Apache-Sitgreaves National Forests
Black Mesa Ranger District
P.O. Box 640
Springerville, AZ 85938

Attn: Heber Wild Horse Territory Objection Coordinator

October 10, 2025

To Whom it May Concern:

The Central Oregon Wild Horse Coalition sincerely appreciates this opportunity to offer input into management decisions regarding the Heber Wild Horse Herd.

While this aspect of the public involvement process may be designed to facilitate further conversation between the Forest Service and public concerning narrowly described "issues", we would hope that the time elapsed since the "Comment" phase in 2021; recent case law; and updates to NEPA guidance might widen the scope of issue resolution.

In general, the Forest Service has failed in its most paramount responsibility, especially as required under the 2007 Stipulation Agreement; to craft a Heber Wild Horse Territory Plan that is a responsive antithesis to the Apache-Sitgreaves National Forests' (ASNFs) then-demonstrably inhumane, if not hostile, intentions toward the Wild Free-Roaming Horses and Burros Act (WFRHBA) and the horses themselves. The Final EA does not satisfactorily address the concerns expressed by the public which would ensure the horses' future, in accordance with law and informed policy which respects the wild horses' right to exist in safety and with sustainably adequate resources. In short, although there are platitudes offered which appear favorable to the horses, the structure of the management plan does not provide a framework for substantive change.

We will attempt to color within the lines here, and will format our Objections according to the generalized Forest Service Responses to Comments, and in the order presented in the Final EA:

<u>Topic 1. Genetic Diversity and Viability</u>

Although our Comments provided fundamental information regarding genetic viability, we reiterate here that the proposed action does nothing to assure the genetic health of the Heber Wild Horse Herd nor does it attempt to establish a genetic profile which could help identify the "Heber Horse" when it becomes necessary to differentiate Federally-protected horses from private or abandoned stock.

As other commenters have stated, first, monitoring genetic diversity during roundups is too late. And, it isn't helpful in terms of measuring the true level of real-time diversity. The stated purpose of gathering Heber Wild Horses is to *remove excess horses*; a basic tenet of conservation biology is that sudden reduction of a large population into a small population will result in a loss of diversity. While diversity can be managed by testing individuals and retaining those with greatest diversity, there is no indication the ASNFs intend to do so; captured horses will be long removed to parts unknown before any such study would yield usable information. Too, though we generally prefer "passive" gather methods, bait

trapping will most often reflect the diversity values of closely-related family bands, which are not necessarily representative of variability across the Herd. Finally, genetic testing is not “real time”. It is a metric of past generations, whether natural or human-influenced. For example, if “translocation” (importation of individuals from outside herds) is employed, it will take several generations to reveal the success or failure of that action.

Commenters were right to call attention to the currently-accepted minimum population size (at least 50 breeding adults) which is compromised in the proposed action’s AML of 50-104. Further, we do not find any assurance that the **AML excludes current-year foals**, as is prescribed in BLM policy but is tacitly rejected by some Forest Service units. Additionally, a herd restricted to cow pastures where internal gates *may* be opened – outside much of the primary wild horse breeding season – is not likely to reap benefits from the entire herd’s DNA.

Predictably, the ASNFs’ solution to low diversity values is to “Introduce one to three young horses from outside the area…” As we stated in our Comments, this quick-fix so commonly accepted across BLM and Forest Service jurisdictions, is blindly embraced. Particularly true regarding the Heber Territory, the receiving herd must be somewhat related to the donor herd. But in the instance of the Heber horses, the right “Fixation Index” may be unavailable except from nearby Tribal horses; which are neither BLM or Forest Service-managed and are therefore not candidates for translocation. The wild horses now identified as lawful residents of the Heber Wild Horse Territory must be extensively sampled in order to arrive at a baseline genotype representative of the entire herd, and then must be compared to donor herds meeting standards for compatibility: appropriate Fixation Index values; similar phenotype; adequate diversity values in donor herd; and similar habitats. It must also be acknowledged that the Fixation Index shown in the 2013 NAS Report, Appendix F, is suspect as being skewed toward the notion of all wild horses being part of a “metapopulation”, whereas we have found that the determination of Fixation Index is a process of many variables which can be manipulated. There is reason to believe that the agencies’ genetic expert may have leaned in this direction, even though his 2024 research first stated that only geographically-close herds should be intermixed, and then that translocation would cause all wild horse herds to become “homogenized”. This same geneticist has admitted that translocation *won’t fix genetic loss*. These facts, in addition to recommendations from conservation biologists that translocation is meant to be used only in a “rescue” situation, should illuminate the ill-conceived nature of translocation as a “tool” to fix genetic issues; which can instead be managed with a higher base population, geographic flow, and strategic retention. The best way to avoid these potentially negative effects, as well as unknown pathogens or undesirable heritable traits, is to maintain a population which allows for natural genetic diversity. Too, although continual monitoring is critical, including ongoing sampling apart from gather operations, caution should be taken where a generic Adaptive Management table calls for reactive steps when “thresholds are met”. Effective genetic management is complex, but is absolutely consistent with and required by the WFRHBA.

We also reject the premise of “metapopulation”. Whether applied as license to import breeding stock from other herds (also prohibited by the WFRHBA) or as punctuation to the “introduced species” narrative, a correct reading of 2013 NAS Report only recommends translocation between adjacent herds or herds with history of interbreeding. The BLM Handbook echos this statement. And, the belief that all wild horse herds comprise a homogeneous mixture of modern breeds is equally unfounded. The 2024 study (Genetic Dynamics of Mustang and Feral Horse Populations in the Western United States

E. Gus Cothran, Anas Khanshour, Stephan Funk, Eleanore Conant, Rytis Juras, and Brian W. Davis (2024)), in which the agencies' geneticist participated (mentioned above), revealed that the wild herds examined were NOT as closely related as assumed. As examples and known apart from this study, the Big Summit Herd was found to be unrelated to other Oregon wild herds tested (a "distinct breed"), and only 2 of 77 known matrilineal lines were represented; a rare finding in the field of equine genetics. The Theodore Roosevelt National Park Herd showed presence of matrilineal lines unknown in any other breed. Another Oregon herd, extracted from the wild, shows strong phenotypical and genetic links to prehistoric horses. The Forest Service admits, in their analysis, that the Heber horses have not been tested for anything related to genetics. There are important discoveries yet to be made; not only for the purpose of genetic health, but of genetic *identity.* It will be impossible to trace the current horses to "original" Heber residents, but it will be crucial to know who these horses now are. Without this knowledge, future management of this herd will be baseless.

