Data Submitted (UTC 11): 3/16/2020 7:00:00 AM
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Comments: March 16, 2020

M. Stephen Best, Forest Supervisor

Attn: Heber Wild Horse Territory

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Springerville, AZ 85938

Submitted online: https://cara.ecosystem-management.org/Public/CommentInput?Project=18916

Subject: Heber Wild Horse Territory Plan #18916

Dear Supervisor Best:

Thank you for the opportunity to comment on the "Heber Wild Horse Territory Plan #18916 on behalf of the Cloud Foundation, a 501(c)3 nonprofit organization committed to protecting and preserving America's wild horse and burros on our public lands through education, advocacy and public participation in our government.

The U.S. Forest Service (USFS) is soliciting public scoping comments for the Heber Wild Horse Territory (WHT) Management Plan. The WHT, which is about 2.5 to 3 miles wide by about 7 miles long, is located in the Apache-Sitgreaves National Forest, in the Black Canyon area of the Black Mesa Ranger District.

TCF, its board of directors, staff and supporters greatly appreciate the Heber wild horses. Having the opportunity to visit and read about these wild horses provides us with enhanced enjoyment of our public lands. We have a strong appreciation for the Apache-Sitgreaves National Forest, and specifically the Black Canyon area of the Black Mesa Ranger District because the Heber wild horses live in that area.

Attached please find our comments and additional documents for your consideration. We appreciate the

opportunity to submit public comment on this topic. Please feel free to contact us with any questions.

Sincerely,

Ginger Kathrens

the Cloud Foundation

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I. OVERVIEW

The U.S. Forest Service (USFS) is soliciting public scoping comments for the Heber Wild Horse Territory (WHT) Management Plan. The WHT, which is about 2.5 to 3 miles wide by about 7 miles long, is located in the Apache-Sitgreaves National Forest, in the Black Canyon area of the Black Mesa Ranger District.

TCF, its board of directors, staff and supporters greatly appreciate the Heber wild horses. Having the opportunity to visit and read about these wild horses provides us with enhanced enjoyment of our public lands. We have a strong appreciation for the Apache-Sitgreaves National Forest, and specifically the Black Canyon area of the Black Mesa Ranger District because the Heber wild horses live in that area.

The following issues must be addressed in the WHT Plan:

[middot] Establishing AML Equitable with Livestock Forage Allocation in and Around the WHT
*
* Protecting Wild Horse Natural Behaviors
* Implementing Humane Management and Humane Fertility Control
* Addressing Fencing Issues Interfering with Natural Horse Movements
* Correcting WHT Boundary Errors
* Conducting Current Census

1. COMMENTS

We urge the USFS to address and incorporate into the Wild Horse Territory Plan the specific points outlined herein.

1. Appropriate Management Level (AML): Equitable with Livestock Forage Allocation: The following is an excerpt from the USFS[rsquo]s [ldquo]Proposed Action, Heber Wild Horse Territory Management Plan, January 2020[rdquo]:

The territory overlays two livestock allotments named Black Canyon and Heber, 60 percent of the Black Canyon allotment and six percent of the Heber allotment overlap with the Heber Wild Horse Territory[hellip]Grazing is in balance with available forage (grazing and browsing by authorized livestock, wild horses and wildlife do not exceed established use levels).

The current [ldquo]Allowable[rdquo] Management Level (AML) of 50-104 horses for the 31-square-mile WHT is inadequate. AML must be in conformance with the 1971 Wild Free-Roaming Horses and Burros Act. The majority of AUMs or forage allocation within the WHT must be [ldquo]principally but not necessarily exclusively to wild horses[rdquo] as outlined in the 1971 Wild, Free-Roaming Horses and Burros Act (WFRHBA). Based on current scientific evidence, in order to maintain an acceptable level of genetic diversity, AML must be set at a minimum of 150 to 200 horses (in order to have 50 effective breeding animals) as recommended for wild horse management in
the BLM Wild Horse and Burro Handbook.

