in the slaughter pipeline, it is an indisputable fact that they suffer horribly. Not only are horses being slaughtered for food in violation of federal law and BLM policy, but from their acquisition at livestock auctions and other sources to their death at the slaughterhouse, horses destined for consumption are subject to unique and inescapable mistreatment and cruelty. Transportation to a slaughter facility is frightening for most horses but is especially traumatic for wild horses, due to their untamed temperaments.⁵⁸ Because of their innate nature as well as their wildness, the fear they display in response to proximity to people in strange environments, and their resistance to handling and transport, means that wild horses experience extremely high levels of distress and have an exponentially greater risk of injury, during the events leading up to slaughter.

Poor conditions during transportation result in slaughter facilities filled with frightened, food- and water-deprived, sick, and injured horses. Federal law usually requires transported horses to be off-loaded for food and water every twenty-eight hours, but horses are often transported continuously for over thirty hours.⁵⁹ Some horses arrive at slaughterhouses with

⁵⁸ See C.L. Stull, *Response of Horses to Trailer Design, Duration, and Floor Area During Commercial Transportation to Slaughter*, J. ANIM. SCI. 77:2925-2933 (1999), <http://jas.fass.org/content/77/11/2925> ("Horses tend to travel longer distances to slaughter than other livestock, because there is a limited number of equine slaughterhouses.").

⁵⁹ T.H. Friend, *A Review of Recent Research on the Transportation of Horses*, J. ANIM. SCI. 79:E32-E40 (2001), <http://jas.fass.org/content/79/E-Suppl/E32> ("Continuous transport of slaughter horses for 30 hours is common, and some trips last 36 hours or longer.").

their backs broken or with other serious injuries.⁶⁰ And the lack of proper food and water in already weakened horses can lead to further injuries and death during extended transport. According to a 1999 study of sixty horses transported for slaughter, one animal had to be removed from the transport trailer after twelve hours of transport, dying two days later.⁶¹ And eighty-one injuries were identified (with many others likely undiscovered) in the fifty-nine arriving horses on just that one truck.⁶²

At slaughter facilities, horses are often subject to appalling abuse before and during their slaughter, so the mistreatment continues at the end of the transport phase. Many horses are not given hay or water in overnight holding pens.⁶³ Many of the horses in holding pens are, or become, “downers” — non-ambulatory animals too sick or injured to stand up and walk, some of whom may be dragged or pushed into their pens.⁶⁴

Because they frighten more easily than cows, horses — and especially wild horses—are unsuited to be processed at a slaughter plant. As horses are more sensitive to odors than cows, the scent of blood that necessarily exists in the slaughter facility exacerbates their fright. Some horses slip and fall in the tight “stun box” in which they are placed so that they can be rendered

⁶⁰ See 151 CONG. REC. H4247 (finding that horses are “transported in excess of 1,000 miles in the most inhumane conditions perceived”).

⁶¹ Stull, *supra* Note 58, at 2925-33.

⁶² *Id.*

⁶³ See *Pasture to Plate: A Report by the Canadian Horse Defence Coalition on Equine Slaughter*, at 5 (July 2011), <http://canadianhorsedefencecoalition.files.wordpress.com/2011/12/pasture-to-plate.pdf> (“*Pasture to Plate*”).

⁶⁴ See Gary D. Anderson & Don R. Lee, *Salmonella in Horses: A Source of Contamination of Horse Meat in a Packing Plant Under Federal Inspection*, 31 *Applied and Environmental Microbiology* 661 (1975), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC291172/> (“[S]laughter horses have usually been trucked for extensive distances. Many times they are injured or unhealthy, housed poorly, fed and watered improperly, and sometimes held for long times, as much as a week, in dirty confined pens at the slaughter plant.”).

unconscious prior to slaughter.⁶⁵ As a result of their keen perception and subsequent fear, horses are more likely to injure themselves trying to escape the slaughter plant.⁶⁶ Wild horses, of course, generally have had even less exposure to humans, and are therefore even more hypersensitive to the handling necessary in commercial slaughterhouses.

Some horses may even be slaughtered while still conscious. Under federal law, horses must be rendered unconscious prior to slaughter,⁶⁷ but because of their natural agility and flight instinct (undoubtedly heightened in wild horses to avoid predators and capture), many horses are improperly stunned and remain conscious when they are hoisted to have their throats cut.⁶⁸ According to a recent report, almost half of the horses going to slaughter had to be stunned more than once.⁶⁹ The desire to slaughter as many horses as quickly as possible inevitably contributes to the inaccuracy and cruelty of the slaughtering process.

The United States Department of Agriculture (“USDA”) is aware of and has documented appalling cruelty at horse slaughter plants, including gruesome descriptions and photographs of the mistreatment inherent in horse slaughter.⁷⁰ The suffering seems to be an inevitable

⁶⁵ See *Pasture to Plate*, *supra* Note 63, at 4.

⁶⁶ See *id.* at 5.

⁶⁷ See Humane Methods of Slaughter Act, 7 U.S.C. § 1902(a).

⁶⁸ See 151 CONG. REC. S10,220 (daily ed. June 8, 2005) (“[H]orses sometimes remain conscious throughout the slaughter process. . .”).