The ASNFs' genetic health strategy, which includes rapid reduction in current population; a low AML; and the importation of outside horses to improve genetic diversity, violates the WFRHBA, § 1331, 1333(a), 1339.

Suggested Remedy: Increase AML to a naturally-viable level, and commit to more proactive genetic monitoring plan. This could include non-invasive fecal sampling.

Topic 2. Horse Population Estimates and Data

Comments skeptical of the ASNFs' population estimates are well-founded. The Central Oregon Wild Horse Coalition included a description of the annual herd census we conducted for the Forest Service, in dense timber and rugged terrain. We know that ground counting can be accurate, but only if certain protocols are followed. Aerial censusing may yield reliable results; again, if it is understood that horses move, and horses hide, and that accuracy must be verified through some manner of ground-truthing. But in the Heber Territory, there is a far greater challenge:

- Horses residing within the designated Territory are to be protected and managed under the WFRHBA.

- Horses residing outside the designated Territory but still within the ASNFs boundary are to be protected and managed under the WFRHBA.

- Horses who may have resided within the Territory boundary but have migrated off the Territory and off the ASNFs are to be protected and managed under the WFRHBA.

The aerial survey will not be effective in discerning the exact history of each horse (or elk, deer, or cow, since images are not always definitive according to species) expressed in an infrared image or as seen by an observer. This is why genetic testing is needed now and not later, and why rangeland assessments are unreliable, and why water sources need to be developed now and not later, and why fences need to be removed or drastically reconfigured now and not later, and why fertility control cannot be responsibly applied, and why AML cannot yet be determined, and why this EA is not ready for prime time.

The ASNFs' wild horse population data and dependent actions would violate the WFRHBA, § 1333(b)(1), 1334.

Suggested Remedy: Conduct current and reliable census. Study the ramifications of assumptions of horses' jurisdiction prior to taking removal or population control actions, to avoid the need for a second Stipulation Agreement.

Topic 3. Designation of Territory

"The intent of this project is to establish a management plan for the existing territory, not to reexamine the original 1974 territory designation."

The Forest Service here seems oblivious to its own disconnection from reality. By contrast, from the outside perspective of the public which the Forest Service serves, there can be no establishment of a management plan – not even an analysis of the effects of a management plan – until the Territory boundary is realigned with the information the Forest Service irrefutably had before it in the early 1970s.

As we and others stated in Comments: Given the circumstances surrounding the flagrant disregard for numbers and locations of wild horses at the time of the passage of the Wild Free-Roaming Horses and Burros Act; the passive failure to ensure the welfare and longevity of the few horses which the Forest Service admits were present; the well-known evidence of many wild horses present during that time; the decision to not abide by the WFRHBA's requirement to proactively manage wild horses to include a formal plan for their management; the open invitation to capture and sell wild horses on or near the established "territory"; the large-scale roundups, planned and nearly accomplished, which Forest Service staff fully knew would result in the torture and death of the horses; the actions and attitudes which necessitated the 2007 Stipulation Agreement; and the years elapsed since the Order which now finally bring us to this space and time, it is unconscionable that "This alternative was not analyzed in detail because the interdisciplinary team did not identify any unusual circumstance or other rationale to justify expanding the territory in contravention to the established Forest Service policy to manage horses and burros on territories as established in 1971 to the extent possible while adhering to all land management acts." If these circumstances are not considered to be "unusual" enough to draw an honest boundary around the horses' area, then we are horrified to imagine what *would* be unusual.

Commenters have receipts. Actual ones.

It may have been above the interdisciplinary team's literal pay grade to determine what circumstance or rationale might justify expanding the territory, as most resource specialists are not versed in wild horse law. However, the Range/Wild Horse and Burro specialist should be informed sufficiently in applicable law to discern the extenuating circumstances of the past which must now be rectified. And certainly, the responsible official here should have learned from the gross errors of the Apache National Forest Supervisor in 1974**;** or in 1984 when horses were removed from the Forest and sent ultimately into the dark, stinking alleys and chutes of abattoirs; or in 2005 when the Forest Supervisor authorized this same fate for hundreds of horses. Sins of the past do not merely demand a wild horse territory management plan; a *fair and sustainable management plan is required*. And the most fundamental of attributes are: a territory which encompasses historic usage – as the WFRHBA prescribes – and which also provides necessary habitat components; full and year-round access to those components; and a population which naturally maintains genetic variability. The failure of the proposed territory to

provide these elements is adequately “unusual” to justify expanding the territory, when history still haunts and this *one* opportunity for atonement is within our reach.

The ASNFs’ current/proposed territory boundary violates the WFRHBA, § 1331, 1334, 1338 (a)(1)-(6), and the Administrative Procedure Act.

Suggested Remedy: Terminate the current analysis in support of the Heber Wild Horse Territory Plan and restart a process which first revises the Heber Wild Horse Territory boundary according to the provable historic record.

Topic 3-4 Heritage of the horses is misrepresented

The Forest Service response to comments here is puzzling, as it refers to the quoted comments as “These diverging views” when all the views admonish that horses were present on the Apache National Forest in numbers much greater than “seven”, and across a wide swath of the Forest if not all the area to some extent. This section only amplifies the need for expansion of the territory boundary in order to comply with the WFRHBA. Diverging views of the horses’ breed lineage is not representative of disagreement with which the ASNFs must grudgingly contend, but is a matter of speculation regardless of the person offering an opinion, as no one imagined the future need for genetic verification in 2025. Since this information is not available, there is simply no reasonable basis for slanting the probable breed heritage narrative toward the Army Remount program, as the military was known to import particular stallions to breed with local stock, or to simply rely on local stock. ‘Artificial Intelligence’ has this to say:

“The U.S. Army Remount Program used a combination of breeds to produce cavalry mounts, relying on native stock and range horses in Arizona and the American Southwest. While stallions in the program were primarily Thoroughbreds, cavalry in the desert region were more likely to ride Mustangs or Morgan crosses that were better suited to the local environment than the purebreds used in other parts of the country.”