[ldquo]A minimum population size of 50 effective breeding animals (i.e., a total population size of about 150-200 animals) is the minimum number of animals recommended to maintain an acceptable level of genetic diversity within reproducing WH&B populations.[rdquo] (Cothran, Gus, 2009. BLM Letter dated July 16, 2009.) [ldquo]This number is required to keep the rate of loss of genetic variation at 1 percent per generation. Animal interchange between adjacent HMAs with smaller population sizes may reduce the need for maintaining populations of this size within each individual HMA.[rdquo] Because there is little to no interchange of the Heber horses with other wild horse herds, it is doubly important to manage for a genetically viable herd.

The Proposed Action states: [ldquo]Tier 2 determined there is enough forage within the territory to support an upper limit of 104 wild free-roaming horses, while still meeting management direction for other resources.[rdquo] We argue that the WHT Plan must not allow livestock grazing to be prioritized above wild horses. Instead, the EA must consider alternatives for [ldquo]meeting management direction for other resources.[rdquo] Specifically, the EA must consider reducing or eliminating livestock grazing within the WHT in order to adhere to the legal requirement to provide resources [ldquo]principally[rdquo] for wild horses versus livestock (see below III. Applicable Laws).

The Plan must also disclose all livestock grazing within the WHT including, but not limited to, permitted AUMs and actual use of AUMs for allotments within and near the WHT. Approximately 9,349 acres of the WHT overlaps the Heber Allotment, mainly within the Gentry Pasture (7,326 acres), with the remainder in the Bunger Pasture (1,892 acres), and the Holding Pasture (131 acres). The Animal Unit Months (AUMs) allocated for livestock grazing in this

allotment for areas located within the WHT and west of the WHT should be eliminated to enable the FS to humanely manage wild horses in this wild horse habitat.

The Proposed Action states, [ldquo]introduce[e] one to three young animals from outside the area to maintain or increase genetic diversity[hellip][rdquo] Genetic diversity is directly related to ensuring a healthy breeding population. Without an adequate population size of more than 150 horses, this herd will be forced to inbreed, thus causing a reduction in genetic diversity or health. By managing the Heber horses based on familial relationships and maintaining the minimum population of more than 150 horses, genetic diversity will be protected.

In order to support the above proposed action, the WHT Plan must fully disclose the science that supports keeping the population below 150-200 individuals and fully describe the calculation of how contributing one to three horses to the population will resolve genetic inbreeding. Dr. Gus Cothran has claimed that adding individuals from another WHT will increase genetic variability over multiple generations. The EA must describe how many generations it will take to increase genetic variability, the duration of a generation for a wild horse, and all genetic data on the Heber horses.

If any Heber horses have already been found to have low or below average genetic variability for wild horses, we urge USFS to establish the minimum population at greater than 200 horses.

2. Protect Natural Wild Horse Behaviors

The Territory Plan must prioritize preserving natural wild horse behaviors. As the National Academy of Sciences determined "preserving natural behaviors is an important criterion" for wild horse management. Therefore, the following should be precluded from management actions:

*

* sex ratio skewing which causes stallion aggression due to the unnatural ratio of males to females;
* castration, ovariectomy and other surgical sterilization that alters the animal's ability to produce natural hormones; and

[middot] any fertility control that alters the production of natural hormones.

In 1971, Congress unanimously passed the Wild, Free-Roaming Horses and Burros Act. It was not called the "American Horses and Burros Act" for a reason. The word "Wild" has distinct meaning, especially when it comes to wild horses and burros. Wild behaviors are the basis for the rich and complex natural social structure of wild horses.

[ldquo]The very essence of the wild horse, that is, what makes it a wild horse, is the social organization and social behaviors. Geldings (castrated male horses) no longer exhibit the natural behaviors of

non-castrated stallions. We know this to be true from hundreds of years of experience with gelded domestic horses. Furthermore, gelded stallions will not keep their bands together, which is an integral part of a viable herd. These social dynamics were molded by millions of years of evolution, and will be destroyed if the BLM returns castrated horses to the HMAs [hellip] Castrating horses will effectively remove the biological and physiological controls that prompt these

stallions to behave like wild horses. This will negatively impact the place of the horse in the social order of the band and the herd.[rdquo] [ndash] Dr. Jay Kirkpatrick, wildlife reproductive biologist, Science and Conservation Center, Zoo Montana

Dr. Kirkpatrick explains that altering natural hormone production through castration essentially changes how that animal feels and behaves. Gelding, ovariectomies and other methods (e.g. drugs) are primarily used on domestic horses and burros to change behaviors [ndash] to make the animals more docile and conducive to training. This is literally done to kill the [ldquo]wild[rdquo] and make the animals more tolerant of human dominance. Interfering in this way with wild horses or burros is counter to the very spirit of the 1971 WFRHB Act.