⁶⁹ *Pasture to Plate*, *supra* Note 63, at 4.

⁷⁰ See, e.g., USDA, Food Safety & Inspection Service, Noncompliance Record No. 0019-2005-8243 (Apr. 13, 2005); see also, e.g., Noncompliance Record Nos. 00 18-2005-8243 (Apr. 4, 2005) (“Nine horses were overcrowded in the alleyway causing undue excitement which was further exacerbated when two more employees from the kill floor began yelling and hitting these horses causing the one in the end of the line to slip and fall.”); 0013-2006-8243 (Oct. 9, 2006) (“horse was down” . . . “in the upper middle compartment of a pot bellied trailer” and “[o]ther horses within the compartment were trampling the downed horse”); 0006-2007-8243 (Jan. 24, 2007) (“two downed horses being trampled upon by the other horses as well as the front horse being kicked with the hind feet from another horse”); Press Release, Animals’ Angels (Nov. 2008), <http://www.kaufmanzoning.net/nov24/pressrelease.pdf>; see also Mary Nash’s Horse

occurrence anytime that horses are slaughtered, as documented recently in Canada.⁷¹ The examples cited in this section, which are only those that were discovered in a small sampling of plants, speak volumes for the absolute terror that transport to slaughter, and slaughterhouses themselves, are for wild horses, and the danger to them and to the public in processing them for meat.

If the BLM is involved in any activity with respect to wild horses and burros, that in any way provides the potential or opens a door for wild horses to go to slaughter, it is actively causing multiple violations of federal law, as well as breaching the spirit and the language of the Wild Horse Act. Because of the strong public policy against slaughter, and the multiple federal laws that confirm that policy, the BLM should be taking every precaution necessary to ensure that each and every wild horse and burro that leaves the range is protected from the possibility of going to slaughter.

V. **DOCUMENTED AREAS OF CONCERN**

A. **Horses and Burros are “Missing” from Long-Term Holding**

WHFF has assembled extensive documentary and percipient witness evidence that the BLM’s reported numbers of horses and burros in many of the long-term holding facilities for America’s wild equids are wildly incorrect. In short, thousands of horses and burros that are supposedly in long-term holding are seemingly not actually in those locations, and not obviously in the control of the BLM or any other government agency or contractor. Somehow, these horses and burros have disappeared. The BLM has a similar set of problems with respect to the [wild horses and burros](#) still left on the range, and this demonstrates its endemic inability to account for the animals under its jurisdiction. As the National Academy of Sciences (“NAS”) group stated in its report, this is a real problem: “[I]mproving the accuracy and quantifying the uncertainty of

Meat Website, <http://www.kaufmanzoning.net/foia.htm> (making available for download USDA documents describing and depicting regulatory violations, mistreatment, and cruelty).

⁷¹ See generally *Pasture to Plate*, *supra* Note 63.

population estimates would allow the BLM to respond with data to criticism about the number of equids that it reports on public lands.”⁷²

WHFF came to, and then repeatedly confirmed, this startling conclusion about the missing horses and burros only after years of collecting documents obtained from the federal government in response to WHFF’s Freedom of Information Act requests. WHFF then validated this documentary evidence with eyewitness affirmation of these disturbing disparities. After compiling and comparing the documentation of equids transported to government facilities, the determination that the equids (mainly horses, but burros as well) were simply not in any government facility became undeniable and indisputable.

The Exhibits to this document lay out an extensive, but not exhaustive, list of the evidence that WHFF has compiled. While much of the evidence comes directly from government documents, it is also the result of extended visual surveys of the long-term holding facilities at issue.

In connection with the documentary evidence, WHFF found multiple circumstances in which truckloads of horses were supposedly on their way to a facility, but then all of the horses on these trucks somehow did not show up at the facility for which they were destined. That is, documents obtained by WHFF have horses going out to a facility, but the number of horses reported at the receiving facility do not reflect increases commensurate with the number of horses shipped. This is evident in multiple circumstances, and the number of horses reported being shipped and received is different to a degree that cannot be explained by any of the documents WHFF has obtained.

This documentary evidence is supplemented by sworn percipient witness testimony. WHFF first obtained maps of all of the long-term facilities. WHFF personnel then drove the public roads that go through and around select long-term holding facilities and did their own careful counts of populations, and the results are significantly different from those reported by

⁷² NAS Report, *supra* Note 19, p. 268.

the BLM.⁷³ After viewing the perimeters and/or driving down roads in the middle of almost half of the facilities, and using comparisons and confirming conclusions with GPS, photographic, and videographic evidence, including GPS overlays of the travel path over the map of the long-term facilities, WHFF has evidence that in some cases less than one-half of the horses supposedly on the grounds of the facilities were actually there.

The disparities are further compounded by a lack of full disclosure – identification and accounting – with respect to newborn horses that are born after wild horses and burros are captured. It is well-known that many mares captured on the range and relocated first to short-term holding facilities and then to long-term maintenance are pregnant when captured. Newborn foals in long-term holding facilities obviously add to the populations and need for care and management, and increase the burdens placed on the BLM with respect to management of the horses. Some of these foals may be born in the short-term holding facilities and be subject to special needs in care and transport. Yet the daily counts of horses at the facilities do not seem to reflect any change in the inventory of the horses, and agency personnel have stated that the BLM often does not include the number of foals in facility inventory reports at various holding facilities.⁷⁴

The pregnancy and foaling issue raises another cogent question for the agency and the public: what is the effect of the gathers on wild mares' pregnancy? There is little data available to the public online regarding nonroutine veterinary care of the gathered horses, and there should be documentation of any problems with pregnancies and other complications from birth, miscarriages and the like. In order to obtain this information, members of the public will usually have to file a Freedom of Information Act request.