The most likely scenario is that the wild horses residing on the Apache National Forest in 1971 were (or were related to) the horses that reside on nearby Tribal lands, and the horses *currently* residing on the ASNFs are (or are related to) the horses that reside on nearby Tribal lands. Ranches and residents located near the ASNFs may have contributed to the wild horse population, but again, also may have originally obtained their horses from the wild or from horse brokers who obtained them from the wild; or from Tribal lands.

The horses’ origin story prior to European settlement is also unknown, with plenty of “experts” clinging to the ‘Spanish introduction’ assumption. Undoubtedly, considering the proximity to Spanish ports of entry, their horses contributed to Southwestern wild horses’ DNA. But two aspects of lesser-known history complicate the paradigm. First, in History of Mexico, Francesco Saverio Clavigero writes that explorers were so impressed with native horses (probably South American), that they shipped horses back to Spain as gifts to Spanish royalty “for these last 200 years”. Clavigero also states that the prolific nature of native American horses exported to Europe had collapsed horse prices there. This is congruous with the discovery of horse bones dating from tens of thousands of years before present to about one thousand years (obviously pre-European contact), made by Dr. Wade E. Miller et al. in Central Mexico (POST-PLEISTOCENE HORSES (EQUUS) FROM MÉXICO,Wade Miller,

Gilberto Pérez-Roldán, Jim I. Mead, Rosario Gómez-Núñez, Jorge Madrazo-Fanti and Isaí Ortiz-Pérez, 2022)). It is possible that the Spaniards brought American horses back to America, and it is possible that, since all equine species evolved in North America and nowhere else, that horses never completely became extinct. This theory is affirmed by permafrost sampling in Yukon/Alaska that shows horses disappearing in that location about four thousand years before present, and at the same time as other extant species left the area.(Collapse of the mammoth-steppe in central Yukon as revealed by ancient environmental DNA, Tyler J. Murchie, Alistair J. Monteath, Matthew E. Mahony, George S. Long, Scott Cocker, Tara Sadoway, Emil Karpinski, Grant Zazula, Ross D. E. MacPhee, Duane Froese & Hendrik N. Poinar, (2021)). We discuss this point here for the fundamental reason that the ASNFs seem to grasp at the Army Remount/random release of random horses origin story because that would diminish the horses' right to now occupy the Forests as a Federally-protected species. But, there's still a law; the Wild Free-Roaming Horses and Burros Act protects *all* horses and burros regardless of whether they are the discarded stock of farmers turning to mechanized equipment, the survivors of cruel journeys across oceans, or the most native of all native wildlife in America.

The ASNFs' revisionist wild horse origin story violates the WFRHBA, § 1331.

Suggested Remedy: Instead of rejecting documentation of the first Heber Wild Horses, collect known records and reconstruct origin story, using genetic technology to help verify origins and to provide accurate genetic identity profile for future management decisions.

Topic 5. Availability and adequacy of forage

While we are still not satisfied with the FS' explanation of forage allocated to wildlife, at the same time as the combined percentages allocated to wild horses and livestock leave 483,063 lbs. for (additional?) wildlife. But, taking the explanation at face value, it appears wildlife needs are accounted for but there is somehow an unclaimed amount of 483,053 lbs. Perhaps we don't need to fully understand. However, it is clear that the un-allocated forage is available for 1) more wildlife and/or 2) more livestock. But not more wild horses. The Central Oregon Wild Horse Coalition takes issue with this. The WFRHBA provides for wild horses and other wildlife, in a thriving natural ecological balance. It does not assure the discretionary grazing of livestock simply because "a multiple use *concept*" is to guide land management within the designated wild horse range. Multiple Use statutes (the promulgated Multiple Use-Sustained Yield Act of 1960 /Forest Service, and Federal Land and Policy Management Act of 1976 for BLM) concisely specify that public lands are to be managed for a balance of "uses" but not necessarily all uses or those which may produce revenue. Neither are agencies' Multiple Use statutes exclusive of "Principal Use" secured for wild horse and burro welfare under the WFRHBA. This topic would not be resolved in endless dissertation, nor does it need to be, as the WFRHBA did not lose the provision of Principal Use through amendments, and Congressional language plainly opposed the concept of special areas where horses and burros would be confined to a "zoo like" existence. The intent of the WFRHBA was that *all* wild horses and burros be allocated resources for their continued and thriving presence into the future; adequate numbers to perpetuate healthy herds, adequate space to live wild lives, the ability to find refuge from human pursuits, year-round water and *forage*. In other words, their basic needs must be met. Their range must be shared with viable populations of other wildlife species. But Multiple Use absolutely did not and does not allow agencies to restrict resources required by wild horses in order to promote certain sectors of the community or the economy which are neither conducive to healthy ecosystems nor the "naturalness" required of the wild horses' existence.

This section's heading also considers "availability" of forage. Yet, the proposed territory is reduced to smaller cow pastures, strung with barbed wire, and is admittedly devoid of perennial streams. *Availability* of forage and other basic requirements is materially restricted. The opening of gates for parts of the year, if that can even be assured, is nothing more than a token gesture. The on-paper allocation of forage to wild horses is simplistic at best, if not intentionally limited, but in a practical sense fails to meet the horses' most primary requirement.

The Forest Service's responses to public comments within this key issue are troubling in a management priority context, but certain statements stand out as being contradictory to the agency's own premise. First (EA at 175) "The AML determination document does not 'allocate a certain percentage of forage to each grazer group…'" and yet, the AML was determined by a specific forage allocation of 989,063 lbs. for wild horses. Then, after stating in this same paragraph that "...there would still be an additional 483,063 lbs. of the available forage for wildlife (beyond that currently utilizing the area) or for future adjustments in the livestock grazing level" the Forest Service states (EA at 176) "There are no proposals to increase the permitted livestock grazing as that is outside the scope of this project." We understand that such decisions would be make though yet another analysis, but this EA – this analysis – unequivocally sets the future action of increased livestock numbers in motion.