The 2013 National Academy of Sciences conducted a BLM-commissioned scientific review of the agency[rsquo]s Wild Horse and Burro Program. The NAS stated that maintaining natural behaviors in free-ranging horses is in the public interest and that BLM should be more responsive to public sentiment: [ldquo]Individual males vary in their behavioral response to castration[mdash]for example, in the loss of male-type behavior, such as aggression and sexual interest, depending on the age and sexual experience of the male. However, some or total loss of sex drive would be likely in castrated stallions, and this is counter to the often-stated public interest in maintaining natural behaviors in free-ranging horses.[rdquo] (page 123)

The Cloud Foundation has documented that mares [ndash] especially lead mares [ndash] play a critical role in wild horse social structure. Mare hormone production would be altered through spaying or ovariectomies or use of drugs that shutdown mares[rsquo] estrus or cycles. The resulting changes to their natural behaviors would only be known on an individual basis.

We know that mammals[rsquo] behaviors, especially social behaviors, are related to hormone production. Therefore, it[rsquo]s understandable that shutting down the production of certain hormones would likely cause the loss of natural behaviors essential to [ldquo]wild horses[rdquo] [ndash] including stallion behaviors for winning and keeping mares, lead-mare behaviors necessary for maintenance of social organization, band integrity, and expression of a repertoire of natural behaviors.

Additionally, wild horses and burros living in extreme environments rely on their natural instincts for survival -- destroying natural behaviors may actually put the lives of these animals at risk.

3. Implement Humane Management Including PZP fertility control program

As a part of humane management, we urge USFS to fully implement (administer to a minimum of 85% of all mares) a humane PZP fertility control program. The Territory plan must allow work with volunteer groups to:

*
* dart on USFS-managed public lands; and
* bait feed on USFS-managed public lands, as needed, to assist with the application of PZP fertility control humane management.

Given the unique situation regarding the Heber wild horses and the history of catastrophic fires in the area, the Territory Plan must include managing horses outside of the Territory through PZP and relocations not removals. The Heber wild horses in and outside of the Territory can be easily controlled and reduced through natural attrition and with the use of PZP. Volunteer

organizations would be happy to work with USFS to implement this humane management that prevents and excludes removals, and allows wild horses to live and die wild as intended by the WFRHBA.

We strongly oppose the Territory Plan establishing the following as [ldquo]thresholds[rdquo] which, if exceeded, would trigger a roundup:

*
* Reaching the upper limit of AML [ndash] instead, range conditions should be the determining factor.
* Horses identified outside of the WHT [ndash] rather, horses outside the WHT should be relocated to the WHT (current WHT boundaries are erroneous and must be corrected).
* 35% utilization on 30%+ of the monitoring area for two of five years -- this should be revised to be in conformance with the livestock grazing standards in the livestock grazing permits in the area (the Plan must include copies of grazing standard requirements for allotments in and around the WHT).
* Drought conditions [ndash] drought conditions do not occur overnight and the Territory Plan must establish proactive measures to ensure water is available throughout the WHT; the plan must consider implementing protocols for low precipitation years prior to drought conditions to ensure the horses have year-round access to adequate water.
* Evaluation of vegetation and soil stability -- use must be distinguished between livestock and horse usage and the three [ldquo]measurement periods[rdquo] must be defined in terms of years.
* Resource damage [ndash] resource damage should first trigger the reduction or elimination of livestock; the proposed language that [ldquo]horses are identified as a contributing factor[rdquo] suggests that livestock could be the primary factor and wild horses will once again be scapegoated for livestock damage to our public lands; horses should not be removed unless all livestock have been removed from the areas for a minimum three years

4. Address Fencing Issues Interfering with Natural Horse Movements

It is clear, based on the USFS pasture fence/horse observation map provided, that fencing is impeding horses

from fully utilizing much of the Territory. Any fencing within the Territory that prevents free movement must be removed. This is inhumane, wrong and not in conformance with Congress[rsquo] intent. The Plan must describe why, if the USFS has not erred in setting the WHT boundaries, horses are not utilizing the WHT (and specific allotments within the WHT).