The problems described above are well established in the documentation collected and summarized in additional documents included in the Appendix provided with this White Paper. By way of a few examples:

⁷³ See Declarations of Debbie Coffey (Exhibit 1) and R.T. Fitch (Exhibit 2).

⁷⁴ <http://archive.constantcontact.com/fs161/1101655399670/archive/1114323721413.html> (accessed July 5, 2017).

1. WHFF obtained documents supposedly describing all horses and burros captured in the period of 1980-1999. There were 131,559 entries, but on other BLM records, the BLM claims that in this time period, 168,627 equids were captured. With this document alone, some 37,068 wild horses and burros were somehow left out of the BLM's Wild Horse & Burro Program System Database. (Exhibit 3.)⁷⁵

Exhibit 4 consists of the pages 1 and 4 of the U.S. Department of the Interior, Office of Inspector General Investigative Activity Report ("Report"), with respect to the case of Tom Davis, BLM Wild Horse Buyer (Case Number OI-CO-13-0004-1). Davis was of course the individual who bought close to 2000 horses from the BLM and sold them to slaughter.

Although the names in Exhibit 4 are redacted, it is clear that this report is based on an interview with Joan Guilfoyle, then Division Chief of BLM's Wild Horse & Burro Program.

On page 4, the Report states "(redacted name) recognized that WHB's database, WHBPS, was another issue that needed addressed [sic] within the adoption and sales programs. As background, WHBPS database is used to track wild horses that have been freeze marked, adopted and/or sold. While (redacted name) was able to access WHBPS to conduct limited queries, BLM employee (redacted name) controlled all rights to the system. The system, in (redacted name's) opinion, was unreliable and problematic since different results could be obtained for the same query. She argued that WHB needed a reliable system, capable of providing accurate numbers that WHB could use and stand behind...."

⁷⁵ The Declaration of Debbie Coffey (Exhibit 1) provides authentication of all nonpublic documents submitted with this White Paper.

2. Exhibit 5 includes Government Bill of Lading # H-529568, which shows that Ourada Truck Line Inc. was paid to haul 35 horses from BLM's facility in Elm Creek, Nebraska, to the BLM facility in Piney Woods, Mississippi, with a delivery date of November 18, 2013. However, documents obtained by WHFF show that only *seven* – not 35 – horses arrived at the Piney Woods facility on November 18 (and the next shipment was not until December).

3. Exhibit 6: Government Bill of Lading D-4108131 shows that Ourada Truck Line, Inc. was paid to haul one truck of approximately 32 horses from BLM's Elm Creek, Nebraska facility to BLM's Piney Woods, Mississippi facility, and that horses were picked up on Dec. 19, 2012, and delivered on December 21, 2012. But on December 21, Piney Woods only received *nine* – not 32 – horses.

4. Exhibit 7: BLM shipping records show 132 geldings (4 loads) were to be shipped to Teterville East LTH, with the receiving date for 66 geldings (2 loads) on 9/12/13 and the receiving date for the other 66 geldings (2 loads) as 9/14/13. However, BLM shipping records show 132 geldings were shipped to Teterville East, but the Teterville East invoice indicated only 112 arrived.

5. Exhibit 8 demonstrates the kind of inaccurate, unexplainable accounting that seems to randomly have horses and burros in the inventories moving in and out of the holding facilities. The documents contained in this Exhibit show wildly disparate numbers for the same facility in a short period of time. According to the inventory at the Piney Woods facility, there were 160 equids on site on January 31, 2011, and 101 equids a month later, on February 28, 2011. But based on the records of equids coming and going out of Piney Woods in that same time period, there should have been *136* – not *101* – equids at the facility on February 28. Somehow 35 equids – at least – remain

unaccounted for. Then again four months later, the inventories claim that on May 2 there were 107 equids, and on May 30, there were 113. But reviewing the attached documents demonstrates a total increase in numbers of equids bringing the total to 157 – *not 113*. Bottom line, with numbers this far apart though, the truth is that no one can really tell what the inventory was at any point in time. The numbers are completely unreliable, given these few examples of identified disparities.