Of significant concern is the Forest Service's mention here of its Adaptive Management strategy. In our Comments, we conceded that "Adaptive Management principles would allow the ASNFs to assess resource condition and genetic sustainability." But there is a monumental chasm between employing the *principles* of Adaptive Management, which would entail a certain amount of flexibility to pivot from established directions when novel circumstances suggest, and using Adaptive Management to circumvent both proactive management and settled law. The ASNFs are indeed intent on using Adaptive Management to avoid the creation of a sound territory management plan and adherence to governing statutes. Although this section is meant to address comments regarding forage availability, forage and water are inextricably linked, and the EA expressly states that water resources will be developed *if* looks like there is a need… (EA at 171) "With the adaptive management strategy, if monitoring indicates a need, management action such as developing additional water sources (to draw the animals into under-used locations) and increasing fence permeability may be used to help improve the use of the territory by the horses." Exactly why does the Forest Service need an Adaptive Management table to grant permission to deploy common-sense practices *now*?

As a tenet for actual wild horse management into the future, the Forest Service continues (EA at 173) to promote the Adaptive Management concept, stating that it is being used, or will be used, to manage livestock grazing. In that application, it might make sense. Permitted grazing of privately-owned livestock is a discretionary use of public lands, but is without a Congressional mandate to protect specific herds of cattle or sheep which were grazing on the Forests as of December 15, 1971; wild horses and burros *are* granted this precise legal protection. Livestock grazing regulations exist and are codified for the purpose of controlling AUMs, dates of use, monitoring of compliance, other regulatory parameters, and whether a particular allotment may be removed from use by permitted livestock for various reasons; such as the land "devoted to another public purpose." (36 CFR § 222.4(1)) Conversely, wild horse management is governed by the WFRHBA, and not by local Adaptive Management. As this analysis progresses toward a final Decision, it is becoming apparent that the ASNFs are formally placing management of the Heber Wild Horse Herd under new and unauthorized constraints, as opposed to using *principles* of appropriate flexibility. Table 2 (EA at 24-28) appears to canonize various "thresholds" for critical, irreversible actions ostensibly to maintain the Herd at the proposed

AML; including the draconian "gather and removal of excess horses". According to Table 2, The removals can be ordered based on a perceived transgression against as few as *one* of the many identified thresholds; with removals authorized by "the responsible official" and apparently with no public input. "The responsible official has the discretion to choose any of the potential management actions if a threshold is reached." (EA at 22)

This authority is definitely NOT conferred upon local agencies by the WFRHBA. The process for determining 'excess' is contingent not only on populations exceeding AML, a current inventory, and range conditions, but once 'excess' is determined, the Forest Service must look at other options to bring the population down to AML (note: not to *maintain* AML) 16 U.S.C § 1333 (b)(1)(2). Though the lawfully expressed "threshold" of Thriving Natural Ecological Balance is as yet undefined, and it is laudable for ASNFs to attempt to approximate that standard through a matrix of sub-thresholds, it would be arbitrary and capricious for the ASNFs to contrive benchmarks that fail to even assign any alleged resource damage to wild horses when it is understood that, at most, horses may have *contributed* to the poor range condition values. Even more importantly, case law prohibits the "maintenance" of AML once it is attained:

Friends of Animals v. Bureau of Land Management Civil Action No. 18-2029 (RDM) 2024) ruled against long-range wild horse and burro management plans. In so doing, it determined that, once AML is reached, ensuing removals are only authorized if new analysis including public comment is completed. In other words, AML "maintenance" is no longer allowed. Too, regardless of Court decisions, the raw NEPA statute and the WFRHBA require currency of analysis (including recent and accurate inventories!).

Further, we still do not find how the low end of AML was derived, even if forage were to be appropriately allocated to a high AML of 104 horses.

Since the Final EA represents a lengthy opportunity for the ASNFs to have contemplated public input, recent case law, changing conditions, and additional experience and information acquired in the new realm of wild horse territory management, the Central Oregon Wild Horse Coalition had hoped for the Forest Service's enlightenment that Adaptive Management, and it's arbitrary, one-dimensional thresholds and solutions, should be set aside in favor of statute-guided principles for 'protection, management, and control' of its wild horses.

The ASNFs' allocation of resources violates the WFRHBA, § 1331, 1332(c), 1333(a)(b)(1)(2) and the National Environmental Policy Act (NEPA).

Suggested Remedy: Re-evaluate AML based on actual, studied, carrying capacity and in accordance with the WFRHBA, rather than by arbitrary utilization limits and non-binding Adaptive Management thresholds. See BLM Handbook guide to AML Determination.

<u>Topic 6. Population control techniques and impacts</u>

In the Central Oregon Wild Horse Coalition's Comments, we did not delve deeply into the issue of fertility control, except to express our rejection of permanent sterilization and gender ratio manipulation. Other commenters, with whom we generally agree, have strong positions on the use and abuse of popu-

lation control options, and the ASNFs have had ample notice to reconsider their proposed action in this light.

Regarding permanent sterilization, as stated, we consider any fertility suppression agents capable of producing this result, such as GonaCon, to be outside the legal parameters of the WFRHBA. Yet, the Territory Management Plan shows GonaCon to be “not permanent”. This is a simplistic acceptance of the foundationless conclusions reached by BLM after minimal study. That study is based largely on Dr. Dan Baker’s research on the wild horses residing in Theodore Roosevelt National Park, and was truncated before planned long-term research could verify permanence. The following is a link to a recorded interview with Dr. Baker:

Dr. Dan Baker interview, 05/28/2013: https://www.youtube.com/watch?v=kdLHvgVmIuw

The recorded interview with Dr. Baker is highly informative, and if agency staff could devote 82 minutes to watching it in its entirety, perhaps they would rethink their position that “GonaCon is NOT an experimental treatment.” Dr. Baker believed the drug was promising in the context of slowing large-scale wild horse population growth, but was also forthcoming as to the need for additional study. He affirms that the study indeed ended before it could be known whether the mares in the 6-year study, who failed to return to fertility, would have *ever* returned to fertility. He felt the “reversibility” pattern suggested in study results could be carried forward to real-time population control. However, instead of building on his research, agencies began administering GonaCon using protocols outside Baker’s research parameters. Presently, BLM is reportedly applying a second dose at a 30-day interval, whereas Baker’s study boosted at 6 months, 1 year, 2 years, and 4 years. The National Park Service, where Baker’s study took place, began using GonaCon on mares beginning at 8 months, and on an annual basis. By any definition, GonaCon is still an experimental treatment, though the experiment is now under no scientific control. Dr. Baker did, in fact, term the 30-day booster protocol “unethical”. Perhaps most troubling was Dr. Baker’s admonition that, in small herds such as reside in Theodore Roosevelt National Park, permanent sterility would be devastating. And this warning did not consider that geneticists have noted the existence of Matrilineal lines not found in other breeds, anywhere, except in the TRNP wild horse herd. In the instance of the Heber Wild Horses, absolutely nothing is known about their baseline genetics or any potential for unique aspects of their heritage or adaptation to the Black Mesa area. However, it is known that 50 -104 horses is considered a “small” herd, and is thus vulnerable to negative consequences.