If there is fencing that has been destroyed or damaged due to fire or other causes [ndash] allowing the Heber wild horses to stray onto private lands -- this fencing must be repaired. These horses must be returned to the WHT, not removed from it. It would be unfair to penalize the wild horses for human error in not repairing damage to fencing meant to keep them safe in their Territory.

Just as USFS takes actions (e.g. fencing, etc.) to enhance livestock grazing on our public lands, USFS should include as a part of its Territory Plan enhancing habitat for wild horses by removing (or preventing) fencing that inhibits the wild horse natural migratory patterns. Wild horses move daily, seasonally and annually [ndash] these movement patterns have developed over time to accommodate the well-being of the horses. Fencing prevents these natural movements

and can jeopardize the well-being of the horses [ndash] preventing the horses from accessing lifesaving water sources or forage.

5. Improve Water Accessibility

The Territory Plan must ensure that water sources are available for wild horses who visit or live on Forest lands. The Territory Plan must also include actions to protect and prevent harm and suffering for these federally protected animals. Ensuring the horses have access to water is essential. Strategic construction or placement of water sources will enhance horse distribution thereby reducing pressure on specific areas.

The USFS must incorporate in the Territory Plan a policy that prevents USFS actions that may jeopardize the well-being of the Heber horses, i.e. the construction of fencing that would knowingly cut off horse access from their natural migratory patterns or life-sustaining water or forage.

The Territory Plan must include protocols that will ensure USFS takes proactive measures to ensure horses have access to water year round and that water sources are strategically located to ensure even distribution of horses across the WHT and USFS must take proactive measures to prevent horses from being fenced out of areas where forage is available.

6. Correct Boundary Errors

Based on historic information, it is apparent that the WHT boundary was incorrectly drawn and lands adjacent to the current boundaries of the WHT that have been used historically for decades by the wild horses were

excluded for their use. To suggest that horses were only found outside of the WHT) in the 1970[rsquo]s when the first federal census was conducted [ndash] and that only seven horses were within the WHT [ndash] is illogical. The USFS must provide documentation as to whether or not the neighboring Reservation laid claim to all the wild horses (outside of the claimed seven horses in the WHT) during that census.

The WHT Plan must disclose the dates (months/years) and maps of the original census and any claims to the horses identified in the census; if USFS does not have these source documents it must state that fact in the plan.

Given that the wild horses would not live in the mountains during the winter months, it is obvious the WHT boundaries failed to take into consideration the seasonal movement of the horses. The Plan should recommend the WHT boundary be redrawn to be in conformance with historic wild horse usage and the animals[rsquo] need to have access to suitable habitat throughout the year. All source documents regarding historic horse use should be included in the Territory Plan appendix.

The boundary revision can be conducted by presenting the historical information that horses have lived outside of the current boundaries and by documenting that historic use to define the correct boundaries. The WHT Plan is the first step in the process to address this error in WHT

boundary which jeopardizes the Congressionally protected horses. The WHTMP boundary recommendation then should be addressed in a Draft EA.

National Forest Management Act, 16 U.S.C. [sect][sect] 1600-1687([ldquo]NFMA[rdquo]) By refusing to consider revising the WHT boundaries the USFS will fail to take a [ldquo]hard look[rdquo] at the environmental impacts arising from the loss of the natural wild horse habitat and the impact that has on the well-being of these federally protected animals. USFS cannot ignore the error in boundary placement of the WHT without being in violation of NEPA.

The National Environmental Policy Act, 42 U.S.C. [sect][sect] 4321-4370 USFS has the same authority as BLM to change Herd Area or Burro Area (Territory) boundaries: [ldquo]Decisions to change HA

boundaries, to designate HMAs for the maintenance of WH&B, or to remove all or a portion of an area[rsquo]s designation as an HMA must be made through a LUP amendment, revision or new RMP[rdquo]

(cite BLM 43 CFR 4710.1 and H-1601-1: Land Use Planning Handbook).