6. WHFF obtained two different sets of documents with records of deaths of horses at Gunnison Prison during the same time period. In fourteen months of reporting, the documents only were in accord – having the same numbers for identical events -- on *one of the fourteen months*. In other words, the accounting with respect to the number of horses at Gunnison Prison was able to be validated less than ten percent of the time, over that entire period. *See Exhibit 9.*

7. The BLM had a contract with a rendering plant, Nevada By-Products (d/b/a Reno Rendering), to process the dead horses and burros from the BLM's Palomino Valley Center Holding Facility in Sparks, NV. During the time period of January 1, 2010 through May 31, 2012, Palomino Valley Mortality Detail Reports reported that 241 horses and burros died at the Palomino Valley Center facility, and 50 died at the Indian Lakes Road facility in Fallon, NV. (Exhibit 10.) A [large number of foals and colts](#) were included in the rendering plant invoices that obviously died at the Sparks facility also, with 64 colts dying at Palomino in March 2011 alone -- though these were not officially reported, pursuant to BLM policy. *See Exhibit 11.*

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8. Another area of concern in which inconsistent reporting has been identified and not explained focuses on horses and burros who die at holding facilities. This is obviously an area that the BLM should be

keeping careful track of, in order to evaluate the reasons for in-facility deaths and to work to ensure that potential harms to horses and burros in long-term holding are reduced as much as possible. Yet it is an area in which the BLM's recordkeeping is sadly lacking in accuracy.

WHFF has obtained copies of contracts between the BLM and private contractors for long-term holding facilities, also known as "Off Range Pastures." Most of those contracts require, on each monthly invoice submitted by the contractor, that each equine death "be recorded by the freemark and/or description of the animal, [and the] date the animal was noted as dead." WHFF has also obtained corresponding invoices that indicate horse deaths -- but *do not* include the freemark number or description of the dead animal that was supposed to be submitted on each month's invoice.

Examples of this seemingly systemic problem, where invoices indicated dead horses do not include the freemark numbers or descriptions of the animal, include:

- (a) Drummond Land & Cattle Co. for February 2014 (see Exhibit 12, pp. 1 (list of dead horses), 2 (first page of contract), 3 (including contractual provision requiring reporting of freemark, and/or description of dead horses, as well as date noted as dead));
- (b) Cross Bell Equine Services LLC for February 2013 (see Exhibit 12, pp. 4 (list of dead horses), 5 (first page of contract), 6 (including contractual provision requiring reporting of freemark, and/or description of dead horses, as well as date noted as dead));
- (c) Grand Eagle Summit for March 2014 (see Exhibit 12, pp. 7 (list of dead horses), 8 (first page of contract), 9 (including

contractual provision requiring reporting of freemark, and/or description of dead horses, as well as date noted as dead),

(d) F. Ford Drummond for January 2015 (see Exhibit 12, pp. 10 (list of dead horses), 11 (first page of contract), 12 (including contractual provision requiring reporting of freemark, and/or description of dead horses, as well as date noted as dead),

(e) Hughes Cattle Company LLC for March 2015 (see Exhibit 13, pp. 11 (list of dead horses), 14 (first page of contract), 15 (including contractual provision requiring reporting of freemark, and/or description of dead horses, as well as date noted as dead); and

(f) Shadow 7, LLC for April 2013, 2015 (see Exhibit 12, pp. 16 (list of dead horses), 17 (first page of contract), 18 (including contractual provision requiring reporting of freemark, and/or description of dead horses, as well as date noted as dead).

In an invoice submitted by Tadpole Cattle Co. there were 36 deaths in November 2010, and another 45 deaths the following month, in December 2010 (81 deaths in two months). The public is left to wonder what caused so many deaths in a short period of time, because the BLM doesn't demand greater accountability from the contractor in its contracts. (See Exhibit 12, pp. 19-21.)

10. As another example of the obfuscation of facts related to the wild horse and burro program, the BLM's bait/water trapping program provides little or no transparency or accountability, so that the public, and the BLM, are unable to account for or track the horses who are captured under that program. Under the applicable contracts, the public is prohibited from viewing the capture pens where the wild horses or burros are trapped. The public may only be allowed to view the

captured horses at a subsequent holding area, the “staging area,” by appointment.⁷⁶

11. WHFF was especially alarmed by the absence on the BLM’s database of large percentages of horses who had supposedly been gathered. For example, in connection with FOIA 2013-00557, the BLM Colorado Records Administrator provided a list of all horses that were bait/water trapped from October 1, 2012 through May 20, 2015. (Exhibit 14.) WHFF selected 100 random freemark numbers (used to identify each horse) on this list, and compared it to a BLM database provided in FOIA 2015-00593, which supposedly included every wild horse and burro captured from January 1, 2000 until May 13, 2015. Of the 100 freemark numbers, 74 were not on the BLM database. Exhibit 15 provides a list of those freemark numbers that referred to horses gathered in a bait/water trapping but that are *not found on the BLM database*. If a random sampling demonstrates such an incredible disparity, there can be no question that the BLM’s records are completely unreliable. And it is completely unclear where all those horses have gone.

This problem is also evident with respect to bait trapping contractor Horse Trappers, LLC, which sent three invoices billing for 200 horses that were captured at Murderers Creek. (See Exhibit 16.) However, BLM’s records only indicate receipt of 157 horses from Murderers Creek in the relevant time period. (See Exhibit 17.) WHFF has found no explanation for the 43 missing horses.

This evidence and discussion in this section raises several areas of concern, including (1) the potential for fraud (where more horses are claimed to have been shipped or cared for than actually were), (2) the falsification of government documents, and (3) breaches of the contractual

⁷⁶ See Exhibit 13, “L12PC00123- Pricing – Statement of Work- Clauses- Horse Trappers,” p. 9.

agreements between the BLM and its contractors (trucking companies and/or the entities that operate the long-term holding facilities), which is discussed in the next Section. And as alluded to previously, the biggest question is – if the horses are not where they are supposed to be – where are they?