Even without the effect of permanent sterilization, GonaCon’s other effects on mares is yet unknown and not adequately studied, and the effect on genetic diversity could be profound.

Contrary to agencies’ belief, GonaCon IS an experimental treatment, and there IS ample reason to question the safety of GonaCon use in wild horses. Jay F. Kirkpatrick, Ph.D., the recognized expert on wild horse fertility control, had registered his concerns, specifically regarding increased cardiological risks to humans, for example, which was apparently alleviated to BLM's satisfaction simply because the NAS Report concluded that "the mechanism and results of GnRH agonists would be *expected to be different*..." (see NAS p.115) But this prediction lacks empirical evidence. And, again from the NAS Report, p.132, contraception comparison charts reveal these cautions: "Sexual behavior may not be cyclic, inasmuch as ovulation appears to be blocked; Should not be administered during early pregnancy because abortion could occur; Few data on horses". (The Central Oregon Wild Horse Coalition recently witnessed the effects of an unborn foal's arrested development and subsequent death, leaving

the mare to suffer untold weeks or months of attempts to expel the necrotic flesh. We were unable to save the mare. This experience warrants our strong opposition to any preventable foal loss, regardless of cause) Too, because the scientific community views effects across a broad spectrum of mammalian species to be potentially relevant to all mammalian species, it may be significant that research findings have cautioned against low levels of progesterone (an effect of GonaCon) in human females; "Anovulation and low levels of serum progesterone have been associated with a significantly higher risk of breast cancer in premenopausal women." (In Defense of Progesterone: A Review of the Literature; Allan Lieberman, Luke Curtis). Also, it was perhaps widely suspected that GonaCon and its variants may have potentially-serious side effects on horses:

"At present, immunocontraception based on pZP glycoproteins appears to be the most practical and effective (Barber and Fayrer-Hosken 2000a, Fraker and Brown 2011), with few side effects (Ransom et al. 2010). pZP-specific vaccines likely have fewer side effects compared to GnRH vaccines (like GonaConTM; National Wildlife Research Center, Fort Collins, CO), *because GnRH receptors are located in a variety of tissues in addition to reproductive organs, including the nervous system (Lopez et al. 2007), bladder (Bahk et al. 2008), and heart (Skinner et al. 2009).* The potential effect of pZP-based immunocontraception on social structure and behavior in herd animals has been explored by others who reported either no differences (Kirkpatrick et al. 1995, Powell 2000) or minimal differences (Ransom et al. 2010) between vaccinated and control mares with respect to activity budgets, hierarchy within the herd, or interactions with stallions, unlike GnRH vaccines, which suppressed behavioral and physiological estrus (Elhay et al. 2007, Botha et al. 2008).” (emphasis added)

Since studies of effects of GonaCon on wild mares' return to fertility were inconclusive, because subject mares were not followed into latter years, there certainly cannot be available research analyzing long-range cancer occurrence in wild mares, or other unspecified, unknown effects. This is deeply concerning, and resonates with Kirkpatrick's alarm that "anti-GnRH vaccines could lead to adverse effects in other organ systems outside the reproductive system." Agencies bent on the use of GonaCon will face challenges to the questionable narratives regarding its safety in equine applications, as well as its “temporary effects”.

Too, fertility control becomes permanent when the subject horse dies, and previous research on potentially life-threatening side effects of GonaCon provides a basis for such concerns.

The use of GonaCon, or any form of permanent sterilization, is unacceptable; intentional or not. As noted in the 2013 NAS Report, p.108 "At the population level, removing females even temporarily from the breeding pool is likely to reduce the effective population size (*Ne*) and genetic diversity of the population". Also, research on behavioral effects of fertility control is sorely limited, typically to the simplistic verification of treated mares' acceptance into social structures of the remaining population. But this ignores the more subtle impacts to that structure. Foals are the heart of a band or a herd; at the core of band cohesion which promotes generational knowledge transfer, leadership development, survival strategy, and position security. Interrelationships are dynamic and purposeful, with foal production inherently recognized and valued as the future of the band. These critical aspects of wildness, and infinitely more that mere humans cannot know, are bound to be diminished or lost with permanent sterility.

We were not able to locate a projection of the ratio of fertility control-treated versus -untreated mares which would be returned to the range, other than what is stated in the HWHT Draft Management Plan

at 8: “...removals could be adjusted with an overall goal of reaching 80 percent of the mares receiving contraception agents/devices.” Without clarification to the contrary, this percentage indicates that the ASNFs intend for only 20 percent of the remaining mares on the range to be fertile. This is today’s re-active AML-targeted solution, but tomorrow’s genetic collapse.

To appreciate early understanding of the ramifications of sterility, the Conference Reports associated with the 1978 Public Rangeland Improvement Act (PRIA) amendment to the Wild Free-Roaming Horses and Burros Act should be considered, both in terms of untested solutions and the broader objec-tive.

(H. Report 95-1122):

“Where an overpopulation is determined to exist, the Secretaries must decide how excess animals will be controlled. In this regard, the bill mandates that consideration be given to options to use sterilization or to allow natural controls (such as disease and parasites) to achieve appropriate management levels. If the Secretaries find that such methods will not work, they are then directed to remove excess animals from the range until appropriate population levels are achieved.”