The Apache-Sitgreaves National Forests cover 2.76-million-acres of public lands and the Black Mesa Ranger District encompasses approximately 616,000 acres of timber. The Heber WHT is limited to under 20,000 acres. A revision of the WHT boundary will [ldquo]not significantly alter[rdquo] the multiple-use goals and objectives for long-term land and resource management.

[ldquo]Adjustments of management area boundaries or management prescriptions resulting from further on-site analysis when the adjustments do not cause significant changes in the multiple- use goals and objectives for long-term land and resource management.[rdquo] Forest Service Manual

[sect] 1926.51 Clearly, the WHT boundary revision would not [ldquo]have an important effect on the entire land management plan or affect land and resources throughout a large portion of the planning area during the planning period[rdquo] and therefore would not be considered [ldquo]significant[rdquo] according to the USFS Manual. Forest Service Manual [sect] 1926.52

This boundary revision is even more urgent and important because wild horses are in great peril given the lands that have been burned in recent years.

We strongly suggest that the WHT Management Plan include a policy to accommodate wild horses outside of the WHT until the boundaries can be redrawn and that any horses that need to be moved be relocated back to the WHT.

Given the proximity to the Phoenix area, the Heber wild horses could be another attraction to the Apache-Sitgreaves National Forests if the USFS were to cultivate and humanely manage the horses with PZP fertility control.

7. Conduct Current Census

Prior to drafting the proposed Territory Plan, USFS must conduct a current census to confirm the population number. While we understand that tree cover may be an issue, we urge the USFS to undertake this important step.

III. Applicable Laws

The Territory Plan must address and be in conformance with applicable laws, regulations and statues including but not limited to those listed herein.

1. Federal Land Policy and Management Act of 1976 (FLPMA)

FLPMA requires that USFS [ldquo]balance wild horse and burro use with other resources[rdquo] which equates at minimum to a 50-50 allocation of available forage between horses and livestock on WHTs. The Draft EA must take this into consideration.

FLPMA addresses the importance of the non-market value within its definition of the term [ldquo]multiple-use.[rdquo] FLPMA requires that:

[ldquo](c) . . . consideration being 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.[rdquo]

The intrinsic value of wild horses and burros falls under the non-market definition specified by both laws.

Sec. 302 of FLPMA states:

[ldquo](a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed

in accordance with such law,[rdquo] [43 U.S.C. 1732] and Sec. 102 [ldquo](b) 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[rdquo] [43 U.S.C. 1701]

In addition, FLPMA requires the public lands to be administered for [ldquo]multiple-use,[rdquo] which Congress defined as:

[ldquo]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 . . . with consideration being 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.[rdquo] [43 U.S.C. [sect] 1702(c)].

While commercial livestock grazing is permitted on public lands it is not a requirement under the agency[rsquo]s multiple use mandate as outlined in the Federal Land Policy and Management Act of 1976 (FLPMA). Indeed, public land grazing is a privilege and not a right and the USFS is

mandated by law to protect wild horses and burros. Therefore, the agency[rsquo]s management and Draft EA should reflect these priorities and legal requirements.

Grazing on public lands is a privilege, and not a right See 43 U.S.C. [sect] 315b & 16 (1943 Taylor Grazing Act, stating that grazing preferences "shall not create any right, title, interest, or estate in or to the lands" belonging to the U.S. Government); 43 U.S.C. [sect] 580l (FLPMA similar provision); Omaechevarria v. Idaho, 246 U.S. 343, 352 (1918) ("Congress has not conferred upon citizens the right to graze stock upon the public lands. The government has merely suffered the lands to be so used"); U.S. v. Fuller, 409 U.S. 488, 494 (1973) (grazing permittee does not acquire a property interest in grazing permit); Swim v. Bergland, 696 F.2d 712, 719 (9th Cir. 1983) ("license to graze on public lands has always been a revocable privilege"); Osborne v.United States, 145 F.2d 892, 896 (9th Cir. 1944) ("it has always been the intention and policy of the government to regard the use of its public lands for stock grazing. . . as a privilege which is withdrawable at any time for any use by the sovereign without the payment of compensation"); Diamond Bar Cattle Co. v. U.S.A., 168 F.3d 1209, 1217 (10th Cir. 1998) (permittees "do not now hold and have never held a vested private property right to graze cattle

on federal public lands"); Alves v. U.S., 133 F.3d 1454 (Fed. Cir. 1998) (holding that neither

grazing permit nor preference is a compensable property interest).