Another area of identified concern is BLM’s lack of compliance with its obligations to ensure the proper, safe and humane adoption of wild horses to individuals who obtain horses through Private Maintenance and Care Agreements (PMACA) from BLM.⁷⁷ If adoptions are not properly monitored, it is possible that wild horses could be improperly used in exploitative demonstrations such as rodeos, or be funneled into auctions where they are sold for slaughter.

Under the PMACA program, the horses remain the property of the BLM unless and until adopters apply for title to the horses they have obtained from the BLM. Adopters are entitled to seek all rights of ownership after they have had the horses for one year.⁷⁸ From the records received and reviewed by WHFF, some adopters never seek to have title transferred, and the BLM does not do regular follow up on the adopted horses. In such cases, the BLM may lose track of the horses, and they may be used in ways prohibited by federal law.

The number of horses that are, or are not, in long-term holding, dictate another aspect of the BLM’s Wild Horse and Burro Program that raises a point of major interest and deep concern for the public, Congress, and the federal budget. That is, the federal budget allocation in 2015 for the Program was \$80 million, with 65 percent of that used for off-range holding of captured wild horses.⁷⁹ Therefore, the questions raised regarding how many wild equids are actually in long-term and short-term holding are also questions about how much money the BLM should be receiving to manage the Wild Horse and Burro Program overall, and the long-term and short-term holding facilities in particular. This potential for millions of dollars being allocated, when

⁷⁷ See generally 43 C.F.R. § 4750 *et seq.*

⁷⁸ See generally 43 C.F.R. § 4750.5.

⁷⁹ Department of the Interior, Office of the Inspector General, “The Bureau of Land Management’s Wild Horse and Burro Program Is Not Maximizing Efficiencies or Complying With Federal Regulations,” Report No.: 2016-WR-027 (October 2016) (“OIG 2016 Report”), p. 1.

they are not needed, presents a further compelling basis for a more detailed and complete explanation of where the horses and burros really are.

Whether it is the BLM, or its contractors, or both, who are generating these inaccurate reports, the result is the same. The public is unable to ascertain with any certainty where the wild horses and burros are going after the gathers. Nor can the public tell where they are actually going when they are supposedly being shipped to long-term holding facilities. And the federal government may be paying out thousands, if not millions, of dollars for horses who are not under federal control.

These troubling facts, combined with an ongoing lack of transparency by the agency, raises a specter of potential concern that puts into question the location and welfare of thousands of wild horses and burros for which the BLM bears primary responsibility. What the National Academy of Sciences group said in 2013 remains clear: "Making the data that it collects available to the public would also be an opportunity to increase public confidence that BLM could explore."⁸⁰ The time to make the data available and explain it is now.

B. The BLM's Contract-Monitoring Procedures Are Inadequate, Allow Illegal Activity, and Provide Little or No Enforcement of Contractual Breaches

The unanswered questions raised above regarding the actual number of horses in long term holding facilities, and about the location and disposition of all the horses removed from the range, demonstrate a compelling need for the BLM to become more transparent and exhaustive in its reporting. But many of the problems can also be attributed to a systemic underlying problem – the agency's inability and lack of diligence in monitoring its contracting partners and subcontractors who are actually in possession of the captured wild horses. Because of the BLM's lack of oversight, and its lack of enforcement of its own contractual terms and the laws governing agreements with the federal government, violations of both the agreements and of federal law are commonplace. Worse, because of the myriad agreements and the lack of enforcement or adequate monitoring, the system promotes abuse and denies the BLM, the public, and the horses the guarantees they deserve.

⁸⁰ NAS Report, *supra* Note 19, p. 268.

And within the last year, despite multiple criticisms and identification of these types of problems in the past, the federal government in its oversight capacity has once again established that the BLM is continuing to violate federal law, despite plenty of notice and warning. The title of the October 2016 report by the Office of the Inspector General, Department of the Interior (OIG) says it all: “The Bureau of Land Management’s Wild Horse and Burro Program Is Not Maximizing Efficiencies or Complying With Federal Regulations.”⁸¹

The most obvious breach of the agreements between the contractors running the holding facilities and the BLM are the inaccurate reporting of the numbers of horses. Each agreement requires accurate reporting of the numbers of horses being held by these facilities, and the evidence presented in connection with Section V.A. makes it clear that the contractors are not meeting their obligations in that regard, and the BLM is not requiring compliance with the contracts. Given the ease of technology to allow adequate reporting, standardized electronic forms should be used by all contractors, with photographic or videographic documentation of exceptional circumstances. This would ensure up-to-date, accurate, systematized documentation that can both streamline the processes and vastly improve recordkeeping capabilities.

One area of especial concern is the lack of reporting of animals who die in long-term and short-term holding. This is an important set of data for both the BLM and the public to evaluate the quality and effectiveness of the work being done by the contracting facilities. And if information about animal deaths is missing or unreported, the potential implication that the horses have been subjected to conditions or treatment that have resulted in unnecessary and suspicious deaths is raised for all involved. Moreover, if the data regarding animal deaths is adequately recorded and reported, it would be an important tool in the evaluation process going forward. Such information can lead to further evaluations of the conditions of confinement, the health of the animals (both long and short term), and the methods and means of improving the situation for all involved.