(Note: this Conference Report also speaks to the provision from the WFRHBA “minimal feasible level management”, which has been misinterpreted for over 50 years to justify actions that agencies simply don’t want to pursue. However, the Report, above, notes that “[if] such methods will not work, they are then directed to remove excess animals from the range…”. This effectively defines minimal feasible level management as being the “least-severe alternative, and the definition is shown to be accepted by the courts in *W.Watersheds Project v. Haaland*, 850 F. App’s 14 (D.C.Cir. 2021) (activities should be conducted “with as little disruption in the horses’ lives as possible”)” and was preserved from *Am. Horse Protection Ass’n., Inc. v. Watt (1982)*. Removal is seldom the least-severe alternative.)

It should also be noted that although perhaps none of these other options (“such methods”) would be embraced today, they represent less-severe alternatives to the animals’ removal from their wild home range and familiar herds. Sterilization must have seemed a more humane approach. But sterilization procedures in 1978 were pragmatically limited to male castration, which is not accepted as an effective means of population control today.

(H. Report 95-1737):

“… with close attention to maintaining ***a stable and viable breeding population*** of animals that are not in excess of appropriate management levels.” (emphasis added)

This sentiment is in direct opposition to “authority” conferred by the (PRIA) amendment to perma-nently sterilize wild horses, in any fashion. It may not be possible to know the intent of the term “steril-ization” appearing in the Wild Free-Roaming Horses and Burros Act (16 U.S.C. § 1333 (b)(1)), when castration of males was the only widely-used means of sterilization in 1978, but the overarching Con-ference intent was to allow wild horses to act and function as wild horses.

Concerning the IUD implant, it is unsettling that we even have to suggest that the use of IUDs in wild horses is absurdly outside the parameters of Minimum Feasible Level Management of wild horses. The initial insertion, and prospective removal, are far from the concept of “hands off” management, literally

and figuratively. (S. Report 92 -242): “An intensive management program of breeding, branding, and physical care would destroy the very concept this legislation seeks to preserve.” This passage doesn’t specifically mention “the implantation of intrauterine devices” because no Conferee of the time would imagine such an intrusive procedure being imposed upon a wild horse.

The entire heading of Population Control is premature, as the ASNFs must first determine where territory boundary lines will be drawn, and how they will justly manage the removal of horses outside the territory and off-Forest. The Adaptive Management population control thresholds are similarly unstudied and not ready for application. With the finished product of a *fair and sustainable* territory management plan so distant in the future, there should be no hard triggers waiting for the first mare who stands quietly for a dart.

The ASNFs’ population control plan would violate the WFRHBA, § 1331, 1333(a).

Suggested Remedy: Reconsider the use of any method of population control which could potentially cause permanent sterilization or unnatural behaviors, or would present unknown risks to the wild horses.

Topic 8. Territory Management Plan

The Central Oregon Wild Horse Coalition’s Comment on off-range disposition of Heber Wild Horses is quoted here, but the Forest Service reply is mistaken. Our questions are NOT answered in the Territory Management Plan.

Our Comment reads as follows:

We do not find detailed information as to the disposition of captured horses: What adoption facility (BLM/FS) will process captured horses? Who will approve facilities for adopted horses? Who will conduct compliance checks on adopted horses? If processed by BLM, will Heber horses be subjected to the ill-fated $1000 adopter incentive program? If processed by Forest Service, are qualified staff available? What database will be used? Will horses be freeze-branded as required by FS regulations, or micro-chipped, or both? What titling process will be used? What is the capacity of the ASNFs to rescue or re-possess horses in the event of failed adoptions? (Letter 912, Comment 13)

The Forest Service’s Response:

Response: The level of detailed information requested is already included in the Territory Management Plan. The standard operating procedures in the Territory Management Plan include the Comprehensive Animal Welfare Standards which are the standards that were developed by established professional equine health organizations both governmental and private which federal and state agencies must comply with.

What the Territory Management Plan says:

Appendix 2: Comprehensive Animal Welfare Standards
Excess animals may be transported to a Bureau of Land Management or Forest Service facility where they would be cared for in accordance with the Wild Free-Roaming Horses and Burros Act and the

most current Forest Service regulations and policies (prepared [freeze-marked or micro-chipped, vaccinated and de-wormed] for adoption or long-term holding).

The concerns we had raised were important, since we have observed and mitigated the effects of agencies' lack of oversight for the 23-year span of our organization's existence. Adopters are often unqualified, and their facilities are often unsuited for a wild horse. We have had to rescue and rehabilitate many horses after failed adoptions, and we have hosted many events designed to better equip adopters with information and a network of assistance. We have purchased wild horses destined for slaughter. Agencies mistakenly absolve themselves of responsibility for wild horses and burros once they enter the "off-range" vortex, though legally and morally they are still obligated to ensure the animals' welfare. Prevention of future failures, which all too often end in suffering and death, is not "outside the scope" of this analysis. Any captured Heber Wild Horse remains "wild" and in the purview of the ASNFs until such time as a title is issued. Even once the animal is titled, evidence may surface that the adopter or purchaser knowingly took possession of the animal for the express purpose of sale for slaughter, which is a violation of the adoption/sales contract and would return the horse or burro to the agency's scope of legal responsibility.

The public has every right to ask:

- Does the Forest Service intend to freeze brand captured horses, according to its own direction, or to skip that step and simply slip a microchip under the horse's skin which would be invisible at an auction yard or to any person having malicious intent? While the freeze brand does not ensure a wild horse will not be slaughtered, it at least alerts observers and stockyards to the possibility that the horse may be the property of the Federal government. Few persons/facilities along the slaughter route will have microchip readers or even handling equipment that would allow for detection of a chip. Nearly every horse or burro passing through these stockyards would have the potential of being wild, and we can be certain they are not checking every animal for a chip. Further, BLM has recently limited the information available to the public regarding horses destined for slaughter, whereas a freeze brand would at least be visible in some photos for some horses at some facilities, and might give the horse a fighting chance to be saved. The current practice of the Forest Service failing to freeze brand its horses and burros is unacceptable; even to the point of being a vestige of the very atrocities the WFRHBA sought to eliminate.

- Where will captured Heber Wild Horses go to be processed for adoption or sale? The public rightfully requests further clarification to this question, at least to have listed possible destinations. A BLM facility is more likely, for now, to freeze brand the horses, as well as to have skilled horse handlers and proper equipment and containment. Too, advocates can better advertise available horses to appropriate adopters when it is known where the horses will be located.