2. Taylor Grazing Act (TGA)

The TGA provides the government broad discretion to decide whether to allow livestock owners to use the public lands i.e., the issuance of a grazing permit does not confer any entitlement or right to use the public lands; rather, it is a privilege that can be taken away if necessary to protect the health of the range and even if necessary to protect the wild horses. See 43 U.S.C. [sect] 315b (BLM, is [ldquo]authorized[rdquo] to issue permits for the grazing of livestock on public lands [ldquo]upon the payment . . .of reasonable fees[rdquo]); id. ([ldquo]the creation of a grazing district or the issuance of a [grazing] permit . . . shall not create any right, title, interest, or estate in or to[rdquo] these public lands.

Id. (emphasis added). Indeed, the TGA also provides that the Secretary [ldquo]is authorized, in his discretion, to . . . classify any lands within a grazing district, which are . . . more valuable or suitable for any other use,[rdquo] 43 U.S.C. [sect] 315f, including use by wild horses that are required to be protected under the WHA (Wild Horse Act). See 16 U.S.C. [sect] 1333(a); see also 43 C.F.R. [sect] 4710.5(a).

Livestock grazing on public lands is a privilege that can be taken away if necessary, to protect the health of the range and even, if necessary, to protect wild horses.

3. Wild Free-Roaming Horses and Burros Act of 1971

Following is general definition of [ldquo]range[rdquo] in the 1971 Act and it applies to all BLM-managed public lands where the horses were [ldquo]presently found[rdquo] in 1971 and thus applies to all Herd Areas

[ldquo]Definitions . . . (c) [lsquo]range[rsquo] means 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; . . .[rdquo]

[Public Law 92-195 [sect] 1332]

4. National Academy of Sciences and National Research Council

The National Academy of Sciences (NAS) was founded in 1863 in the midst of the American Civil War. The National Research Council (NRC) was founded in 1916 against the backdrop of the First World War. These two independent research bodies have played significant roles to ensure the U.S. government is provided balanced, fact-based information and data which should be incorporated in governmental decision-making processes.

The Draft EA should consider recommendations and reviews from the NAS and NRC [ndash] while directed to the BLM Wild Horse program, these positions are applicable to the USFS management of Congressionally-protected wild burros.

The National Academy of Sciences (NAS) Report on the BLM Wild Horse and Burro (WHB) Program dated June 2013 (hereafter [ldquo]NAS Report[rdquo]) also supports the above requirements of FLPMA:

[ldquo]It is unlikely that all the values involved can be monetized in a way that is satisfactory to all parties, so use of economic policy tools such as benefit-cost analysis and contingent valuation, although potentially informative, is not able to resolve value differences fully

and is not adequate to support decisions.[rdquo] p. 273

[ldquo]Horse and burro management and control strategies cannot be based on biological or

cost considerations alone; management should engage interested and affected parties and also be responsive to public attitudes and preferences.[rdquo] p. 292

[ldquo]Livestock grazing occurs on 160 million acres of land (65% of BLM land) with a maximum of 12.5 million AUMs of grazing authorized and 8.6 million AUMs used. By contrast, wild horses exist on 26.9 million acres of BLM land and are authorized 318,060 AUMs and are estimated to have used 447,689 AUMs. Put another way, of forage allocated on BLM land to wild horses and livestock, wild horses account for just 5% of consumption, while

livestock account for 95%.[rdquo]

The 1982 National Research Council report on the BLM[rsquo]s wild horse and burro program stated:

Attitudes and values that influence and direct public priorities regarding the size, distribution, and condition of horse herds, as well as their accessibility to public viewing and study, must be an important factor in the determination of what constitutes excess numbers of animals in any area[hellip] [A]n otherwise satisfactory population level may be controversial or unacceptable if the strategy for achieving it is not appropriately

responsive to public attitudes and values[hellip]

Biologically, the area may be able to support 500 cattle and 500 horses and may be carrying them. But if the weight of public opinion calls for 1,000 horses, the area can be

said in this context to have an excess of 500 cattle. For these reasons, the term excess has both biological and social components. In the above example, biological excess

constitutes any number of animals, regardless of which class above 1,000. Social excess depends on management policies, legal issues, and prevailing public preference...