⁸¹ Department of the Interior, Office of the Inspector General, “The Bureau of Land Management’s Wild Horse and Burro Program Is Not Maximizing Efficiencies or Complying With Federal Regulations,” Report No.: 2016-WR-027 (October 2016) (“OIG 2016 Report”), p. 1.

One notable example that did pierce the veil of secrecy around contracting compliance in long-term holding facilities was the OIG's 2013 audit of the BLM's cooperative agreement with Utah Correctional Industries ("UCI"), in which UCI agreed to maintain wild horses in a long-term facility. That agreement, the OIG found, was entered into illegally and involved the overpayment of significant funds to UCI, which was having prisoners care for the horses. The OIG audit found that, rather than complying with the law by paying for the specific and identified costs of caring for the horses, the BLM was paying UCI a specified rate that surely exceeded the actual costs – in direct violation of federal contracting law.⁸² Additionally, the OIG 2013 audit noted that the BLM should have entered into a standard contract, and not a cooperative agreement, in order to comply with federal contracting laws. The OIG found the same illegal situation occurring at the Carson City prison, "resulting in inaccurate or inflated claims for reimbursement and allowing for potential profits, which are not allowed under a cooperative agreement."⁸³ And the Carson City institution even had an additional illegal option for profits, under a fee-for-training provision.

While the BLM has since transitioned some correctional institutions to contracts, and not cooperative agreements, this was of course only done as a result of the OIG study, despite the longstanding and obvious violation of federal law. And the BLM's willingness to ignore the law was again exposed recently, when OIG's 2016 Report identified continuing problems, including that the BLM had reported conditions that would "make it difficult to transition the remainder of the existing cooperative agreements for correctional institutions that provide holding services to contracts" – despite the fact that cooperative agreements continue to be in violation of federal law.⁸⁴

The problems noted with contractual noncompliance are greatly compounded by a lack of consistent enforcement, or regularly scheduled review for enforcement, of contractual violations.

⁸² Department of the Interior, Office of the Inspector General, "Financial Audit", Report No. WR-CA-BLM-0013-2013) ("OIG 2013 Report").

⁸³ OIG 2016 Report, *supra* Note 80, p. 5 (summarizing OIG 2013 Report).

⁸⁴ *Id.*

Rather, the notion of enforcement seems to be one that exists only on paper and in principle, with virtually no actual or active review of the contractors. As one relatively simple fix to the multiple problems facing the BLM, increased oversight and attention to contractors' compliance would certainly be a step in the right direction to provide the BLM and the public with information regarding how contractors are dealing with the contractual terms, and the extent to which the contracts comply with federal law.

C. **The BLM's Population Estimates for Wild Horses and Burros On the Range Are Scientifically Implausible, So That All Decisions Relving On Those Estimates are Inherently Flawed**

As has been reported by the OIG, the growth rate of wild horse populations across America has been estimated to range from a low of five percent annually to a high of twenty percent annually.⁸⁵ Yet WHFF has identified multiple instances where the BLM's growth estimates and population increases on specific HMAs is biologically impossible and scientifically absurd. The BLM has reported, on more than one occasion, statistics that would establish a *750 to 1250 percent increase* in population over the course of a year. This is not feasible or possible under the absolute best circumstances, and demonstrates once more the unreliability of the BLM's records.⁸⁶

This inaccurate – indeed, impossible – factual reporting must be understood for the damage it does, on multiple levels, and for the legal violations it admits. First, the BLM presents its budget to Congress, and takes money from the public fisc, based on its population estimates and the correlated growth rates. Inaccurate representations of number of wild horses translate directly into unfounded and improper requests for funding in the budget. Besides the obvious implications of obtaining funds that are not needed, this inflation of population estimates

⁸⁵ See generally NAS Report, *supra* Note 19, pp. 48-56; OIG 2016 Report, p. 1 (“The on-range wild horse and burro population currently grows at a rate of 18 to 20 percent annually.”).

⁸⁶ With respect to burros, the National of Academy of Sciences noted that “little is known about the demography of free-ranging burros in the western United States. Because key aspects of burro life-history characteristics and their ecological niche differ from those of horses, this committee recommends separate studies on burro population growth rates.” NAS Report, *supra* Note 19, p. 49.

compounds the perceived problem with the Wild Horse and Burro Program that has been repeatedly addressed by the public and federal oversight groups.

Second, the inaccurate reports about on-range populations then lead to support for increasing the number of wild horses and burros that will be taken from their Herd Management Areas. This directly impacts wild equids who should actually be allowed to remain on the range. And in doing so, it also creates an indisputable violation of the Wild Horse Act's directive that wild horses and burros be managed at the minimal feasible level, and that only truly "excess" horses be removed. If the population numbers were as incredible as those presented here – but they clearly are not – the entire system is broken in this respect.

Third, and most relevant to the concerns raised in this document regarding the long-term holding facilities, the BLM's wildly off-the-mark numbers contribute to the glut of horses being sent to those holding facilities, as well as the animals who seem to be disappearing from the actual population everywhere.