- Does the Forest Service plan to train and certify local compliance-checkers, who could also advise and inspect adopters' facilities? This was once considered standard procedure, and would be a major factor toward more successful adoptions. The Forest Service should also be apprised of competent wild horse trainers in the area, or at least maintain open relationships with advocates in order to link adopters to persons who are able to accept clients having wild horses.

- BLM's Adopter Incentive Program multiplied the number of formerly-wild horses and burros being slaughtered. After unrelenting opposition, the AIP was ended. However, the Forest Service had insti-

tuted its own AIP. Hopefully, FS got the memo and curtailed their copy-cat policy as well. If not, the public asks 'Is a program similar to the AIP contemplated to help 'unload' captured Heber Wild Horses?'

- Has the Forest Service developed a Wild Horse and Burro (off-range) tracking data base? Formerly, when a freeze branded horse or burro was randomly encountered in the public sector, a call could be made to the BLM office and the animal was readily identified. Title status was the most critical question, but BLM could also reveal the HMA/Territory of origin and age of the horse, and if not titled, BLM could contact the adopter and take appropriate action. Apart from advocates' role from a public perspective, the capacity for tracking individual horses is necessary for all types of follow-up actions. When the FS and BLM were formally partnered, it was impressively simple to freeze brand every horse and enable agencies to access the database as circumstances demanded. The ASNFs' cavalier approach disregards the significant safety-net for its wild horses of utilizing BLM's database or creating its own.

- What titling process will be used? We ask this specific question because several wild horses have been adopted from the Ochoco National Forest, following incidents of injury or pubic misconduct. Yet, the adopters still do not have titles after 5 or more years of possessing the horses.

The ASNFs' off-range plans are essentially non-existent, and therefore would violate the WFRHBA, § 1333(c), the Administrative Procedure Act, and FSM 2265.51 - Identification of Animals Placed in Private Custody.

Suggested Remedy: Make a concerted effort to identify voids in the off-range plan that could endanger captured horses, and add language to this and all future analyses. Develop procedures which address concerns expressed above.

This section, though its heading 'Territory Management Plan' would suggest most of the comments would fall under it, seems to capture just a few stray comments. We did note, however, that Adaptive Management is again mentioned. We restate that any attempt to define Thriving Natural Ecological Balance is commendable, but not when achievement of thresholds amounts to impingement on the statutory authority of the WFRHBA. We are also concerned that such drastic responses to the meeting of a single threshold can be based on horses merely "contributing" to supposed resource damage when the FS also admits that there is no ability to distinguish wild horse effects from livestock or wildlife effects. As we have also expressed, the Forest Supervisor does not have the authority to authenticate the thresholds associated with ASNFs' Adaptive Management table as meeting the "excess" determination, and especially cannot proceed with removal once AML has been achieved; and with no public engagement.

The ASNFs' Adaptive Management components exceed authority granted under the WFRHBA, § 1333(a)(b)(1)(2) and ignore recent case law pertaining to the unlawful "maintenance" of AML.

Suggested Remedy: Avoid departures from existing law regarding the removals of horses based on arbitrary "thresholds" and local officials' perceived authority.

Topic 10. Fencing

The ASNFs' Response here includes the following statement: "When the Heber Wild Horse Territory (the territory) was established it overlaid portions of the already well-established Black Canyon and Heber grazing allotments." We could descend into an argument that horses predated cattle in the ASNFs by at least a million years, and that would only account for the evolution of Equus caballus which includes all horses living today. Rather, we cite to a statement from the Rangeland Vegetation report (EA at 65): "The most recent allotment management plan for the Black Canyon Allotment was implemented in 1998. The plan was developed following site-specific environmental analysis with the decision notice signed November 20, 1998 (USDA Forest Service 1998). That plan implements a five pasture, deferred grazing system, with a season of use of June 1 through October 31…" This would suggest that the allotment map (EA at 61) reflects the 1998 decision and authorized construction of pasture fencing within the territory.

The Forest Service then responded to our comment by assuring the public that the Adaptive Management component would "increase fence permeability". As we stated, horses become accustomed to certain established travel routes, due to generations-old habits as well as factors such as terrain and predator pressure, and it can take as many generations to alter routes because of a new gate. It may pencil out, but in practical terms is probably not a meaningful solution. If gates are only open for periods corresponding to the absence of grazing livestock (assuming they ARE opened), then the wild horses are essentially shut out of expanded area and constrained within areas which may be receiving heavy use during times when vegetation is most vulnerable. This is also the timeframe wherein wild horses would require more water. It is a timeframe which excludes at least half the typical wild horse breeding season, and would therefore limit genetic exchange. And, it is the timeframe when wildfire is most likely to occur, but the Forest Service has said "Horses would not be removed in the event of wildfire, similar to other wildlife" (EA at 38) so there is little reason to imagine they would open all gates to allow for emergency egress. Wildlife, however, can generally jump or pass through fences. As a reminder, wild horses are a Federally-protected species, despite longstanding resistance to the WFRHBA from private interests and agencies alike, whereas permitted livestock grazing is entirely discretionary. Please consider removing fences.

The ASNFs' subjective preference given to livestock grazing over the needs of Federally-protected wild horses violates the WFRHBA, § 1331, 1332(a).

Suggested Remedy: Remove or reconfigure fencing which restricts wild horses' natural movement and may result in overuse of sensitive areas.

<u>Topic 16. Suggested alternatives for consideration</u>

This section heading misses an important point; the ASNFs only presented two Alternatives. Although NEPA direction is currently in a state of chaos, even the raw statute does not require a minimum number of Alternatives beyond No Action and Proposed Action. It *does* demand full and complete analysis, and these two Alternatives do not fulfill that standard. The No Action Alternative is a place-holder, having little value to most public interests. The Proposed Action rejects nearly all input from serious advocates for wild horses. Therefore, it is disingenuous for the Forest Service Responses to categorize issues such as reduction in livestock grazing as a separate Alternative. It is an issue that should be considered as an aspect of Alternatives. Since this was highlighted as a prospective Alternative, we will restate that wild horses are a Federally-protected resource, rather than a "use", and as such, the maintenance of wild horses into the future *requires* the habitat components necessary for the horses' physical

and genetic health. It's really that simple. Multiple Use does not preclude this fundamental adherence to the WFRHBA. Livestock grazing, again, is a discretionary use, and if the ASNFs choose to resist any changes to grazing levels in this analysis, it should be noted that the spare 483,063 lbs. of forage was said to potentially be available for more livestock. This is an assault on fair allocation, as well as the irrefutable provision from the WFRHBA which states that the horses' range is to be "devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands." Amendments and alternative interpretations of this premise have not erased it from the law.