The WHT Plan must consider the interests of those who cherish the opportunity to observe, photograph, and otherwise enjoy wild horses and/or burros which Congress declared to be [ldquo]national esthetic treasure[s][rdquo] when it enacted the Wild Free-Roaming Horses and Burros Act of 1971.

IV. HISTORY

The WHT Plan must acknowledge the history of the Heber wild horses. Below are excerpts from the USFS [ldquo]Tonto National Forest Final Assessment Report [ndash] Final Assessment Report of Social and Economic Conditions, Trends, and Risks to Sustainability, Vol II.[rdquo]

USFS [ldquo]Scoping Summary, Heber Wild Horse Territory Environmental Analysis,[rdquo] page 2 states:

During the west[rsquo]s settlement period it was common practice to use the wild horse herds as a pool from which stock could be drawn for use as needed by anyone who could catch them[hellip]. the practice of keeping free ranging horses for potential use by a livestock association or an individual is still active on some Indian Reservations. This is true of the Fort Apache Indian Reservation (the Reservation) that shares a boundary with most of the Lakeside and Black Mesa Ranger Districts[hellip]. Reservation horses moved freely back and forth

between ownerships (Klein, 1993) [hellip] The territory was established in an area where it was known that seven horses ranged. The first recorded census (1974) of the HWHT showed seven horses, with notations that the stallion was thought to be sterile because no foals were seen for several years. By 1975 five horses were being reported and their numbers remained stable for the next several years. By the early 1990s, only two mares could be found[hellip] During the 1980s-1990s other horses continued to move back and forth between the Reservation and the ranger districts, especially whenever boundary fences needed repair. It was common for the fence to fall into disrepair during winters[hellip]. Horses arriving onto public lands after December 15, 1971, do not automatically acquire the status of a wild horse under the Act. Any horse introduced onto the Forest on or after December 15, 1971 by accident, negligence or willful disregard of private ownership is not a wild horse.

In addition, Item 4 of the In Defense of Animals, et al., vs. United States Forest Service, et al. Stipulation Agreement dated March 13, 2007, directs the Forest Service to develop a Heber Wild Horse Territory Management Strategy, in accordance with the provisions of the Wild Horses and Burros Protection Act of 1971, which requires a Territory Management Plan.

The Proposed Action includes an [ldquo]ethnographic study[rdquo] conducted by [ldquo]a Forest Service historian to inform the deciding official about the relationship of the current horse population to the horses on the territory when it was designated (USDA Forest Service 2017).[rdquo] No information is provided on the identity or credentials of the [ldquo]historian[rdquo] or the ten people interviewed for the [ldquo]study[rdquo] [ndash] essential data in evaluating the validity of a [ldquo]study.[rdquo]

The [ldquo]ethnographic study[rdquo] states one of the people interviewed claimed: [ldquo]There were around 7 horses in the 1960s and 1970s when the territory was first created. A hard winter in 1967- 1968 left the stud or stallion sterile (one source indicates 1983). There were no more foals within that original herd after that winter or any subsequent years. The herd dwindled down to 2 horses, which likely died of old age.[rdquo] Each individual relied upon for this information must be disclosed in order that the public is given the opportunity to provide meaningful comments. Clearly credibility of these individuals is of the utmost importance given that their statements are being utilized to support the USFS Proposed Action.

The Draft EA must include the entire [ldquo]ethnographic study[rdquo] in order that the public may provide meaningful comments. The study included conducting and synthesizing oral histories given by ten people with various associations with the territory. The study was not meant to be exhaustive or definitive, rather to provide the deciding official with various perspectives of the history of the horses. Since the deciding official is considering the perspectives included in the [ldquo]ethnographic study[rdquo] the validity and credibility of the sources of these [ldquo]perspectives[rdquo] must be subject to public review/scrutiny so that meaningful public comments may be presented.