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A contributing factor to the problems discussed in this section is the BLM's unscientific and outdated calculation of a foundational figure in wild equid management – the Appropriate Management Level, or AML. The BLM sets the AML for each Herd Management Area and uses it as a basis to help it determine how many horses it can justify removing from a given area. Obviously, if the AML – the foundational data point -- is wrong, then so is everything that follows that relies on that estimate. The BLM's decision with respect to how many horses should be captured will also be wrong, and this will lead to all of the same issues and problems discussed in this section, related to the inaccurate population growth rates. Nothing has changed in this regard, with respect to AMLs, since the NAS issued its study which concluded that "[h]ow AMLs are established, monitored, and adjusted is not transparent to stakeholders, supported by scientific information, or amenable to adaptation with new information and environmental and social change."⁸⁷ The NAS stated that it was "necessary [for the BLM] to develop and maintain standards for transparency, quality, and equity in AML establishment, adjustment, and monitoring," and that the process of AML determination needed to be

⁸⁷ NAS Report, *supra* Note 19, p. 11.

“adaptable” to changing conditions.⁸⁸ With many AMLs a decade or two old, that is clearly not the case, and it is ripe for positive change.

All of these cited problems are caused in part at the inception, when the BLM’s population and growth estimates are so radically inaccurate and unscientific. This was a key finding of the NAS report, that the BLM’s management was not based on “rigorous population monitoring procedures”, and that the population estimates from the BLM “cannot be considered scientifically rigorous.”⁸⁹ “Data and methods used to inform decisions must be scientifically defensible.”⁹⁰ Currently, the BLM clearly does not meet these minimum standards. In order to fix this broken part of the system, the BLM needs to increase all AMLs to allow for viable herd levels of a *minimum* of 150-200 animals, with at least fifty breeding age adults. And it needs to monitor and correct its errors involving population growth estimates.

D. The BLM’s Gather Protocol Threatens the Health of the Herds in Violation of the Wild Horse Act

1. *Zeroing Out Herd Management Areas Violates the Policies of the Wild Horse Act.*

A final area of documented concern is the BLM’s repeated removal of horses and burros from Herd Management Areas in ways that directly and negatively impact the herds’ abilities to maintain a healthy genetic pool so that the populations on the range can survive.

The BLM has engaged in two types of wild horse capture and removals that both lead to the same unacceptable end – the elimination of horses and burros in an area where they were living at the time of the adoption of the Wild Horse Act. It is unequivocal that the BLM is required to “manage” the wild herds. However, the BLM’s skewed idea of management includes, in some cases, the removal of all equines from certain areas in some cases.

⁸⁸ *Id.*

⁸⁹ *Id.* at pp. 3-5.

⁹⁰ *Id.* at p. 11.

In the first method, the BLM, time and again, has threatened removal of *all* wild horses and burros in a herd. And in other cases, the BLM “manages” the herds to numbers well below the minimum amount necessary to maintain a healthy population (whether that is characterized as AML or carrying capacity or maximum sustainable population), effectively dooming the herd to eventual elimination. In fact, even the BLM’s conservation biologists and scientists agree that the herd sizes forced by the BLM are smaller than the minimal size necessary to maintain a thriving population. Gus Cothran, a geneticist used by the agency for decades, has consistently stated that wild horse and burro herds need a *minimum* of 150-200 members, with at least 50 breeding age adult animals, in order to sustain genetic diversity in the herd and maintain a viable population. But the BLM, much more often than not, drops below those minimal numbers. ↓

Deleted: It seems that the BLM has also not given Dr. Cothran vital information on sex ratio skewing and fertility control on herds, which may have resulted in skewed conclusions of Cothran’s analyses and recommendations.

Congress enacted the Wild Horse Act to “extend federal protection to wild horses and empower BLM to manage horses roaming public lands as part of the Agency’s management of the public lands.” *Am. Horse Prot. Ass’n v. Watt*, 694 F.2d 1310, 1311-12 (D.C. Cir. 1982). In removing all wild horses and burros from any Herd Management Area, or reducing them to sizes that will endanger their future, BLM is also disregarding its obligations to protect and minimally manage these wild animals on public lands.⁹¹

The Wild Horse Act’s core legislative intent includes the preservation of the natural state of the herds where they were found in 1971, when the Act became law. This mandate is violated if a herd population is zeroed out or reduced to a number that is genetically infeasible. By such actions, BLM is violating mandatory activities under the Wild Horse Act. It is *not* (1) managing wild horses where they were found in 1971, (2) promoting a “thriving natural ecological balance”, (3) treating wild horses as an integral part of the natural system of public lands, or (4) providing them with the federal protection to which they are entitled under the Act.

⁹¹ Even if such a drastic agency action could be supported under the Wild Horse Act, herd elimination cannot be undertaken without complete study and disclosure of how such an action may significantly impact the herd and the broader natural and human environment. The cumulative effects of an action as drastic as complete removal must be carefully examined under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

In either of the scenarios at issue – total removal of the herd or diminution below accepted genetic viability levels – there are eventually no equids in areas where there once were [wild](#) horses and/or burros. In both cases, there are no more animals to manage – a requirement under the law. BLM cannot, as a matter of law, “manage” horses and burros that are not there. And in eliminating the animals it is required to manage, it is violating the Wild Horse Act. If a supervisor at the BLM was directed to manage a particular office, and she was paid for the “management” of personnel, she obviously could not terminate everyone in the office, since there would be no more employees to “manage”. What the BLM is doing with the herds that it is eliminating, or that it is dooming to genetic failure, will cause exactly that result.