The Central Oregon Wild Horse Coalition does, however, firmly believe that more Alternatives should have been developed. The territory *must* be expanded. The AML *must* be increased to allow for a genetically-viable population. Fences *must* be eliminated, and water sources *must* be developed or made accessible year-round. The WFRHBA, not some Adaptive Management table, *must* guide management. The ASNFs *must* take responsibility for the welfare of Heber Wild Horses once they are removed from their range. These points are non-negotiable, so it is the obligation of the ASNFs to determine how these issues can be fairly presented as necessary aspects of the sustainable, humane management of the Heber Wild Horse Herd.

The ASNFs' failure to develop workable, realistic Alternatives beyond the requisite No Action and Proposed Action violates NEPA.

Suggested Remedy: Take a genuine "Hard Look" at public input and provide interested parties with additional, realistic, Alternatives.

The Central Oregon Wild Horse Coalition also reiterates our misgivings about the ASNFs territory plan and supporting analysis, as we expressed in Comments submitted during the Scoping period and in response to the Draft Environmental Assessment.

Comments – March 14, 2020:

- Authority of Land Management Plan. p.2, 3. The Final EA does not provide justification for its elevation of Land Use Plan direction which conflicts with the WFRHBA and recent case law: "Guidelines for the Wild Horse Management Area – If horse populations exceed the appropriate management level horses should be removed in accordance with the wild horse territory management plan." So, the ASNFs. Land Use Plan was written in 2015, whereas the Heber Wild Horse Territory Plan's Final Decision has yet to be released and survive public challenge, but there is a formal Land Use Management Guideline for wild horses. Too, wild horses are given a Management Area, which rises above their treatment on other National Forests, but this designation fails to prioritize the horses' rightful use of the area in the sense that certain other uses are handed the very same resources. In the Land Management Plan, the wild horse territory has been found to be "suitable for livestock grazing" though this does not imply "entitled to". Too, livestock grazing Standards and Guidelines speak to the business of livestock's use of the land, to include areas overlapping the wild horse territory, as though they weren't treading through the horses' sole habitat for the duration of the grazing period. That period, notably, is when forage is at its peak, creating a significant differential between a livestock AUM and a wild horse AUM when measured in the dead of winter. One "guideline" is favorable to the sharing of land with other wildlife species:

"Forage, browse, and cover needs of wildlife, authorized livestock, and wild horses should be managed in balance with available forage so that plants providing for these needs remain at or move toward a healthy, persistent state."

But, "balance" is undefined here. This cannot mean "all the desired consumption of authorized livestock while restricting allocations to wild horses to a level wherein a viable wild horse population cannot be maintained".

Further, we did not find "forage allocation" guidelines in the Land Management Plan. The utilization standard used to limit grazing, and to set the AML, appears to be a construct established for range management in 1998 for the Black Canyon Allotment, and upheld in 2020 for the Heber Allotment. The "available forage" allocated to wild horses is wrongly dependent on a formula developed for permitted livestock.

As we also stated in Scoping comments, Recreation in the wild horse area was apparently expected to remain as it was in 2015, prior to the development of a territory plan, according to the ASNFs Land Management Plan at 118. "Desired conditions" within a designated Management Area, particularly one which was established pursuant to a Federal law, must be subordinate to the implementation of *that* law, whether the secondary purpose is grazing, recreation, or something else; not the other way around.

- "Principal Use" (public lands devoted to wild horses' and burros' welfare), relativity to Multiple Use and permitted livestock, is further explained in our Scoping Comments at 5-7.

ASNFs' Heber Wild Horse Territory Plan must recognize the authority of the WFRHBA over local land use plans or resource allocations meant for other uses.

Suggested Remedy: Revisit basic statutory requirements of the WFRHBA and build a territory management plan which reflects the gravity of the unique situation on the ASNFs. Consider following the entire BLM Handbook's direction regarding AML Determination, rather than the cursory first tiers alone; doing so would provide a baseline for comparing current horse use to actual carrying capacity.

Comments to Draft EA – April 20, 2021

- Environmental Impact Statement. Comments' reference 3, 4.

"3. Initially, we found it surprising that an Environmental Impact Statement was not prepared for this proposed action from the outset. The decisions in the balance have widespread implications and the potential for significant impacts in terms of both complexity and intensity."

"4. As we, and many others, have clearly said, an Environmental Impact Statement with a full range of Alternatives is badly needed. The reasons given by the ASNFs (EA pgs. 13, 14) for rejecting viable Alternatives do not hold up to laws and statutes."

ASNFs should have prepared an Environmental Impact Statement, considering the complex issues and challenges of a first-ever territory management plan within the historical context of this situation.

Suggested Remedy: With more open and honest dialogue and intent to create a fair and durable management plan, start over.

At this stage of the planning process, we find it necessary to express confusion and concern over the status of NEPA as the guiding statute for determining the extent of analysis required by agencies. Considering this project was initiated in 2007 by Court Order, and the public was notified of the Scoping process in 2020, we understand that agencies had the latitude to continue under the 1978 NEPA Rule. Or, after September 14, 2020, agencies could elect to conform to the 2020 CEQ revised Rule. Then, in 2024, the 2020 Rule was revised, replacing most of that direction and expanding environmental protections to include, as examples; climate change effects/reduced emissions, restoring "Significance" definitions, and applying some EIS standards to an EA. In 2025, the 2024 Rule was rescinded, and CEQ was out of the NEPA interpretation business. Currently, USDA's universal NEPA interpretation is in effect.

We do not find reference in the Final EA as to which iteration of NEPA regulations governs this project now and going forward. Clarification would be greatly appreciated.

Respectfully submitted,

Gayle Hunt

Central Oregon Wild Horse Coalition gdhunt4@gmail.com 541-447-8165