Figure 4. Map showing overview of fences and recorded observations of horses 02/2015 & 04/207

Crane and others (1997) found horses move from lower to higher elevations in the summer and back to lower elevations in the winter where access to feed is less hampered by snow accumulation.

Figure 4 above shows that more horses in higher elevations in April than in February further supporting the understanding that horses move from lower to higher elevations in warmer months.

I. Animal Welfare

The Territory Plan must not simply adopt the BLM[rsquo]s [ldquo]Comprehensive Animal Welfare Program (CAWP),[rdquo] which is woefully inadequate in establishing humane standards for the treatment of wild horses and burros during a roundup, it must go further in its protection of these animals.

If helicopters are to be used as a part of any management, the plan must consider, analyze and implement humane standards as outlined in the below recommendations. These recommendations are necessary to reduce potential stress and harm to the wild horses during a roundup. Merely citing the BLM CAWP will not sufficiently meet the National Environmental Policy Act (NEPA) requirements that the agency must consider meaningful alternatives presented by the public. The WHT Plan must consider information to minimize stress and injury to wild horses during roundups must be analyzed including the following:

1. Limit the distance wild horses may be chased by a helicopter to no more than five (5) miles.
2. Require that the helicopter not chase/move wild horses at a pace that exceeds the natural rate of movement of that specific animal. Every effort should be made to keep older, sick and young animals together with their companions or mothers as they are moved to the trap. The helicopter should not move or capture compromised, old, weak or young animals.
3. Establish strict requirements for suspending helicopter roundup operations in temperatures below 32 degrees F (freezing) or over 90 degrees F. Roundups outside of this temperature range would be blatantly inhumane.

The EA must consider and adopt the following with regards to CAWP:

*

* Improved public observation of all agency actions. There is significant public interest in the agency[rsquo]s management of wild horses and burros and its management of these protected animals. The NAS specifically recommended to the BLM to improve the transparency of its management of the Wild Horse and Burro Program (Attachment). The treatment of the wild horses and agency transparency are paramount.
* All removal operations must be located on public lands to allow public observation of all activities. No government operations should be located on private lands for which the owners will not give permission for public observation of activities.
* Real-time cameras with GPS should be installed on all aircraft and/or helicopters used in operations and video should be live streamed on the Internet. This will improve the transparency and accountability of roundup operations and enable the USFS and public to monitor the direct impact motorized vehicle usage has on wild horses and the environment.
* Real-time cameras should be installed on any traps, corrals and temporary holding pens, again, so that USFS personnel, public and media can monitor the entire roundup operation and treatment of the horses.

The recommendation of real-time cameras is also supported by a report commissioned

by Cattoor Livestock Roundup, a long-time roundup contractor hired by the BLM which states:

[ldquo]Video monitoring of animal operations is a good way to ensure humane handling is taking place on a daily basis. Video cameras mounted in helicopters and in the capture and holding pens can also render the activists[rsquo] videos as simply nothing more than proof that your business [lsquo]walks the walk[rsquo] when it comes to upholding animal welfare standards.[rdquo] The report was prepared by Mark J. Deesing, Animal Behavior & Facilities Design consultant for Grandin Livestock Handling System. Deesing was an assistant to the highly regarded livestock industry consultant Dr. Temple Grandin. (Attachment)

Video cameras will improve the transparency of the operations and enable the BLM and public to monitor the direct impact motorized vehicle usage has on wild horses and the environment. TCF would be happy to provide technical assistance and financial assistance to establish these real-time cameras as described above.

II. Conclusion

We request that the important issues raised in this letter are disclosed and analyzed in the WHT Plan. The vast majority of Americans greatly cherish our iconic wild horses. The BLM and USFS wild horse programs are highly controversial due to the very issues facing the Heber wild horses today. We urge the USFS to be responsive to the public[rsquo]s concerns and follow the NAS recommendations. The public wants a fair and equitable program for the

Heber wild horses, one that manages the Territory primarily for wild horses not privately- owned livestock

Attachments:

1. BLM Wild Horses and Burros Management Handbook
2. The National Academy of Sciences (NAS) Report on the BLM Wild Horse and Burro (WHB) Program dated June 2013
3. Grandin-Deesing roundup report to Cattoors, 2012