These activities also flagrantly conflict with the agency’s obligation to take a somewhat hands-off approach in its efforts and to manage herds “at the minimum feasible level.” 16 U.S.C. § 1333(a). The BLM has an obligation “to protect, maintain, and control viable, healthy [wild horse and burro] herds while retaining their free-roaming nature.” 43 C.F.R. § 4700.0-6(c) (BLM must manage “with the goal of maintaining free-roaming behavior.”). This obligation is certainly violated if BLM foregoes all management practices short of eliminating the herd from public lands. Efforts need to be made, as directed by the Wild Horse Act, to “preserve” and “protect” these herds, not to endanger them – and certainly not to get rid of them. Indeed, as one federal district court has succinctly stated, “[i]t is difficult to think of a ‘management activity’ that is farther from a ‘minimal feasible level’ than removal.”⁹²

And in both scenarios mentioned above, neither is there any “thriving natural ecological balance” – another requirement under the law. In fact, the BLM is creating the very opposite of a thriving, natural, or ecological, balance. In moving towards a zeroed out, or a nonproductive, population of equids, the BLM is forcing the wild horses and burros to dwindle and die out – the exact opposite of “thriving.” And it is removing wild equids from the landscape where they have been for all this time – the very other end of the spectrum from “natural.” Both results are in direct conflict with the Wild Horse Act’s premise, its promise, and its clear language. The BLM, through their routine practice, is creating a dying, unnatural, unecological tragedy on lands that have been reserved by Congress for wild equids. So this conduct is in violation of the Wild

⁹² *Colo. Wild Horse and Burro Coalition, Inc. v. Salazar*, 639 F.Supp.2d 87, 96 (D.D.C. 2009).

Horse Act's mandate, as well as being in direct contravention of the BLM's own regulations that require the agency to treat wild horses and burros as "self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat." 43 C.F.R. § 4700.6.

These ongoing violations of the BLM's mandate are direct results of the BLM's two cited practices – actually eliminating all horses from certain Herd Management Areas, and reducing the herds below the level of viability. And the fact of this practice is clear – despite the BLM's expert's position that 150 to 200 individuals are needed for a healthy population, the statistics are astounding. In fact, there are over 150 individuals in only 27 of the 148 wild horse herd management areas across the country; and there are over 150 burros in *only three* of the 30 documented burro herds. So according to the BLM's own scientist of more than two decades, most of the herds the BLM manages are on the road to grave genetic danger, impairment, and potential extinction.

2. *Eliminating Entire Herds Also Violates the Multiple Use Principles That BLM is Required to Employ.*

BLM also has a mandate under the Federal Land Policy and Management Act of 1976 (P.L. 94-579) ("FLPMA") to manage land resources for multiple uses. Management for "multiple use" has an extensive definition in the Department of Interior's federal regulations. In short, "[m]ultiple use means 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 needs of the American people." 43 C.F.R. § 1601.0-5. And careful consideration must be given to the "relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." *Id.*

In accordance with the regulatory mandate for "multiple use" management, the National Academy of Sciences studied BLM's management approach and issued a formal recommendation that BLM consider an "adaptive management framework" for wild horses and burros, which calls for management actions that are responsive to the mandates to the agency and

the needs of the resources it is required to protect.⁹³ The agency has not satisfied the multiple use mandate and adaptive management framework with respect to the Wild Horse Act, as BLM has persisted in a static management approach that for years has been determined to eliminate all wild horses and burros from these federally protected lands, regardless of population health conditions or the contributory impacts from livestock and other wildlife present in the herd area.

BLM's *modus operandi* to slowly eliminate wild horse herds is in direct conflict with its express statutory mandates under either the Wild Horse Act or FLPMA; and it is also in conflict with the congressional intent behind the Wild Horse Act. It is time to revisit these policies, and develop new practices that will embody the sentiments of Congress and the American people, and adequately manage the herd populations.

CONCLUSION

As recently as last October, the Department of the Interior's Office of the Inspector General concluded that the "BLM does not have a strategic plan in place to manage the wild horse and burro populations. . . A long term strategic plan is necessary to sustain land health, animal populations, and affordability."⁹⁴ And that plan must include sufficient transparency so that the public can see the changes that have been made in the BLM's practices with respect to wild horses and burros. What the NAS said in 2013 is just as true today: "[T]ransparency is an important contributor to the development of trust between agencies and stakeholders."⁹⁵ WHFF urges the agency to enter into a new phase of wild horse management that brings an open approach to the BLM's important work. In that regard, WHFF offers its expertise and assistance to the BLM in doing so, and encourages an open and productive dialogue with respect to the future of America's wild horses and burros.

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⁹³ NAS Report, *supra* Note 19, p. 250.

⁹⁴ OIG 2016 Report, *supra* Note 80, p. 6.

⁹⁵ NAS Report, *supra* Note 19, p. 13.